

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Monday, June 6 2022 at 9:30 a.m.

VOLUME 24

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1 Arbitration Place Virtual
2 --- Upon resuming on Monday, June 6th, 2022 at
3 9:30 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning, Counsel. Mr. Ferguson.

8 THE WITNESS: Good morning.

9 MS. LAWRENCE: Good morning,
10 Mr. Ferguson.

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

25 Many counsel appearing today

1 at this hearing are located in Toronto, which is
2 on the traditional land of the Huron-Wendat, the
3 Seneca, and most recently the Mississaugas of the
4 Credit River. Today this meeting place is still
5 home to many indigenous people across Turtle
6 Island and I'm grateful to have the opportunity to
7 work on this land.

8 Thank you. Turning now to our
9 on witness today, Mr. Ferguson. Can the court
10 reporter please affirm the witness.

11 DAVID FERGUSON; AFFIRMED

12 EXAMINATION BY MS. LAWRENCE:

13 MS. LAWRENCE: Thank you.
14 Commissioner, may I proceed?

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

17 BY MS. LAWRENCE:

18 Q. Good morning,
19 Mr. Ferguson.

20 A. Good morning.

21 Q. I'm going to start with
22 some questions about your professional background.
23 I understand that you're a graduate of Mohawk
24 College transportation engineering technology
25 program; is that correct?

1 A. Yes.

2 Q. And you are a certified
3 engineering technologist through the Ontario
4 Association of Certified Engineering Technicians
5 and Technologists?

6 A. Yes.

7 Q. Am I correct that prior
8 to working at the City of Hamilton you worked as a
9 manager of traffic and bylaws with the City of
10 Welland?

11 A. That's correct.

12 Q. And also with the City of
13 Toronto and the City of Brampton as a traffic
14 technologist?

15 A. Correct.

16 Q. You joined the City of
17 Hamilton in August 2013; is that right?

18 A. Yes.

19 Q. What was your role at
20 that time?

21 A. I was hired as a
22 superintendent of traffic engineering.

23 Q. Can you describe that
24 role, please.

25 A. Yeah. We were

1 responsible for the community traffic group. So
2 they dealt primarily with reviewing safety
3 operational concerns around local traffic such as
4 all way stop requests, speed concerns, safety
5 concerns. We were also responsible for traffic
6 signals, so the operation of signals, signal
7 timings, new installations. We were also
8 responsible for the traffic engineering side which
9 was the design of traffic signals and pavement
10 markings.

11 Q. Thank you. Who did you
12 report to in that role?

13 A. My direct report was
14 Mr. White, manager of traffic.

15 Q. That's Martin White?

16 A. Yes.

17 Q. And at the time Mr. White
18 reported to Geoff Lupton, is that right, when you
19 first started?

20 A. Correct.

21 Q. After Mr. Lupton retired
22 who did Mr. White report to?

23 A. Um --

24 Q. Mr. Mater?

25 A. Yes, it was Mr. Mater.

1 Thank you.

2 Q. You're welcome. And
3 before Mr. Lupton retired did Mr. Lupton report to
4 Mr. Mater?

5 A. That's correct, yes.

6 Q. And am I correct that
7 Betty Matthews-Malone took over Mr. Mater's
8 position as Mr. White's direct report?

9 A. Correct.

10 Q. In your role as
11 superintendent who reported to you?

12 A. Who reported to me? At
13 that time it was project managers. We had Ron
14 Gallo, we had Stephen Cooper, Sue Russell, and Rob
15 Decleir.

16 Q. Those are all project
17 managers. At some point during your tenure did
18 the City also add a senior project manager?

19 A. Yes.

20 Q. And that role was filled
21 by Jason Warren?

22 A. Correct.

23 Q. What was Mr. Warren's?

24 A. He was a senior project
25 manager. So he oversaw the community traffic

1 group.

2 Q. So he oversaw the project
3 managers that you just named?

4 A. Yeah, he would have
5 overseen Stephen Cooper and Sue Russell.

6 Q. Why was Mr. Warren's role
7 of senior project manager added to your team?

8 A. We had a large group, a
9 considerable amount of work, and it aligned with
10 the hiring of Rob Decleir. So Mr. Decleir dealt
11 with the signal side of operations and Mr. Warren
12 was going to deal with the traffic technical side
13 of operations.

14 Q. I understand in 2019 you
15 switched roles at the City; is that right?

16 A. Around that time, yes.

17 Q. What was your new role?

18 A. Superintendent of roadway
19 safety.

20 Q. Can you describe that
21 role in contrast to the -- your first
22 superintendent role?

23 A. So this was just focused
24 on the community traffic roadway safety works.

25 Q. In that role was

1 Mr. Declair in the sign group still under your
2 responsibility?

3 A. No, the signals group was
4 separated.

5 Q. Who did you report to
6 while in the role of superintendent roadway
7 safety?

8 A. Started with Mr. White
9 and then Mike Fields.

10 Q. Who did they report to?

11 A. Edward Soldo.

12 Q. When did you leave your
13 position of superintendent of roadway safety?

14 A. When did I leave?

15 Q. Hm-hmm.

16 A. July '21.

17 Q. July 2021?

18 A. Yes.

19 Q. What is your current
20 role?

21 A. Manager of traffic
22 services.

23 Q. In which municipality?

24 A. City of Brantford.

25 Q. Thank you. I have some

1 questions about the City's roster program. I
2 understand for a time you were a roster captain;
3 is that right?

4 A. That's correct.

5 Q. Can you describe how the
6 City of Hamilton roster of consultants worked in
7 terms of work distribution to them?

8 A. So a request would be
9 made to the roster captain by various staff for
10 works to be done and the roster captain would
11 assign a consultant to that group.

12 Q. The assignment by the
13 roster captain of a consultant, was that based on
14 that specific industry areas or expertise?

15 A. It would be assigned on a
16 number of things. It would obviously take into
17 consideration expertise. We also tried to
18 distribute the work through various consultants,
19 as well as previous experience.

20 Q. Am I correct that there
21 were a number of roster captains responsible for
22 different rosters of specialized consultants?

23 A. Yes, there was different
24 roster captains in different areas, departments.

25 Q. I'm going to turn now to

1 some questions about the Red Hill Valley Parkway
2 safety review in 2013 which I'm going to refer to
3 as the 2013 CIMA report.

4 You started at the City in
5 August of 2013 and this project was already under
6 way; is that right?

7 A. Correct.

8 Q. Who was the project
9 manager for the City for this project?

10 A. That would have been
11 Stephen Cooper.

12 Q. Ron Gallo is also
13 identified as someone on the team. What was his
14 role to your knowledge?

15 A. So he was a senior PM.
16 He filled sort of that leadership role until the
17 position that I received was filled.

18 Q. Did Ron have a traffic
19 safety background?

20 A. He had a traffic
21 background, yes.

22 Q. Did he have a particular
23 focus or expertise within traffic safety?

24 A. Ron was primarily focused
25 on the signal side. That was more his forte. And

1 design of pavement markings and traffic services.

2 Q. So I understand, we've
3 talked about signs and signals. Can you tell me
4 what the difference is between those two things?

5 A. Sorry, signs?

6 Q. Signs and signals. You
7 said Mr. -- Ron was primarily focused on the
8 signal sign -- side, the signal side. What is the
9 signal side as compared to signs or markings?

10 A. So signals is the actual
11 operation of traffic signals; signal timings,
12 reviewing corridors, level of service,
13 coordination of signals. So it's the physical
14 operation of the signals.

15 Signs and markings and traffic
16 signals design is the physical design --
17 developing the pavement marking designs, the
18 technical drawings for signal installations, where
19 poles are going, where signal lights are, et
20 cetera.

21 Q. Thank you. Mr. Field,
22 Mike Field was also part of the internal City team
23 for this project. In 2013 what role did Mr. Field
24 play in this project to your knowledge?

25 A. I believe his title was

1 project manager of street lighting.

2 Q. What expertise did he
3 have, if any, around lighting, to your knowledge?

4 A. As far as I was aware he
5 was trained and specialized in street lighting,
6 electrical.

7 Q. Thank you. The last
8 person on the team according to the documents was
9 Gary Kirchknopf. What was his role in this
10 project to your knowledge?

11 A. I don't recall Gary's
12 interactions with that project.

13 Q. Okay. And what do you
14 recall about his role in the City more generally?

15 A. I believe he was manager,
16 but I'm not sure exactly what his title was.

17 Q. Did he work within
18 traffic safety or was he in another area of public
19 works?

20 A. No, he was in the
21 engineering department.

22 Q. And what about Mr. Field,
23 was he in the engineering department or was he in
24 the traffic safety department?

25 A. They were in engineering.

1 Q. Thank you. Mr. Ferguson,
2 we're going to be spending some time today within
3 the inquiry's review documents and the registrar
4 is going to bring those documents up on the
5 screen.

6 Registrar, if you can bring up
7 chapter 6, page 44, paragraph 104, please. Thank
8 you.

9 Mr. Ferguson, how is your
10 screen share? Can you see both sides of the
11 image?

12 A. Yes.

13 Q. And how is the font?

14 A. Good.

15 Q. Thank you. The registrar
16 will occasionally call out things to make them a
17 little bit bigger for us and to highlight them.

18 So you said earlier that you
19 started in August of 2013. On August 22nd traffic
20 engineering services had a meeting and I believe
21 that you were there. There's a reference to DF.
22 Is this one of the first meetings that you had in
23 your new position?

24 A. Yes, with the traffic
25 team, yes.

1 Q. The notes of this meeting
2 include a number of different things going on
3 within traffic engineering services, but one of
4 them was the Red Hill Valley Parkway safety
5 review. You see at the bottom there it's
6 excerpted. Comments have been provided to the
7 consultant. Revision expected by end of week for
8 final review. Once completed will be presented to
9 council.

10 Do you recall being briefed on
11 the status of a Red Hill Valley Parkway safety
12 review project at this meeting?

13 A. No, I don't.

14 Q. Registrar, you can close
15 that. Thank you.

16 Whose responsibility was it
17 within traffic engineering services to bring this
18 report to completion?

19 A. It was assigned with
20 Mr. Gallo and Mr. Cooper.

21 Q. And that didn't change
22 despite your addition to the team?

23 A. No. They had obviously
24 been involved with the project up to this point
25 and I had just started with the City so it would

1 be appropriate to keep it with them as they have
2 the background information.

3 Q. Did you understand, in
4 your very early days of your time at the City,
5 that this report was the result of a motion from
6 council -- pardon me -- from the PWC?

7 A. Not specifically at that
8 time, no.

9 Q. When you were first
10 briefed what did you understand the primary focus
11 of this report to be?

12 A. My understanding was that
13 it was related around lighting, concerns with
14 lighting, and review of signage -- signage and any
15 other possible improvements.

16 Q. Thank you. Registrar,
17 can you go to page 47, paragraph 111, please. No
18 need to call it out. Thank you.

19 So in August -- on August 23rd
20 Mr. Cooper forwarded an e-mail message from CIMA
21 that included the attachment of the draft -- final
22 draft of the CIMA report and he asked for
23 comments.

24 Registrar, can you close that
25 and open up HAM41675.

1 This is the attachment to that
2 e-mail that was forwarded to you. Did you review
3 this draft of this e-mail report when you received
4 it from Mr. Ferguson?

5 A. When I received it from
6 Mr. Cooper.

7 Q. Pardon me. Yes, when you
8 received it from Mr. Cooper.

9 A. I don't remember
10 specifically, but I would assume that yes, I did
11 review it.

12 Q. Would it be your practice
13 to review draft reports that hit your in-box?

14 A. Correct.

15 Q. Registrar, you can close
16 this down. Actually no, if you could leave it up.
17 Sorry, Registrar. If you can bring up OD6,
18 page 47, paragraph 113.

19 There was a meeting scheduled
20 with Mr. White and your boss, you, Mr. Cooper,
21 Mr. Gallo, Mr. Field and Mr. Kirchknopf, those on
22 the team, to discuss the safety review scheduled
23 for September 4th, 2013. Would it have been your
24 practice to review the report before that meeting?

25 A. I would say yes.

1 Q. If you can open up
2 HAM41675, please. And you can close this
3 document. If you can turn up image 19, please.
4 Apologies. I misspoke. Image 18, please. Thank
5 you.

6 So this is -- if you can call
7 out some findings summary, please. So this is
8 from the CIMA draft that Mr. Cooper forwarded to
9 you, and it is a summary of the most notable
10 findings of the collision analysis that CIMA had
11 done. Is it fair to say that you had some
12 experience with collision reviews from your work
13 at other municipalities?

14 A. Yes.

15 Q. So you would have
16 reviewed this summary carefully?

17 A. Yes.

18 Q. In here there's a number
19 of references to types of collisions, the
20 proportion of collisions, and the location of
21 collisions. Did these findings cause you to
22 conclude that additional countermeasures would be
23 prudent?

24 A. Additional on top of
25 recommendation of the report?

1 Q. No. From the current
2 status of the roadway?

3 A. Yes, based on what's
4 identified in the report yes.

5 Q. Thank you. You can close
6 that call out, please, Registrar.

7 You'll see the bottom half of
8 this page there's a reference to the safety
9 analysis that CIMA did using the enhanced
10 interchange safety analyst tool. Were you
11 familiar with that tool?

12 A. No.

13 Q. When you reviewed this
14 draft report did you have any concerns about the
15 methodology that CIMA used?

16 A. It was something that was
17 identified and something that I was aware of. The
18 report itself sort of identifies it as somewhat of
19 a -- I wouldn't say a concern, but a flag that
20 there's some discrepancies with using that tool as
21 a prediction model.

22 Q. Other than those
23 limitations identified by CIMA, did you have any
24 other issues with the methodology or tools used by
25 CIMA?

1 A. No. CIMA is a reputable
2 consulting firm so always supportive of the
3 information they bring forward.

4 Q. Did you do any review of
5 the underlying data that CIMA was analyzing?

6 A. I don't recall.

7 Q. You didn't go into any of
8 your own collision review analysis based on
9 internal City information, City data?

10 A. Not at this time, no.

11 Q. Registrar, can you go to
12 image 20, please. Sorry, I misspoke. Can you go
13 to image 25, please, and can you bring up the next
14 image as well, please.

15 Mr. Ferguson, under
16 "Illumination Review" at the bottom of image 1 and
17 top of image 2 and in particular in the track
18 changes that are noted at the bottom it says,
19 "illumination of the main line section of the RHVP
20 was not examined for this study." And at the top
21 of image 2:

22 "This is because the
23 illumination design choices
24 that were made during the
25 design phase were intimately

1 linked to approvals."

2 Did you have any discussion
3 with anyone at the City either that the briefing
4 meeting we talked about or the September meeting
5 that we just -- calendar invitation we just looked
6 at about the scope of CIMA's review on
7 illumination?

8 A. Not that I recall.

9 Q. What limitations, if any,
10 were you aware of about the ability to illuminate
11 the main line?

12 A. Well, at this point from
13 reading the document my understanding was that the
14 direction was to review lighting specifically
15 around the Mud Street ramps. I didn't take it
16 that there was a direction to look at the entire
17 main line or study area.

18 Q. Did you come to that
19 conclusion based on looking at this report or
20 based on looking at the motion or some from
21 discussions? What was the source of that?

22 A. I don't recall
23 specifically what it was. I can't remember if
24 there was reference to it at the beginning of the
25 report or at some point I had received what the

1 actual direction was in terms of the study.

2 Q. So your understanding was
3 that the direction was to review lighting in a
4 specific part of the study area. Apart from that
5 limitation or that narrowing of scope, were you
6 aware of any other limitations about the ability
7 or the feasibility to illuminate the main line?

8 A. It's difficult for me to
9 answer because I wasn't with the City when the
10 scope document was prepared, so I was just going
11 based on what was available with respect to the
12 direction and the focus area. So again if it's
13 not included within the scope of the project then
14 of course the consultant wouldn't be looking at
15 it.

16 Q. The top of image 4
17 references the illumination design choices that
18 were made during the design phase were intimately
19 linked to approvals. Did you receive any
20 additional information about -- we can have that
21 call out if you like.

22 A. I appreciate that.

23 Q. Registrar, would you mind
24 calling out the first paragraph, please. That's a
25 bit bigger.

1 A. Thank you.

2 Q. Did you receive any
3 additional information about the illumination
4 design choice or the approvals that is referenced
5 in that first sentence?

6 A. Not that I'm aware of,
7 no.

8 Q. Thank you. You can close
9 this. And can you go to image 34, please. No,
10 pardon me, image 42, please. Apologies, image 40,
11 please. Jumping all over. Thank you.

12 So this is the summary of
13 findings. So we looked at that summary of notable
14 collision review findings and this is the
15 summary -- sort of second summary. Going down to
16 the third paragraph from the bottom "it is
17 noteworthy that." Registrar, could you pull that
18 paragraph out, please. Thank you.

19 Do you recall taking note
20 about the three types of collisions that CIMA had
21 noted compared to the provincial and City of
22 Hamilton averages?

23 A. Yes.

24 Q. And did you also find
25 that these three types of collisions occurring in

1 atypically high proportion compared to provincial
2 and City of Hamilton's averages was also
3 noteworthy?

4 A. What do you mean by --
5 can I ask just -- what do you mean by
6 "noteworthy"?

7 Q. Was it something that
8 when you review it you said oh, well, this is
9 something I need to keep an eye on?

10 A. Yes. I would say yes.

11 Q. And did it leave with you
12 the impression that there was potential
13 countermeasures, including those that CIMA had
14 suggested, that should be put in place in order to
15 address these types of collisions in particular?

16 A. Correct, yes.

17 Q. Thank you. Registrar,
18 can you go to image 44, please. Can you call out
19 "Perform Friction Testing," that paragraph. The
20 first paragraph of this recommendation is:

21 "Pavement friction plays a
22 vital role in keeping vehicles
23 on the road by enabling
24 drivers to control and
25 maneuver the vehicle in a safe

1 manner."

2 As a person with road safety
3 experience you understood the importance of
4 pavement friction. Is that fair to say?

5 A. I agree.

6 Q. And you understood its
7 potential correlation to collisions?

8 A. Yes.

9 Q. In the last sentence of
10 this callout:

11 "Based on the high proportion
12 of what wet surface condition
13 and single motor vehicle
14 collisions, the City could
15 consider undertaking friction
16 testing on the asphalt to get
17 a baseline friction
18 coefficient for which to
19 compare to design
20 specifications."

21 Did you know at this point if
22 the City had a system to assess pavement friction
23 on the Red Hill on an ongoing basis?

24 A. No.

25 Q. Do you have any knowledge

1 about whether friction testing had been done
2 before 2013?

3 A. No.

4 Q. In 2013 would you have
5 expected the City of Hamilton to have such a
6 monitoring program?

7 A. No.

8 Q. Why not?

9 A. Well, it's not a
10 regular -- through my experience it's not a
11 regular type of study or assessment that is
12 completed.

13 Q. I'm going to turn now to
14 image -- before I leave this one. You said it's
15 not a regular type of study or assessment that is
16 completed and that's based on your experience
17 working for other municipalities?

18 A. Correct. I've never been
19 involved in a friction test.

20 Q. Do you know why it's not
21 something that the municipalities that you worked
22 in had, at least to your knowledge?

23 A. No.

24 Q. Registrar, can we go to
25 image 60, please. Actually back just a couple.

1 If you can go to 58 first, please. Thank you.

2 So this is a summary of
3 countermeasures starting with overall
4 countermeasures and then roadside countermeasures,
5 and then as we just saw second ago, ramp
6 countermeasures. Do you remember reviewing these
7 potential countermeasures?

8 A. Yes.

9 Q. Do you recall having or
10 taking any issue with any of the potential
11 countermeasures?

12 A. No.

13 Q. Thank you. Registrar,
14 you can close this.

15 So back to that internal
16 meeting that was scheduled for September 4, what
17 do you remember about that meeting, if anything?

18 A. Unfortunately nothing.

19 Q. Registrar, can you bring
20 up OD page 43, paragraph 98, please.

21 So this is an e-mail between
22 Mr. Field and Mr. Cooper. You're not copied on
23 this but I do want to highlight the third
24 paragraph. Mr. Field says to Mr. Cooper in this
25 e-mail:

1 "Illumination of the main line
2 has been excluded. This is
3 decision is based on upon
4 information we provided to
5 CIMA. The exclusion is not
6 well explained. Considering
7 that illumination of the main
8 line is the first request in a
9 council motion to review, I
10 think that there should be far
11 more explanation as to why it
12 was excluded."

13 Was there any discussion at
14 the September 4th meeting to your recollection
15 about the exclusion of the illumination of the
16 main line from the study?

17 A. I don't recall.

18 Q. Can you close this,
19 Registrar.

20 Did you provide any comments
21 on the draft report that CIMA had sent to
22 Mr. Cooper and then Mr. Cooper had sent to you and
23 others for comment?

24 A. I don't remember.

25 Q. Registrar, can you go to

1 page 48, paragraph 114, please.

2 So you sent -- the day after
3 the scheduled meeting, internal meeting, you sent
4 a copy of the reviewed draft report with
5 markups -- so we've moved a little ahead in time;
6 there is a new draft -- to CIMA. Pardon me. The
7 draft from CIMA to Councillor Collins. By this
8 point had you reviewed the motion that led to this
9 project?

10 A. I don't recall
11 specifically, but I would say yes.

12 Q. On whose instruction did
13 you send a copy of the draft report to Councillor
14 Collins?

15 A. I don't recall
16 specifically. It would have been at the direction
17 of the management team.

18 Q. You're still pretty brand
19 new to the City. Would you have done this on your
20 own initiative?

21 A. No.

22 Q. What was the purpose of
23 sending a copy to Councillor Collins? And just
24 referring you to the e-mail you sent, if you would
25 like to set up a meeting, you offer a meeting to

1 Councillor Collins. What is the purpose of both
2 of those things?

3 A. Well, one was at that
4 time the process within -- can't remember what we
5 were called -- was to engage with councillors and
6 specifically discuss with councillors who have
7 either brought forward motions or notices of
8 motion or directions or were impacted or
9 identified within the ward about a report, to have
10 open communication with those councillors to make
11 them aware of what was coming forward.

12 Q. Did you have any concerns
13 about providing a draft consultant report to a
14 subset of councillors rather than all councillors?

15 A. No.

16 Q. You said that the process
17 at that time was to have that engagement. Did
18 that process change?

19 A. No. It was we would
20 continue pretty much till the time I left to
21 engage councillors on reports and studies.

22 Q. When you say engage, do
23 you mean speak to councillors in advance of coming
24 to the public works committee, for example?

25 A. Correct.

1 Q. At this point, so in
2 September of 2013, was it your intention to
3 provide a copy of the final version of this e-mail
4 report to all of the councillors on the public
5 works committee?

6 A. I don't recall
7 specifically.

8 Q. Again recognizing you are
9 quite new to the City at this point, had that been
10 your practice in your other roles at other
11 municipalities, that is, to give councillors final
12 copies of consultant reports?

13 A. Well, we would engage
14 with councillors about upcoming reports. I don't
15 recall specifically providing them with copies of
16 consultant reports.

17 Q. So this invitation for a
18 meeting to Councillor Collins actually turns into
19 an invitation to a meeting for a broader group of
20 councillors.

21 Registrar, can you close this
22 callout.

23 And you'll see at
24 paragraph 117 you schedule a meeting with
25 councillors Collins, Jackson and councillor Clark.

1 Registrar, if you can go over
2 to the next image.

3 Councillor Clark ended up
4 being ill, you will see in paragraph 118. Do you
5 remember the meeting with the other two
6 councillors?

7 A. No, I don't remember the
8 meeting at all.

9 Q. You have no recollection
10 of it at all?

11 A. No.

12 Q. Registrar, can you go
13 over to the next image, page 50, please.

14 On September 17 and 18 you had
15 an e-mail exchange with Mr. Lupton and Mr. White.
16 So just as a reminder, at this point Mr. Lupton is
17 Mr. White's boss and Mr. White is your boss; is
18 that right?

19 A. Correct.

20 Q. And was it generally a
21 hierarchical communication structure, that is,
22 from you to Mr. White, to Mr. Lupton, or was there
23 collaboration on amongst the three of you, just
24 generally?

25 A. I would say it was

1 primarily Mr. White and I but I would also say
2 there was a collaboration approach.

3 Q. Mr. Lupton is not a
4 traffic safety person, is he?

5 A. No, I don't believe he
6 had a background in traffic.

7 Q. But Mr. White did?

8 A. Yes.

9 Q. Registrar, can you pull
10 out the first paragraph under paragraph 125 where
11 it says "Mr. Lupton"? Mr. Lupton says:

12 "I generally don't like
13 sending councillors thick
14 technical reports, especially
15 in draft that are thoughts and
16 recommendations. They can be
17 open to misinterpretation."

18 Then he says:

19 "Councillors don't like to
20 read technical reports."

21 Did you agree with that
22 statement, that last statement?

23 A. That they don't like to
24 read large, thick reports?

25 Q. Yeah.

1 A. I would agree with that,
2 yes.

3 Q. In your experience would
4 the length of a consultant's report be a factor in
5 whether or not councillors read it?

6 A. It's been my experience
7 that councillors who have an interest will read it
8 and that others will not.

9 Q. If a councillor -- if a
10 consultant's report is attached to a city staff
11 report it becomes a document that is publicly
12 accessible to citizens; is that right?

13 A. Correct.

14 Q. And if it's not attached
15 or appended to a staff report it's not posted on
16 the website with a staff report, for example?

17 A. Correct.

18 Q. How could a member of the
19 public go about getting a copy of a consultant's
20 report that's not appended to a staff report?

21 A. The most common practice
22 is an FOI request.

23 Q. If a staff report is
24 summarizing a consultant's report and that
25 consultant's report is not attached to the staff

1 report do you agree that it is important the staff
2 report accurately and completely describe the
3 content of the consultant's report?

4 A. Yes.

5 Q. Registrar, can you close
6 this down, the callout. And if you can call out
7 the next paragraph under Mr. Ferguson.

8 So there's a reference to
9 meeting with the councillors and saying that they
10 were very supportive and appreciative. Does that
11 assist you in refreshing your memory about that
12 meeting?

13 A. No.

14 Q. You said the report to
15 council would be exactly what you are commenting
16 on. It will be a summary of findings and the
17 things we will be implementing.

18 And if you can close that
19 down, Registrar, and call out the next bit of the
20 paragraph. Thank you.

21 The whole plan will be
22 outlined in the report you said. At this stage
23 did you understand that this was going to be a
24 implementation that would be rolled out in stages?

25 A. Yes. I mean, the

1 consultant report sort of defines timelines and
2 from an implementation perspective obviously it
3 takes time to complete works and get works in
4 place so it would be completed over a staged
5 approach.

6 Q. Means that there was
7 timelines. Do you mean like reference to short
8 term, medium term, long term possible
9 countermeasures?

10 A. Correct.

11 Q. And of course things take
12 time to actually roll out. In terms of a stage
13 report, did you understand that there was going to
14 be some countermeasures that were done first and
15 then see if they work and then move to other
16 countermeasures?

17 A. Correct, yes.

18 Q. It's going to be staged
19 in that way?

20 A. Correct.

21 Q. And in particular
22 illumination was going to be something that was
23 going to be deferred until other countermeasures
24 were implemented and assessed?

25 A. Correct.

1 Q. Thank you. You can close
2 this down and open up page 49, paragraph 121,
3 please. Thank you.

4 So just to orient you to time.
5 On September 16 Mr. Applebee from CIMA sent a copy
6 of the final version of the CIMA report without
7 appendices to Mr. Cooper. So that's when CIMA has
8 sent its final version.

9 So you can close that down.
10 Thank you, Registrar. If you can go to
11 paragraph 126 which is on page 51.

12 Mr. Cooper wrote to you and to
13 Mr. White and he said:

14 "I was speaking to Mike Field
15 this morning. He said Jerry
16 Moore saw the report and was
17 not pleased with the
18 recommendations provide by
19 CIMA. Have either of you
20 spoken to him about this? Are
21 you aware of anything in
22 particular he does not like or
23 agreed with."

24 Had you spoken with Mr. Moore
25 at this point?

1 A. I don't believe so.

2 Q. Did you know Mr. Moore?

3 Again, you're only about a month into your role at
4 the City.

5 A. I believe I had met him
6 once maybe by this time. But I hadn't known him
7 before coming to the City, no.

8 Q. Were you aware of his
9 past role on the Red Hill?

10 A. I don't recall if at this
11 time I was aware. I came to become aware.

12 Q. You can close that down,
13 Registrar. If you can pull up 127, please.

14 Just before I get to this
15 callout, did you have an understanding of how
16 Mr. Moore would have come to have a copy of the
17 CIMA report that Mr. Cooper had received a few
18 days before?

19 A. Yes. The CIMA report
20 would have been circulated to other stakeholders
21 or divisions or groups who would have been
22 impacted by works identified in there or areas of
23 their expertise and responsibility.

24 Q. That circulation to other
25 groups, that would have been a best practice?

1 A. Yes.

2 Q. Were you aware that

3 Mr. Moore was -- that his role at this point was

4 the director of engineering services?

5 A. Yes.

6 Q. And he was Gary

7 Kirchknopf's boss?

8 A. Yes.

9 Q. And without having to go

10 into the hierarchy, he was also Mr. Ferguson's

11 boss?

12 A. He was not my boss.

13 Q. I'm sorry. Mr. Field.

14 Mr. Field. He was also Mr. Field's boss?

15 A. Yes, they fell under it,

16 yes.

17 Q. Sorry about that. Prior

18 to receiving this e-mail from Mr. Cooper, did

19 anyone tell you that Mr. Moore had any concerns

20 about the 2013 draft report?

21 A. Prior to the e-mail, no.

22 Q. Prior to the e-mail from

23 Mr. Cooper?

24 A. No.

25 Q. So you will see that

1 Mr. White forwards this message to you and
2 Mr. Lupton and drops Mr. Cooper from the chain,
3 and he says:

4 "Geoff, Gary has a vested
5 interest in this from the
6 beginning and has influenced
7 it somewhat already."

8 What does you understand
9 Mr. White to mean when he said Gary had a vested
10 interest?

11 A. I believe at some point I
12 had been notified that Mr. Moore was involved in
13 the design and construction of the parkway, so I
14 believe that is what Mr. White was referring to.

15 Q. Mr. White also says, "off
16 the record I think he even spoke to CIMA." To the
17 extent that that -- assuming for the moment that
18 was true, would you have concerns about Mr. Moore
19 speaking to CIMA?

20 A. No.

21 Q. Mr. White says he deemed
22 this extremely sensitive. Did you share that view
23 that this was extremely sensitive?

24 A. I don't believe I had a
25 viewpoint at that time. The way I read that is I

1 believe -- we have to confirm with Mr. White, but
2 how I'm reading it is he would be concerned that
3 he is maybe contradicting during the public works
4 meeting and will avoid -- would like to avoid
5 having that type of contradiction.

6 Q. As a general practice did
7 you also want to avoid different messaging from
8 different staff in matters that were going before
9 councillors?

10 A. In my experience with
11 anything like this you always want to have open
12 discussion, communications and engagement with
13 other divisions or departments, whoever may be
14 responsible for an item, to make sure that one was
15 aware of what concerns there may be or ideas.

16 Q. Okay. So you want to be
17 building consensus among staff members about a
18 response back to a committee or to council?

19 A. Yes, we want to make sure
20 that whatever is being provided within the
21 documents is supported by those groups who are
22 going to be responsible for it.

23 Q. Can you close this
24 callout, Registrar. Go to the next image, please.

25 In paragraph 29 Mr. Lupton

1 forwards this chain to Mr. Mater, his boss, and
2 recommended that they talk to Gary and bring in
3 CIMA if needed. Mr. Lupton directed you to do
4 that, did he?

5 A. Sorry, what paragraph are
6 you on?

7 Q. 129 at the top.
8 Registrar, if you could pull it up.

9 A. Yes, sorry, what is the
10 question?

11 Q. The question was did
12 Mr. Lupton direct you to talk to Gary and bring in
13 CIMA if needed?

14 A. I don't recall, not based
15 on 129, no.

16 Q. Okay. And you don't
17 recall either way?

18 A. No.

19 Q. You can close this down,
20 Registrar. And if we can go to page 52 of the
21 same document, image 131. I think we'll have to
22 bring up the next image as well. You don't have
23 to call it out. You can close that callout. Just
24 close it completely. And if you can call out the
25 top of the next image, "Saturday due to heavy

1 rain." Thank you.

2 Brian Shynal is the director
3 of operations. So those are the people who are
4 dealing with maintenance on the parkway; is that
5 right?

6 A. Correct.

7 Q. And Betty Matthews-Malone
8 eventually takes on his role; is that right?

9 A. I believe so.

10 Q. (Skipped audio).

11 A. Yes.

12 Q. So in September of 2013
13 there were heavy rains on the Red Hill and
14 Mr. Shynal sends an e-mail to a number of people
15 forwarding e-mails from his staff about these
16 heavy rains.

17 Can you close that callout
18 please.

19 There's some back and forth.
20 You're not copied at this point. But basically
21 Mr. McCleary in paragraph 133 says "roads is a big
22 issue whenever it rains on these class roadways."

23 And you'll see this request --
24 so this is from staff and operations -- is to add
25 "slippery when wet" signs on every ramp and along

1 the route.

2 If you can close that down,
3 Registrar, and if you can go to the next image.

4 And so you'll see in
5 paragraph 134 Mr. White forwards this exchange to
6 you.

7 Registrar, can you pull out --
8 yeah, perfect. Thank you. And he says:

9 "This is an extraordinary
10 request and in my opinion
11 should be substantiated by
12 collisions history. Please
13 review the collision history
14 facility-wide for a
15 significant period and review
16 the percentage of collisions
17 on wet pavement."

18 So just stopping there. Did
19 you agree that a request to install slippery when
20 wet signs on the ramps and along the main line was
21 an extraordinary request? Or sorry, I should say
22 an extraordinary request.

23 A. Yes.

24 Q. Did you agree with
25 Mr. White that it would be prudent to substantiate

1 such a request by completing a collisions history?

2 A. Correct.

3 Q. By this point you had
4 just recently reviewed the CIMA report. Did you
5 raise with Mr. White that there was already a
6 collisions review history at least of a particular
7 study area that had just been recently done by the
8 consultant?

9 A. I don't recall
10 specifically.

11 Q. Close that down. And if
12 you can go to next image -- pardon me, page 56,
13 please.

14 So skipping over, there is
15 some back and forth about the nature of the
16 pavement and Mr. Norway's (ph) end, and in
17 paragraph 140, if you can call that up. You're
18 not copied on this, but Mr. Mater says this should
19 be discussion at transportation coordinating
20 committee.

21 Now, what is the
22 transportation coordinating committee?

23 A. I don't recall what that
24 committee was.

25 Q. Did you sit on that

1 committee?

2 A. I don't remember that
3 committee.

4 Q. Can you close that down,
5 please, and call out 145, just the next image.

6 So you see that the
7 transportation coordinating committee met on
8 September 24 and you'll see the list of attendees,
9 Mr. White, Christine Lee Morrison, Al Kirkpatrick,
10 Sally Yung Lee, Susan Jacob, Gary Kirchknopf and I
11 think an assistant, Gord McGuire, Jim Johnson,
12 John Murray regrets, and guests were Geoff Lupton
13 Marissa Scribenac. And then there's a cc to John
14 Mater and Geoff Lupton and others. Does this
15 assist you in refreshing your memory about the
16 transportation coordinating committee and what it
17 is?

18 A. I would say a little bit,
19 yes. It appears to be a combination of traffic,
20 transit, transportation planning, development and
21 engineering.

22 Q. So these are all within
23 public works, but subdepartments within public
24 works; is that right?

25 A. Correct.

1 Q. Do you recall going to
2 the transportation coordinating committee meetings
3 at any point during your tenure?

4 A. Not specifically, no.

5 Q. Do you know either way
6 whether the transportation coordinating committee
7 disbanded or stopped meeting at some point after
8 2013?

9 A. I don't recall.

10 Q. So you don't attend
11 this -- it doesn't look like you are invited to
12 it. Did you have any discussions with Martin Wade
13 about this meeting?

14 A. I don't recall
15 specifically.

16 Q. Can you close the
17 callouts, Registrar, and bring up paragraph 146.

18 In the minutes of that meeting
19 under the heading "Martin" it says "in reference
20 to the Linc and the Red Hill studies to be
21 completed all on/off ramps."

22 And if you can close that,
23 please. And if you can bring up the excerpted
24 paragraph in 147.

25 The day after that

1 transportation committee -- coordinating committee
2 meeting -- Registrar, can you highlight the second
3 sentence, "in order to determine the severity and
4 magnitude." You can highlight all the way down to
5 "determine higher incidents," several lines down.
6 Perfect, thank you.

7 So here Martin is responding
8 back to Mr. Shynal in that previous e-mail
9 exchange and says:

10 "I've asked our traffic
11 engineering section to analyze
12 on the collision history on
13 the entire Linc and Red Hill
14 system to determine if there
15 is proven recorded collision
16 history related to the impacts
17 of weather and road surface."

18 So Mr. White has asked you to
19 do a collision review, has raised at the
20 transportation coordinating committee doing -- a
21 study is to be conducted on the on/off ramps and
22 then has sent this e-mail. Did he direct you to
23 do a collision review?

24 A. Based on that previous
25 correspondence, yes, he's asked for one, yes.

1 Q. In what particular way
2 did he ask you to do in terms of a collision
3 review?

4 A. Mainly would be looking
5 at wet weather collisions based on the request for
6 slippery when wet signs.

7 Q. Did you do this collision
8 review personally?

9 A. No, we would have had our
10 collision analyst pull the collision data from the
11 system.

12 Q. And once that gets pulled
13 then does someone in your department actually
14 analyze it?

15 A. Well, it would have more
16 than likely been submitted to Martin and myself.

17 Q. Well, there isn't any
18 documentation to suggest that. Do you have a
19 recollection about whether you received some chart
20 or something from the collision analyst in respect
21 of the collision review that Mr. White wanted?

22 A. I don't have a
23 recollection -- a specific recollection of it, but
24 that would have been our process.

25 Q. Okay. So when was this

1 collision review done?

2 A. Again I don't recall
3 specifically. I would say that's our practice in
4 dealing with requests like this would have been
5 probably within a two- to three-week period would
6 have been completed from the initial request.

7 Q. At this point were you
8 aware of the type of pavement used on the main
9 line?

10 A. Sorry, was I aware?

11 Q. Yeah.

12 A. No.

13 Q. You can close this down.

14 So in that exchange of e-mails
15 one of the other things that comes up apart from
16 the collision review is to see if there's a claims
17 history.

18 If you can go, Registrar, to
19 paragraph 148, please. Pardon me. Can you go to
20 the next image, please. No. Sorry. I misspoke.
21 149.

22 Mr. McLellan (ph), who was in
23 risk, says:

24 "Off the top of my head I
25 would say there is not a

1 significant claims history for
2 slippery conditions on the Red
3 Hill."

4 Do you see that? Okay, close
5 that.

6 Do you recall, Mr. Ferguson,
7 receiving information from Mr. McLellan that there
8 is not at this point a significant claims history
9 for slippery conditions on the parkway?

10 A. Not specifically, no.

11 Q. So this collision review
12 that Mr. White directed, what did you find when
13 you did that review?

14 A. Again, I don't recall
15 specifically, unfortunately.

16 Q. If the collision review
17 of the parkway indicated that there was a higher
18 than average incident of wet weather collisions
19 across the entirety of the facility would you have
20 recommended installing slippery when wet signs as
21 requested?

22 A. Well, the actual process
23 would have been to undertake a more extensive
24 review. So the report that is produced by the
25 collision analyst is very high level, it's going

1 to give you a sort of general data information.
2 But to clearly understand where things are, what's
3 occurring, you have to take a more detailed review
4 of the data.

5 Q. Would it have been your
6 process to do some sort of commentary on review of
7 that data in writing?

8 A. In the original request
9 are you referring to?

10 Q. In response to the
11 original request, and then you said if -- I asked
12 if the request would have showed a higher than
13 average incidence you would have done a further --
14 a deeper dive, if I can paraphrase, would you have
15 documented that more extensive review?

16 A. Not specifically, no. It
17 might have been as simple as a sit down with
18 Mr. White to discuss the data, and I know based on
19 reviewing the documents there is discussions later
20 where we've identified concerns around collisions
21 in wet weather.

22 Q. Do you recall ever
23 responding to the request from operation staff to
24 install slippery when wet signs?

25 A. Not specifically, no.

1 Q. Registrar, can you bring
2 up CIM8089.0001 at image 52. If you can call out
3 6.2.4.

4 Do you recall one of the
5 proposed countermeasures that CIMA recommended was
6 installing slippery when wet signs in particular
7 areas?

8 A. Yes.

9 Q. Considering them. And
10 here you'll see it says in the fourth sentence
11 down:

12 "Given the high proportion of
13 wet surface collisions it may
14 be determined through friction
15 testing that the skid
16 resistance of the roadway
17 surface is lower than normally
18 encountered in some areas. If
19 this is determined the City
20 could examine the installation
21 of a WC105 sign at the
22 northbound and southbound
23 directions in relation to any
24 areas identified through
25 friction testing."

1 If you had this section in
2 mind when you were getting the request from
3 operations to install slippery when wet signs,
4 would it have changed anything about your approach
5 to how you addressed the operation staff's
6 request?

7 A. No.

8 Q. Did you consider this
9 recommendation from CIMA when you were conducting
10 your collision review?

11 A. I don't recall
12 specifically.

13 Q. To your knowledge, were
14 slippery when wet signs ever installed on the main
15 line or the ramps prior to late 2018?

16 A. Prior to 2018?

17 Q. Prior to late 2018.

18 A. Where there was a
19 recommendation from the consultants reports the
20 slippery when wet signs were installed.

21 Q. So your evidence is that
22 there were slippery when wet signs installed?

23 A. Wherever they were
24 identified in those consultant reports, yes.

25 Q. Were you waiting for

1 friction test results to determine where to
2 install slippery when wet signs?

3 A. I would say no, no.

4 Q. Were you waiting on
5 friction test results to assess the request from
6 Mr. Shynal's group to install slippery when wet
7 signs?

8 A. No.

9 Q. Thank you. You can close
10 this callout.

11 So again I'm repeating myself,
12 but do you recall responding directly to
13 Mr. Shynal's staff's request to install slippery
14 when wet signs?

15 A. No.

16 Q. Registrar, can you bring
17 up OD6, page 59, page 160, please.

18 You're not copied on this.
19 This is an e-mail between Mr. Moore and
20 Dr. Uzarowski at Golder. Were you familiar with
21 Golder and Associates?

22 A. No, I was not.

23 Q. Did Mr. Moore tell you he
24 was going to do skid resistance testing?

25 A. No, he did not.

1 Q. Can you close this out,
2 and, Registrar, can you go to paragraph 160 which
3 I believe is the next image. It is not. Sorry.
4 Apologies. Let me find right image. Registrar,
5 can you bring up GOL2641.

6 If we can go down image 2.
7 And if you can call out the e-mail from Gary
8 Moore, the top half of this.

9 So here Mr. Moore says:

10 "As part of ongoing pavement
11 monitoring we will have skid
12 testing completed."

13 And this is part of the back
14 and forth from Mr. Shynal's group.

15 "There is a standard by which
16 we can report on the relative
17 level of resistance and by
18 which we can gauge the
19 performance of each road
20 surface." (As read)

21 Did anyone advise you that
22 Mr. Moore had said he was going to obtain skid
23 resistance testing?

24 A. I don't recall that
25 specifically, no.

1 Q. Did you follow up with
2 Mr. Moore about skid resistance testing or
3 friction testing while the 2013 CIMA report was
4 being completed?

5 A. No, the recommendation of
6 the report is to undertake friction testing as
7 part of the short term measures. We're finalizing
8 that report, so no, there's no discussion with
9 Mr. Moore about that, no.

10 Q. Okay. And once the
11 report was completed and finalized and the
12 recommendations from the report were being
13 implemented, did you follow up with Mr. Moore at
14 that point about friction testing?

15 A. I don't recall
16 specifically no. The expectation would have been
17 again we had the short term period to complete the
18 work and we would have expected to have heard
19 something back about when that work would have
20 been completed.

21 Q. So I just want to be
22 really clear. I said did you follow up and you
23 said I don't recall specifically, no. Can you be
24 more specific? Did you follow up or did you not
25 follow up?

1 A. No.

2 Q. No, you didn't follow up?

3 A. No, I did not.

4 Q. All right. You can close
5 that down -- that callout down, Registrar, and go
6 to page 62, paragraph 157. Thank you.

7 So is it fair to say that
8 there's a fair bit of lead time before you get to
9 a public works committee meeting during which
10 staff needs to start preparing its staff report?

11 A. Yes.

12 Q. A month or two?

13 A. At least.

14 Q. At least, okay.

15 Mr. Cooper did a draft of a staff report in
16 respect of this e-mail report noting that the
17 report was due today when you sent it to
18 Mr. Fields. Not great practice that he's sending
19 it for the first time on the day that it's due; is
20 that fair?

21 A. That is fair, yes.

22 Q. Registrar, can you bring
23 up HAM41767.

24 Do you recall reviewing
25 Mr. Cooper's draft? It's a 10-page draft.

1 A. Not specifically, no.

2 Q. Okay. Go to image 3,
3 please. In fact, can you bring up image 2 and
4 image 3 together?

5 Have you had a chance to
6 review this report in advance of your evidence
7 today?

8 A. Is this the draft report?

9 Q. This is the 10-page draft
10 report that Mr. Cooper drafted.

11 A. I believe I have. I
12 believe there is a couple of draft reports.

13 Q. Yes. There are several
14 draft reports. On this one there are two 10-page
15 draft reports; one that Mr. Cooper does and then
16 one that you revise. Do you recall that?

17 A. Not specifically but...

18 Q. Okay. So we're looking
19 at the one Mr. Cooper did.

20 A. Okay.

21 Q. And you can see on
22 image 3 -- sorry, let just reorient my screen. At
23 the top under the bullet points -- Registrar, if
24 you can call out -- you don't have to call out the
25 bullet points, just the next paragraph underneath

1 it, "the findings of the study are indicated."

2 Did this sentence accord with
3 your understanding of this e-mail report?

4 A. Yes.

5 Q. Would you be surprised if
6 in fact it's cut and pasted from the CIMA report?

7 A. No. That was a common
8 practice.

9 Q. You can close that down.
10 Can you go to the next two images, images 4 and 5.

11 So Mr. Cooper has actually set
12 out in the body of this draft report the list of
13 countermeasures for the whole road. We are just
14 in the bottom of image 1 here and image 4 and the
15 top of image 5. And then goes through the series
16 of road segments and ramp segments just like this
17 e-mail report did. Do you recall that?

18 A. Not specifically.

19 Q. Do you recall seeing
20 this? No?

21 So if you can go now,
22 Registrar, to image 7, please. Now, up at the top
23 under Mud Street interchange if you can call out
24 that paragraph.

25 What is the network screening

1 list?

2 A. The network screening
3 list was a program that started in City of
4 Hamilton prior to my arrival and was a -- using a
5 mathematical equation reviewing roadways and
6 ranking them based on priority concern.

7 Q. Priority concern?

8 A. Yes.

9 Q. And here Mr. Cooper lists
10 the eastbound off ramp to Mud Street as number one
11 on the 2012 network screening list. So what does
12 that mean in terms of its ranking as a priority
13 concern? Is it the best in the City?

14 A. Be ranked number one in
15 terms of being considered for review.

16 Q. The highest priority on
17 the network screening list?

18 A. Correct.

19 Q. Were you aware of that
20 before you read Mr. Cooper's draft report?

21 A. I would not have been,
22 no.

23 Q. You can close that,
24 Registrar. And if you can go back into the OD
25 page 62, paragraph 159, please. Thank you. If

1 you can call out all of paragraph 159 and two
2 callouts here.

3 So this is after Mr. Cooper
4 has put together the draft report that we were
5 just looking at and you and Mr. Lupton and
6 Mr. White exchange a series of messages, and
7 Mr. Lupton starts by saying:

8 "Can you summarize the
9 actions, I want to get a sense
10 of this before I arm wrestle
11 Gary."

12 So at this point what did you
13 understand was the next step in dealing with this
14 report as it related to Mr. Moore?

15 A. What are the next steps?

16 Q. Yeah, what was the plan
17 as between Mr. Lupton and Mr. White and yourself
18 in order to engage with Mr. Moore in respect of
19 this report?

20 A. In terms of engaging with
21 Mr. Moore, I don't recall being part of any of
22 that. Our focus within traffic was completing
23 this report, finalizing the details of that
24 report.

25 Q. Well, what did you

1 understand Mr. Lupton then to say, I would like to
2 get a sense before I arm wrestle Gary?

3 A. I think my assumption of
4 it is that he wants to know what the process is
5 going to be in terms of the implementation of the
6 items before he talks to Gary about it.

7 Q. Did you have a sense of
8 what Mr. Moore's concerns were about the report at
9 this point?

10 A. Only based on the
11 previous e-mail that Mr. Cooper had sent
12 Mr. Fields.

13 Q. So you knew that he had
14 some concern but you didn't know the substance of
15 those concerns?

16 A. Correct.

17 Q. Mr. White in this e-mail
18 at the bottom says -- there's a back and forth
19 about doing another safety review of the entire
20 LINC and the remaining portions of the Red Hill,
21 and Martin White says:

22 "Geoff, basically there are a
23 statistically significant
24 number of collisions in wet
25 conditions identified that

1 tells me we may need to do
2 something."

3 Had you done a collision
4 review of the entire facility by this point?

5 A. As I mentioned, I can't
6 remember specifically. Based on the previous
7 request and based on my experience in doing those
8 works I believe that is what he's referring to.

9 Q. But sitting here today
10 it's your evidence that you did do a collision
11 review when Martin White questioned it?

12 A. Again, I can't remember
13 it specifically.

14 Q. Okay. You can close
15 those callouts down.

16 So you revised Mr. Cooper's
17 draft, it's still 10 pages, and you sent it to
18 Mr. White and Mr. Lupton.

19 And that -- in the next image,
20 please, Registrar.

21 Do you remember doing that,
22 making some revisions and sending it off but still
23 being 10 pages?

24 A. Again, not specifically.
25 That would have been practice, yes.

1 Q. Registrar, can you bring
2 up HAM454, image 6.

3 So this is your draft, and in
4 the full paragraph in addressing number 3 above
5 you say, "the engineering division will be
6 conducting friction testing on the Red Hill." So
7 that's your drafting and you took it from the CIMA
8 recommendations; is that right?

9 A. The reference to the
10 friction testing, yes.

11 Q. You can close this down.
12 You didn't explain -- in your
13 draft you didn't explain the purpose for a
14 friction testing apart from that sentence, did
15 you?

16 A. I don't recall
17 specifically. I would have to re-read the whole
18 report.

19 Q. Do you want to do that?

20 A. Sure, if you want to
21 bring it up.

22 Q. Sure. It's 10 pages. I
23 can tell you this is the only reference to
24 friction testing in here. On the break I'm happy
25 to ensure that you get a copy. Does that make

1 sense in terms of efficiency?

2 A. Yeah, that's fine. Yeah.

3 Q. Registrar, can you close
4 this down and bring up page 64, paragraph 163 of
5 OD6, please.

6 Do you recall that Mr. Lupton
7 wanted you to make changes to substantially reduce
8 the page count of the report?

9 A. I vaguely remember.

10 Q. The first thing he says
11 in paragraph 163 is that he wants to change it
12 from -- or that this should be an information
13 report and to this point it was a recommendation
14 report. What's the difference between those two
15 types of reports?

16 A. A recommendation report
17 is something that you submit to committee and
18 council with specific recommendations that require
19 council approval usually associated with funding
20 especially.

21 An information report is
22 exactly that, a report that's providing
23 information to committee, maybe outlining the
24 steps that are being taken. There's no specific
25 requirement for committee or council to approve

1 anything. Those would be the major differences, I
2 think.

3 Q. Can you bring up the next
4 image as well, please. Can you call out the very
5 top paragraph.

6 So Mr. Lupton is talking about
7 moving forward fairly quickly on implementation.
8 And then he says:

9 "Did Gary agree to the
10 frictionless piece? If not
11 take it out. If so, we should
12 be clear that this
13 implementation would be to
14 their schedule."

15 Did you understand this to be
16 the recommendation regarding friction testing?

17 A. That's how I read it.

18 Q. Did you speak to
19 Mr. Moore personally about the friction testing
20 recommendation in that report?

21 A. I don't recall
22 specifically.

23 Q. Would you have -- based
24 on Mr. Lupton's comments here, would you have
25 taken the friction testing reference out if

1 Mr. Moore had not agreed to it?

2 A. You are asking would I
3 have?

4 Q. I'm trying to understand
5 how you interpreted Mr. Lupton's direction.

6 A. I interpret his direction
7 is that if Gary doesn't agree with the
8 frictionless piece then he's looking forward to it
9 being removed.

10 Q. So you understood that
11 Mr. Moore's agreement to do friction testing was a
12 pre-condition to referencing it in the report?

13 A. That's how I'm reading
14 that.

15 Q. And sitting here today
16 you can't recall if you spoke to Mr. Moore about
17 the friction testing recommendation?

18 A. Unfortunately, no.

19 Q. Okay. Registrar, can you
20 bring up RVH688, image 2, please. I think I
21 misspoke. RVH668.

22 THE REGISTRAR: 68?

23 By MS. LAWRENCE:

24 Q. 668. Both images.

25 Mr. Ferguson, this is a

1 significantly pared down report that goes to
2 council -- pardon me -- it goes to PWC. In it, if
3 you can bring up, Registrar, call out the third
4 paragraph on the second image, "the consultant's
5 report also recommended." Here we go. So the
6 very last line:

7 "Staff will also review
8 further countermeasures such
9 as friction testing with
10 construction engineering."

11 Do you see that?

12 A. Yes.

13 Q. So that was the line that
14 was edited from -- engineering division will be
15 conducting friction testing that we just looked
16 at. That slight edit, do you see that?

17 A. Yes.

18 Q. Can you describe for me
19 in detail what further review staff did with
20 construction engineering in respect of friction
21 testing?

22 A. What further review did
23 we have with construction engineering? And is
24 this the final report?

25 Q. Yeah.

1 A. Is there an appendix that
2 goes with this report?

3 Q. There is.

4 Registrar, can you close this,
5 close the callout. Is there a -- image. May be a
6 different doc ID. There we go. I don't know if
7 that's helpful but there's the friction testing
8 referenced there as the area short term
9 countermeasure, and there's additional appendices.
10 You can see they are in the same format as CIMA's
11 dealing with other signs, markings, et cetera?

12 A. Yes. So one, we have
13 identified the friction testing as a short term
14 measure, so at some point, once this report is
15 approved, there would have been the communication
16 with the engineering group to say, okay, these
17 items are approved, they are identified for
18 engineering services to arrange the studies.
19 Please proceed accordingly.

20 Q. So you said there would
21 have been communication. Do you remember such
22 communication?

23 A. Not specifically from
24 myself, no, or from staff. You know, staff also
25 obviously worked with project managers, worked

1 together, so the expectation would be that staff
2 would communicate back and forth with each other
3 to proceed with the -- inform (ph) engineering of
4 the passing of the report.

5 Q. Okay. The inquiry has
6 not received any documents that would suggest that
7 communication. So I understand what your
8 expectation is, but do you have any recollection
9 of directing staff to do that?

10 A. Not specifically, no.

11 Q. Do you have any
12 recollection staff reporting back to you that they
13 had done that?

14 A. Not that I recall, no.

15 Q. Okay. So going back to
16 that statement:

17 "Staff will review further
18 countermeasures such as
19 friction testing with
20 construction engineering."

21 (As read).

22 Do you have any knowledge
23 about whether staff in traffic engineering
24 consulted with construction engineering about
25 friction testing specifically?

1 A. I don't recall.

2 Q. In terms of staff within
3 traffic engineering, who individually by name
4 would have been responsible in your view for
5 having that discussion with construction
6 engineering?

7 A. Mr. Gallo and Mr. Cooper.

8 Q. And who in engineering
9 would have been on the other side of that
10 discussion?

11 A. It would have been, I
12 would say at Mr. Kirchknopf's level.

13 Q. Okay. You can close
14 these, please. Can you bring up, Registrar, OD6,
15 page 68, paragraph 173. Thank you.

16 So this is -- we were just
17 looking at the final version. So this is before
18 the versions are finalized. Mr. Lupton and you
19 exchange e-mails, and Mr. Lupton asks if -- why
20 there is a reference to the illumination warrant,
21 you say, that's a recommendation in the report.
22 This is about installing lighting on the ramp, and
23 Mr. Lupton says, "so I can remove it then," and
24 you say, "that's your call pal, that's why you
25 make the big bucks."

1 And then you reference your
2 concern which is -- and I'm quoting here:

3 "If we remove it, Collins will
4 eat us live as the motion
5 speaks specifically to
6 lighting."

7 What in particular were your
8 concerns about Councillor Collins' response to
9 this staff report?

10 A. Well, the motion
11 specifically spoke to reviewing lighting around
12 the Mud interchange, so to remove that piece to me
13 didn't make much sense because we're trying to
14 follow the direction of council and what they are
15 requesting. I think that's about it.

16 Q. Okay. Are you concerned
17 at this point about your staged approach, which
18 is, do a number of the countermeasures first,
19 defer doing the lighting, come back to lighting
20 later. Are you concerned going into finalizing
21 the staff report about how that will be received
22 by councillors?

23 A. No, no. It's common to
24 undertake works and then evaluate and then
25 consider additional options if they are required.

1 And I believe the report itself even talks about
2 various locations, works being evaluated, some
3 installations or signage had been completed, and
4 they weren't able to determine a full assessment
5 of that location -- or a full assessment, assess
6 how those new signs or works had affected any
7 change with respect to safety, so I wouldn't say I
8 was concerned with the approach.

9 Q. Okay. Registrar, can you
10 bring up RVH668 again, please. And if you can
11 bring up the first and second image.

12 Mr. Ferguson, this final
13 version doesn't include -- or doesn't reflect
14 CIMA's conclusion that half the collisions on
15 ramps occurred on ramp 6, does it?

16 MS. CONTRACTOR: Counsel, I
17 wonder I if we could also allow Mr. Ferguson to
18 look at the appendix of this report that was
19 included with the body and then submitted to
20 council, or to committee rather.

21 MS. LAWRENCE: Of course.
22 It's just hard to show a lot of pages at the same
23 time. I think that it is image 4 that deals with
24 ramp 6.

25 BY MS. LAWRENCE:

1 Q. If you -- Registrar,
2 maybe you can keep up image 2 that you have up
3 here. Make image 2 -- yes. There we go. And if
4 you can call out -- there a reference to -- sorry,
5 I just want to make sure I'm in the right place
6 for you, Mr. Ferguson. That's the Mud segments.
7 Apologies. Registrar, if you can close that and
8 go to the next image, please. There we go, and if
9 you can call up the bottom half of this page, ramp
10 5 and ramp 6.

11 And so to be fair in my
12 question, and I'll just be more specific. In the
13 body of the report there's no reference to half of
14 the ramp collisions, or more than half of ramp
15 collisions being on ramp 6, is there?

16 A. In the written text of
17 the report, no.

18 Q. I think you can close
19 that down, that callout. Thank you.

20 And there isn't anything in
21 the text that deals -- that reflects CIMA's
22 finding that high proportion of wet surface
23 conditions in single motor vehicle collisions were
24 found during their collision review, is there?

25 A. Well, it's identified in

1 the appendix which is part of the overall report.

2 Q. Would you agree that this
3 is relevant information that should have been
4 highlighted in the body of the text?

5 A. No.

6 Q. The information report
7 references friction, and we went to that one
8 reference to it. It's also in the appendix as a
9 short-term countermeasure. The report doesn't
10 explain CIMA's connection between -- its
11 recommendation for friction testing and the high
12 proportion of wet weather collisions. Why isn't
13 that referenced in the body of the report?

14 A. So in the CIMA report
15 itself and the way it's written, the CIMA talks
16 about the potential correlation between wet
17 weather collisions and pavement conditions, and it
18 identifies that if the City -- the City could
19 undertake a friction test to -- I believe it's --
20 I believe they reference creating a review of the
21 data to the design specs, but there's also the
22 correlation within traffic between more vehicle
23 collisions and wet weather, especially when you
24 take into account the geometrics of the roadways.
25 You have grade changes, you have curvature

1 changes.

2 So it's not identified as a
3 high priority type of task that would be expected
4 to be received from a consultant. We obviously
5 have discussions with consultants. We'll talk to
6 consultants throughout the reports, development of
7 the reports or the studies and have those types of
8 conversations.

9 And to put that sort of into
10 perspective, you know -- a couple of years ago
11 municipalities were required to undertake railway
12 safety audits, and so within those reports the
13 consultants clearly identified items that had to
14 be completed.

15 So, again, in our industry we
16 look at the wording that's associated within those
17 reports.

18 So going back to the railway
19 stake. It stated that municipalities or the
20 municipality must complete X work by X date. So
21 it's very clear; it's very upfront. Then they
22 provide the additional information that says
23 municipality can also look at these items; it's
24 not a requirement; you could do it if you want to
25 supplement the location, but it's not an actual

1 requirement.

2 When you go back and use that
3 as a comparison here, again, it's a lot -- a
4 number of the items are identified as could or
5 to -- as a follow-up, if your
6 pre-countermeasures -- if you find that they are
7 not addressing the situation, then upgrade to
8 these new installations or these additional
9 countermeasures.

10 Q. Okay. So you'll agree
11 with me that a person who has not -- doesn't have
12 experience in traffic safety may not easily
13 connect the reference to friction testing with the
14 collisions that are set out in the body of the
15 appendix. Do you agree me with me that, that that
16 might not be an obvious connection?

17 A. I'm not sure. I'm sorry,
18 Ms. Lawrence, I don't understand the question.

19 Q. I can try again. Would
20 you agree with me that it's not an obvious
21 connection to someone who is a lay person that the
22 connection being between friction testing and the
23 reference, the high proportion of particular kinds
24 of collisions that are in the appendix to this
25 report?

1 A. I'm not sure I can agree
2 with that. There is -- I mean, throughout -- a
3 lot of people will reference paving condition and
4 wet conditions before they assume anything else,
5 has always been my experience.

6 Q. Okay. I'm going move on.

7 Registrar, can you go back to
8 the OD6, paragraph 70 -- pardon me, page 70,
9 paragraph 176.

10 There's a calendar and an
11 appointment for a meeting with Mr. Lupton,
12 Mr. White, Mr. Moore and yourself on October 28,
13 and it says "cancelled." And then it says in the
14 body of the invitation "revised - location
15 meeting." Did you attend a meeting with
16 Mr. White, Mr. Moore and Mr. Lupton?

17 A. At that time I don't
18 recall.

19 Q. Can you close that
20 callout, please, and if you can call out 177.

21 So on that same day as the
22 meeting was scheduled, October 28, Mr. Lupton
23 e-mailed you and Mr. White and said he had a
24 conversation with Gary. Does that refresh your
25 memory about whether you attended any meeting with

1 Mr. Moore in respect of the 2013 report?

2 A. No, no.

3 Q. Apart from this e-mail
4 where Mr. Lupton speaks -- includes some
5 information about Gary, which I'll get to, did
6 Mr. Lupton otherwise convey to you Mr. Moore's
7 concerns about the 2013 report?

8 A. Beyond this e-mail not
9 that I recall.

10 Q. So you still weren't sure
11 about exactly what Mr. Moore's concerns were
12 starting from that e-mail with Mr. Fields?

13 A. Yeah, I -- honestly, I
14 don't recall. Sorry.

15 Q. It's all right. So
16 you'll see in this e-mail Mr. Lupton says, "I
17 reviewed with Gary." Do you recall what he
18 reviewed with Gary, the CIMA report or the staff
19 report?

20 A. No, I don't know.

21 Q. And he -- Lupton says:
22 "He's good, but suggests we
23 manage the final version of
24 the report to reflect what we
25 are saying."

1 And then he goes on to talk
2 about an FOI, and he says:

3 "I'm not asking to change
4 opinions, but to soften and
5 stage the report similar to
6 what we have done with our
7 info report. Do this first
8 and measure results. Please
9 sit down with CIMA make this
10 happen."

11 Did you understand from this
12 e-mail from Mr. Lupton that you were to go back to
13 CIMA and ask them to make changes to the final
14 report that they had submitted to you?

15 A. Just based on how I'm
16 reading it, that is how I read it.

17 Q. Can you close out the --
18 this callout, please. And you'll see it -- you
19 don't have to call out, Registrar.

20 The next paragraph you ask
21 Mr. Cooper to set up a meeting with CIMA.

22 And then if you can go,
23 Mr. Registrar, to paragraph 182 which is I believe
24 on the next page, next image.

25 And Mr. Applebee comes back

1 with additions to the final report that sets out
2 or includes ranges of time periods. Do you see
3 that in paragraph 182? We can call it out. That
4 was as a result of your communications with CIMA,
5 wasn't it?

6 A. Agreed.

7 Q. You can close that, and
8 if you can bring up page 79, 201, please.

9 Did you attend the
10 November 18, 2013 PWC meeting?

11 A. I can't remember
12 specifically. I suspect I was there.

13 Q. Okay. Do you recall that
14 councillors accepted the report that we've just
15 been looking at, but also wanted lighting to be
16 put on the -- the lighting aspects to be put on
17 the outstanding business list?

18 A. Yes.

19 Q. And so fair to say, they
20 were pleased with the work that had been done, but
21 they didn't want to lose sight of the lighting
22 issue?

23 A. Correct.

24 Q. If you could go to the
25 next image, Registrar. Actually can you pull up

1 the last image and this image at the same time.

2 Thank you.

3 So you see down at 203 -- in
4 fact it may be easier to go to the document itself
5 just for ease of review.

6 Registrar, can you go to
7 HAM4339. And if you can go down to the image 2.
8 And if you can call out Mr. Moore's e-mail at the
9 top.

10 You're not copied on this
11 e-mail; if you can take a look. Did anyone convey
12 the substance of this e-mail, in particular
13 Mr. Moore's concerns to you?

14 A. I don't recall
15 specifically.

16 Q. What about generally?
17 That he was displeased -- that's my
18 characterization -- displeased with the lighting
19 aspects living (ph) on the OLB -- OBL, pardon me.

20 A. Yes, I would think that
21 Mr. White and I probably would have talked at some
22 point, and he would have made me aware.

23 MS. LAWRENCE: Okay.
24 Registrar, can you close this down and go to
25 page 77 of OD6, paragraph 196.

1 Were you aware that in
2 November 2013 Golder conducted -- Golder retained
3 Tradewind to conduct friction testing on the
4 parkway?

5 A. No.

6 Q. Registrar, can you go to
7 page 86, paragraph 225 of OD6. Actually can you
8 close that and go down to -- no, that's fine. You
9 can leave that up. Oh, back. There we go. Thank
10 you.

11 Do you recall learning that
12 Mr. Moore had talked to the councillor and that
13 Mr. Lupton confirmed that the deal with Chad was
14 to implement the items and monitor for at least a
15 year and then see if anything further needs to be
16 done? Did anyone convey that to you?

17 A. Again, I don't recall.

18 Q. Okay. Can you close
19 that. And can you call out the next paragraph,
20 225 (sic). Thank you.

21 And this is an e-mail you are
22 copied on. That's a follow-up from this back and
23 forth about the lighting issue and the outstanding
24 business list. And Mr. White forwarded this
25 e-mail to you, and notes:

1 "What are we doing with the
2 Roads request to sign slippery
3 when wet signs everywhere? I
4 forgot about that one. We
5 need the asphalt skid test to
6 determine to see what they
7 determine also!" (As read)

8 So from this I'm going to
9 suggest to you that this is in January, that you
10 had not done the collision history review that
11 Mr. White had previously requested.

12 A. Again, I don't recall. I
13 can't really speak to it.

14 Q. Okay. You agree with me,
15 this implies that you hadn't had a conversation
16 with Mr. White about the roads request for
17 slippery when wet signs by this point?

18 A. I would say, I disagree
19 based on the previous communications where I
20 believe Mr. White references the collisions and
21 based on our practices and how quickly we
22 responded to those types of requests. I'm
23 assuming of course that the work had been done,
24 that we had completed a high level review.

25 Q. Okay. Mr. White also

1 says, we need the asphalt skid tests to see what
2 they determine also. Why did you agree you need
3 (ph) friction testing results to see what they
4 determined?

5 A. Well -- and I take that
6 as he's referencing the 2013 report?

7 Q. Hm-hmm.

8 A. That he's -- we need the
9 asphalt skid tests to see what they determine. So
10 I don't know if he's -- based on what CIMA had
11 written, those results were to be compared to the
12 design spec. So I take that statement as, you
13 know, engineering completing that work and being
14 able to do the comparison to the design spec to
15 see where it stands.

16 Q. Okay. What use would
17 traffic engineering put to friction test results?
18 Maybe I'll put that differently. How would
19 traffic engineering use friction testing results?

20 A. Again, so one -- there's
21 a couple of things to that. One, we would have to
22 have someone summarize the information. We would
23 need a professional that is trained in that area
24 to summarize that information is -- as myself,
25 anyways, I don't have that training or background,

1 so I would have no understanding of what the
2 actual results mean.

3 Secondly, based on those
4 results and whatever came back, you would be able
5 to determine, one, is there an issue obviously
6 with skid resistance, or are the issues aligned
7 more with driver behaviour. And so that is going
8 to help you direct going forward in terms of what
9 type of actions you could take.

10 Q. Thank you. Who was
11 ultimately responsible to ensure that the friction
12 testing that was recommended in the CIMA report
13 actually happened in your opinion?

14 A. It was engineering
15 services.

16 Q. Was traffic engineering
17 responsible for obtaining those results and
18 reporting them back to council given that
19 the initial report came from traffic engineering?

20 A. Well, my position was at
21 the time, and you kind of -- I think you see that
22 in the wording of the reports, including the 2015,
23 report, that I know we're not trained in that
24 area, and so I'm not really comfortable in
25 providing that information. It's my position that

1 engineering should be providing that material. It
2 was often rolled into traffic works obviously
3 because we were all under public works, but to me
4 it was always my position that engineering should
5 be undertaking that work and reporting.

6 Q. My question was reporting
7 back to council about that. Is that your opinion,
8 that it's engineering services responsible to
9 report back?

10 A. That would be my position
11 to it.

12 Q. Okay. Would you expect
13 that engineering services would have advised
14 traffic engineering when the test -- of the
15 results when the tests were complete?

16 A. Yes.

17 Q. And would assist in
18 interpreting those results so that traffic safety
19 could then, I think as we said, take appropriate
20 steps?

21 A. Correct. Ms. Lawrence,
22 will we be taking a break soon?

23 MS. LAWRENCE: Yes. I was
24 just considering whether I should end here. I
25 recognize we've gone about 10 minutes after our

1 usual break, and I'm happy to pause it at this
2 point.

3 And thank you, Commissioner
4 and Mr. Ferguson, for your indulgence on going a
5 little later than we normally end -- normally
6 break. It's now 11:40.

7 MS. CONTRACTOR: If I may,
8 Mr. Commissioner, I wonder -- if Mr. Ferguson is
9 going to be given the report that Ms. Lawrence
10 referenced, that he also be given the appendices
11 to that report, and if he needs time to review
12 that report and take a break, perhaps we can add a
13 little bit more time in case he requires it to
14 review the report and take a break.

15 JUSTICE WILTON-SIEGEL: Well,
16 let's take a 15-minute break. I'm sure he'll be
17 given the appendices. If he requires any more
18 time, he can communicate with you. Ms.
19 Contractor, you can advise Ms. Lawrence, and we'll
20 extend our break.

21 MS. CONTRACTOR: Understood.
22 Will do. Thank you.

23 MS. LAWRENCE: Ms. Contractor,
24 we've sent it to you by e-mail.

25 JUSTICE WILTON-SIEGEL: Okay.

1 So we'll stand adjourned until
2 5 to 12:00.

3 --- Recess taken at 11:41 a.m.

4 --- Upon resuming at 11:58 a.m.

5 MS. LAWRENCE: Thank you.

6 BY MS. LAWRENCE:

7 Q. Mr. Ferguson, did you
8 have any additional answer that you wanted to give
9 about the question I asked you about the draft
10 10-page staff report that you prepared and the
11 reference to collisions in it? I understand
12 you've had a chance now to see that report and
13 review it in detail over the break.

14 MS. CONTRACTOR: Ms. Lawrence,
15 I wonder if you could repeat your question for
16 Mr. Ferguson.

17 MS. LAWRENCE: I can. And
18 apologies, I'm going to have go back and find it.
19 In fact, in order to keep going I will do that
20 over lunch and then I will have the -- I will come
21 back to that just so that I have the exact
22 question. I want to check the real time
23 transcript to make sure that I'm assessing it
24 correctly, and apologies, I can't locate it at the
25 moment, so I'll hold off and I'll return to that.

1 BY MS. LAWRENCE:

2 Q. Is that all right,
3 Mr. Ferguson?

4 A. Yes.

5 Q. Thank you.

6 Mr. Ferguson, in the 2013 CIMA
7 report there was also a recommendation for the
8 application of a high friction pavement surface to
9 be applied in particular on ramp 6. Do you recall
10 that recommendation?

11 A. Yes.

12 Q. Do you know if that
13 recommendation was implemented?

14 A. No. There was a
15 follow-up report, I believe, that recommends that
16 the pavement be replaced at a -- during a future
17 repaving project.

18 Q. Thank you. So put
19 differently, the recommendation was not
20 implemented immediately after the 2015 report was
21 received?

22 A. Correct.

23 Q. And it was reassessed as
24 part of the broader resurfacing project at a later
25 date?

1 A. That was the
2 recommendation approved by council.

3 Q. That was the
4 recommendation from staff?

5 A. Yes, approved by council.

6 Q. Was traffic engineering
7 responsible for ensuring that that recommendation
8 was completed?

9 A. Yeah. It would've been
10 identified in terms of information provided to
11 engineering services for the completion of works.

12 Q. Apologies, I think I was
13 vague in my question when I said "that
14 recommendation." Was traffic engineering
15 responsible for ensuring that the recommendation
16 that the high friction application be placed on
17 pavement, was that within the scope of traffic
18 engineering to ensure that that was complete?

19 A. As part of the repaving?

20 Q. Just generally. Is it
21 traffic engineering who was responsible for that?

22 A. Yes. They undertake to
23 work and do all the pavement materials and takes
24 (ph), whatever is used. That falls under
25 engineering, yes.

1 Q. Falls under engineering
2 services or traffic engineering?

3 A. No, engineering services.
4 Sorry.

5 Q. Okay. That's all right.
6 I think it was my question, but thank you for the
7 clarity.

8 Why is that the kind of
9 project which falls under engineering services?

10 A. So their privy (ph) is
11 obviously construction projects, and so when they
12 have construction projects they -- they're the
13 experts in that area and so they do that type of
14 work. Traffic engineering doesn't typically do
15 construction of that type.

16 Q. Thank you. Registrar,
17 can you to OD page 106, paragraph 284, please.
18 Thank you. Can you close that callout, please.
19 Thanks. Can you call out 284 and 285 together,
20 please.

21 So we're now in March of 2014
22 and Ms. Clark circulated a reminder about the
23 lighting aspects that had been on the outstanding
24 business list, and Mr. Lupton e-mailed
25 Mr. White -- I don't believe you're copied --

1 asking if they had a plan in place when the
2 weather improves. Is it fair to say that many of
3 the improvements that CIMA recommended were more
4 easy to implement in better weather, in spring or
5 summer weather?

6 A. Correct, yes.

7 Q. And did traffic
8 engineering have a plan in place to address the
9 CIMA recommendations?

10 A. Well, I know, I recall
11 that we had submitted a number of work orders to
12 have the work begin once the weather had improved,
13 so I would say, yes, there was a plan in place.

14 Q. Okay. Registrar, can you
15 go to page 117, please. And if you can call out
16 325 and 326.

17 So this is after some back and
18 forth about some of the markings, the pavement
19 markings. And you and Mr. Jacobson are having a
20 discussion about having enough money to pay based
21 on the existing contracts. And you say:

22 "Well, it will come from the
23 RLC fund, I think initially we
24 had 30,000 cats eyes, but we
25 can exceed that if need be."

1 What is the RLC fund?

2 A. Red light camera.

3 Q. And what sort of projects
4 are funded out of that fund?

5 A. Safety initiatives.

6 Q. And is that a standing
7 fund from which traffic engineering can take funds
8 without having to go through a capital budgeting
9 process?

10 A. Yes, you can, yes. At
11 that time you could.

12 Q. Do you recall during this
13 period of time from January 2015 after the report
14 was received by council about the 2013 CIMA report
15 and through the course of that year that there was
16 some pressure from your bosses to ensure that the
17 CIMA recommendations were being undertaken?

18 A. Yes.

19 Q. And in particular setting
20 up the cats eyes, getting those in place?

21 A. Yes.

22 Q. And ensuring that there
23 was the purchase orders or the work orders as
24 you've suggested for some of the other signage; is
25 that right?

1 A. Correct, work orders.

2 Q. And here, I know I've
3 asked you this question before, but to your
4 recollection did some of those work orders include
5 installing slippery when wet signs?

6 A. I don't recall
7 specifically.

8 Q. Okay. Is it that you
9 don't recall either way whether slippery when wet
10 signs were actually installed?

11 A. Yeah, I don't recall if
12 the work orders, if there was one specific to
13 slippery when wet.

14 Q. Okay. Registrar, can you
15 bring up same document page 125, please.

16 And you'll recall we went
17 through earlier e-mails today where you told
18 Mr. White that Councillor Collins wanted a
19 complete study of the LINC and the remainder of
20 the Red Hill. Do you remember those e-mails?

21 A. I remem- -- yes.

22 Q. And so here in October,
23 and, Registrar, can you call out 351, please.

24 Linda Juchniewicz -- I'm not
25 sure I'm saying her name right -- she e-mailed --

1 she's the collision analyst -- she e-mailed you
2 and Mr. White about a fatal collision on the LINC.
3 Do you remember that fatal collision?

4 A. I believe so, yes.

5 Q. And Mr. White responded
6 to you and copied in Mr. Gallo:

7 "I have seen the preliminary
8 LINC collision data and we may
9 have a legitimate problem."

10 Do you recall sharing
11 Mr. White's concern about the preliminary LINC
12 data that Linda had sent you?

13 A. At this time?

14 Q. Yes.

15 A. I don't recall
16 specifically.

17 Q. Okay. At the end he
18 says:

19 "Anyway, let's get a technical
20 evaluation started and run to
21 a conclusion, in house
22 solution or roster assignment
23 solution is perhaps another
24 question." (As read)

25 Is it fair to say that this is

1 the beginning of the discussion that leads to CIMA
2 being retained for the LINC safety review?

3 A. Yes, it is.

4 Q. And do you recall that
5 part of these discussions around the LINC related
6 to whether to install median barriers?

7 A. Yes.

8 Q. They did?

9 A. Yes, they did.

10 Q. In May of 2015 -- you can
11 take this down, Registrar.

12 In May of 2015 there was a
13 fatal crossover collision on the Red Hill
14 involving two young women. Do you recall that
15 collision?

16 A. Yes.

17 Q. And do you recall that it
18 prompted Councillor Connelly to request a safety
19 study to be conducted on the Red Hill?

20 A. Yes.

21 Q. At this point the LINC
22 safety review was already under way; is that
23 right?

24 A. That's correct.

25 Q. And CIMA had been

1 retained to do that?

2 A. Yes.

3 Q. And to your perception,
4 were both these safety reviews intended, at least
5 in part, to assess the issue of median barriers?

6 A. Yes.

7 Q. Registrar, can you close
8 this and open up OD7, page 8, paragraph 19,
9 please.

10 Councillor Connelly e-mailed
11 you requesting -- in respect of his request to get
12 a safety study done, and he says:

13 "I want to write a motion to
14 this effect but I need your
15 help." (As read)

16 Was it common for staff and
17 councillors to collaborate on the language of
18 motions?

19 A. Yes, it is.

20 Q. And why is that? What's
21 the benefit of that collaboration?

22 A. We're able to help
23 identify certain areas that they maybe want to
24 include as part of that motion or have some -- we
25 might have some background information that we can

1 provide to them to assist them in finalizing the
2 motion.

3 Q. Okay. In mid-May, so
4 let's say May 11th, the date you have this e-mail
5 with Councillor Connelly, did you know whether or
6 not any friction testing had been carried out on
7 the Red Hill?

8 A. Not that I recall, no.

9 Q. You don't recall knowing
10 or....

11 A. Yeah, I don't recall or
12 am aware that any friction testing had been done
13 at that point.

14 Q. I'm sorry. I'm just --
15 I'm not sure I understand your answer. Did you
16 know whether or not any friction testing had been
17 done?

18 A. No. I had not been
19 notified of any of friction testing being done.

20 Q. Okay. Were you aware of
21 any concerns about wet weather accidents on the
22 Red Hill as compared to the LINC, the Red Hill as
23 of May 2015 other than the documents that we've
24 already gone through?

25 A. Yes, we had done -- well,

1 I had done an analysis of the Red Hill
2 specifically looking at collisions and looking for
3 wet weather collisions, and I had identified that
4 there appears to be a higher number of wet weather
5 collisions, and I had recommended that we retain
6 CIMA to essentially do a similar review on the Red
7 Hill as to what they were doing on the LINC.

8 Q. In your collision review
9 of -- you said it was a collision of -- looking
10 for collisions and looking for wet weather
11 collisions. Was that a review of the entire
12 facility?

13 A. Along the Red Hill, yes.

14 Q. Okay. Registrar, can you
15 close that callout and go to page 6, paragraph 15.

16 So you just said that you had
17 already done one. In paragraph 15 on May 6th --
18 so this is after the fatal collision but before
19 you go to Public Works -- you e-mailed Mr. Cooper
20 and Mr. Worrone and said "a couple things came I
21 need to be prepared for."

22 Can you follow up with
23 Hamilton police? Can do you an update on the
24 consultant review for the LINC -- so that's the
25 CIMA LINC? Can you prepare a collision review

1 past 10 years focusing on crossover collisions,
2 and a three-year review of the Red Hill from
3 Greenhill to Dartnall, January to April, all
4 collisions?

5 So is this the reference to
6 the collision review that you were just
7 referencing?

8 A. No.

9 Q. You had done another
10 earlier one?

11 A. Yes.

12 Q. Do you recall when you
13 had done that?

14 A. I'm going to say at some
15 point in 2014. I'm sorry, I can't remember
16 specific timelines. But essentially I had the
17 collision analyst pull all of the collisions, and
18 I randomly went through pulling collisions and
19 through that process identified that I was pulling
20 up many more wet weather collisions than I would
21 have expected. And so that's what generates -- or
22 has me have that discussion with Mr. White and
23 Mr. Mater about the need for a study.

24 Q. And sorry, just so that
25 I'm clear, that's what generates you to have a

1 discussion with Mr. White or Mr. Mater about the
2 need for a study. When was that discussion?

3 A. I'm going to say it's in
4 either late 2014 or early 2015, somewhere in
5 there.

6 Q. Okay. So as we're in
7 2015, had you already determined that you were
8 going to be retaining CIMA to complete a safety
9 review of the entire Red Hill?

10 A. Yes. So I believe
11 Mr. Mater had agreed to it and had notified I
12 believe the general manager at the time that it
13 was something we wanted to pursue.

14 Q. And does that get funded
15 out of red light fund as well?

16 A. I believe it did. I'm
17 not 100 percent sure, though.

18 Q. Given that collision
19 review you've referenced in 2014, did you consider
20 it urgent to get a complete external safety review
21 done?

22 A. I felt it was something
23 that was required. Obviously we had started the
24 LINC safety review; the City obviously done a
25 study in 2013. Based on my review of the

1 collisions and identifying a higher proportion of
2 wet weather than to be expected, it was something
3 that I felt had to be done.

4 Q. Thank you. So you had a
5 call with Brian Malone who had been involved in
6 the LINC and -- the LINC safety review and also
7 the 2013 safety review.

8 Registrar, can you pull up
9 page 12, paragraph 35, please.

10 So this is an internal e-mail
11 amongst CIMA staff summarizing a discussion --
12 Mr. Malone summarizing a discussion that he'd had
13 with you, and he said "he's going to be
14 directed" -- that is you were going to be
15 directed -- by the PWC "to do a detailed analysis
16 of safety on the" Red Hill. You wanted a quote.
17 Recognize that you had done a -- that CIMA had
18 done a smaller review of a smaller study area, and
19 at the bottom it says:

20 "The review will be of the Red
21 Hill and will include the
22 areas towards the escarpment
23 where lighting is absent,
24 especially a repeat of the
25 previous work, with a

1 recognition that the answer
2 regarding lighting is not
3 simply a no as it was
4 previously." (As read)
5 And so just stopping there and
6 going back to the 2013 report, was it your
7 understanding that the City had not asked CIMA to
8 do an assessment of lighting the main line in
9 2013?

10 A. Correct.

11 Q. And do you agree with
12 Mr. Malone's characterization that you had
13 indicated to him that the answer regarding
14 lighting is not simply a 'no' this time around?

15 A. Yes. So what I wanted
16 was a review. So despite what had come up
17 previously, whatever the comments were, whatever
18 studies had previously been done or environmental
19 wanted to be reviewed based on the technical
20 warrants that are available to determine whether
21 or not lighting is required on those roadways.

22 Q. And when you say "whether
23 lighting is required," you mean lighting of the
24 main line of the Red Hill?

25 A. Correct.

1 Q. Not just the interchanges
2 or the ramps?

3 A. No, the full facility.

4 Q. Did you recognize by
5 making this request it was likely going to be --
6 come back as, you know, quite an expensive
7 prospect to implement?

8 A. Yes, definitely. I mean,
9 lighting is a costly endeavour. But again, I
10 wanted to make sure everything was covered and
11 that we had all the information available to us.

12 Q. And did you view lighting
13 as an important component for the study review
14 because of the nature of the collisions that were
15 being seen on the Red Hill?

16 A. I wouldn't necessarily
17 say yes, no. It's more I just wanted to know the
18 information of whether the facility is warranted
19 for lighting.

20 Q. And you didn't know that
21 either way before making this request in 2015?

22 A. No. I mean, based on the
23 previous information that was available, it was
24 something that, you know, through the design
25 process and environmental concerns, et cetera,

1 that it wasn't something that was recommended at
2 that time, and so that was the information that
3 was provided, but I still felt it was something
4 that needed to be looked at and considered.

5 Q. Okay. So you wanted to
6 assess whether it would be warranted even if there
7 was going to be some obstacles to actually
8 implementing it?

9 A. Exactly. I mean, even if
10 it is warranted, I know it's a long implementation
11 process, and there's certain steps that have to be
12 taken, but I wanted to know the -- we wanted to
13 know the information of whether or not it
14 warranted lights.

15 Q. Okay.
16 Registrar, can you close that
17 and go to page 10, paragraph 29.

18 So you already have a run-up
19 to a meeting before PWC, and then this is an
20 agenda that goes in advance, and it is for the
21 motion that staff be directed to investigate
22 additional safety measures and to report back with
23 recommendations by December 7, 2015. Is that
24 language that you worked on with Councillor
25 Connelly?

1 A. Yes, I believe so.

2 Q. Thank you. You can close
3 that, and if you can go to page 14, paragraph 40,
4 please.

5 So you were already going to
6 PWC to provide an update on the 2013
7 recommendations and the status of their
8 implementation. Do you recall that?

9 A. Not specifically, no.

10 Q. Okay. Looking at this
11 now, is this looking more familiar?

12 A. No, sorry.

13 Q. Okay. Can you close
14 that, Registrar, and go to paragraph 49, please.
15 Thank you. Trying to think of the best way to
16 call this out. If you can just call out the
17 excerpted bit at the bottom.

18 So this is a Spectator
19 article, and it's about widening the highways, and
20 Mr. Moore says it would cost 80 to 100 million.

21 And you can close that.

22 Do you recall around May of
23 2015 discussion about potentially widening the
24 highways to allow for more traffic flow? Pardon
25 me, I said highways; I meant parkways.

1 A. Not really.

2 Q. Okay.

3 Can you, Registrar, go to
4 paragraph 51. And if you can call out
5 paragraph 51, please.

6 And you update Mr. Malone and
7 Mr. Cooper that city manager has made a comment
8 about the TMP, that's the transportation
9 management plan; is that right?

10 A. Yes.

11 Q. "Will be reviewing the
12 idea of widening both roadways."

13 And Mr. Mater wanted to make
14 Mr. Malone aware in case that changed any of
15 CIMA's recommendations in the 2015 project. Do
16 you remember conveying this information to
17 Mr. Malone?

18 A. Not specifically, no,
19 from what I'm reading.

20 Q. Okay. Would you agree
21 that widening the parkways would actually be a
22 very substantial infrastructure project?

23 A. Yes.

24 Q. And it could affect the
25 timing of recommendations that CIMA might make

1 around illumination, for example?

2 A. Correct.

3 Q. Or around putting in

4 median barriers?

5 A. That's correct.

6 Q. It could also affect

7 things like signage. If you are actually trying

8 to widen the parkway, you might not want to put up

9 a bunch of signs and then have to take them down;

10 is that fair?

11 A. I wouldn't agree with

12 that.

13 Q. No?

14 A. The signage process is --

15 no, it's not as costly obviously. That's I guess

16 what I'm trying to say.

17 Q. Signage is usually low

18 hanging fruit in terms of being able to do a

19 countermeasure?

20 A. Correct.

21 Q. Registrar, you can close

22 that and can you open page 23, paragraph 63.

23 While that's coming up,

24 Mr. Ferguson, do you remember that during this

25 time while CIMA is doing its work on this project,

1 that there was a number of collisions, and you
2 were reporting up every time there was a
3 collision?

4 A. I briefly -- yes, I
5 remember a bit, yes.

6 Q. And do you recall feeling
7 that there was mounting public pressure to do
8 something, and you were waiting on the CIMA report
9 during this time?

10 A. Yes.

11 Q. Okay. We're going to go
12 to the first version of the CIMA report received.

13 Registrar, can you first go to
14 page 40, paragraph 122. Thanks.

15 So unlike the 2013 report,
16 were you more actively involved in CIMA's work
17 leading up to the draft report?

18 A. Yes.

19 Q. And did that work include
20 providing collision data, speed data, that sort of
21 thing?

22 A. Not me specifically, but
23 our staff, traffic staff would provide that
24 information, yes.

25 Q. Okay. Were you involved

1 in the day-to-day of the discussions back and
2 forth between CIMA and the City about what they
3 needed, where they were heading, potential
4 recommendations, what they were thinking, all of
5 those sorts of -- the preliminary things before
6 this draft came out?

7 A. I wouldn't say on a
8 day-to-day basis, no.

9 Q. Did you leave that to
10 Mr. Worrton -- pardon me, Mr. Cooper and
11 Mr. Worrton?

12 A. Correct.

13 Q. Okay. You can close
14 that, Registrar. And could you pull up,
15 Registrar, CIM10146.0001. You can scroll down,
16 Registrar, to the table of contents, I think it's
17 three. There we go.

18 Mr. Ferguson, do you remember
19 reviewing this report when you received it?

20 A. Not specifically but that
21 would have been the practice.

22 Q. We're going to go first
23 to the summary of -- in fact, actually we're going
24 to stop right here for a moment. You'll see that
25 there's the review of collisions, then there's a

1 field investigation, then there's illumination
2 review on this page. And that was what you
3 expected in terms of some of the work that CIMA
4 was going to do to prepare the report and the
5 potential countermeasures?

6 A. Correct.

7 Q. Okay. Turning to the
8 review of collisions.

9 If you can go to image 25,
10 please. Actually we should start one more up. If
11 you can go to the image 24. There we go.

12 So looking at the bottom half
13 of this page, there's a summary of the collision
14 review with overall findings and some critical
15 locations. Did the information set out here, did
16 that accord with the internal collision reviews
17 that you and your staff had prepared?

18 A. Yes, it would have a
19 aligned, yeah.

20 Q. Was there anything
21 surprising from CIMA's collision review?

22 A. I would say, no.

23 Q. Registrar, can you now go
24 to the next image, 25.

25 Had your team internally done

1 a median-related collision review?

2 A. I don't recall
3 specifically. I know I had looked at median-type
4 collisions; I don't recall how detailed it was.

5 Q. Okay. This information,
6 in particular the critical locations for
7 median-related collisions, was that useful to you
8 in trying to think through appropriate
9 countermeasures?

10 A. Yes, it's a -- yeah, that
11 was part of the scope for them to review in
12 identifying any potential issues or locations,
13 yeah.

14 Q. Okay. And one possible
15 use would be to focus on critical locations for
16 median-related collisions and in fact maybe put in
17 some specific countermeasures only in those areas?

18 A. Correct.

19 Q. What did you think about
20 the overall collision summary and the
21 median-related collision summary in 2015 given the
22 countermeasures that the City had implemented
23 after the 2013 report?

24 A. Again, it wasn't -- so
25 there was a couple of aspects to that. One was

1 around this point in time, I'm starting to study,
2 learn more about Vision Zero, road safety actions,
3 so I'm looking at things through a Vision Zero
4 lens with respect to the median barriers. And of
5 course the Vision Zero premise is to eliminate
6 injury and fatality-type collisions. So there's a
7 big focus on the median aspect.

8 We know they happen. We know
9 that when they do occur there's higher level of
10 injuries that happen. So that's really what I'm
11 kind of focusing on with respect to the medians.
12 The collisions occurring -- again, it wasn't
13 really that big of a surprise to me.

14 Q. Was it disappointing that
15 not much progress had been made despite the
16 countermeasures implemented since 2013?

17 A. Ah, I would say
18 frustrating. Remember the 2013 studies focused a
19 lot on the median -- or the on and off ramps so
20 not really comparative, but still to see
21 collisions at higher levels is obviously
22 disappointing when you're involved in traffic,
23 especially when a lot of them are being correlated
24 to driver behaviour.

25 Q. Okay. I have a follow-up

1 question to something you said before. You said
2 you were up looking at things through a Vision
3 Zero lens with respect to median barriers. Vision
4 Zero is no deaths, no fatalities, no injuries; is
5 that right?

6 A. No serious injuries or
7 fatalities. That's what the vision is.

8 Q. And when it comes to
9 median barriers, what is the concern about either
10 the use of median barriers or the absence of
11 median barrier when it comes to a Vision Zero
12 strategy?

13 A. Well, from a non-use
14 perspective it obviously permits for vehicles to
15 be able to potentially cross the facility into
16 obviously the oncoming lanes. The addition of
17 barriers, there's no guarantee it's going to stop
18 serious injuries or fatalities. It may stop the
19 crossover from occurring. But there's still a
20 potential for obviously collisions. There's a
21 potential for increasing the number of collisions
22 because in the current process a vehicle may leave
23 the roadway and either, you know, end up in the
24 shoulder or end up in the median without any
25 physical contact. So in those cases they're

1 considered property-damage-only-type collisions.
2 Whereas if you put obviously a physical barrier in
3 place, there's going to be a connection to it.
4 There's also of course maintenance -- increasing
5 maintenance costs associated with that.

6 Q. Okay. And also the
7 potential that the car goes into the median
8 barrier and then bounces back into the same lane
9 in which they were driving which can increase
10 other risk to other people on the roadway; is that
11 right?

12 A. This is a potential.
13 Obviously it depends on the type of barrier you're
14 using.

15 Q. Okay. Is a steel barrier
16 less likely to do that?

17 A. No, a steel barrier would
18 be more likely to do that.

19 Q. Okay. And a high
20 tension --

21 A. High tension cable
22 barrier will -- essentially the cable structure
23 will absorb the pressure car and help to bring the
24 car to a slow speed or a stop.

25 Q. Okay. That was my first

1 follow-up question from your answer. The second
2 is you said it's disappointing to see a lack -- a
3 lack of reduction in collisions especially when a
4 lot of them are being correlated to driver
5 behaviour. What did you mean by that?

6 A. Well, we know that
7 there's collisions occurring in wet weather
8 conditions. We know that there's a speed concern
9 associated with the Red Hill. A number of the
10 collision reports identify this lost control or
11 speed too fast scenario, which are all
12 driver-behaviour-type issues. So it's clear
13 there's a disregard for the posted speed limit,
14 and when you add in those other weather
15 environments along with the number of other
16 features, it's -- it only increases the potential
17 for collisions occurring.

18 Q. Okay. We'll come to this
19 a little later, but one of the things in this
20 report that comes out later is that CIMA used 2013
21 speed data. Do you remember that?

22 A. Vaguely.

23 Q. Okay. We'll come back to
24 that.

25 Recognizing it's frustrating

1 or disappointing when there isn't a reduction in
2 collisions after putting in countermeasures, and
3 your reference is to these types of collisions in
4 your mind being linked to driver behaviour, were
5 you seeing or did you perceive there was more
6 speeding on the Red Hill than on other roads?

7 A. Well, I mean, you can't
8 really correlate that because we're talking about
9 a completely different facility compared to any
10 other City of Hamilton roadway. So, you know,
11 you're talking about essentially a high speed
12 facility here that you don't have anywhere else in
13 the City of Hamilton.

14 Q. Exception, the LINC?

15 A. Yeah, but even there you
16 can't really use that as a true comparison because
17 the geometrics are obviously very different,
18 right.

19 Q. Yep. Okay. Can we go
20 to -- sorry, I just want to make sure I'm getting
21 the right image number -- image 38, please. And
22 if you could pull up the top of image -- if you
23 could pull up image 39 as well, please.

24 So full main line illumination
25 was warranted by CIMA. Do you remember having any

1 conversations with anyone at CIMA about the
2 illumination -- its illumination review or its
3 illumination recommendations?

4 A. Not specifically, no.

5 Q. I think you can go to
6 image 34, please. I misspoke, it's page 34. It
7 would be image 42. Thank you. That's perfect,
8 Registrar. If you could call out 7.1.2.

9 So much like the 2013 report
10 there's a reference to pavement friction playing a
11 vital role. And then in the second paragraph it
12 says:

13 "Because of the high
14 proportion of wet surface
15 conditions and single motor
16 vehicle collisions, the City
17 could consider undertaking
18 pavement friction testing on
19 the asphalt to get a baseline
20 friction coefficient for which
21 to compare." (As read)

22 And then it provides an
23 estimated cost, and it says:

24 "Based on the results the City
25 may be in a better position to

1 determine if further action is
2 required." (As read)

3 Did you understand that this
4 was a recommendation to do further investigation
5 in respect of friction?

6 A. Correct.

7 Q. And did you understand
8 that this investigative tool would then allow the
9 City to be in a better position to determine if
10 further action was required?

11 A. Yes.

12 Q. Would it be traffic
13 engineering that would be involved in the
14 assessment of whether further action would be
15 required?

16 A. No, that would fall into
17 engineering.

18 Q. Given the references in
19 this paragraph to the second paragraph:

20 "Tests should be performed
21 near locations with the
22 highest frequency of wet
23 surface collisions especially
24 curves." (As read)

25 And the reference to:

1 "Because of the high
2 proportion of wet surface
3 condition and single motor
4 vehicle collisions." (As
5 read)

6 So those two parts of this
7 paragraph. Did you take that into account when
8 you were considering how much of the issues on the
9 Red Hill were related to driver behaviour?

10 A. Sorry, can you repeat
11 that?

12 Q. Sure. I can rephrase it.
13 I think it might be easier. Given these two
14 comments and this recommendation for further
15 investigative testing, did you turn your mind to
16 that when you were considering whether speeding
17 alone might account for the significantly high
18 proportion of wet weather collisions on the Red
19 Hill?

20 A. No, and the reason around
21 that is, you know, a motor vehicle collision is a
22 series of small events that occur through the
23 process. It looks at, you know, what was
24 obviously the weather conditions, road conditions,
25 driver action, driver behaviour, and then you --

1 obviously how does a person react in being
2 involved in the collision. You know, you even get
3 into the fine details of, you know, vehicle
4 condition. What are the conditions of the tires.
5 What are the conditions of the brakes. Right?
6 Obviously through police reporting and
7 investigation, so there's a whole number of things
8 that are involved when it comes to a motor vehicle
9 collision.

10 The primary area or the
11 primary area that's identified that causes a
12 collision is driver behaviour. I mean, that's
13 throughout North America you'll find that, you
14 know, driver behaviour, especially in poor weather
15 conditions is identified as a primary issue for
16 those collisions.

17 Q. Thank you.

18 MS. LAWRENCE: Commissioner, I
19 note the time is about 10 to 1:00. I'm moving to
20 another topic now which I think might be a lengthy
21 topic. May I propose that we take our lunch a
22 little early?

23 JUSTICE WILTON-SIEGEL: I
24 think that would be fine. We'll take our usual
25 hours and 15 minutes. So if it's just about 10

1 to, we'll return at 5 past 2:00. We'll stand
2 adjourned until that time.

3 --- Recess taken at 12:49 p.m.

4 --- Upon resuming at 2:05 p.m.

5 BY MS. LAWRENCE:

6 Q. Mr. Ferguson, picking up
7 on a topic that we were dealing with before the
8 lunch break.

9 Registrar, can you bring up
10 HAM454.

11 So this is the 10-page draft
12 of the November 2013 staff report. It's your
13 draft. And this morning I asked you in respect
14 of -- sorry, I'm just trying to get to the right
15 paragraph.

16 Image 6, pardon me.

17 Registrar, if you can go to image 6.

18 I asked you in respect of the
19 paragraph in addressing number 3 above. I
20 suggested to you that the reference to friction
21 testing in this paragraph was the -- made
22 reference to friction testing in this document,
23 and you said you would have to look, and I believe
24 you've had a chance to review. Was I right in
25 my -- in the assertion that I gave that this is

1 the only reference?

2 A. Yes.

3 Q. Thank you. Registrar,
4 you can close that document.

5 And if you could go into OD7
6 at page 44, paragraph 131. Thank you.

7 So this is the bottom of
8 image 1, and it's a meeting in September of 2015
9 with Mr. White and you, Mr. Worrton, Mr. Cooper and
10 Mr. Malone and others at CIMA. Do you remember
11 this meeting?

12 A. Not specifically, no.

13 Q. There's a summary of the
14 notes of this meeting, but it may be easier to
15 actually look at the document itself.

16 Registrar, can you go to
17 CIM9288. I hope this more helpful to refresh your
18 memory.

19 So this is a meeting that
20 occurred at 1375 Upper Ottawa. And you'll see
21 that it says CIMA went through "the findings and
22 recommendations from both reports," and just
23 stopping there. Was it your experience with CIMA
24 that they did these progress meetings?

25 A. Yes.

1 Q. And the second bullet,
2 Registrar, if you could pull that out for me. So
3 it says here the:

4 "...City questioned in both
5 reports relating to the
6 variable message boards
7 consistent with the overall
8 traffic management program."

9 (As read)

10 What is the variable message
11 boards and how does it relate to the traffic
12 management program?

13 A. So at that time we were
14 working on developing an overall traffic
15 management program that would allow us obviously
16 to monitor operations on roadways, and the
17 variable message boards are the large digital
18 boards that you see on highways that provide
19 messaging back to the motorists. So we were
20 looking at a way to be able to tie those together
21 and bring those into the City of Hamilton.

22 Q. Okay. And what sort of
23 messages were you hoping that CIMA might consider?

24 A. It's not so much them
25 providing the messages. It's more just the

1 correlation between the radar -- the variable
2 message boards and our traffic management program.
3 Our plan was that we could use these message
4 boards to provide road safety messaging to the
5 motorists.

6 Q. Okay. So that was not
7 going to be a new countermeasure or a difference;
8 it was just some context?

9 A. Yeah, so one of the
10 issues was within the report it identified radar
11 message -- or radar message boards, so those are
12 the signs that provide -- the board will provide
13 you with what speed you're travelling at. But
14 what we've found with those boards is where you
15 had large volumes, it was very difficult to
16 provide consistent messaging because it's
17 constantly changing to other vehicles and picking
18 up other things. So we were looking at these
19 variable message boards instead.

20 Q. Okay. Registrar, you can
21 close that.

22 The very last bullet: "CIMA
23 is to provide a revised final report by
24 October 6 --" it says 2010, but we're in 2015, so
25 I think that's just a typo.

1 When was the staff report
2 going to have to be finalized to be able to be
3 included in December 7th, 2015 update to PWC?

4 A. I don't remember
5 specifically, but it would have been somewhere
6 between mid-to-late October, early November.

7 Q. So your anticipation was
8 that you would have a revised final report from
9 CIMA before having to finalize the staff report?

10 A. Correct.

11 Q. Thank you. Registrar,
12 you can close that and go back into OD7, page 42,
13 please.

14 So in paragraph 129,
15 September 19th, you e-mailed Mr. White copying
16 Mr. Cooper, Worrton and Ms. Aquila attaching a
17 draft staff report. Do you recall if you were the
18 primary and initial drafter of the staff report or
19 if it was one of your other staff?

20 A. No. It would have been
21 Mr. Cooper or Mr. Worrton that would have -- one of
22 the two would have drafted the report.

23 Q. Or Mr. Decleir?

24 A. No.

25 Q. Okay. So you'll see just

1 the covering e-mail here. I think I've answered
2 my own question. The first line says:

3 "Attached is a report that
4 Stephen had completed and
5 you've reviewed and made some
6 changes." (As read)

7 And in that second numbered
8 bullet there, Registrar, could you bring that up,
9 "I have identified."

10 "I've identified
11 recommendations that specific
12 departments would be
13 responsible for action, but
14 I've not yet circulated it to
15 them as I wanted you to review
16 first in case you felt this
17 would cause some issue." (As
18 read)

19 Do you want to close that
20 down, Registrar, and then if you can call out the
21 excerpt at paragraph 130, please.

22 So this is in that same -- in
23 the document that -- where we were just looking at
24 the e-mail that attached it. You'll see it has
25 engineering services is doing the first four,

1 forestry is doing the next two, roads is doing the
2 next one, Hamilton Police Service is doing the
3 next one, and then there's a reference to speed
4 limit, and then traffic operations and
5 engineering, which you are now called, was doing
6 the other identified countermeasures.

7 Why was it that you thought
8 identifying the specific departments would be
9 beneficial?

10 A. As we I think mentioned
11 before, things would get dropped I found into
12 within traffic route to undertake these reviews,
13 and, you know, often we would get questions about
14 items that we really didn't have any jurisdiction
15 on, so I wanted to make it clear who was
16 responsible for what item so that if council or
17 anybody had a question, they knew exactly who to
18 go to.

19 Q. Okay. And you were
20 saying things would get dropped. Did you have any
21 concern about things getting dropped by forestry
22 or roads in the past?

23 A. No. And when I say
24 dropped, sorry, maybe that's the wrong term, we
25 would be asked to, you know, facilitate these

1 types of reports for essentially all public works.
2 So, you know, we're writing this report, but
3 there's sections that obviously we don't have
4 jurisdiction on, so it's a case where I'm trying
5 to clearly identify who is responsible for what.

6 Q. Okay. And is that
7 because in the past engineering services had not
8 completed the 2013 CIMA recommendations?

9 A. No, it's not anything to
10 do with that. It's just a case where, you know,
11 this goes to council or committee as is, it gets
12 approved, and again, you know who's responsible
13 for what.

14 Q. Okay. Registrar, you can
15 close that down. And if you could call up
16 HAM43023, please.

17 So this is the document that
18 we've been -- that we were just looking at the
19 recommendations for. So this is a recommendation
20 report?

21 A. Yes.

22 Q. Why was this a
23 recommendation report rather than information
24 report?

25 A. Sorry, why is it a

1 recommendation rather than a....

2 Q. Information report.

3 A. I can't really answer the
4 question. I suspect it's the direction we were
5 given to prepare a recommendation report.

6 Q. Okay. So this is a
7 report that's dealing both with the LINC -- the
8 CIMA LINC safety review and the Red Hill safety
9 review?

10 A. Correct.

11 Q. Both those being
12 completed in 2015?

13 A. Correct.

14 Q. And so in that way they
15 are similar to the staff report prepared in
16 followup to the 2013 CIMA report?

17 A. Correct.

18 Q. Okay. And does that
19 assist you with understanding why this is a
20 recommendation report versus the other one was a
21 recommendation report?

22 A. No. The only thing I
23 would say is the 2013 started off as a
24 recommendation report.

25 Q. Okay. And it wasn't your

1 decision to change it to an information report, I
2 think you've given evidence; is that right?

3 A. Correct.

4 Q. Registrar, could you go
5 down to image 3, please. Sorry, I've skipped over
6 that summary of the LINC and the LINC report. And
7 could you call out, Registrar, the two paragraphs
8 under Red Hill Valley Parkway.

9 You'll see here there's a
10 reference to the number of collisions, the type of
11 collisions and the specific circumstances or
12 conditions that were in effect during the
13 collisions, i.e., median-related barrier
14 collisions or delay collisions. That's in the
15 first paragraph. There's also a reference to
16 approximately 500 vehicles per day have been
17 recorded travelling in excess of 430 (sic)
18 kilometres per hour. That was taken right from
19 the CIMA report; is that right?

20 A. I believe so, yes.

21 Q. Do you recall where CIMA
22 got the speed data to include that statement?

23 A. I don't recall
24 specifically.

25 Q. Okay. We'll come back to

1 that. In the second paragraph there's a reference
2 to illumination, and that it was:

3 "...considered to increase
4 safety by providing drivers
5 with improved night time
6 visibility." (As read)

7 And then there's a reference
8 to:

9 "...37 percent of collisions
10 being -- occurred during
11 non-daylight conditions;
12 therefore, a review of
13 illumination was part of the
14 scope of the study." (As
15 read)

16 And so would you agree with me
17 that these two paragraphs provide significantly
18 more detail about CIMA's collision assessment than
19 the 2013 report did?

20 A. Yes, it does.

21 Q. Why did you think it
22 was -- would be useful to council -- or pardon me,
23 to the PWC to have this information?

24 A. Well, this is -- overall
25 the two reports are a more detailed and

1 comprehensive review of the parkways, and so it's
2 important to have this type of information.

3 Q. Okay. Registrar, can you
4 close that out and go to the next image, please.

5 And so here you have set out
6 countermeasures. And am I correct that those are
7 the countermeasures that are just lifted from the
8 summary of countermeasures in the CIMA 2015
9 report.

10 A. Yes. I believe that's
11 correct, yes.

12 Q. And you've identified
13 which section or which department would be
14 responsible for each countermeasure?

15 A. Yes.

16 Q. And you've included all
17 of them, including countermeasures that were
18 determined to be long-term countermeasures; is
19 that right?

20 A. Correct, everything is
21 in....yes.

22 Q. You can close that down
23 and go back to OD7, page 42, paragraph 129.

24 So you're saying this to
25 Mr. Martin (ph) and others. Why did you want

1 Mr. Martin to review the way that you had
2 separated out the responsibilities. When you say
3 "in case you felt this would cause some issue,"
4 what issue were you concerned about?

5 A. The issue with respect to
6 identifying other groups within our report, that
7 they were responsible for those things.

8 Q. But that wouldn't be an
9 issue if you contacted them and you got buy-in
10 from them, right?

11 A. Sorry, say that again.

12 Q. It wouldn't be an issue
13 if you contacted those other departments and got
14 buy-in to proceed in this way.

15 A. Correct, and I don't
16 believe we had contacted them with respect to a
17 copy of the report at this time, I don't think.

18 Q. Is it common that final
19 reports are separated by division like this?

20 A. The way I've
21 recommended -- put the recommendations together?

22 Q. Yeah.

23 A. Not necessarily, no.

24 Q. So this was something
25 specifically you were doing about these projects

1 to ensure that the responsibility was
2 appropriately allocated?

3 A. Yes.

4 Q. Registrar, can you pull
5 up the next image. Apologies, the next image,
6 page 44. Thank you.

7 And so did Mr. White sign off
8 on your proposed plan to separate out by division?

9 A. I don't remember
10 specifically. I would say, I assume, yes.

11 Q. Okay. You sent Mr. Moore
12 a -- pardon me. You sent Mr. Moore an e-mail
13 where you have these all separated out, and so you
14 wouldn't have done that without Mr. White signing
15 off. Is that fair to say?

16 A. Correct.

17 Q. Also sent one to Betty
18 Matthews-Malone. She didn't any comments. Do you
19 recall? No substantive comments --

20 A. No --

21 Q. -- do you recall that?

22 A. No, I don't recall that.

23 Q. Okay.

24 Registrar, can you go to
25 page 45, paragraph 134, please.

1 So in the e-mail which we just
2 sort of jumped over you asked Mr. Moore if he was
3 okay with those recommendations that related to
4 engineering services, and this was his response.
5 Do you recall receiving this response from
6 Mr. Moore?

7 A. Vaguely.

8 Q. And he says under number
9 one:

10 "You can take engineering
11 services off every line. We
12 don't do investigations. We
13 do programming, design and
14 tender and construction
15 supervision."

16 Maybe just for you it might be
17 easier if we have this up with the
18 recommendations.

19 Registrar, can you call out at
20 the same time paragraph 129. Sorry, it's
21 paragraph 130. Just to be able -- because he's
22 using numbering as well, so I just want to ensure
23 I'm using numbering. And, Registrar, you only
24 need to pull out the first half of this, which is
25 from A to E, just so it's easy for all of us to

1 read. Perfect. There we go.

2 Mr. Ferguson, can you read
3 both of these?

4 A. Yes.

5 Q. Great. So he says:

6 "You can take engineering
7 services of every line and we
8 don't do investigations. We
9 do programming, design and
10 tender and construction
11 supervision." (As read)

12 Looking at the recommendations
13 that you had drafted and sent to Mr. Moore, do you
14 agree that they were inappropriate for engineering
15 services given the scope of engineering services
16 work?

17 A. No.

18 Q. Why not?

19 A. Those are all forms of
20 engineering services works that they would have to
21 be involved with.

22 Q. To your knowledge, does
23 engineering services find funding and engage in
24 funding analysis?

25 A. Yeah. At that time they,

1 for lack of a better word, they held the budgets.
2 They created the budget fundings, allocated funds
3 towards various projects. That was kind of the
4 process.

5 Q. Thank you. And in terms
6 of investigating the high tension steel cable
7 median barrier installation and shield rock cuts,
8 would you view that as part of programming design
9 or construction?

10 A. Yes. It all would be
11 part of that because, I mean, it's not as simple
12 obviously as just going out and installing. There
13 has to be a review completed from an engineering
14 perspective of what would actually be required to
15 actually install those items.

16 Q. And would that review
17 also include some input from traffic engineering
18 about the safety perspectives of doing those
19 tasks?

20 A. Yeah. I mean, we would
21 have -- obviously we've done this report, and it's
22 sort of identified within the report, so we would
23 have provided that information.

24 Q. In his second point in
25 the e-mail that's on the left-hand side he says:

1 "What is friction going to
2 tell you if you don't have
3 anything to compare it to?
4 There's no provincial database
5 or guideline. The MTO will
6 never discuss this with you
7 because it opens up an entire
8 line liability every road."

9 (As read)

10 Was it your understanding as
11 of September 2015 that Mr. Moore had had friction
12 testing done on the Red Hill?

13 A. No.

14 Q. Was it your understanding
15 that he had not done friction testing?

16 A. We had received no update
17 from the 2013 report that I was aware of that had
18 suggested there had been work completed.

19 Q. Okay. So your assumption
20 at this point was that Mr. Moore had not done any
21 friction testing in response to the 2013 report?

22 A. Correct.

23 Q. And was it also your
24 understanding that he had not done -- engineering
25 services had not done friction testing for any

1 other reason?

2 A. Correct, yes.

3 Q. Did you reach out to
4 Mr. Moore in respect of that statement to confirm
5 whether engineering services had conducted
6 friction testing at any point?

7 A. No. I believe I ended up
8 forwarding this off to management.

9 Q. In terms of funding the
10 recommendation, and it's (c), is that:

11 "Engineering services be
12 directed to complete pavement
13 friction testing on the RHVP
14 in its entirety at an
15 estimated cost of 40,000 to be
16 engineering operating budget."

17 (As read)

18 Just so I'm clear in terms of
19 timing, had the 2016 engineering operating budget
20 been set by September of 2015?

21 A. Staff would have
22 submitted their requests with respect to what
23 their operations budget is going look like by this
24 point, but it wouldn't have been finalized or
25 approved.

1 Q. Okay. And would
2 Mr. Moore as the director of engineering be in
3 charge of finding funds and arranging for funds?

4 A. Yes.

5 Q. If this recommendation
6 was accepted in this form?

7 A. Yes.

8 Q. And would it also be
9 engineering services who would arrange for the
10 testing?

11 A. That's correct.

12 Q. Registrar, would you mind
13 closing out the callout on the left-hand side and
14 calling out paragraph 4. It's just a little cut
15 off at the bottom, just so we can all see it
16 better. Thank you.

17 Mr. Moore also said:

18 "We have said over and over,
19 illumination of the Red Hill
20 or LINC is never going to
21 happen so stop asking. The
22 approval was based on no
23 illumination for environmental
24 reasons. It is unaffordable,
25 unsustainable and unnecessary.

1 It would be a 8 to 12 million
2 project plus protection,
3 barriers, guide rail, and then
4 the maintenance costs." (As
5 read)

6 Who did you understand he
7 meant when he said "we have said over and over"?
8 Who is the "we"?

9 A. I would -- engineering
10 services.

11 Q. Who was supposed to stop
12 asking if it was clear to you?

13 A. I read it as council,
14 essentially.

15 Q. Did you view Mr. Moore's
16 comments as consistent with the direction from PWC
17 regarding the CIMA study and what CIMA was to
18 consider?

19 A. I would say, no. I mean,
20 he's providing his opinions on things. That
21 doesn't really align with what the scope of the
22 study was.

23 Q. In your view, given
24 direction from council, were staff required to
25 provide a report that responded to questions of

1 full illumination on the Red Hill?

2 A. That was one of the
3 things we identified, yes.

4 Q. And that was a
5 requirement by staff given the council's
6 direction?

7 A. Yes.

8 Q. At this point did you
9 have any deeper knowledge than you did in 2013
10 about environmental constraints that might affect
11 the ability to illuminate the Red Hill?

12 A. No.

13 Q. Thank you.

14 You can close those callouts,
15 and, Registrar, if you can call out the very first
16 paragraph that says "Dave, sorry, I wasn't aware"
17 in paragraph 134. Thanks.

18 So Mr. Moore says:

19 "I need to see it, and it
20 needs to be discussed at DMT
21 or at least with John, Gerry
22 and myself before it goes. In
23 any event, here's my
24 comments." (As read)

25 What is DMT?

1 A. That's the department
2 management team, I believe.

3 Q. Is that director level
4 discussions?

5 A. I believe so, yes.

6 Q. You didn't attend those?

7 A. No.

8 Q. Do you know how often
9 those occurred?

10 A. I don't, no.

11 Q. Registrar, you can close
12 that callout and go to page 45, paragraph 136,
13 please. Could you bring up the prior image as
14 well. Thank you.

15 So just for continuity you
16 flipped as you -- I think you gave evidence
17 today -- flipped Mr. Moore's e-mail to Mr. Mater
18 and Ms. DiDomenico. Who is Ms. DiDomenico?
19 Pardon me, you copied her.

20 A. Who is she? So
21 Ms. DiDomenico, I can't remember her specific
22 title, manager. So she was brought in and was
23 doing this financial planning and policy
24 development.

25 Q. Did understand her to be

1 related to the Red Hill project in any way?

2 A. Not at that time, no.

3 Q. Did you later come to
4 learn that she had some connection to the Red Hill
5 project?

6 A. I don't recall
7 specifically.

8 Q. Okay. So you'll see at
9 the top of the -- the image 2, paragraph 136, you
10 have an e-mail from Mr. Mater who is copied
11 initially by Mr. Moore saying:

12 "Fergy, we should sit down to
13 review these please. Char --"
14 that's his assistant "--
15 please find some time for Dave
16 Martin --" so Mr. White "--
17 Geoff --" Mr. Lupton "-- and I
18 to review." (As read)

19 Do you recall if this meeting
20 with Mr. Mater, Mr. White, Mr. Lupton and yourself
21 took place?

22 A. I don't recall.

23 Q. You don't recall whether
24 it happened or not?

25 A. Yeah, I don't have any

1 recollection of it.

2 Q. Okay. Do you remember
3 anything about the instructions from Mr. Mater,
4 Mr. Martin -- Mr. White and Mr. Lupton -- about
5 how to deal with Mr. Moore?

6 A. No, I don't.

7 Q. This seems pretty
8 significant in terms of not being able to -- in
9 terms of how you've tried to draft these
10 recommendations. But what was the plan to try to
11 deal with this apparent conflict between
12 engineering services and traffic engineering about
13 the drafting of this staff report?

14 A. And I'm sorry, I just
15 don't recall. I don't remember it at all, to be
16 honest with you.

17 Q. Okay.

18 A. Sorry.

19 Q. Registrar, can you go to
20 callout 138 which is on image 2 there.

21 Just in terms of time on
22 October 7, CIMA sent the final reports for the
23 LINC and the Red Hill review projects similar to
24 that timeline that they had given you at that
25 meeting. Did you review these when they came in?

1 A. I don't remember
2 specifically, but I'm sure I did.

3 Q. Okay.

4 Registrar, you can close that.
5 And can you pull up HAM672, please.

6 So this is that report you've
7 now seen at least one draft, maybe more, of this.

8 Registrar, can you go to
9 image 26, please, and to the paragraphs and the
10 crosses up at the top underneath "Potential
11 Contributing Factors For Collisions."

12 Did you agree that a high
13 proportion of wet surface conditions suggested
14 that one or more of the following conditions might
15 be present, and then it has inadequate skid
16 resistance, hazardous manoeuvres and excessive
17 speed.

18 A. Yes.

19 Q. Are those generally the
20 three things that might be contributing factors to
21 a high proportion of wet surface conditions?

22 A. From a high level
23 perspective, yes.

24 Q. And it's important to
25 consider all three possible factors as

1 contributing; is that fair?

2 A. That is fair.

3 Q. And try to either -- try
4 to reduce their impact to reduce collisions. That
5 also fair?

6 A. Agreed.

7 Q. Registrar, can you go to
8 image 57, please.

9 So this is the summary table.
10 You've now seen a number of these tables. This is
11 the one in the October 7th version, and you'll
12 see -- is it big enough?

13 A. Yeah. No, you're good.

14 Q. You'll see that it's been
15 divided into short-term options which include
16 things like trimming vegetation, installing
17 slippery when wet signs, conducting pavement
18 friction and doing speed feedback signs. Those
19 are all, for example, under the short-term
20 options; is that right?

21 A. Correct.

22 Q. And then under -- doesn't
23 say it like this, but under the long-term
24 options -- it does say long-term -- there's
25 install continuous illumination and install high

1 tension cable guide rail, and there's construction
2 costs. There's anticipated costs for those two as
3 well. You see that?

4 A. Correct.

5 Q. Registrar, can you pull
6 out the section in between "short-term total" and
7 "grand total." So here CIMA has provided some
8 notes, "install continuous illumination," and then
9 the note is:

10 "Require sound evaluation of
11 context for a surrounding
12 network and environment and
13 environmental assessment will
14 be required." (As read)

15 Had you conveyed the nuances
16 of CIMA's recommendation to Mr. Moore when you met
17 with him?

18 A. I don't remember
19 specifically. I'm sure we would have touched base
20 on it.

21 Q. Apologies. I actually
22 meant in that e-mail exchange that you had.

23 A. Oh, sorry. No, I don't
24 recall if we included a copy of the report.

25 Q. You did not. Just in

1 terms of time, you didn't have a copy of this
2 draft of the report?

3 A. Sorry.

4 Q. No, it's fine. I didn't
5 mean to confuse you.

6 The tension guide rail, is
7 that a type of median barrier?

8 A. Yes.

9 Q. And when it says:
10 "Consider effective
11 median-related collisions
12 on -- countermeasures to
13 reduce speed and wet surface
14 collision." (As read)

15 What does that mean in terms
16 of what the City's next steps would be in
17 assessing this is a long-term option?

18 A. Essentially what it is
19 saying is implement the other measures prior to
20 considering -- to see if they have an impact on
21 the median collisions that are occurring.

22 Q. Okay. You can close this
23 out, Registrar, thank you. Can you go to the OD7,
24 page 46, paragraph 139. And if you can just call
25 out the paragraph 138 -- pardon me, 139 on

1 image 1.

2 So you have the back and forth
3 with Mr. Moore in late September, and then
4 Mr. Mater said, let's have a discussion. You
5 can't remember that meeting.

6 On October 20 Mr. Malone and
7 other CIMA reps met with Mr. Moore, you and
8 Mr. White to discuss the 2015 CIMA report and the
9 2015 LINC report. Do you remember that meeting?

10 A. No, I don't.

11 Q. Registrar, can you bring
12 up CIM9287, please.

13 So this says that it is a
14 meeting that is at 1375 Upper Ottawa. Does that
15 assist with refreshing your memory?

16 A. No, sorry.

17 Q. That's okay. So at
18 the -- before the dotted line there's references
19 to the LINC report and then after is references to
20 the Red Hill.

21 If you could pull out,
22 Registrar, the sixth bullet in the points
23 discussed, discussion followed. And this in
24 respect of the LINC report. Mr. Moore believes
25 benefits do not offset costs and says:

1 "The current situation
2 reflects the risks the City is
3 willing to assume." (As read)

4 This is in respect of median
5 barrier. Do you remember Mr. Moore providing
6 comments on the costs and benefits of the median
7 barrier.

8 A. I do remember -- I mean
9 not specific to this, but I do remember he did
10 raise issues with the costing that CIMA had
11 identified in the report and felt that the
12 costings associated were low.

13 Q. What did you understand,
14 if anything, about his comment that the current
15 situation reflects the risk the City is willing to
16 assume?

17 A. To be honest, again, I
18 don't remember the meeting, reading it. Again,
19 that's his opinion.

20 Q. Okay.

21 Registrar, can you close that
22 callout, please. Can you call out the last four
23 bullet points, please.

24 So this is on the Red Hill,
25 and Mr. Malone summarized it, referenced at the

1 end.

2 "Mr. Moore stated that
3 friction testing was conducted
4 recently following standards
5 and resulted satisfactory."

6 (As read)

7 Do you remember Mr. Moore
8 making this comment at this meeting?

9 A. I don't, unfortunately.

10 Q. I think your evidence has
11 been that Mr. Moore had not provided you with an
12 update about friction testing. Was this the first
13 update that you received from him about the status
14 of friction testing on the Red Hill?

15 A. It would have been based
16 on what is there.

17 Q. And so you had not heard
18 before that testing had been completed and the
19 results were satisfactory?

20 A. Correct.

21 Q. At this meeting did you
22 or your colleagues ask Mr. Moore to commit to
23 doing friction testing again in response to the
24 2015 CIMA report?

25 A. Well, I don't -- again, I

1 don't remember this meeting, so I can't really
2 speak to what we said or what was said, but we've
3 identified it in the 2015 report for friction
4 testing along the whole facility.

5 Q. Okay. Recognizing what
6 your evidence has been about your recollection at
7 this meeting, did Mr. Moore agree to conduct
8 another friction test?

9 A. Well, again, it's in the
10 2015 report. I can't, again, speak specifically
11 to this meeting or anything that was discussed
12 because I just don't remember it.

13 Q. Okay.

14 A. In the future obviously
15 he does.

16 Q. Can you close this,
17 Registrar, and go to the next image, and call out
18 the second bullet, please.

19 So Mr. Moore is recorded as
20 preferring to use the term "potential solutions,"
21 instead of "recommendations," and that "the City
22 will consider all required contacts to make
23 decisions." (As read)

24 Did you see a difference
25 between these two phrases in substance?

1 A. Not specifically, no,
2 because, I mean, we write reports and provide
3 recommendations, and we're going to be -- identify
4 what work we're going to be doing. So to me the
5 answer would be no, I don't -- it's a play on
6 words.

7 Q. Okay. Would you agree
8 that recommendations has a stronger meaning than
9 potential solutions?

10 A. I would agree.

11 Q. Do you think it is
12 appropriate to ask a consultant to change its
13 terminology in its consultation -- in its reports?

14 A. Well, through the process
15 of dealing with consultant, you always have
16 discussions and interactions, and staff will
17 provide suggestions or options or things that want
18 to be modified within the report. It's always up
19 to the consultant to determine whether or not
20 they're willing to accept those changes, so that's
21 kind of how it operates.

22 Q. Okay. So in your view
23 it's okay to ask and it's up to the consultant to
24 accept or reject that ask?

25 A. Right.

1 Q. Registrar, you can close
2 this out, and if you can pull up page 47 of OD7,
3 paragraph 140. Actually can you also call up 141,
4 140 and 141 together.

5 So after that meeting CIMA
6 provided a final draft for internal circulation,
7 and Mr. White forwarded that to Mr. Mater,
8 Mr. Lupton and Mr. Moore. Do you know whether
9 Mr. Moore had had a copy of the CIMA report and
10 the CIMA LINC report before this meeting, before
11 the meeting with CIMA?

12 A. I don't recall
13 specifically.

14 Q. Okay. And Mr. Moore did
15 provide comments on both reports, didn't he?

16 A. Yes, he did.

17 Q. Registrar, can you bring
18 up HAM690, and I believe it's the native version.
19 It will be a PDF version, but I think it's been
20 identified as a native version. Thank you. Can
21 you make that -- sorry, I'm just trying to figure
22 out the best way to look at this. Can you close
23 out the comments on the right-hand side and make
24 it, yeah, maybe just a little bit bigger. Okay.
25 Let's see if this works.

1 Mr. Ferguson, do you recall
2 that the document that Mr. Moore sent to you had
3 both strikethroughs and sticky notes as
4 Mr. Moore's comments?

5 A. Yes.

6 Q. Okay.

7 Registrar, can you go first to
8 image 8. I feel like that's a bit small for me to
9 read, and I know you can't do a callout here. Can
10 you increase the font size? Thank you.

11 Mr. Ferguson, can you read
12 that?

13 A. Yes.

14 Q. Okay. Mr. Registrar,
15 could you hover on the text that has the red
16 strikeout?

17 Mr. Ferguson, was it your
18 understanding that the red strikeout was
19 Mr. Moore's revision to this document?

20 A. Yes.

21 Q. Okay. I suspect if we
22 hover in -- perfectly in the right way Mr. Moore's
23 name will come up, but it's not happening, so --
24 but it was -- you hadn't taken -- hadn't deleted
25 anything. This was Mr. Moore's add -- proposed

1 deletion?

2 A. That's correct.

3 Q. And did he explain orally
4 why he thought that these three paragraphs or
5 parts of paragraphs should be taken out?

6 A. I don't believe so, no.

7 Q. He didn't leave you with
8 any impression that the facts in here were
9 incorrect?

10 A. No, not that I'm aware
11 of.

12 Q. Registrar, can you go to
13 image 34, please.

14 Okay. So at the top here
15 there's another strikethrough. That was also
16 Mr. Moore's strikethrough?

17 A. Yes.

18 Q. CIMA had recommended that
19 given the existing proportion of wet pavement
20 collisions, 50 percent, oversized slippery when
21 wet signs should be used in the study area and
22 that's struck out, and then at the right-hand
23 side --

24 Registrar, can you click on
25 that. Can you click on the gray box, please.

1 That's not going to be super helpful. Is there a
2 way to expand it so we can see it all in one box.
3 There we go. That's perfect. Thank you. And
4 Mr. Moore's comment is:

5 "Absolutely not. The sign
6 should say, drive according to
7 road conditions." (As read)
8 Just stopping there. Is there
9 a sign that says drive according to road
10 conditions, like a standard sign?

11 A. Not in the OTM, no.

12 Q. "Because honestly the
13 road is not slipperier when wet any more than any
14 other road." (As read)

15 In your view is that statement
16 consistent with the collision history analysis
17 CIMA performed in 2013 and 2015?

18 A. Not based on their
19 reporting.

20 Q. In fact, CIMA had
21 suggested that it did have a higher proportion
22 than -- of wet weather collisions than provincial
23 averages (indiscernible) on City of Hamilton
24 roads, right?

25 A. Yes, it did.

1 Q. He also says:
2 "The geometrics and the
3 increased speed profile make
4 it seem like it is slippery
5 when wet. I can't increase
6 the skid resistance." (As
7 read)
8 To your knowledge, are there
9 methods by which the skid resistance of a roadway
10 can be increased?

11 A. I can't speak to that.

12 Q. I'm not asking as a --
13 your analysis of pavement, but as a road safety --
14 a person with significant road safety experience.
15 Are you aware of how one might increase friction
16 on pavement?

17 A. Again, I can't speak to
18 that. I've -- throughout my career I've never
19 been involved in a situation like this dealing
20 with skid resistance, so it's never been something
21 that I've studied or investigated.

22 Q. Okay.

23 Registrar, can you go to
24 image 42, please. This one is a bit trickier in
25 terms of identifying the sticky notes. Registrar,

1 can you click on that first sticky note in the
2 second....so it says:

3 "The purpose of slippery when
4 wet signs is to advise drivers
5 that the surface of the
6 roadway has significantly
7 reduced wet weather skid
8 resistance so competent
9 drivers are aware that the
10 friction of the road surface
11 is reduced in wet weather."

12 (As read)

13 And I think that that sticky
14 note says "so does every other road in Ontario."

15 (As read)

16 Did you have any comment on
17 Mr. Moore's comment there?

18 A. I read much of this as
19 Gary just providing his opinion.

20 Q. Okay. Did you understand
21 his opinion to be that the Red Hill did not have
22 significantly reduced wet weather skid resistance?

23 A. No, that's not how I was
24 reading it.

25 Q. Okay. How were you

1 reading it?

2 A. Again, I just -- to be
3 honest with you, I didn't put a lot of weight into
4 Gary's -- these types of comments. You know, we
5 had a consultant prepare this report and provide
6 recommendations within that report. They're seen
7 as a reputable consulting firm, so I'm going to
8 follow what CIMA is saying rather than Mr. Moore's
9 opinions on things.

10 Q. Okay. But you would
11 agree that you did need to understand his opinions
12 to be able to try to get this project completed
13 and before the PWC by December 7th as they
14 requested, right?

15 A. Where it was relevant to
16 him, yes.

17 Q. Registrar, can you click
18 on the third of the stickies that is over top of
19 the word "criteria."

20 And so this is another comment
21 from Mr. Moore. It says "we know reason excess
22 speed." (As read). And it's in response to CIMA's
23 comment:

24 "Where no identifiable reason
25 for more than one third of

1 collision on any given road
2 are occurring on wet
3 pavement." (As read)

4 Did you agree with Mr. Moore
5 that the reason for the collisions was excessive
6 speed?

7 A. Overall the report
8 identifies that the higher speed values and that
9 they are a contributing factor to the collisions
10 that are occurring. They do identify that there
11 are other collisions that occur that don't have
12 any information that suggests speed or
13 driver-behaviour-type actions.

14 Q. Registrar, can you go to
15 image 38, please.

16 Mr. Moore makes one comment
17 here:

18 "There is no sense at looking
19 at the warrant for something
20 that can't and won't be
21 considered."

22 But the Public Works committee
23 did want to consider illumination of the Red Hill,
24 right?

25 A. Correct.

1 Q. You said earlier you
2 didn't take these comments -- you took these
3 comments as Mr. Moore's opinions. How did you
4 view this particular comment?

5 A. Again, I mean, that's his
6 professional opinion based on the information that
7 had been provided to date. You know, appreciated
8 and respected his position, but again, it still
9 felt that it was a requirement of council and an
10 expectation of council that we did review it.
11 Whatever comes out of it, comes out of it, but at
12 least we had reviewed it and provide that
13 information.

14 Q. Okay.

15 Registrar, can you go to
16 image 54, please.

17 Under "Recommendation to
18 Conduct Pavement Friction Testing" Mr. Moore
19 said -- and this is not on a sticky note; it's the
20 red language there. At least is that -- am I
21 correct that that's Mr. Moore inclusion?

22 A. I believe so, yes.

23 Q. Says "I don't have any
24 frame of reference to pass or fail this against."

25 But the week before at the

1 meeting Mr. Moore -- we went to the minutes of
2 that meeting -- had said friction testing done and
3 results satisfactory. How did you square that
4 comment, that friction testing had been done and
5 results satisfactory, with this comment, I don't
6 have any frame of reference to pass or fail this
7 against?

8 A. Yeah, unfortunately I
9 don't because I don't remember that previous
10 meeting where the comment made, unfortunately.

11 Q. Just stopping there just
12 so that I have -- just so that we're very clear on
13 your evidence, that those October minutes do say
14 he said that. Do you recall in October,
15 October 20th, receiving information from Mr. Moore
16 that friction test results had been completed?

17 A. Again I don't recall,
18 only based on I've read.

19 Q. Okay.

20 A. I don't specifically
21 remember the meeting or that discussion.

22 Q. Okay. Well, taking
23 yourself back to late October 2015, presumably you
24 would remember -- have remembered that; it was
25 only the week before. Did you take any steps to

1 try to square the -- take any further steps to try
2 to understand what Mr. Moore meant by this
3 statement at the time?

4 A. No. With this report and
5 with these comments I believe I forwarded them off
6 to management. I felt that based on the comments
7 being made it was an issue that had to have
8 management involved to deal with.

9 Q. Okay.

10 Page 41, please. Image 41.
11 Apologies.

12 So here we've gone to this a
13 few times in various drafts. Am I right in my
14 understanding that Mr. Moore wanted to -- just by
15 the way the strikes are, that he wanted to delete
16 the entire reference to the section on perform
17 friction testing? That was your understanding?

18 A. Yes.

19 Q. Registrar, can you open
20 up the comment box a little more.

21 Do you have any other -- any
22 knowledge about whether other agencies in Ontario
23 did friction testing?

24 A. No.

25 Q. And do you have any

1 knowledge about the MTO's friction management
2 program, if any?

3 A. No, I do not.

4 Q. And Mr. Moore says:

5 "It means absolutely nothing
6 except proving potential
7 exposure to legal actions and
8 confusion."

9 Do you have any views about
10 that statement as relates to legal actions?

11 A. I didn't agree with the
12 statement, if that's what you're asking me.

13 Q. Did you have any concerns
14 that any of the potential countermeasures in this
15 report would expose the City to potential legal
16 actions?

17 A. No.

18 Q. Is that the kind of
19 consideration or kind of factor that you would
20 have considered in assessing the CIMA report?

21 A. That it would open us up
22 to legal action?

23 Q. Yeah.

24 A. No. Because -- I mean,
25 within traffic we identify concerns, safety

1 issues, and, you know, when we identify them we
2 move forward to implement the countermeasures that
3 are identified. So, you know, I don't think of it
4 as -- or is it going to create legal action or
5 anything like that. I don't look at it that way.

6 Q. Okay. And sometimes in
7 your job you're improving something that's already
8 safe. Is that fair to say, sort of generally?

9 A. Improving something
10 that's already safe?

11 Q. Yeah. You're just --
12 you're making it more safe?

13 A. Yes, you can, yes.

14 Q. But other times you're
15 actually dealing with deficiencies in safe access.
16 Is that also fair to say?

17 A. Correct. You know,
18 you're brought -- you know, a concern is brought
19 forward. You do a study, you identify potential
20 issues and identify ways to address those issues,
21 and you implement those. That is our job within
22 traffic.

23 Q. And you implement them
24 even if implementing them might reveal that there
25 was a safety deficiency?

1 A. Whatever that may be.

2 Yes, we move forward to try to improve safety.

3 Q. Did you take Mr. Moore's
4 comments, any of his comments in this e-mail
5 report, back to CIMA to try to get more
6 information to respond to Moore?

7 A. I don't believe so. As I
8 said, I believe I sent that on -- this on to
9 management group to make them aware for them to
10 deal with it.

11 Q. Okay.

12 Registrar, you can close this
13 out. And if you can open up, OD page 55,
14 paragraph 165. Sorry, you don't have to call it
15 out, Registrar.

16 But this is the -- just
17 confirmation you forwarded Mr. Moore's e-mail and
18 his proposed revisions on the CIMA report to
19 Mr. White and Mr. Lupton and Mr. Mater. Is that
20 the -- you're referring to sending it to them. Is
21 that....

22 A. Correct.

23 Q. Okay. And then if you
24 look to the second image at paragraph 170, you'll
25 see Mr. Mater responds. He's talking about the

1 timing. He also says:

2 "I know you gents are working
3 on a draft cover report for
4 Gary and LTL review the
5 Gerry." (As read)
6 Can you call that out. Thank
7 you.

8 Did you understand that
9 Mr. Moore, Mr. Mater and Mr. Davis would be
10 meeting to discuss this issue?

11 A. No.

12 Q. What did you
13 understand -- when you said you sent it to
14 management, what did you understand management was
15 going to do with Mr. Moore's comments, if
16 anything?

17 A. Well, my hope would have
18 been that they would have reviewed and had a
19 discussion at a senior level with the appropriate
20 people to come to some type of resolution with
21 respect to his comments.

22 Q. Okay. Do you -- never
23 mind. I'm going to take that back.

24 MS. LAWRENCE: If you can --
25 I'm just looking at the time. It's 3:15, and I'm

1 about to, move on to another topic.

2 So I don't, again, go 10
3 minutes after our regular break, Commissioner,
4 would this be a good time to take our regular
5 break?

6 JUSTICE WILTON-SIEGEL: I
7 think it would be a good time. Let's adjourn
8 until 3:30.

9 --- Recess taken at 3:29 p.m.

10 --- Upon resuming at 3:29 p.m.

11 BY MS. LAWRENCE:

12 Q. Thank you. Registrar,
13 can you pull up OD7 page 58 and 59, please. And,
14 apologies, just before we go forward, I would like
15 to mark the native version of HAM690 with those
16 comments as the next exhibit, which is Exhibit 64.

17 EXHIBIT NO. 64: Red Hill
18 Valley Parkway Detailed Safety Analysis, Final
19 Draft, October 2015, HAM690

20 THE REGISTRAR: Noted,
21 Counsel. Thank you.

22 MS. LAWRENCE: Thank you.

23 BY MS. LAWRENCE:

24 Q. Registrar, can you go
25 back one image so that you have 57 and 58 up.

1 Thank you. And my apologies, just so that I can
2 orient Mr. Ferguson, can you back one more image
3 to 56 and 57. Thank you.

4 Just on the bottom at
5 paragraph 171, Mr. Ferguson, you'll see on
6 October 30th Mr. White forwarded the e-mail that
7 we were just looking at, Mr. Mater's e-mail about
8 the meeting with Gary Moore, Gerry Davis and
9 Mr. Mater, that reference, to you and Mr. Lupton.

10 So I think I asked you before
11 the break, were you aware that Mr. Mater, Mr.
12 Moore and Gerry Davis were going to meet? And it
13 does appear that you were forwarded that e-mail.
14 Do you have a recollection that you knew that
15 there was going to be a meeting between those
16 three individuals?

17 A. Just based on what I'm
18 reading. I don't recollect (indiscernible), but
19 based on what is in front of me.

20 Q. Okay. And Mr. White
21 included some -- in the e-mail forwarding that
22 e-mail, he said up at the top of page 57.

23 And, Registrar, if you can
24 pull this out. He says:

25 "First, Dave, can you make

1 those minor changes in the rec
2 section to read the actions
3 are by the GM PW and then send
4 it to me again?"

5 Am I correct that that is a
6 direction to you to change the division specific
7 recommendations to be completed by the general
8 manager of Public Works?

9 A. Correct.

10 Q. Were you involved in any
11 discussions that led to that being the drafting
12 that was going to be done?

13 A. No, I was not.

14 Q. And you'll see that in
15 the paragraph Mr. White says:

16 "After that I'm not sure what
17 to say. It recs the guiderail
18 and lighting review and
19 asphalt testing. All the
20 things Gary argues against.
21 Despite that I believe them to
22 be prudent and required that
23 we do this ethically and
24 technically responsibly." (As
25 read)

1 Did you agree with Mr. White's
2 statements that I just quoted?

3 A. Yes.

4 Q. Did you agree that the
5 countermeasures set out in CIMA's report were
6 justified given CIMA's analysis?

7 A. Yes.

8 Q. And did you agree that
9 those countermeasures were appropriate to improve
10 safety?

11 A. Yes.

12 Q. Did you agree that those
13 countermeasures were necessary to improve safety?

14 A. Yes.

15 Q. Mr. White -- and the
16 third paragraph says:

17 "Frankly, I think Chris Murray
18 should be in on the
19 discussions."

20 Chris Murray, the City
21 manager; is that right?

22 A. Yes.

23 Q. And were you aware that
24 Mr. Murray was involved in the construction of the
25 Red Hill?

1 A. Yes.

2 Q. To your knowledge did
3 Mr. Murray ever get looped in on these
4 discussions?

5 A. Not that I'm aware of.

6 Q. Okay.

7 Registrar, you can close that
8 callout. Thank you.

9 You'll see paragraph 172 on
10 November 2nd you modified the report to make it a
11 little more general. Do you see that? Sorry,
12 it's not very -- I haven't called it out.

13 A. That's okay.

14 Q. Paragraph 172 --

15 A. Yeah. Yeah, I see it.

16 Q. And so here you've done a
17 revised Red Hill/LINC report. Just before we get
18 into this report, do you recall having any other
19 meetings with Mr. Moore between the October 20th
20 meeting with CIMA and the preparation of this
21 revised version of the Red Hill/LINC report?

22 A. There was a meeting. I
23 don't remember the specific time period. It's
24 within this area from receiving his comments to
25 finalizing the report that was held at the civic

1 centre with Mr. Moore, Mr. Malone, I believe
2 Mr. Lupton was there, Mr. Mater and Mr. White.

3 Q. So this meeting occurred
4 in the brief window after Mr. Moore provided you
5 with his comments on October 28 and when you
6 finalized the report?

7 A. That's correct.

8 Q. And Mr. Malone attended
9 for a second time along with the City staff that
10 you listed?

11 A. Correct. There might
12 have been another representative from CIMA, but I
13 can't remember specifically.

14 Q. And Mr. Malone was
15 definitely there?

16 A. Yes.

17 Q. What was the purpose of
18 this second meeting with Mr. Malone and other
19 senior staff from the City?

20 A. It was primarily to
21 listen to Mr. Moore's comments with respect to the
22 report.

23 Q. Did he reiterate the
24 comments that he made in the sticky notes that
25 we've gone through?

1 A. I don't remember the
2 whole conversation specifically. In a roundabout
3 way I would say, yes, it was, maybe not every
4 single one, more specific to items relating to
5 Mr. Moore.

6 Q. But it was to listen to
7 Mr. Moore. What did you understand the outcome of
8 that meeting was going to be?

9 A. There were some suggested
10 changes to the layout of the report, moving things
11 around within the report. CIMA was going to take
12 the comments back and review whether or not they
13 supported those changes.

14 Q. Okay. Can you be more
15 specific about the formatting changes that were
16 discussed?

17 A. Yeah. So, for example,
18 in the previous draft of the report I believe the
19 barrier information was near the top in terms of
20 recommended items, and then in the final version
21 of the report it's one of the last items that's
22 identified.

23 Q. What do you recall about
24 any discussion around friction testing?

25 A. I don't recall any

1 discussion around friction testing.

2 Q. And is that to say that
3 you're confident there was no discussion about
4 friction testing, or you just can't remember
5 either way?

6 A. I just can't remember.

7 Q. Do you recall whether
8 there was any discussion about the timing of
9 friction testing, that is, being short term,
10 medium term or long term at that meeting?

11 A. No, I don't recall.

12 Q. You just don't recall
13 either way?

14 A. Yeah, I don't recall
15 either way.

16 Q. Coming out of this
17 meeting, did you believe that Mr. Moore was going
18 to sign onto the recommendations set out in this
19 CIMA report?

20 A. Yes.

21 Q. Is there anything else
22 that you can remember about that meeting?

23 A. Well, as I said, the only
24 thing I remember was Mr. Malone saying that he
25 would essentially take the comments under

1 advisement, and he would review and determine
2 whether they were comfortable with making any
3 changes that had come up.

4 Q. Okay. In terms of
5 chronology did that happen before you revised the
6 report and sent it to Mr. Mater, Mr. Lupton and
7 Mr. White on November 2nd. It says, "further to
8 our discussion today." I'm not sure if that --
9 what discussion that was; if it was the one
10 Mr. Moore, for example?

11 A. No, I don't believe it's
12 referencing that meeting we're talking about.

13 Q. Okay. Registrar --

14 A. I met with Mr. White on a
15 regular basis, almost daily, so we were always
16 having discussions.

17 Q. Okay.

18 Registrar, can you bring up
19 HAM24539.

20 So this is the revised draft
21 that you put together, the one that you sent on
22 November 2nd, and it has four recommendations.
23 The second one being that:

24 "The general manager of Public
25 Works be directed to implement

1 the collision countermeasures
2 outlined in the report, that
3 Hamilton Police Service be
4 directed to undertake regular
5 speed and aggressive driving
6 enforcement, and that the
7 speed limit be reduced for a
8 section of -- on Mud Street
9 between Winterberry Drive and
10 the Red Hill main line." (As
11 read)

12 A. Just for clarification
13 that's on Mud Street, correct?

14 Q. On Mud Street --

15 A. Okay.

16 Q. -- going up to the main
17 line. Is that your recollection?

18 A. Yes, that's correct.

19 Q. And was that to reduce
20 the speed of vehicles accessing the Red Hill?

21 A. That was actually
22 primarily for vehicles exiting the Red Hill or the
23 LINC.

24 Q. Registrar, can you bring
25 up pages 1 and -- images 1 and 2, please. Thank

1 you.

2 So you set out the Red Hill
3 and LINC first, and it no longer has in the
4 countermeasures table the department responsible,
5 but now it has the time period implementation. So
6 I'm going to skip past the LINC countermeasures,
7 except to note that there is an install a median
8 barrier system for the LINC as well recommended in
9 the long-term.

10 And then, Registrar, if you
11 can go to the next image, please.

12 So this is where the Red Hill
13 starts. And then if you could, Registrar, bring
14 up this image and image 4, please.

15 And so here you have it as
16 well. The LINC included the time period
17 implementation, and you have a number of
18 short-term matters.

19 Registrar, can you pull out
20 the table, call out the table, please. You have
21 listed "conduct pavement friction testing" as a
22 medium in that time period implementation. You
23 see that?

24 A. Yes.

25 Q. CIMA had noted this as a

1 short-term recommendation. Why is it listed as
2 medium-term recommendation here?

3 A. So one of the things we
4 wanted to do here is we wanted to lay out the
5 format in similar nature to the previous report.
6 We identified short term as quick wins. If you
7 may remember in the original report, CIMA
8 identifies short term as zero to five years, but
9 we wanted to identify areas where we could move
10 more quickly on, so we identified short term, I
11 believe, as zero to two and then medium term as
12 two to five. So it's still aligned with what
13 CIMA's position on short term was. But we wanted
14 to identify these other measures that we could get
15 implemented to be able to start evaluating the
16 roadway.

17 Q. Okay. And why was it
18 that pavement friction testing would be completed
19 in two to five years instead of zero to two years?

20 A. Again, it gave us the
21 opportunity to evaluate if any of those additional
22 changes that we're proposing would make a
23 difference on what's occurring on the roadway.

24 Q. Whose decision was it to
25 identify pavement friction testing as a medium

1 term?

2 A. I don't recall

3 specifically.

4 Q. Just giving you a chance
5 to try to think back in your mind. Can you
6 have -- do you have any sense of who gave you the
7 instructions?

8 A. No, I don't. I mean, it
9 would have been a management direction and
10 discussion with management, but I don't know
11 specifically who it was.

12 Q. When you say
13 "management," who are you referring to?

14 A. Either Mr. White or
15 Mr. Lupton or Mr. Mater.

16 Q. Okay. And did you
17 understand that any direction that you got from
18 your bosses was actually coming from Mr. Moore?

19 A. Potentially. I would
20 say, yes. Obviously I wasn't involved in any of
21 those discussions at the higher levels, so I would
22 say I made an assumption that that's probably
23 where it might be coming from.

24 Q. Okay. So just so I
25 understand your evidence, you didn't take the

1 initiative to make this change, someone told you
2 to do it?

3 A. Yes, that would have been
4 a direction.

5 Q. You said that you want
6 easy wins, low hanging fruit. Did anyone tell you
7 why pavement friction testing wasn't low hanging
8 fruit or wasn't an easy win?

9 A. No.

10 Q. In the discussions that
11 you did have with Mr. Moore, the meetings that
12 you've already testified to, do you recall having
13 any discussion about the time frame for conducting
14 pavement friction testing?

15 A. No.

16 Q. Registrar, you can take
17 this down, and if you can bring up OD7 page 58
18 paragraph 176 and 177, please. I might have
19 misspoke. 176 and 177 rather than 177 and 178.
20 Thank you.

21 So this is a couple of days
22 after you've circulated your draft, the one we
23 were just looking at. Mr. White e-mails you and
24 says "Did Gerry, John and Gary approve the last
25 draft of the report?"

1 And just looking back and
2 perhaps, Registrar, you can bring this up. If you
3 could bring up paragraph 172.

4 Do you recall sending the
5 draft of this to Mr. Moore. Just looking at 172,
6 you send it to Mr. Mater, Mr. Lupton and
7 Mr. White. Do you remember sending it by e-mail
8 or dropping off a copy for Mr. Moore?

9 A. No, I don't.

10 Q. Okay. Going back to 176
11 and 177, Mr. White says, did they approve, and you
12 said:

13 "Yes and no. Let's say I have
14 some work to do tonight and
15 tomorrow. I will send it to
16 you once I update it again."

17 What work did you have to do
18 tonight and tomorrow to get the draft in a shape
19 that you thought Gerry, John and Gary would
20 approve?

21 A. There would have been --
22 I guess, again, I'm just going to have to assume
23 here because I don't recall specifically, but
24 there was obviously edits were requested to be
25 made to the report.

1 Q. You don't remember the
2 nature of those edits?

3 A. No, I don't.

4 Q. And do you remember how
5 those edits were communicated to you? In a
6 meeting?

7 A. I don't specifically. I
8 have a vague remembrance that I believe I met with
9 John Mater. Mr. Mater and I had -- we were in the
10 same office, so we were in close proximity to each
11 other. And I believe I may have met Mr. Mater in
12 his office to go over what the changes were.

13 Q. Okay.

14 Registrar, can you go over to
15 the next page, please, and keep these to images up
16 so that 58 is on the left and 59 is on the right.
17 Thank you.

18 So Ms. Aquila -- I'm looking
19 in 178 -- she's an assistant, right?

20 A. Yes, she was Mr. White's
21 assistant.

22 Q. Okay. So she sent an
23 e-mail to, I believe, Mr. Lupton's assistant,
24 copying Mr. Lupton, copying Mr. White and copying
25 you, and she says:

1 "Martin has reviewed the
2 report and is in agreement.
3 Please have Geoff review and
4 approve. Note section under
5 legal implications, Geoff to
6 comment after discussion with
7 legal." (As read)
8 And just stopping there, is it
9 common for traffic engineering to get legal to
10 look at recommendation reports?

11 A. It's not unusual.

12 Q. Okay.

13 Looking at 179. Registrar,
14 can you call out 179, please.

15 So here Mr. Lupton gives you
16 some direction, and he wants the title to look at
17 certain way, options for consideration and
18 estimated costing. He wants to remove medium-term
19 options and combine into one table, to remove
20 conduct speed enforcement, to add a 25 percent
21 contingency and to make a table medium and long
22 term together.

23 So just going into what he was
24 looking at and the changes that you made coming
25 out of this.

1 Can you close that, Registrar.

2 And I'm going bring up a
3 version that you later sent to Mr. Malone because
4 I think it's probably the clearest way to look at
5 it.

6 Can you bring up CIM9879. Oh,
7 CIM9879.0001. And can you put up image 1 and 2,
8 please. Thank you.

9 So looking at the
10 recommendations. Looking at the first two
11 recommendations, they have been altered since the
12 last draft that we looked at. And you see (a)
13 says:

14 "General manager of Public
15 Works be directed to implement
16 the short-term safety options
17 for consideration identified
18 in appendix A and that these
19 will be funded from the red
20 light camera reserve and that
21 staff needs report back." (As
22 read)

23 And (b):

24 "The design with request to
25 the medium and long-term items

1 in appendix B be deferred
2 pending the outcome of the
3 transportation master plan
4 update."

5 And just stopping there, is
6 that reference to that update, is that the
7 reference the potential widening of the parkways?

8 A. Yes. My understanding
9 was the City was undertaking a transportation
10 master plan review, and they wanted to consider
11 that, looking at that as a potential.

12 Q. Okay.

13 Registrar, can you keep
14 image 1 up and bring up image CIM9875.0002.
15 Great.

16 So this is a appendix B that
17 is referenced in recommendation B, and here
18 there's now two different tables medium-term
19 options two to five years and long-term options
20 six-plus years. And just looking at those,
21 there's shield rock cuts in the medium term. Is
22 that a medium-term option because it's related to
23 a repaving project?

24 A. This shield rock cuts?

25 Q. Yeah.

1 A. No. It's not -- it's not
2 defined as specifically something like that, no.
3 That would --

4 Q. No.

5 A. -- be the easiest time to
6 do it, but....

7 Q. But is there a connection
8 between wanting to wait for the next repaving and
9 doing the shield rock cuts?

10 A. No, not specifically, no.

11 Q. Okay.

12 A. It's just in terms of
13 ease, it would be.

14 Q. Okay. And then looking
15 at the long term which is six-plus years, there is
16 provide shoulder rumble strips, medium barrier
17 system on LINC, medium barrier system on Red Hill,
18 install end-to-end illumination. So those are all
19 the long-term options.

20 So when I read that two things
21 together, none of these options on the medium term
22 or the long term are going to happen until the
23 outcome of the transportation master plan update.
24 Is that right?

25 A. I would read it in the

1 same way, yes.

2 Q. When was the
3 transportation master plan update expected?

4 A. I can't remember
5 specifically.

6 Q. Okay.

7 A. It might have already --
8 it might have been under way at that point. I
9 can't remember.

10 Q. Okay. What is the
11 relationship between having an update on the
12 transportation master plan and completing pavement
13 friction. Is there some reason to hold that
14 pending the outcome of the transportation master
15 plan?

16 A. Yeah, I don't see one. I
17 don't see a correlation.

18 Q. Okay. So the effect of
19 identifying friction -- pavement friction testing
20 as a medium-term option is that it was going to be
21 pre-conditional on some other thing happening?

22 A. Based on how it's
23 written, yes.

24 Q. Okay. The title of this
25 appendix B, and I can say appendix A as well, is

1 "Options For Consideration." Why is that used
2 rather than recommendations?

3 A. Again, that goes back to
4 the previous comments with respect to changing the
5 wording of recommendation versus options. That's
6 why that change is made.

7 Q. That is at Gary Moore's
8 behest?

9 A. Correct.

10 Q. Was it your understanding
11 that staff city staff were going go back to CIMA
12 to get them change their language from
13 recommendations to options to consider as well?

14 A. I believe so. I believe
15 we had discussions about that. Changing the
16 wording from recommendations to options, I believe
17 that was a discussion that was had.

18 Q. Okay. Do you remember
19 with whom you had that discussion?

20 A. With whom? Like within
21 our internal team?

22 Q. Or external team. You
23 just said discussions were had. I'm trying to
24 clarify who was involved in those discussions?

25 A. Yeah. From the CIMA side

1 it was usually -- on a regular basis I would talk
2 to Mr. Malone or Pedram. Internally it was always
3 within our senior management team, our manager,
4 directors.

5 Q. And so with CIMA did you
6 think that that happened at that meeting at the
7 civic centre?

8 A. Could that have been
9 the -- sorry, could that have been part of the
10 conversation?

11 Q. Yes. Thank you.

12 A. It could have been.
13 Again, like I said, I don't recall specifically,
14 but it is possible.

15 Q. Okay.

16 Registrar, you can close this
17 out, and if you could go to OD7 page 60,
18 paragraph 183, please.

19 So the document that we were
20 just looking at was the version that you sent to
21 Mr. Malone here on November 12th. And you say in
22 this second paragraph of your e-mail:

23 "With respect to the reports
24 we are asking that the wording
25 that states recommendations be

1 changed to options for
2 consideration."

3 You see that?

4 A. Hm-hmm. Yep.

5 Q. And you also include an
6 attachment that you've identified short-term
7 options and long-term options. "Could the report
8 have a similar layout?" (As read)

9 And if we could go into that
10 reference. It's CIM9879.

11 And you include an attachment
12 that is the attachment of the CIMA report itself.
13 Sorry, I see you nodding, but just for the court
14 reporter. Yes.

15 A. Sorry, are you asking me,
16 Ms. Lawrence?

17 Q. You were nodding, and I
18 just wasn't sure if you had agreed that the
19 attachment was the LINC safety report on
20 November 11th; the one we were just looking at?

21 A. The staff report?

22 Q. The staff report.

23 A. Correct.

24 Q. Okay. CIMA e-mailed you
25 a revised -- revised versions of the 2015 CIMA

1 report and the 2015 CIMA LINC report on
2 November 20th.

3 And I'm going to call up the
4 CIMA report which is HAM702.

5 THE REGISTRAR: Do you mind
6 just repeating that for me.

7 MS. LAWRENCE: HAM702. And if
8 you could go to page 50, Registrar, which I
9 believe is image 58. Let's try 57.

10 BY MS. LAWRENCE:

11 Q. So here you'll see that
12 "conduct pavement friction testing" is still
13 listed as a short-term measure even though you had
14 asked CIMA to maintain the same format. Were you
15 expecting that CIMA was going to change the time
16 that it A-listed from short-term to medium-term
17 for friction testing?

18 A. Was it my expectation
19 that they did?

20 Q. Yes.

21 A. No.

22 Q. So you had no -- go
23 ahead?

24 A. Sorry. Their short term
25 still aligns with our medium term, right, the end

1 date, the five years.

2 Q. Would you be surprised to
3 learn that CIMA had thought that that's what you
4 wanted and declined to do it?

5 A. Sorry, say that again.

6 Q. Would you be surprised to
7 learn that CIMA thought that's what you wanted,
8 for you to change, conduct pavement friction
9 testing to medium term from short term, and they
10 declined to do it?

11 A. Would I be surprised?
12 No, I wouldn't be surprised.

13 Q. Do you recall having any
14 discussions with Mr. Malone or anyone else at CIMA
15 about that particular timeline for that particular
16 countermeasure?

17 A. Not specifically, no.

18 Q. Registrar, you can close
19 this one down and open OD7, page 71,
20 paragraph 222, but you don't need to call it up.

21 So on December 1, Mr. Lupton
22 e-mailed you and copied Mr. White and Lauri Leduc.
23 Ms. Leduc is the legislative coordinator. Is it
24 fair to say her role is to receive reports from
25 staff and then deal with committee members?

1 A. Yes.

2 Q. Mr. Lupton says:

3 "Can you please connect with
4 Lauri to coordinate
5 distribution of the two
6 consultant reports for Public
7 Works committee members after
8 the staff report has been
9 released by clerks."

10 At this point on December 1st
11 had there been discussions about whether staff
12 were going to append the two consultant reports to
13 the staff report?

14 A. I believe so. I don't
15 remember specifically. I know there was some
16 discussions. Do we include the reports, don't we
17 include the reports, and I believe the final
18 outcome was to include the reports.

19 Q. Okay. We're going to go
20 through a little bit of back and forth on that,
21 but I'm just asking at this early point, and maybe
22 I'll ask a more specific question.

23 Mr. Lupton says can you:

24 "...coordinate the
25 distribution of the two

1 consultant reports to Public
2 Works committee members after
3 the staff report has been
4 released." (As read)

5 And does that mean that City
6 staff was going to provide copies of the
7 consultant reports to Public Works committee
8 members but not actually append them as public
9 documents to the staff report?

10 A. Yes, I believe that that
11 was the intent. Because they were such large
12 documents, they wanted to provide them separately.

13 Q. And would the effect of
14 that be that the public couldn't easily access
15 these documents?

16 A. I can't really answer
17 that question. I don't....

18 Q. Okay. You weren't
19 turning your mind to whether they would be made
20 public in the same way that the staff report would
21 be made public?

22 A. I was under the
23 assumption they would be public.

24 Q. Okay. And you'll see
25 you, on the same day, write -- in fact our timing

1 in our OD might be off; you may have said this
2 before at 6:32. You e-mailed Ms. Leduc and said:

3 "Once the December 7th reports
4 have been sent to committee
5 members, can you please
6 circulate the attached to
7 councillors." (As read)

8 And you appended the two
9 consultant reports. Can you see that?

10 A. Yes.

11 Q. Registrar, can you go on
12 to the next image, please.

13 And then that night Mr. Mater
14 e-mailed you and Ms. Leduc and said:

15 "Dave, I had another thought
16 on this today, sorry I didn't
17 get back to you yet. Lauri,
18 can we please hold until I
19 reconnect with Dave." (As
20 read)

21 Do you recall having
22 discussions with Mr. Mater about the circulation
23 of the consultant reports to Public Works
24 committee members?

25 A. Not specifically, no.

1 Q. Okay. If you go down to
2 paragraph 226, couple days later on December 3rd,
3 you wrote to Ms. Leduc and Mr. Mater copying
4 others and said:

5 "In talking with John we
6 decided to hold off on issuing
7 to committee. Instead we will
8 offer the consultant reports
9 to councillors that are
10 interested at the meeting on
11 Monday." (As read)

12 And am I right, then, at this
13 point your intention was to make hard copies of
14 the reports and circulate them to those who asked
15 for them?

16 A. Based on how I read that,
17 yes.

18 Q. And do you recall why
19 that was the path that you and Mr. Mater landed
20 on?

21 A. No, I don't.

22 Q. Registrar, can you keep
23 this one up but bring up the next image.

24 And you'll see at
25 paragraph 227 Ms. Leduc says:

1 "It's noted on page 2 of the
2 report that the copy will be
3 available, so I feel it's best
4 to send it to the councillors
5 in advance." (As read)

6 And mentions:

7 "I really think them seeing it
8 now instead of at the meeting
9 won't 'get their backs up,' so
10 to speak.

11 "I'm going to offer them a
12 hard copy if they wish." (As
13 read)

14 And Mr. White forwards that
15 e-mail to you and says:

16 "Ferg: She is right! John is
17 cautious, but I would rather
18 they have access now. Between
19 me and you as it's done now.
20 Thanks."

21 Does that assist you with your
22 recollection of the discussions that you had with
23 Mr. Mater about this issue?

24 A. No.

25 Q. Ms. Leduc in fact does

1 send copies of the -- both reports to -- the OD
2 says members of City council; I suspect it's
3 probably Public Works committee members. And you
4 were okay with that?

5 A. Yes, I had no issue with
6 that.

7 Q. Okay. And you say: "As
8 you know, I agree."

9 Maybe taking it out of this,
10 because you don't have a memory of this, what
11 would have been your practice at that point in
12 2015 about providing Public Works committee
13 members with copies of consultant reports in
14 advance of Public Works committee meetings? Do
15 you have any concern about doing that?

16 A. About providing it in
17 advance of the meeting?

18 Q. Yeah.

19 A. No, I didn't have any
20 concern. As I mentioned before, that was the
21 process that was identified within the division in
22 engaging the councillors. And I mean,
23 specifically when it came to these two reports, I
24 felt the more information sharing was better.

25 Q. Okay. Turning now to the

1 meeting itself.

2 Registrar, can you turn to
3 paragraph 233 on page 74, please. Oh, thank you.
4 You actually don't need to call that out. You can
5 close that call our.

6 So you presented and attended
7 at the Public Works committee meeting presenting
8 these two reports. Do you remember that?

9 A. Yes.

10 Q. During the discussion
11 about these reports, Councillor Merulla asked you
12 to reply to public comments questioning the
13 quality of the asphalt used in the construction of
14 the Red Hill. Did you have any heads up in
15 advance of this meeting that Mr. Merulla would be
16 asking that question?

17 A. No, I did not.

18 Q. Mr. Merulla also asked
19 Mr. Moore who was also present to elaborate on the
20 quality of the asphalt. And Mr. Moore replied
21 that the City had used SMA, which is stone mastic
22 asphalt, in the construction of the Red Hill which
23 is the MTO's top mix for "high speed freeway-type
24 roadways."

25 Do you remember Mr. Moore

1 making those statements to Councillor Merulla.

2 A. Yes, I do.

3 Q. Would you have any reason
4 to quibble with the accuracy of those statements?

5 A. No.

6 Q. Mr. Moore also informed
7 the Public Works committee that MTO had performed
8 the initial friction test and had received results
9 at or above what the MTO typically expected from
10 high grade friction mixes. Was this the first
11 time -- do you remember that?

12 A. Yes.

13 Q. Was this the first time
14 that Mr. Moore had told you that the MTO had
15 performed initial friction testing?

16 A. Yeah. Specifically in
17 that meeting I remember the statements, and to me
18 that was the first time I had heard that.

19 Q. When you heard that, what
20 did you understand by initial friction testing?

21 A. I remember being
22 surprised because, again, we've, you know, done
23 these two studies, 2013, 2015. We identified
24 friction testing in these studies. Mr. Moore was
25 aware of what we were doing and what the

1 recommendations were, and my understanding was
2 that had never been brought forward to provide us
3 with -- myself or the consultant with information
4 around that.

5 Q. Did you, in fact, recall
6 that Mr. Moore had made comments about MTO holding
7 friction testing results close to its vest?

8 A. I'm sorry, say that
9 again.

10 Q. Did you recall Mr. Moore
11 making comments that MTO held friction testing
12 close its vest?

13 A. Only from the statements
14 that are there, not overall, though.

15 Q. But not sitting in Public
16 Works --

17 A. No.

18 Q. -- committee meeting?

19 A. (Indiscernible).

20 Q. Okay. He also informed
21 Public Works committee that they had performed
22 subsequent testing five years after in
23 approximately 2012 or 2013. Was that something
24 you didn't know before Mr. Moore made that
25 comment?

1 A. Correct.

2 Q. And was it surprising to
3 you?

4 A. Yes.

5 Q. And he said that test
6 finding of the road was holding up exceptionally
7 well. "We have no concerns about the surface
8 mix."

9 Did any one from your staff
10 follow up on those statements that Mr. Moore made
11 with him after this meeting?

12 A. Yes, we did. Mr. White
13 had asked me to follow up with Mr. Moore to
14 request a copy of the reports.

15 Q. How did you contact
16 Mr. Moore to do that follow-up?

17 A. I can't remember
18 specifically. I think I had commented that I
19 believed it was an e-mail, but it could have been
20 a phone call. Honestly, I just don't remember
21 specifically how I contacted him.

22 Q. Okay. And what was
23 Mr. Moore's response to your request for the
24 results?

25 A. We never received a

1 response.

2 Q. Okay. I mean, if it was
3 a phone call or an e-mail, was there any -- maybe
4 I'll take it this way. If it was a phone call and
5 you spoke to him, do you recall what his response
6 was?

7 A. If it was a phone call,
8 no, no. I don't remember specifically talking to
9 him. I just know we asked the question.

10 Q. Okay. So you said you
11 were surprised given that there had been these two
12 consultant projects. What might CIMA have done
13 with the friction testing results from the MTO and
14 the one that Mr. Moore said had been performed
15 subsequently if you had had them and been able to
16 provide them to CIMA?

17 A. Similar to, you know, any
18 type of consultant review, we would have asked
19 them to evaluate and provide a comment or
20 recommendation around whatever was provided within
21 the reports.

22 Q. Okay.

23 Can you go to the Public Works
24 committee report which is at chapter -- OD7,
25 page 75, paragraph 238, please.

1 So this was the outcome of the
2 receipt of the report that we've been looking at;
3 is that right? Previously accepted the
4 recommendations.

5 A. Yes, I believe so.

6 Q. Registrar, can you go two
7 pages over to page 77. Actually can you start on
8 page 76 and over to page 77.

9 At paragraph 240 Councillor
10 Lloyd Ferguson. And stopping there, that's no
11 relation to you.

12 A. Correct, no relation.

13 Q. Councillor Ferguson
14 e-mailed you and said:

15 "Can you tell me how you
16 measured 500 vehicles a day
17 travelling at the Red Hill at
18 speeds greater than 140
19 kilometres an hour." (As
20 read)

21 And do you recall that this
22 set off a bit of a back and forth with Councillor
23 Ferguson about speeds on the Red Hill?

24 A. Yes, I do.

25 Q. And I asked you this

1 earlier today. Do you recall where the speed data
2 in the 2015 report originated from?

3 A. I don't remember
4 specifically. It was practiced that we provided
5 data that we had. Any speed data or volume data
6 that we had, we would provide to the consultant.

7 Q. Why don't we go to
8 page 104 paragraph 330, please.

9 Do you recall that
10 Mr. Ferguson just couldn't believe there would
11 that be many vehicles travelling at that speeds
12 daily.

13 A. Yes, I remember him
14 saying that.

15 Q. And you'll see in
16 paragraph 339 there's some back and forth with
17 CIMA trying to figure out where this data came
18 from. And at 329 Mr. Cooper forwarded a document,
19 said:

20 "It seems Pyramid had
21 collected the data and the
22 City forwarded them to us."
23 Pardon me, I think I misspoke.
24 That's someone from CIMA saying that.

25 Pyramid, is that a speed data

1 collection provider or company?

2 A. Yes. They are a traffic
3 count company.

4 Q. They are a traffic count
5 and speed data?

6 A. Yes. They do various
7 types of traffic studies.

8 Q. Okay. And just going
9 over to the next paragraph, 330, Mr. Malone
10 responded to you, and if you see the second
11 paragraph on page 105, he said:

12 "We did not have any reason to
13 dispute the Pyramid data, and,
14 frankly, we still don't."

15 Do you recall that the speed
16 data that CIMA used in its 2015 report was
17 actually speed data collected in 2013 for the 2013
18 report?

19 A. Vaguely, I remember it.

20 Q. And is it -- did you
21 agree with Mr. Malone's statement:

22 "We do not have any reason to
23 dispute the Pyramid data, and,
24 frankly, we still don't."

25 A. Yes, I do.

1 Q. Am I correct that
2 Pyramid, when it's collecting speed data, sets
3 down a device for a period of time and records
4 every vehicle and the speed they are going?

5 A. That's correct.

6 Q. And in your view that's
7 an accurate way to assess speed -- average speed?

8 A. Yes, and that is also
9 essentially the standard that is used in Ontario,
10 and the majority of municipalities in Canada.

11 Q. You said that Pyramid
12 also does traffic counts. So in collecting the
13 speed data they are also counting the number of
14 vehicles?

15 A. That's correct.

16 Q. And can they distinguish
17 between types of vehicle by weight or length of
18 vehicle or anything like that?

19 A. Yes, they can identify
20 classification of vehicles.

21 Q. Okay. And did you have
22 an opportunity to use Pyramid as a speed data
23 collector after this period of time in 2016 while
24 you were at the City?

25 A. Yes, I did.

1 Q. And was it in respect of
2 the Red Hill?

3 A. I believe we did some
4 additional studies on the Red Hill as well as our
5 overall traffic count program.

6 Q. Over time was the speed
7 data that CIMA referred to in the 2015 report
8 consistent with speed data on the Red Hill that
9 was obtained later?

10 A. I can't remember
11 specifically.

12 Q. Okay. I can come back to
13 that when we get there.

14 Registrar, can you go to
15 page 70 of this document, paragraph 218, please.

16 Were you involved in the
17 Hamilton Strategic Road Safety Plan?

18 A. Yes.

19 Q. And that plan, among
20 other things, contains statistics for collisions
21 in the City; is that right?

22 A. Yeah, just for -- maybe
23 misspeaking here.

24 Q. That I might be
25 misspeaking. Why don't I try again. The Hamilton

1 Strategic Road Safety Plan is a plan dealing with
2 traffic and road safety in Hamilton generally?

3 A. Yes, yes, yes.

4 Q. And it releases reports
5 on a relatively frequent basis annually or
6 biannually?

7 A. I think you may be
8 referring to the police department work?

9 Q. What I was referring to
10 was annual or biannual collision reports.

11 A. So if I can -- so we have
12 the Hamilton Strategic Road Safety committee that
13 was established in -- I believe we reestablished
14 it in late 2014, maybe early 2015. If you are
15 asking me to comment what's on the page or on the
16 screen currently --

17 Q. I am not. No. I am
18 speaking more generally. More generally that
19 Hamilton Strategic Road Safety Plan and its
20 committee, part of what they do is continue to
21 assess collision rates in the City as a whole; is
22 that fair?

23 A. I would not -- no, I
24 would not agree with that statement. End part of
25 the statement, sorry.

1 Q. That's fine. I was
2 trying to find something I could do in the two
3 minutes before we wrap up for the day. But this
4 is, I think, a longer back and forth. I will
5 address one thing.

6 Registrar can you go to 220,
7 please. Paragraph 220, on the next image.

8 Coming out of the Public Works
9 committee where those recommendations we've been
10 looking at were accepted, and where one of the
11 recommendations was that the Hamilton police were
12 going to continue their enforcement mechanisms, am
13 I correct that the police service proposed
14 increasing the number of patrol officers to assist
15 with speed and other enforcement?

16 A. That's correct.

17 Q. Okay.

18 MS. LAWRENCE: Great. And
19 with that it is 4:30, Commissioner, and I'm about
20 to move on to another topic, so I think this is
21 good time to end for the day.

22 JUSTICE WILTON-SIEGEL: Okay.
23 So we will stand adjourned then until tomorrow at
24 9:30. Is there any need for counsel to meet in a
25 breakout room this evening, or we can do that

1 sometime tomorrow morning?

2 MS. LAWRENCE: I think it
3 would be helpful just to have a brief discussion
4 amongst counsel about tomorrow's schedule, if the
5 Registrar would be willing to do that for us.

6 JUSTICE WILTON-SIEGEL: Okay.
7 Then we'll otherwise stand adjourned until 9:30
8 tomorrow morning.

9 MS. LAWRENCE: Thank you.

10 --- Whereupon at 4:31 p.m. the proceedings were
11 adjourned until Tuesday, June 7, 2022 at
12 9:30 a.m.

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