

RED HILL VALLEY PARKWAY INQUIRY

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

VOLUME 27

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, June 9th, 2022

3 at 9:30 a.m.

4 MS. BRUCKNER: Good morning.

5 May I proceed, Commissioner?

6 JUSTICE WILTON-SIEGEL: Please

7 proceed.

8 MARTIN WHITE; PREVIOUSLY AFFIRMED

9 EXAMINATION BY MS. BRUCKNER (CONT'D):

10 Q. Mr. White, at the end of

11 the day yesterday you were discussing the

12 information report on the 2013 CIMA report that

13 goes to council on November 18th, 2013.

14 Registrar, could you take us

15 to OD6, image 70, paragraph 175, 176. If you

16 could call out 175 and 176.

17 Mr. White, just to orient you,

18 that information report is finalized and

19 circulated on October 25th, 2013. The same day,

20 we have a record of a cancelled calendar

21 invitation which is titled "Red Hill Valley

22 Parkway Safety Review Internal Discussions"

23 between you, Mr. Ferguson, Mr. Lupton, and Mr.

24 Moore. Do you recall if this meeting took place?

25 A. I believe it did not.

1 Q. Registrar, you can close  
2 those call outs and take us to paragraph 177 which  
3 is just below there.

4 On October 28th, 2013, Mr.  
5 Lupton e-mailed you and Mr. Ferguson to update you  
6 on a conversation he had with Gary, and he says:

7 "I've reviewed with Gary.  
8 He's good, but suggests that  
9 we manage the final version of  
10 the report to reflect what we  
11 are saying. He said it's not  
12 uncommon to get an FOI to this  
13 type of thing. I'm not asking  
14 to change opinions, but to  
15 soften and stage the report,  
16 similar to what we have done  
17 with our information report.  
18 Do this first and measure  
19 results, etc. Please sit down  
20 with CIMA to make this happen.  
21 Please ensure you manage this  
22 directly." (As read)

23 Do you recall receiving this  
24 e-mail from Mr. Lupton?

25 A. I recall generally

1 receiving that instruction.

2 Q. He's sending you an  
3 update because you weren't present for the  
4 conversation he had had with Mr. Moore.

5 A. Yes, I believe that was  
6 the cancelled meeting.

7 Q. You believe the cancelled  
8 meeting was replaced by a meeting between Mr.  
9 Lupton and Mr. Moore?

10 A. That's my best  
11 recollection.

12 Q. What did you understand  
13 Mr. Lupton to mean when he said:

14 "Mr. Moore suggested that you  
15 should manage the final  
16 version of the report to  
17 reflect what we are saying and  
18 soften and stage the report,  
19 similar to what we had done in  
20 the information report."?

21 A. Well, I presume now, a  
22 number of years later, that he's asking that we  
23 put the council report in line with -- or the  
24 consultant's report in line with the council  
25 report.

1 Q. Did understand that as a  
2 direction from Mr. Lupton, your boss?

3 A. Yes.

4 Q. Shouldn't it be the other  
5 way around? Shouldn't the staff report reflect  
6 the consultant's report?

7 A. They should both reflect  
8 each other. I'm not going to -- I'm not sure  
9 which one should come first. I guess the  
10 consultant's report is produced, we have the  
11 opportunity to liaise with the consultant for the  
12 content of the report and then move forward with  
13 the committee report.

14 Q. So you don't have a view  
15 on whether or not the consultant report should  
16 mirror the staff report or the staff report should  
17 mirror the consultant report?

18 A. Well, they should both  
19 mirror each other, and that's, you know, how I  
20 feel about it.

21 Q. And if they aren't the  
22 same, which one should be modified to reflect the  
23 other?

24 A. Well, I don't know.  
25 That's a hypothetical question. I can't answer

1 that. I was under instructions from Mr. Lupton at  
2 this point, and I believe David followed through  
3 with it.

4 Q. Mr. Lupton goes on to say  
5 "it's not uncommon to get an FOI to this type of  
6 thing." What did you understand that to mean?

7 A. Well, you know, I  
8 personally don't care if we get an FOI on it.  
9 It's all information we're dealing with, and I'm  
10 not sure what's common to get an FOI on. I had a  
11 large number of FOIs come through me in my career  
12 with the City, so I don't know what he meant by  
13 uncommon. It's common. I don't know.

14 Q. Did you understand from  
15 this e-mail that Mr. Moore and Mr. Lupton were  
16 concerned that members of the public could access  
17 the consultant's report through the FOI process  
18 and see that it was not accurately reflected in  
19 the staff report?

20 A. No, I don't particularly  
21 believe that.

22 Q. Okay. So I think that  
23 we've covered this off already but, Registrar, if  
24 you can take us to 178, which is on page 80.

25 So Mr. Ferguson exchanges a

1 series of e-mails with Mr. Cooper, and you'll see  
2 below Mr. Cooper asks him -- sorry, Mr. Ferguson  
3 asks Mr. Cooper to set up a meeting with CIMA.  
4 Mr. Cooper asks him when and why, and you'll see  
5 the final line there is Mr. Ferguson's response in  
6 which he says modifications to the report to  
7 reflect council in the report.

8 A. Okay.

9 Q. Did you direct  
10 Mr. Ferguson to sit down with CIMA and ask them to  
11 modify the 2013 CIMA report to reflect the  
12 information report?

13 A. I think it came from  
14 Geoff's e-mail to both of us. I don't think I  
15 interjected.

16 Q. So you understood Mr.  
17 Lupton's e-mail as a direction to Mr. Ferguson?

18 A. Yes.

19 Q. Registrar, could you  
20 please take us to OD6, image 79, paragraph 200.  
21 So on November 27th, 2013, City council approves  
22 the public works committee report, 1304 -- 014 as  
23 presented, so that is the report on the 2013 CIMA  
24 report. From this point, what steps were taken to  
25 implement the countermeasures identified in that

1 information report? And if you would like, I can  
2 pull that up.

3 Registrar, could you put  
4 RHV668 at image 3. So there are two appendices to  
5 the report, and we were looking at this yesterday.  
6 The first one is general countermeasures. And,  
7 Registrar, if you scroll down, there are  
8 area-specific countermeasures in the next appendix  
9 on the next image, Registrar. Thank you.

10 So returning to image 3.  
11 Which public works department was, in your view,  
12 responsible for each of the countermeasures listed  
13 on this appendix?

14 A. Do you wish me to itemize  
15 them?

16 Q. Yes, please.

17 A. Friction testing  
18 engineering services, PRPMs traffic, inverted  
19 profile markings traffic, white markings traffic,  
20 slippery when wet traffic, enforcement and travel  
21 speeds, Hamilton Police Services, trailblazer  
22 signage traffic, remove lane exit signs traffic.

23 Q. Registrar, can you take  
24 us to image 5, and call out the section under "Mud  
25 Street Interchange," just because otherwise we're

1 going to have some trouble reading this. Thank  
2 you.

3 So you'll see that with  
4 respect to the Mud Street interchange, there are a  
5 number of segment-specific recommendations as  
6 well, and one of them you'll see is "install high  
7 friction pavement approaching through the curve."  
8 Do you see that? Or, Registrar, can you highlight  
9 that for Mr. White.

10 A. I can see it, Counsel.

11 Q. Do you know if that  
12 recommendation to install high friction pavement  
13 through the curve was ever implemented?

14 A. I don't know.

15 Q. Who in your view would  
16 have been responsible for implementing that  
17 recommendation?

18 A. Engineering services.

19 Q. Registrar, you can close  
20 that call out. If you could take us to paragraph  
21 OD6, image 79, paragraph 201, and just call out  
22 that paragraph. Please, thank you.

23 So on November 29th, 2013 the  
24 office of the City clerk sent a council follow-up  
25 for the public works report that we were just

1 looking at. And one of the items for staff action  
2 was the outstanding business list item.

3 A. Excuse me, Counsel, I've  
4 lost my feed, and the Zoom is trying to tell me  
5 that this computer needs to be cleaned or  
6 something.

7 Q. Should we take a five to  
8 ten-minute break right now so you can resolve your  
9 technical issues?

10 A. Well, I'm in legal  
11 services department. I'll have to find somebody  
12 here to come look at this thing.

13 MS. CONTRACTOR: Mr. White,  
14 we'll contact our liaison at the City who is  
15 setting up the room and see if they can assist  
16 you.

17 THE WITNESS: Thank you.

18 JUSTICE WILTON-SIEGEL: Why  
19 don't we take a five-minute break and we'll  
20 await -- perhaps, Ms. Contractor, if you could  
21 communicate with Mr. White and then communicate  
22 with commission counsel when his feed is back up  
23 properly. That would be --

24 THE WITNESS: It just came  
25 back up.

1 JUSTICE WILTON-SIEGEL: It  
2 just came back up?

3 THE WITNESS: Commissioner,  
4 yes, I just came back on-line.

5 JUSTICE WILTON-SIEGEL: Okay.  
6 Well, let's proceed in the hopes that that won't  
7 re-occur.

8 BY MS. BRUCKNER:

9 Q. Perfect. I will repeat  
10 the question. Registrar, can you take us back to  
11 OD6, image 79, paragraph 201.

12 You'll see that on November  
13 29th, 2013 the office of the City clerk sends a  
14 council follow-up for the public works report that  
15 we were just looking at, and one of the items  
16 listed on the outstanding business list is the  
17 section that is excerpted there:

18 "Staff were directed to report  
19 back respecting the lighting  
20 aspects of outstanding  
21 business list C respecting the  
22 Red Hill Valley Parkway  
23 improvements."

24 Just for a bit of background  
25 information, can you tell me what the outstanding

1 business list is?

2 A. My best recollection is  
3 the outstanding business list was a listing of  
4 topics, projects and reports that had not been  
5 completed or that were referred back to staff for  
6 further report preparation or for a new report  
7 preparation based on items that were discussed at  
8 committee and council and came back around to  
9 staff to report back on.

10 Q. So my understanding from  
11 this is that staff were directed to do further  
12 work respecting lighting on the Red Hill Valley  
13 Parkway after you reported on the 2013 CIMA  
14 report?

15 A. That is -- appears to be  
16 accurate, yes.

17 Q. Thank you. Registrar,  
18 could you call out HAM4336, please. And you can  
19 close the reference to the report there.

20 MS. CONTRACTOR: I'm sorry to  
21 interrupt, Mr. Commissioner, but the actual OBL  
22 item which is referenced in 11(c), the language is  
23 a bit different, so I don't know if you want to go  
24 to the actual language.

25 MS. BRUCKNER: I believe it's

1 excerpted in this e-mail here, Delna. Could you  
2 please call out, Registrar, the middle e-mail  
3 there.

4 BY MS. BRUCKNER:

5 Q. Mr. White, would you like  
6 to just take a quick look at that if it helps to  
7 refresh your memory about the outstanding business  
8 list item.

9 A. Okay.

10 Q. Registrar, could you  
11 please close out that callout and call out the  
12 e-mail from Mr. Moore that is directly above it.  
13 Thank you.

14 So on December 5th, 2013 Mr.  
15 Moore sends this e-mail to you, Mr. Lupton and Mr.  
16 Mater in response to the OBL item. He says:

17 "What part of, 1, the road was  
18 approved environmentally, not  
19 only without lighting, but  
20 specifically not to have it?  
21 2, the road geometrics were  
22 done with no lighting  
23 required. 3, there are  
24 consistent -- there are  
25 constraints that preclude the

1 erection of lighting on  
2 several ramps. 4, it is not  
3 recommended in any way, shape  
4 or form to erect lighting on  
5 partial basis. And 5, we  
6 can't afford it. Didn't  
7 committee get?" (As read)  
8 He goes on to say:  
9 "This doesn't even begin to  
10 address the fact that we  
11 shouldn't be talking about  
12 potential improvements that  
13 will give any claimants more  
14 ammunition. I thought you  
15 guys met with Chad and he was  
16 happy. Did we get CIMA to  
17 finalize the report to our  
18 liking before they asked for a  
19 copy?" (As read)

20 Do you recall receiving this  
21 e-mail from Mr. Moore?

22 A. Not particularly.

23 Q. Do you have any concerns  
24 with a director responding in this way to a  
25 council direction?

1                   A.     It's Mr. Moore's opinion  
2     and I don't share it.

3                   Q.     So just to dig into that  
4     a little bit.  The first five points of his e-mail  
5     deal with lighting.  You don't agree with Moore's  
6     comments there about lighting?

7                   A.     Well, I don't know  
8     anything about what the EA said at all, only that  
9     I believe the road geometrics were done with no  
10    lighting required because they didn't include any  
11    lighting, but I wasn't involved in that, that  
12    phase.

13                  Q.     At this time, in December  
14    of 2013, what was your source of information about  
15    whether or not lighting was viable on the Red  
16    Hill?

17                  A.     Well, there was only --  
18    really the only background I had is things that I  
19    was told by Mr. Moore.

20                  Q.     And you relied on him for  
21    that information?

22                  A.     I did.

23                  Q.     Why?

24                  A.     Because he was the person  
25    who was in charge of that asset and had history

1 with the project.

2 Q. So the e-mail goes on and  
3 Mr. Moore says the potential safety improvements  
4 here -- sorry -- the potential safety improvements  
5 here are ones that are recommended by CIMA. What  
6 did you think of Mr. Moore saying:

7 "We shouldn't be talking about  
8 potential improvements that  
9 will give any claimants more  
10 ammunition."

11 A. I disagreed with that.

12 Q. How should City staff  
13 consider, if at all, the possibility of increasing  
14 claims against the City when they are assessing  
15 whether or not to move forward with a safety  
16 improvement?

17 A. Well, I don't think you  
18 should take into account that there could be a  
19 claim because you take action. I think you have  
20 to take the best action you can at the time that  
21 you're aware of any condition or something that  
22 requires a remedial action or action. So I think  
23 once you find out certain things, you should move  
24 forward to examine their feasibility and the  
25 proper means of mitigating the concerns that were

1 raised.

2 Q. Mr. Moore goes on to say:  
3 "Did we get CIMA to finalize  
4 the report to our liking  
5 before they asked for a copy?"  
6 Who did you understand the  
7 "they" to be in that sentence?

8 A. I'm not really sure. I  
9 don't know.

10 Q. If the "they" in that  
11 question is council, did that raise any concerns  
12 for you?

13 A. Well, I don't have  
14 problems sharing reports with council if we're  
15 asked to, and if you -- I think we shared a lot of  
16 this information with several councillors.

17 Q. When the comment is  
18 prefaced by, "Did we get CIMA to finalize the  
19 report to our liking before they asked for a  
20 copy," does that give rise to any concerns?

21 A. I think it's bad wording.  
22 I think we talk to CIMA. We -- under the  
23 direction that we were under, that's David and  
24 myself, we asked CIMA to modify some -- the report  
25 somewhat, but the content of the report in the

1 final version from CIMA was inclusive of  
2 everything that was in their original report, it  
3 was just put more into a graph or a chart form. I  
4 don't think we changed their results and  
5 anticipated actions that they were putting  
6 forward.

7 Q. So I'm going to move us  
8 up a little bit now into January of 2015.  
9 Registrar, could you take us to HAM4355. If you  
10 could call out Mr. White's e-mail, which is the  
11 second e-mail. Sorry, Registrar, the next one  
12 down. Thank you.

13 So this is a response that you  
14 send further to that e-mail about the OBL item on  
15 January 15th -- on January 14th -- 15th. Sorry.  
16 And you say:

17 "Dave and Chris, see below.  
18 Please ensure that all  
19 remedial works on the LINC are  
20 completed, and then we'll have  
21 to measure their  
22 effectiveness, and we'll also  
23 have to follow up on the  
24 entire safety issue on the  
25 LINC also. What are we doing

1 with the road's request to  
2 sign slippery when wet signs  
3 everywhere? I forgot about  
4 that one. We need the asphalt  
5 skid test to see what they  
6 determine also." (As read)  
7 And my apologies. I think I  
8 misled you a moment ago. This is January 2014,  
9 not 2015.

10 A. Yes, okay, thank you. I  
11 was losing context.

12 Q. That was my fault. My  
13 apologies.

14 A. Is this a direct result  
15 of the e-mail we just looked at? I don't remember  
16 the chain.

17 Q. Registrar, could you  
18 close this callout and call up image 2 of this  
19 e-mail exchange.

20 So you'll see that there's a  
21 reference there to the improvements on lighting in  
22 Ms. Clark's e-mail on the top of the second page.

23 A. Okay, thank you.

24 Q. Registrar, could you take  
25 us back to Mr. White's e-mail and call it out

1 again, please. Do you recall sending this e-mail  
2 to Mr. Ferguson and Mr. Jacobson?

3 A. Not really, no.

4 Q. So there's a reference at  
5 the bottom where you say:

6 "We need the asphalt skid  
7 tests to see what they  
8 determine also."

9 A. Okay.

10 Q. Was that a reference to  
11 the friction testing that Mr. Moore had said  
12 engineering services would do in September 2013?

13 A. It only suggests that my  
14 answer is likely.

15 Q. You don't recall if it  
16 was with reference to Mr. Moore's correspondence  
17 about that? I can --

18 A. I don't really recollect  
19 sending the e-mail, so specifically I don't  
20 remember how I connected it.

21 Q. Were you aware at this  
22 time of any other asphalt skid tests that were  
23 occurring on the Red Hill at the time?

24 A. No, not at all.

25 Q. So I can I think refresh

1 your memory a little bit. Registrar, if you can  
2 also pull up HAM36707 and put it up where the  
3 second page of the current e-mail chain is.

4 THE REGISTRAR: Sorry,  
5 Counsel, do you mind just repeating the doc ID for  
6 the second one.

7 BY MS. BRUCKNER:

8 Q. HAM36707.

9 We looked at this e-mail chain  
10 yesterday, Mr. White, but just to refresh your  
11 memory you'll see that this is the e-mail chain in  
12 which Mr. Moore indicated that he would conduct  
13 friction testing.

14 Registrar, could you take us  
15 to image 2 and just call out the e-mail at the  
16 very top.

17 So this is the end of 2013, so  
18 November 19, 2013. This is the e-mail where Mr.  
19 Moore e-mails you and indicates that Golder is  
20 going to do friction testing and will need traffic  
21 control coordination.

22 Registrar, if you can take us  
23 to image 1 of this document again and just call  
24 out the top e-mail.

25 So you assign this task to Mr.

1 Jacobson, which we looked at yesterday.

2 A. Yes, I did see that  
3 yesterday.

4 Q. And then you're copied on  
5 this e-mail from Dr. Henderson at Golder about  
6 traffic control coordination for the friction  
7 testing, and she asks for a couple of things,  
8 including access to water refill for the testing  
9 equipment. Do you remember that exchange, again,  
10 on November 19th, 2013?

11 A. Vaguely I do, yes.

12 Q. Registrar, you can close  
13 this down for us, thank you. And we'll look back  
14 at HAM4355, Mr. White's e-mail.

15 Does that help to refresh your  
16 memory at all about what asphalt skid tests you  
17 thought that you needed as of January 15th, 2014?

18 A. Well, I'll say exactly  
19 how I felt about this. When I got that e-mail  
20 from Gary to do the traffic control, I was in the  
21 middle a lot of things and I simply flipped it to  
22 Chris and didn't really pay a lot of attention to  
23 it. And when the person asked for the water, I  
24 didn't care, it went to Chris, and so I moved on.  
25 So I didn't particularly register what was going

1 on at that moment in time. However, when you come  
2 back to this e-mail and connect this to that, by  
3 this point I knew Gary was supposed to be doing  
4 some friction testing.

5 Q. So the friction testing  
6 results that you would have been looking for  
7 January 15th, 2014 are the results of that testing  
8 that you knew Gary was going to do?

9 A. That's a logical  
10 connection.

11 Q. Why did your group need  
12 the friction test results?

13 A. Well, I'm not really sure  
14 that I know the answer to how friction testing  
15 would impact collisions; however, as I think I  
16 suggested yesterday, there's a number of data  
17 collection points that can contribute to  
18 collisions, and, you know, if it was friction  
19 testing that showed that the asphalt was way out  
20 of line, it would have helped explain it. But  
21 that's the only thing I think I could have used it  
22 for, and I wasn't even sure if it was  
23 location-specific.

24 Q. Registrar, can you just  
25 call out Mr. White's e-mail again so it's a little

1 bit bigger for us.

2 So you send this e-mail to  
3 Mr. Ferguson, copying Mr. Jacobson, and you say,  
4 we need the asphalt skid tests to see what they  
5 determine. After sending this e-mail, did you  
6 take any steps to follow up with Mr. Moore about  
7 the friction testing results?

8 A. Oh, gosh, I don't have  
9 any recollection.

10 Q. You send this e-mail to  
11 two of your direct reports?

12 A. Yes.

13 Q. Did you ask them to  
14 follow up with Mr. Moore about the friction  
15 testing on the Red Hill?

16 A. Again, I don't have any  
17 recollection.

18 Q. You don't recall asking  
19 them to do it or you just don't have any --

20 A. I just don't have -- I  
21 don't recall asking them and I don't remember  
22 doing anything like that.

23 Q. As of January 2014, do  
24 you recall having had any discussions with Mr.  
25 Moore about the friction testing on the Red Hill?

1                   A.    You know, again, I had  
2    conversations with him.  I just don't know where  
3    in time they sat.  Not specific to the date, but I  
4    did.

5                   Q.    What did you discuss when  
6    you did have these conversations with him?

7                   A.    I think we were simply  
8    asking where are the results.

9                   Q.    And what was his  
10   response?

11                  A.    The thing that I remember  
12   him saying the most is that there was nothing to  
13   compare them to and that there was a UK standard  
14   but no standard in Canada.

15                  Q.    Do you remember him  
16   saying that to you on more than one occasion?

17                  A.    I don't remember  
18   particularly.  I just remember that that's  
19   something that stuck in my head that he told me.

20                  Q.    Do you recall if -- when  
21   Mr. Moore made those comments to you, if you  
22   escalated those comments to Mr. Lupton or Mr.  
23   Mater?

24                  A.    You know, I don't have a  
25   specific recollection of that, but Geoff and I

1 talked on a regular basis, and I know he was  
2 monitoring this entire project, if you will, and  
3 so I feel comfortable that I would have said  
4 something; I just don't remember doing it.

5 Q. Registrar, could you  
6 close this out and take us to OD6, image 135,  
7 paragraphs 388 and 389. I believe 389 is on to  
8 the next page. If you can call out that image.

9 So you're not immediately  
10 copied on this e-mail exchange, but I'm going to  
11 start from January 20th just to give you some  
12 context. So in January of 2015 your group is  
13 working on installing pavement reflectors on the  
14 Red Hill Valley Parkway?

15 A. Yes.

16 Q. And you'll see from the  
17 e-mail that Mr. Ferguson sends to Mr. Merritt and  
18 Jason Worrone that Mr. Moore has expressed some  
19 concern about the length of the cut for those  
20 reflectors. Do you recall that exchange?

21 A. Not specifically, but I  
22 remember the concern.

23 Q. And so Mr. Merritt --  
24 just for some additional context, is Mr. Merritt  
25 someone who is reporting to you at this time?

1                   A.    He's in traffic  
2    engineering, and reported to Dave through -- to  
3    me.

4                   Q.    So Mr. Merritt responds  
5    to this e-mail chain and he says:

6                   "Apparently the MTO typically  
7                   uses 5-foot slot length. We  
8                   are already way under that."

9                   And then, Registrar, you can  
10   close this out and take us into paragraph 391.

11                   So on January 21st, 2015  
12   Mr. Ferguson e-mails Mr. Moore, copying Mr. White,  
13   Mr. Mater -- sorry -- you, Mr. Mater, Mr. Worrone  
14   and Mr. Merritt, and he says:

15                   "Further to our discussion  
16                   yesterday, the following is  
17                   provided."

18                   And he goes on to say:

19                   "We discussed the issue of  
20                   marker lengths with the  
21                   manager of the MTO's program.  
22                   His comment was that the  
23                   length of the cuts should be  
24                   5 feet to allow for proper  
25                   reflection of the markers. He

1                    advises us not to go below a  
2                    length of 4 feet. Our current  
3                    contract is for 4 feet cut."

4                    Registrar, could you close  
5 this out and pull up the paragraph below.

6                    So Mr. Moore replies  
7 45 minutes later and he writes:

8                    "Okay, but when the pavement  
9                    fails prematurely because of  
10                   these cuts, I'll be asking you  
11                   to provide an explanation  
12                   about this need for both the  
13                   reflectors and the cuts."

14                   Do you recall this exchange?

15                   A. More or less. I  
16 recollect this piece.

17                   Q. Registrar, could you take  
18 us to the next image, paragraph 394. Sorry,  
19 let's -- just for context, let's also call out 393  
20 for Mr. White.

21                   So Mr. Mater responds to this  
22 e-mail only to you and Mr. Ferguson, and he writes  
23 "Just let it go." You forward that to Mr. Lupton  
24 and you say, "Really. Nice team play." What did  
25 you mean by that?

1                   A.    I meant that -- and I'll  
2    maintain that we were supposed to be in this  
3    project together, not at odds with each other, and  
4    it felt at that point in time that Mr. Moore was  
5    being critical of the work we were doing to  
6    respond to the deficiencies that we had been --  
7    that we found out on the facility.

8                   Q.    Registrar, could you take  
9    us to the next paragraph down which is 396 --  
10   sorry, a couple paragraphs down, 396.  Sorry,  
11   let's also include 395 just so that we keep the  
12   e-mail chain straight for Mr. White.

13                   So Mr. Lupton forwards your  
14   e-mail to Mr. Mater, but then you respond to the  
15   e-mail chain where Mr. Mater says to just let it  
16   go, and you write:

17                   "John, in confidence.  Has  
18                   anybody told him we are doing  
19                   the LINC collision crossover  
20                   study with CIMA?  He's going  
21                   to react when he finds out.  
22                   Traffic shouldn't have to put  
23                   up with his reaction when he  
24                   finds out.  Malone even told  
25                   me he is charging us a bit

1 extra due to Gary. He wants  
2 to be sure his recommendations  
3 are totally defensible. He  
4 asked me what he should say  
5 when Gary calls him. I told  
6 CIMA to do the best analysis  
7 they can and give us the best  
8 technical options and not  
9 worry about what Gary says to  
10 them. This is a consistent  
11 problem we face routinely with  
12 that section and related  
13 works. I'm not going to  
14 respond, but I just had to  
15 have my bitch out to you.  
16 Thanks for listening." (As  
17 read)

18 Do you remember sending that  
19 e-mail to Mr. Mater?

20 A. Yes, I think I do.

21 Q. Why did you title it "in  
22 confidence"?

23 A. Again, as in a different  
24 e-mail, I'm discussing another director who is  
25 above me in the chain of command who works with

1 John and I felt it prudent to -- and I really was  
2 just as -- I think to use my term there, I was  
3 just bitching out to him really about the  
4 situation so that the directors were aware of how  
5 things were transpiring.

6 Q. In your view, was this  
7 exchange with Mr. Moore something that needed to  
8 be addressed at the director level?

9 A. Well, I think that if he  
10 had a concern, it didn't have to come around like,  
11 you know, he was going to be asking us to explain  
12 it later. I think simply a question about the  
13 appropriateness of the cut would have been  
14 sufficient, and we could have provided the  
15 information from a technical basis that we were  
16 doing what we could to install the pavement  
17 markings. And we used the same process that the  
18 MTO had done so on the 403 at the top of the  
19 Ancaster hill. I think that's where we got the  
20 information, I believe. So I thought we were  
21 acting appropriately.

22 Q. You say at the top of  
23 this e-mail:

24 "Has anyone told him we are  
25 doing the LINC collision

1 crossover study with CIMA?  
2 He's going to react when he  
3 finds out. Traffic shouldn't  
4 have to put up with his  
5 reaction when he finds out."

6 What did you mean by that?

7 A. Gosh. I just think that  
8 we were doing a crossover study and if we hadn't  
9 told him -- and I really wasn't -- it's a  
10 collision study, which was traffic's  
11 responsibility -- that I was concerned he might  
12 have a negative reaction if we brought forward  
13 recommendations or something that didn't need his  
14 thoughts.

15 Q. When you say "didn't need  
16 his thoughts," were you aware of what Mr. Moore's  
17 thoughts were around collision history on the Red  
18 Hill at this time?

19 A. I think this is the LINC  
20 but --

21 Q. Oh, yeah, sorry, the --  
22 (Speaker overlap)

23 A. In any case, we were just  
24 commencing the 2015 report I think at this time.  
25 Sorry, your question?

1 Q. So you said you were  
2 concerned that you would see a negative reaction  
3 from Mr. Moore. Why were you concerned about a  
4 negative reaction?

5 A. I think we had  
6 experienced that in the past.

7 Q. In what context?

8 A. On this project.

9 Q. In connection with a  
10 project on the LINC or in connection with the 2013  
11 CIMA report?

12 A. I think what I'm  
13 referring to is the body of both these things.

14 Q. Can you describe the  
15 negative reaction that you had seen from Mr. Moore  
16 in the past?

17 A. Well, I think if you go  
18 to the e-mail we just exchanged, you'll see his  
19 commentary on the installation of the markers, and  
20 he had opinions on the reports from CIMA.

21 Q. Are those the items that  
22 we discussed yesterday, or are you referring to  
23 different opinions that Mr. Moore had?

24 A. No, the marginalized  
25 reports in that CIMA report.

1 Q. Sorry, the marginalized  
2 reports?

3 A. The reports in the margin  
4 of that CIMA report, Mr. Moore's comments on the  
5 report.

6 Q. I think you're -- are you  
7 referring to the 2015 CIMA report?

8 A. I'm sorry, I'm not sure  
9 now.

10 Q. That's okay. I'll circle  
11 back to it. I think that we're going to get there  
12 very shortly. So you go on to say that:

13 "Malone even told me he is  
14 charging us a bit extra due to  
15 Gary. He wants to be sure his  
16 recommendations are totally  
17 defensible."

18 Had Mr. Malone told you that  
19 CIMA was charging extra due to Gary's involvement  
20 in the project?

21 A. Well, I don't remember  
22 him saying that to me at all, but I typed it, so I  
23 believe I must've understood that. I would never  
24 have put something in that I didn't believe to be  
25 true.

1 Q. What was your  
2 understanding about why CIMA would charge extra  
3 due to Gary's involvement?

4 A. Well, I think my next  
5 line says it, "he wants to be sure his  
6 recommendations are defensible."

7 Q. Did Mr. Malone anticipate  
8 that he would receive challenges from Mr. Moore on  
9 his recommendations?

10 A. I don't really know what  
11 Mr. Malone anticipated.

12 Q. Did he tell you that? Is  
13 that why you wrote that he wanted to ensure the  
14 report was defensible?

15 A. I think he told me he  
16 wanted to be sure that the report is defensible.  
17 I don't remember the dialogue around it at all.

18 Q. So you go on to say:  
19 "He asked me what he should  
20 say when Gary calls him. I  
21 told CIMA to do the best  
22 analysis they can and give us  
23 the best technical options and  
24 not to worry about what Gary  
25 says to them."

1 Do you remember that aspect of  
2 your conversation with Mr. Malone?

3 A. No. As I say, I don't  
4 really recollect the conversation with Brian at  
5 all.

6 Q. Why did Mr. Malone think  
7 that Mr. Moore would call him about the report?

8 A. I couldn't say. I don't  
9 remember. I don't know.

10 Q. To your knowledge, had  
11 Mr. Moore called Mr. Malone about past City  
12 projects?

13 A. I don't know that either.

14 Q. To your knowledge, had he  
15 called him about the 2013 CIMA report?

16 A. I don't know that either.

17 Q. So at the end of this  
18 e-mail you say:

19 "This is a consistent problem  
20 we face routinely with that  
21 section and related works."

22 What did you mean by that?

23 A. Things were always a  
24 little difficult to get things done the way we saw  
25 them to be done, and so when I mean that section,

1 I mean engineering services. Sometimes they would  
2 challenge us for funding and such things that --  
3 for projects that we were moving forward, and it  
4 was always a little bit of a negotiation to get  
5 certain things accomplished.

6 Q. More so than with other  
7 public works departments that your group worked  
8 with?

9 A. Truly, I think honestly  
10 that I worked with engineering services a  
11 substantially greater number of instances than  
12 other divisions and departments. I don't  
13 recollect any problems with roads or forestry. I  
14 didn't have much interplay with water, but I did  
15 have a lot with engineering services. Not just  
16 me, traffic had a lot of interchange with  
17 engineering services, the various groups.

18 Q. So at this point in time,  
19 your group had worked with Mr. Moore's group on  
20 the 2013 CIMA report. Did you have any concerns  
21 about working with his section in relation to that  
22 project?

23 A. Not particularly, no. We  
24 were still pursuing it, and in general everything  
25 was moving forward. When we look at the input of

1 Mr. -- of the street lighting folks and Gary  
2 Kitchknopf and those guys, they were moving  
3 forward with us.

4 Q. Had your staff reported  
5 any concerns to you about working with Mr. Moore's  
6 section during the work that they did on the 2013  
7 CIMA report?

8 A. Only the one we looked at  
9 yesterday with Mr. Cooper saying that he heard  
10 Gary was not happy, but I don't have any other  
11 reference to that.

12 Q. Understood. Registrar,  
13 could you please take us into OD7, image 8,  
14 paragraph 19. Thank you. So I moved us up a  
15 little bit in time. We are now in May of 2015.

16 Registrar, can you make this  
17 actually the second image and pull up the image  
18 before it, image 7.

19 So, Mr. White, in May 2015  
20 there was a crossover collision on the Red Hill  
21 Valley Parkway that killed two young women. Do  
22 you recall that collision?

23 A. Yes, I do. I may not  
24 have been -- I may have been off on leave at that  
25 time or around that time, but I still remember the

1 incident.

2 Q. So it's my understanding  
3 that you were on leave from approximately  
4 February 2015 through to June 2015. Is that about  
5 right?

6 A. That feels right, yes.

7 Q. So to the extent that you  
8 can address any of the questions, I'm going to  
9 move quite quickly through May, but just let me  
10 know if you can't address them because you weren't  
11 present.

12 So following this collision  
13 Councillor Connelly sends a request to  
14 Mr. Ferguson asking for a safety study on the Red  
15 Hill Valley Parkway with particular attention to  
16 median barriers, and Mr. Ferguson does forward  
17 this e-mail to you.

18 Registrar, can you pull out  
19 HAM4637.

20 You'll see the bottom e-mail  
21 there is from Councillor Connelly to Mr. Ferguson,  
22 and if you look up the chain you'll see that you  
23 are forwarded this e-mail by Mr. Ferguson on  
24 May 11th, 2015.

25 A. Okay.

1 Q. Do you remember that  
2 request from Councillor Connelly?

3 A. No, I don't.

4 Q. Registrar, can you take  
5 us to OD7, image 9, paragraph 204. I'm sorry,  
6 it's paragraph 24. Drop the extra 0. Thank you.

7 On May 11, 2015 Mr. Ferguson  
8 e-mails Mr. Malone at CIMA asking what the cost  
9 would be to complete a review of the Red Hill  
10 Valley Parkway for possible barriers.

11 At this time, it's my  
12 understanding based on our discussion from  
13 yesterday that Mr. Ferguson had completed the  
14 collision history review of the Red Hill Valley  
15 Parkway that you had directed him to do in 2013  
16 and that your group had identified a pattern of  
17 wet surface collisions on the Red Hill; is that  
18 fair?

19 A. That's fair.

20 Q. And you had advised Mr.  
21 Lupton of that on October 14, 2013 that there was  
22 a statistically significant number of collisions  
23 on wet conditions identified on the Red Hill?

24 A. Okay.

25 Q. Do you recall if this was

1 a factor in the decision to retain CIMA for the  
2 2015 CIMA report?

3 A. I think my response is I  
4 don't really remember, but it would have seemed  
5 reasonable that it would factor into our decision,  
6 along with the concerns of Councillor Collins and  
7 now Councillor Connelly asking for a fulsome  
8 review of the -- or a fulsome review of the  
9 facilities.

10 Q. Registrar, you can close  
11 this out, and if you could take us to OD7, image  
12 10, paragraph 29.

13 So you'll see that there is a  
14 motion which I believe is actually brought by  
15 Councillor Merulla. And if you could -- yes. So,  
16 Mr. White, if you could just take a minute to  
17 review the details of this motion on the text,  
18 effectively direct staff to investigate additional  
19 safety measures for the Red Hill Valley Parkway  
20 and Lincoln Alexander, such as additional  
21 guardrails, lighting, lane markings, and other  
22 means to help prevent fatalities and serious  
23 injuries.

24 A. Okay.

25 Q. To be reported back to

1 the public works committee on December 7th, 2015.

2 A. Okay.

3 Q. Do you remember that  
4 motion?

5 A. Well, I remember -- I  
6 know of it from after. I don't think I was  
7 actually involved at that moment. I think I was  
8 not at work, but I'm certainly aware of it.

9 Q. Registrar, if you could  
10 close this out and take us to OD7, image 24,  
11 paragraph 63 to 65. Thank you.

12 On June 28th Mr. Ferguson  
13 advises you, Mr. Mater and Mr. Malone of a  
14 crossover collision on the Red Hill Valley  
15 Parkway. He, on July 7th, advises you of another  
16 crossover collision. He says that "we have  
17 another collision same location as a collision the  
18 previous week." And you reply to this e-mail.  
19 Registrar, could you call out Mr. White's response  
20 to Mr. Ferguson. So the text there below. Thank  
21 you.

22 So you say:

23 "Dave, as soon as I get back,  
24 let's meet, you, Jay and  
25 Cooper to go over the report

1 and pick a path. Okay?" (As  
2 read)

3 Is that a reference to the  
4 2015 CIMA report?

5 A. I'm not sure.

6 Q. So you go on in this  
7 e-mail to say:

8 "Let me know if any further  
9 incidents occur. We need to  
10 action this as quickly as we  
11 can. Please have your review  
12 of report and recommendations  
13 ready for me by next week."

14 Again, that's in relation to  
15 crossover collisions that had occurred on the Red  
16 Hill Valley Parkway. Does that help to refresh  
17 your memory as to whether or not this would have  
18 been about the 2015 CIMA report?

19 A. I'm sorry, I don't know  
20 if it's related to the report. I can understand  
21 the e-mail and I know what I'm asking, and if -- I  
22 just can't make that connection all these years  
23 later.

24 Q. Okay. Registrar, could  
25 you take us to OD7, 24, paragraph 66, which is

1 just the bottom of this.

2 So on July 8th, 2015 Ms.

3 Aquila sends you, Mr. Ferguson, Mr. Worrone and Mr.

4 Cooper a calendar invite for a meeting entitled

5 "Red Hill Valley Parkway Collisions," scheduled

6 for June 13th, 2015. Do you recall this meeting?

7 A. No, I'm sorry, I don't.

8 Q. Registrar, can you take

9 us to OD7, image 30, paragraph 81. Pull up image

10 80 as well. Sorry, image 29 as well.

11 So this is an e-mail exchange

12 that you had with Mr. Malone in July of 2015 after

13 there are two additional collisions on the Red

14 Hill.

15 A. Yeah, I vaguely remember

16 that.

17 Q. So you say to Mr. Malone

18 "appreciate it," and I believe that is in

19 reference to his commitment to accelerate or work

20 on the 2015 CIMA report as quickly as possible.

21 A. I believe that.

22 Q. So you go on to say in

23 this e-mail:

24 "I anticipate some greater

25 pressure for us to respond to

1 the need to do something."

2 What did you mean by that, the  
3 need to do something?

4 A. Well, council is always  
5 looking for action, and in this particular case  
6 they -- there were several serious collisions.  
7 And if you look at this through a Vision Zero  
8 lens, and we were just beginning to start working  
9 on collision countermeasures and Vision Zero.  
10 Vision Zero is intended to minimize serious injury  
11 collisions and fatalities, and we were starting to  
12 look at the world through that lens a little bit  
13 and start to think in that respect. It eventually  
14 turned into a Vision Zero process that we  
15 implemented a few years later.

16 Q. Just to clarify that,  
17 Vision Zero, is it a -- what exactly is Vision  
18 Zero?

19 A. Vision Zero is a process  
20 by which you look at the conditions of a roadway  
21 and take action to minimize serious injuries and  
22 fatalities, and in essence it suggests that we  
23 shouldn't blame the driver; we should improve the  
24 roadway condition as well.

25 Q. And that's something that

1 your group was starting to look at as of 2015?

2 A. Sometime around then. We  
3 were aware it was around. It began in Europe, and  
4 we were starting to think that we could bring that  
5 forward in Hamilton. We were under a lot of -- I  
6 won't say pressure. We just had a lot of safety  
7 concerns. This is just one project we're  
8 concentrating on here, but overall, traffic safety  
9 was becoming a very large corporate -- I won't say  
10 issue, but a concern, and we were looking at ways  
11 and means of moving forward with the strategic  
12 road safety program, the collision reporting,  
13 Vision Zero -- they are all tied together -- to  
14 provide a safe road environment or as safe a road  
15 environment as we could.

16 Q. And you said you wouldn't  
17 say pressure, but there were a lot of complaints.  
18 Who were those complaints from?

19 A. The general public had a  
20 lot of concerns about roadway safety, trucks on  
21 the roadway, all kinds of things.

22 Q. That's in relation to the  
23 city at large, not specific to the Red Hill?

24 A. That is correct. The  
25 city at large is what I'm referring to, but that's

1 what led us to start looking at things slightly  
2 differently.

3 Q. Were you also in receipt  
4 of complaints about the Red Hill?

5 A. I didn't personally  
6 receive any complaints about the Red Hill. Those  
7 all came through councillors.

8 Q. So you received them from  
9 councillors forwarding complaints from their  
10 constituents?

11 A. No. As a commentary, you  
12 know, I think we looked at an e-mail that Chad  
13 said he's receiving complaints. Nothing specific  
14 came to us of what the complaint was, except maybe  
15 one person said it was dark or required lighting,  
16 but I don't really remember the detail of those  
17 e-mails from Councillor Collins.

18 Q. Registrar, could you  
19 please take us to OD7, image 40, paragraph 122.

20 You were not copied on this  
21 e-mail, Mr. White, just for your reference. Mr.  
22 Bottesini, who is from CIMA, sends Mr. Ferguson,  
23 Mr. Cooper and Mr. Worrone a draft of the 2015 CIMA  
24 report on September 6, 2015. Do you recall if you  
25 would have reviewed the September 6, 2015 version

1 of this CIMA report?

2 A. I'm sorry, I don't.

3 Q. Registrar, you can close  
4 that out, and if you could take us to OD7, image  
5 42, paragraph 129. And call that out, please.  
6 Thank you. If you could put image 43 up on the  
7 next page as well, that would be helpful. Yes,  
8 thank you.

9 So on September 29th, 2015  
10 Mr. Ferguson e-mails you and he copies Mr. Cooper  
11 and Mr. Worrone and Ms. Aquila and he attaches a  
12 draft staff report to the public works committee  
13 which summarizes the 2015 CIMA report and also the  
14 2015 CIMA LINC report, and he says to you:

15 "Please see attached report  
16 that Stephen has completed and  
17 I have reviewed and made some  
18 changes. I'm sure there will  
19 be more to come."

20 And if you look down, the  
21 second point there, he says to you:

22 "I have identified in the  
23 recommendations the specific  
24 departments that would be  
25 responsible for action.

1                                   However, I have not yet  
2                                   circulated to the various  
3                                   departments, as I wanted you  
4                                   to review first in case you  
5                                   felt this would cause some  
6                                   issue."

7                                   Would you have reviewed the  
8    2015 CIMA report before you provided Mr. Ferguson  
9    with feedback on this staff report that he had  
10   sent you?

11                                  A.    That would be logical.

12                                  Q.    It would be your  
13    practice?

14                                  A.    That would be my  
15    practice.

16                                  Q.    So Mr. Ferguson is  
17    commenting on the fact that he has assigned  
18    recommendations to specific departments.  And he  
19    suggests that you might think that it could cause  
20    some issue.  Why would Mr. Ferguson think that it  
21    could cause some issue that he had assigned  
22    recommendations to specific departments?

23                                  A.    I'm not really sure why  
24    he might have felt that way.

25                                  Q.    Would that have been a

1 departure from the standard style for  
2 recommendation reports in the public works  
3 department?

4 A. I would say yes. It's a  
5 departmental thing. You know, public works will  
6 do this would be our normal approach.

7 Q. Would it generally say  
8 that a general manager would have the  
9 recommendations --

10 (Speaker overlap)

11 A. Yeah, I believe that is  
12 the way we would normally do it, or if we were  
13 only talking about ourselves, I didn't mind  
14 pointing at myself.

15 Q. It would have been  
16 outside the practice to point to another  
17 department?

18 A. Yes, I had not seen it  
19 done.

20 Q. Why did Mr. Ferguson want  
21 to assign specific recommendations to specific  
22 public work departments in connection with the  
23 2015 CIMA Red Hill Valley Parkway and LINC  
24 reports?

25 A. I think he just wanted to

1 make sure that the operating divisions were aware  
2 that there was action to be taken.

3 Q. To make sure they were  
4 aware of it so that it would be implemented?

5 A. Yes.

6 Q. Registrar, could you call  
7 out paragraph 130. Yes.

8 So, Mr. White, just for your  
9 reference, this is an excerpt from the draft staff  
10 report that Mr. Ferguson sent you, and this is his  
11 assignment of the recommendations from the 2015  
12 CIMA reports.

13 A. Okay.

14 Q. Could you take a minute  
15 review that and let me know if you have any  
16 concerns about the items that Mr. Ferguson has  
17 assigned to specific public works departments.

18 A. (Witness reviews  
19 document). It's mostly appropriate to the right  
20 department other than -- I just now see that there  
21 may be a disparity -- there may be an issue with  
22 forestry being directed to remove vegetation  
23 because I think the grass cutting was done by  
24 roads, road operations. But in essence that might  
25 have been corrected if we moved forward with that

1 approach, but we didn't, I believe.

2 Q. Registrar, you can close  
3 this down. If you could take us to HAM660. Image  
4 2 as well, if you could pull up both.

5 So you'll see in this e-mail  
6 it's a bit cut off, but on September 22nd, 2015,  
7 Mr. Ferguson reaches out to Mr. Moore.

8 Registrar, could you call out  
9 the e-mail that's on the top of the second page.  
10 Thank you. He says:

11 "As you're aware, I'm just  
12 finalizing the Red Hill Valley  
13 Parkway/LINC report, and have  
14 included the following  
15 recommendations that impact  
16 engineering services."

17 And he goes on to list the  
18 recommendations that we were just looking at that  
19 he had assigned to engineering services.

20 Registrar, if you could leave  
21 that callout but call up Mr. Moore's response on  
22 the next page as well so it's also bigger and  
23 beside the recommendations. Thank you.

24 You'll see Mr. Moore responds  
25 to Mr. Ferguson and he says:

1 "Dave, sorry, I wasn't aware.  
2 I need to see it and it needs  
3 to be discussed at DMT or at  
4 least with John, Gerry and  
5 myself before it goes, but in  
6 any event, here are my  
7 comments."

8 And he gives a number of  
9 comments on each of these items that Mr. Ferguson  
10 had sent to him. First he says:

11 "You can take engineering  
12 services off every line. We  
13 don't do investigations; we do  
14 programming, design and tender  
15 and construction supervision."

16 (As read)

17 Did you agree with Mr. Moore's  
18 comments about engineering services' role?

19 A. I think in general that  
20 is correct, except that he also operated an  
21 operating department in street lighting, and they  
22 do -- they had to do investigations to determine  
23 where street lights would go. So in essence over  
24 the broader scope of his division, that's true,  
25 but I think that one section, maybe it wasn't

1 quite applicable.

2 Q. So just referring back to  
3 Mr. Ferguson's e-mail. So item C on that e-mail  
4 is that:

5 "Engineering services should  
6 be directed to identify a  
7 funding source to complete  
8 pavement friction testing on  
9 the Red Hill Valley Parkway in  
10 its entirety at an estimated  
11 cost of \$40,000."

12 A. Okay.

13 Q. Was it your view that  
14 engineering services would be responsible to  
15 identify a source to complete friction testing if  
16 that was something that council directed the  
17 public works department to do?

18 A. That is my opinion.  
19 Engineering services was the overseer of the  
20 entire roads capital budget, or public works  
21 capital budget.

22 Q. In your view was friction  
23 testing on the Red Hill Valley Parkway generally  
24 an engineering services function?

25 A. Sorry, was it generally

1 what?

2 Q. Was it an engineering  
3 services function?

4 A. Yes.

5 Q. As of September 2015, you  
6 had been copied on those e-mails where Mr. Moore  
7 is speaking to Golder about conducting friction  
8 testing on the Red Hill Valley Parkway in  
9 November 2013. What was your understanding about  
10 how the friction testing Mr. Moore had conducted  
11 on the Red Hill Valley Parkway in November 2013  
12 had been funded?

13 A. Sorry, what was my  
14 opinion what?

15 Q. What was your  
16 understanding about how the testing that Mr. Moore  
17 had conducted in November 2013 had been funded?

18 A. I have no idea.

19 Q. Was it your understanding  
20 that it would have been funded through a source  
21 identified by Mr. Moore?

22 A. Mr. Moore would have had  
23 to paid for it some way through his own budgets.  
24 I don't know the answer to the question.

25 Q. It would have been from

1 the engineering services budget?

2 A. Presumably.

3 Q. So Mr. Moore in his

4 e-mail at point 2 goes on to say:

5 "What is friction testing  
6 going to tell you if you don't  
7 have anything to compare it  
8 to? There's no provincial  
9 database or guideline. The  
10 MTO will never discuss with  
11 you because it opens up an  
12 entire line of liability on  
13 every road."

14 Had you heard Mr. Moore make  
15 comments like this about friction testing before  
16 you received this e-mail?

17 A. Well, I do recollect him  
18 talking about the UK standard. Is this after he  
19 attended council and said it was fine?

20 Q. No, this is before.

21 A. Then no.

22 Q. Again, it was your  
23 understanding as of September 2015 that Mr. Moore  
24 had had friction testing done on the Red Hill  
25 Valley Parkway in November 2013?

1                   A.    I never had any  
2 confirmation of that.

3                   Q.    But you had been copied  
4 on the e-mails where he had asked for traffic  
5 control?

6                   A.    Yes, that's true;  
7 however, I didn't recollect what happened after  
8 that moment in time.

9                   Q.    But did you assume that  
10 he had done it pursuant to those e-mails he sent  
11 in 2013?

12                  A.    At this point in time I  
13 don't recollect what I remember. I may or may not  
14 have. I don't know.

15                  Q.    If Mr. Moore had done  
16 friction testing in 2013, wouldn't you have been  
17 able to compare the results of that testing to  
18 friction testing done in 2015?

19                  A.    If he had given us the  
20 2013 results, would I have been able to compare it  
21 to results done in 2015? Is that the question?

22                  Q.    Yes.

23                  A.    If they were comparing  
24 apples to apples at locations, the same pavement  
25 locations, there was a whole lot of variables in

1 that question. There's a potential to compare it,  
2 but we would have to be sure that we were  
3 comparing the same sort of information. Also,  
4 I've never had experience with friction testing  
5 before. It was a new thing to us in traffic. I  
6 had no experience with it.

7 Q. So you wouldn't have been  
8 able to perform a comparison of friction testing  
9 results yourself?

10 A. No, we would have had to  
11 have asked for professional assistance on that  
12 matter.

13 Q. So Mr. Moore says that  
14 there's nothing to compare it to. We don't have  
15 anything to compare it to. If friction testing  
16 had been conducted in 2013, there would have been  
17 something to compare friction testing results  
18 conducted pursuant to the 2015 CIMA report to,  
19 right?

20 A. Well, if they were  
21 comparing apples to apples, that's possible.

22 Q. When you receive this  
23 e-mail, and it's I believe forwarded to you by  
24 Mr. Ferguson, did you reach out to Mr. Moore to  
25 confirm if the 2013 friction testing had been

1 completed?

2 A. I don't recollect.

3 Q. You don't recall --

4 A. I don't remember.

5 Q. If you did it?

6 A. Yes. I don't recall what

7 I did with it.

8 Q. Did you direct your staff  
9 to follow up with Mr. Moore about the friction  
10 testing from 2013?

11 A. I don't remember that  
12 either.

13 Q. So Mr. Moore goes on to  
14 comment about lighting, and that's item 4 on this  
15 list. He says:

16 "We have said over and over  
17 illumination on the Red Hill  
18 or LINC is never going to  
19 happen, so stop asking. The  
20 approval was based on no  
21 illumination for environmental  
22 reasons. It is unaffordable,  
23 unsustainable and unnecessary.  
24 It would be a 8 to \$12 million  
25 project, plus protection,

1 barriers, guardrail, and then  
2 the maintenance costs."

3 Did you agree with Mr. Moore's  
4 comments about lighting on the Red Hill?

5 A. I'll respond this way.  
6 He had an OBL item mandating that he report back  
7 on lighting. If that was the -- his opinion, it  
8 wouldn't have been very arduous to report back to  
9 council with those facts. Whether that's true or  
10 not, though, I don't know.

11 Q. So you didn't know one  
12 way or another whether it was true?

13 A. Well, I certainly don't  
14 know what the EA said, and those environmental  
15 reasons were never clearly explained to me. As to  
16 the cost and sustainability, I don't know that.

17 Q. Did you ever ask Mr.  
18 Moore for the underlying documents that would  
19 substantiate his position on lighting on the Red  
20 Hill?

21 A. No, I asked for his  
22 opinion and I got his information.

23 Q. And you relied on his  
24 opinion?

25 A. I did.

1 Q. Why?

2 A. Because Mr. Moore was the  
3 director of a very large department, he was a  
4 reputable engineer, and I think he had a good  
5 technical reputation.

6 Q. So Mr. Moore says at the  
7 top of this e-mail:

8 "I need to see it and it needs  
9 to be discussed at DMT or at  
10 least with John, Gerry and  
11 myself before it goes."

12 What is DMT?

13 A. Department management  
14 team.

15 Q. Who goes to those  
16 meetings?

17 A. The GM and the directors.

18 Q. So it's not a meeting  
19 that you would have attended?

20 A. Never.

21 Q. Registrar, could you  
22 close the callouts, please. If you could take  
23 us -- you can take this down and take us to OD7,  
24 image 46, at 136 and 137.

25 So Mr. Mater responds to Mr.

1 Moore's comments by saying that you need to sit  
2 down and discuss these items. Do you remember if  
3 you attended a meeting with Mr. Mater,  
4 Mr. Ferguson, Mr. Lupton, or anyone else in your  
5 group to talk about this e-mail from Mr. Moore?

6 A. I don't remember that,  
7 no.

8 Q. Registrar --

9 A. I'll just say that  
10 Mr. Ferguson sat adjacent to Mr. Mater and Mr.  
11 Lupton and I was situated about 15 kilometres away  
12 at the operations engineering department office.  
13 So I wasn't in their proximity, and I think they  
14 had direct -- Dave had direct contact with Mr.  
15 Mater at some point as to direction to continue  
16 with this.

17 Q. So you think that  
18 Mr. Ferguson and Mr. Mater had a conversation that  
19 you weren't part of about these comments?

20 A. Yes.

21 Q. Registrar, could you  
22 please take us to HAM655. If you could call it  
23 out just so it's a little bit bigger.

24 On October 5th, 2015, you send  
25 Mr. Lupton an e-mail and you say:

1 "Geoff, please find attached  
2 the draft public works report,  
3 the LINC and Red Hill Valley  
4 Parkway safety reports from  
5 CIMA engineering, and some  
6 e-mails regarding the report  
7 recommendations."

8 A. Okay.

9 Q. And those e-mails are the  
10 e-mails that Mr. Ferguson had sent to directors  
11 advising them of recommendations that he had  
12 directed to them in the staff report, including  
13 the one we just looked at from Mr. Moore?

14 A. Okay.

15 Q. And you say:

16 "I would stress the report is  
17 only in draft at this point.  
18 We meet with Gary October 20.  
19 I am at your disposal to meet  
20 to discuss beforehand. Let me  
21 know. Thanks."

22 Why were you sending this  
23 information to Mr. Lupton on October 5th, 2015?

24 A. I have no idea. He's my  
25 direct boss.

1 Q. Did you meet with him in  
2 advance of an October 20th meeting with Mr. Moore?

3 A. I don't remember that at  
4 all.

5 Q. So you don't remember  
6 meeting with him or you have no recollection?

7 A. I have no recollection.

8 Q. Would you have reviewed a  
9 copy of the CIMA report that is attached to this  
10 e-mail before sending it to Mr. Lupton?

11 A. That would have been my  
12 practice.

13 Q. Registrar, could you take  
14 us into HAM657.

15 So this is the staff report  
16 that's attached to your e-mail -- sorry, the CIMA  
17 report that's attached to your e-mail to Mr.  
18 Lupton.

19 Registrar, could you take us  
20 to image 24 and call out -- maybe include the next  
21 page as well and call out section 4.3 under  
22 "Summary of Collision Review." Thank you.

23 So this is the summary of the  
24 collision review that CIMA had done on the Red  
25 Hill. Could you take a look at that and let me

1 know when you've had a chance to finish reviewing  
2 it.

3 A. (Witness reviews  
4 document). Okay, I got the gist of it.

5 Q. Perfect. Thank you. So  
6 you'll see the first point under "Overall  
7 Findings":

8 "Wet surface collisions were  
9 found to represent  
10 approximately 50 percent of  
11 all collisions in the study  
12 area, which is significantly  
13 high compared to typical  
14 proportions."

15 Was that finding by CIMA  
16 concerning to you from a traffic safety  
17 perspective?

18 A. I think we had already  
19 established ourselves going into this that we were  
20 seeing a high proportion of wet collisions. We  
21 were asking them to do a complete holistic review  
22 of the facility. I think my answer is that it  
23 highlighted something that we needed to pursue and  
24 look at remedial measures.

25 Q. Perfect. This was

1 consistent, then, with the collision history  
2 review that Mr. Ferguson had conducted I think in  
3 2013 or 2014?

4 A. Yeah, I would say I don't  
5 remember the 50 percent, but I remember that the  
6 conclusion is the same.

7 Q. And so you had identified  
8 this pattern. What you were looking for from CIMA  
9 was recommendations about how to address it?

10 A. Yes.

11 Q. Registrar, could you  
12 please take us --

13 A. Sorry, Counsel, we were  
14 looking to confirm our data too, and have it  
15 compared to other like facilities to make sure  
16 that we were looking at a anomalous information.

17 Q. Understood. Thank you.  
18 Registrar, could you take us to image 26, and call  
19 out "Potential contributing factors to  
20 collisions." Thank you.

21 So you'll see in the draft  
22 CIMA report under "Potential contributing factors  
23 to collisions," it says:

24 "The overall findings from the  
25 collision review indicates

1                   that the proportion of wet  
2                   surface collisions in the  
3                   study area is significantly  
4                   higher than typically observed  
5                   in the City and in the  
6                   province. A high proportion  
7                   of wet surface condition  
8                   suggests that one or more of  
9                   the following conditions may  
10                  be present..."

11                  And CIMA lists:

12                  "Inadequate skid resistance,  
13                  surface polishing, bleeding,  
14                  contamination, hazardous  
15                  maneuvers that may be related  
16                  to avoidance maneuvers or  
17                  surface deficiencies, so  
18                  potholes, waves, other  
19                  deformities, water  
20                  accumulation, and/or excessive  
21                  speed." (As read)

22                  Do you recall reviewing that  
23                  section of the CIMA report?

24                  A. As I say, I don't really  
25                  remember reading the report, but if I read the

1 report, which is my practice, then I would have  
2 read that.

3 Q. Do you agree that the  
4 collision history and pattern identified on the  
5 Red Hill could suggest one or more of those  
6 conditions listed by CIMA?

7 A. Yes, and several others  
8 as well, including geometry, the grade, the  
9 curvature of the roadway, the design elements that  
10 go into the roadway, the superelevation, the use  
11 of side -- roadside -- sorry, I can't think of the  
12 term -- roadside, like, guardrails and guide rails  
13 and that sort of thing. So the entire condition  
14 of the roadway needed to be looked at as well.

15 Q. At this point in time, so  
16 this is September 2015, had you and your group  
17 considered that there might be inadequate skid  
18 resistance on the Red Hill Valley Parkway?

19 A. Quite frankly, I think we  
20 were still waiting for confirmation of that.

21 Q. So was it something that  
22 you had in mind and you were looking for CIMA or  
23 Mr. Moore through the skid testing that he was  
24 conducting to confirm it?

25 A. I was waiting for any

1 kind of information on the friction testing, skid  
2 testing, skid resistance, to move forward with  
3 that item.

4 Q. On reviewing this report,  
5 did you reach out to Mr. Moore to ask him for the  
6 friction testing results?

7 A. I don't remember that.

8 Q. Did you direct any of  
9 your staff to do so?

10 A. Again, I don't remember.

11 Q. Do you recall if in  
12 connection with this section of the draft CIMA  
13 report, if you advised any of your staff, other  
14 than Mr. Jacobson who was copied on that e-mail  
15 about traffic control, that CIMA -- that Mr. Moore  
16 was conducting friction testing on the Red Hill  
17 Valley Parkway in November 2014 -- 2013, my  
18 apologies?

19 A. Well, let me just say  
20 that Dave and I spoke almost every day and we  
21 debriefed each other on things that were going on.  
22 I'm confident that I would have told him that  
23 sometime ago before this report, because I know he  
24 knew it and it would have been our practice to  
25 discuss larger scope projects over coffee, usually

1 in the mornings quite often.

2 Q. You expect you would have  
3 communicated that information to Mr. Ferguson at  
4 some point between November 2013 and September  
5 2015?

6 A. Yes, I'm confident he  
7 knew that engineering services was going to do  
8 friction testing at this point.

9 Q. Did you advise CIMA that  
10 Mr. Moore had conducted pavement friction testing  
11 on the Red Hill in connection with their work on  
12 the 2015 CIMA report?

13 A. I did not, but I did not  
14 advise CIMA of anything. I stayed out of the  
15 discussion with CIMA and let Dave and his staff  
16 deal with them. I think I only met with Brian  
17 once that I really remember, because I just wanted  
18 them to be in control of the project they were  
19 working on, so I didn't give them any information.

20 Q. Understood. When you  
21 spoke to Mr. Ferguson about the friction testing,  
22 did you direct him to tell CIMA about that testing  
23 on the Red Hill?

24 A. I'm sorry, I don't  
25 remember. I have no recollection.

1 Q. Do you recall directing  
2 any of your staff to advise CIMA that Mr. Moore  
3 had conducted friction testing on the Red Hill  
4 Valley Parkway in 2013?

5 A. I don't have any  
6 recollection of that either.

7 Q. In hindsight do you think  
8 that that information would have been helpful for  
9 CIMA to have in its work on the 2015 CIMA report?

10 A. I don't know that it  
11 would have been helpful to them at all. I don't  
12 know that that information would have been --  
13 would have been useful when they were doing the  
14 review, so I don't know.

15 Q. CIMA here has listed a  
16 number of conditions -- sorry, a number of  
17 indications -- let me rephrase.

18 So CIMA has indicated here at  
19 the top of this section that the collision history  
20 and pattern that they're observing on the Red Hill  
21 Valley Parkway could be the result of one or more  
22 of the following conditions, and one of those  
23 conditions is inadequate skid resistance. If they  
24 had had access to friction testing results from  
25 2014 or 2013, do you think that that would have

1 helped them to rule out or account for the  
2 possibility of that condition on the Red Hill.

3 MS. CONTRACTOR: Counsel, I  
4 think in order for the witness to answer this  
5 question fairly, I think it might be useful to  
6 take him to the notes from the October 20th  
7 meeting which he was at and which the minutes  
8 suggest friction testing was discussed.

9 MS. BRUCKNER: Absolutely. I  
10 was actually just about to go there. I can move  
11 on from this question and we can go into that  
12 meeting. Thank you, Ms. Contractor.

13 MS. CONTRACTOR: Thank you.

14 BY MS. BRUCKNER:

15 Q. Just before we leave this  
16 report and go to that meeting, Registrar, could  
17 you quickly pull up image 55.

18 I just want to refresh your  
19 memory, Mr. White, about the recommendations that  
20 are listed in this report. And if you could call  
21 out the summary table.

22 So these are the  
23 recommendations that CIMA lists in the 2015 CIMA  
24 report, and you'll see that there are a number of  
25 short-term countermeasures, including conduct

1 pavement friction.

2 A. Yes.

3 Q. Perfect. In your view

4 were these countermeasures appropriate?

5 A. Sorry, now that forces me  
6 to read them all. Just a moment, please.

7 Q. Go ahead.

8 A. (Witness reviews  
9 document). Yes.

10 Q. Thank you. Now we can  
11 move on.

12 Registrar, could you pull up  
13 CIM9287. So Mr. White -- could you put up the  
14 second image as well, please. Thank you.

15 So, Mr. White, these are the  
16 minutes of a meeting that you attended with  
17 Mr. Ferguson and Mr. Moore and Mr. Malone, Mr.  
18 Bottesini and Mr. Hawash from CIMA on  
19 October 20th, 2015. Do you remember this meeting?

20 A. I'm sorry, I don't.

21 Q. Is this a reference to  
22 the meeting with Mr. Moore -- sorry, is this  
23 meeting the one that you referenced in your  
24 October 5th e-mail to Mr. Lupton about a meeting  
25 with Mr. Moore on October 20th?

1                   A.    Well, since this meeting  
2   occurs on October 20th, I think that's -- I think  
3   that's true.

4                   Q.    So the second half of  
5   this page -- Registrar, if you don't mind calling  
6   out after the dividing line in the first column  
7   there. Thank you.

8                   The second part of this set of  
9   minutes diarizes a discussion around the Red Hill  
10  Valley Parkway report?

11                  A.    Okay.

12                  Q.    And you'll see the second  
13  line there -- Registrar, if you could highlight  
14  it, please -- says:

15                         "Mr. Moore stated that  
16                           friction testing was conducted  
17                           recently following standards  
18                           and resulted satisfactory."

19                  A.    Yes.

20                  Q.    Do you remember Mr. Moore  
21  making that statement to CIMA?

22                  A.    Well, I don't remember  
23  the meeting, so I don't remember that specific  
24  comment, no.

25                  Q.    As of October 20th, 2015

1 had Mr. Moore previously advised you that results  
2 of friction testing on the Red Hill Valley Parkway  
3 were satisfactory?

4 A. I don't think so. This  
5 precedes the council meeting, so --

6 Q. Yes.

7 A. Okay. Then no.

8 Q. Had he said anything to  
9 you about the results of the friction testing at  
10 all at this point in advance of this meeting?

11 A. I do not believe so.

12 Q. Would this comment have  
13 come as a surprise to you?

14 A. I don't know if it would  
15 have been surprising. I think it was just Mr.  
16 Moore reporting.

17 Q. After Mr. Moore made this  
18 statement to CIMA at this meeting, did you take  
19 steps to obtain the friction testing results from  
20 Mr. Moore?

21 A. I do not recall doing  
22 that.

23 Q. Did you direct your staff  
24 to obtain the friction testing results?

25 A. Well, I'm not sure what

1 use they would have been to us, no. But as I say,  
2 I'm not sure what use we would have had for them  
3 if they were satisfactory, and that's where Mr.  
4 Moore's statement is, and I would have taken that  
5 at face value.

6 Q. So we were just looking  
7 at the section of the draft CIMA report that talks  
8 about how inadequate skid resistance could be one  
9 or more of the contributing factors leading to the  
10 collision pattern that you had observed on the Red  
11 Hill.

12 A. Yes.

13 Q. Do you think that review  
14 of the testing results at this point in time would  
15 have assisted to indicate whether or not it was  
16 the case that inadequate skid resistance was a  
17 contributing factor?

18 A. I'm sorry, that was a bit  
19 complicated.

20 Q. I will re-ask that  
21 question for you. I recognize that. So we had  
22 just looked at the draft CIMA report which  
23 indicated that there were various conditions that  
24 could contribute to the collision pattern that you  
25 had observed and CIMA had observed with respect to

1 wet weather conditions on the Red Hill Valley  
2 Parkway. One of those possible conditions was  
3 inadequate skid resistance. Do you remember that  
4 we just looked at that?

5 A. Yes, I do.

6 Q. Do you think that having  
7 access to the friction testing results that Mr.  
8 Moore references in this meeting would have  
9 assisted to direct you as to whether or not  
10 inadequate skid resistance was something that you  
11 should be considering as a contributing factor to  
12 the collision history on the Red Hill?

13 A. So if the results were  
14 satisfactory, that would negate the impact of the  
15 friction testing as a contributing factor to the  
16 collisions. And that would therefore put onus on  
17 the conditions of the roadway in general, the  
18 geometrics, as well as the speed of vehicles on  
19 the facility. The speed of vehicles on this  
20 facility was excessive a lot of the time.

21 Q. Understood. So then as a  
22 result of that, did you ask Mr. Moore for the  
23 friction testing after he made this statement  
24 about the results being satisfactory to confirm  
25 what he had said?

1                   A.    As I said, I don't  
2    recollect doing that, and I would also state that  
3    I'm not -- I'm a lay person when it comes to  
4    friction testing. I would not have been able to  
5    interpret it.

6                   Q.    Would you have been  
7    content to rely on Mr. Moore's word that the  
8    results were satisfactory?

9                   A.    Yes.

10                  Q.    So CIMA goes on to say in  
11    this second point here -- Registrar, if you could  
12    highlight that as well.

13                  CIMA clarified that actual  
14    weather conditions occurring on the Red Hill  
15    Valley Parkway may exceed typical testing  
16    conditions, and more rigorous testing could be  
17    undertaken in order to rule out pavement friction  
18    as a problem. Speed is definitely a contributing  
19    factor, but the contribution of pavement should be  
20    ruled out.

21                  So CIMA is still indicating  
22    that they would like to rule out pavement as a  
23    contributing factor regardless of the speeding  
24    that's been identified on the Red Hill?

25                  A.    I see that.

1 Q. What did you think of  
2 that?

3 A. I really don't remember  
4 having -- I don't remember my reaction to that.

5 Q. Did you view it as an  
6 appropriate recommendation?

7 A. Are we still within  
8 the --

9 MS. CONTRACTOR: Sorry to  
10 interrupt but, Mr. Commissioner, he said a few  
11 times that he doesn't remember this meeting, so  
12 I'm not sure if questions about what he thought or  
13 what he did with respect to specific remarks is  
14 useful given the witness's comment that he does  
15 not recall.

16 JUSTICE WILTON-SIEGEL: I am  
17 inclined to agree. Could the Registrar put this  
18 down for a moment, take all this down so that I  
19 can see -- thank you. Ms. Bruckner, do you have  
20 more questions along this line?

21 MS. BRUCKNER: Only a couple.  
22 If Mr. White doesn't recall this meeting, I'm  
23 happy to move on. I just thought that it might  
24 assist his recollection if we put a couple of the  
25 lines from the CIMA notes to him.

1 JUSTICE WILTON-SIEGEL: Well,  
2 why don't you put this question and then let's  
3 move on. Put this question again. If it  
4 refreshes his memory, so be it, but if it doesn't,  
5 then we'll move on.

6 BY MS. BRUCKNER:

7 Q. Registrar, could you  
8 bring the callout back up again. Thank you.

9 So, Mr. White, does this note  
10 about what CIMA said about friction testing help  
11 to refresh your memory at all about the  
12 discussions around friction testing that occurred  
13 at this meeting?

14 A. I'm sorry, I just don't  
15 remember this meeting at all.

16 Q. You can close this out,  
17 Registrar, and we can move on.

18 Registrar, could you take us  
19 to OD7, image 47, paragraphs 140 and 141. Thank  
20 you.

21 So you forward a draft copy of  
22 the 2015 CIMA report to Mr. Moore on October 20th,  
23 2015. Do you remember sending him the draft of  
24 the CIMA report?

25 A. Not particularly. Sorry.

1 Well, I'm reporting to my directors here. I'm  
2 looking at it, but I don't remember doing it.

3 Q. So just to help you with  
4 the chronology, based on the e-mail that CIMA  
5 sends to Mr. Ferguson attaching the report that  
6 you then forward to Mr. Moore, it's my  
7 understanding that you sent this after the  
8 October 20th meeting with CIMA.

9 A. Well, if you look at the  
10 dates on the paper, that's the only thing I can go  
11 by, and this was at the end of the day when I  
12 forwarded it.

13 Q. Understood. Do you  
14 recall receiving Mr. Moore's comments on the 2015  
15 CIMA report?

16 Registrar, to assist with  
17 that, could you take us to OD7, image 50,  
18 paragraph 152 to 153. If you could include Mr.  
19 Moore's comments.

20 I'm going to take you into the  
21 actual document in a minute, but do you recall Mr.  
22 Moore sending his comments on the 2015 CIMA report  
23 to Mr. Ferguson?

24 A. I remember that  
25 Mr. Ferguson shared the comments with me. At the

1 time it was occurring I was unaware of it.

2 Q. Registrar, could you take  
3 us into HAM0689. I think it's HAM689.

4 Just for your reference, Mr.  
5 White, you'll see that Mr. Ferguson does forward  
6 this e-mail to you at the top.

7 A. Yes.

8 Q. Thank you. Registrar,  
9 could you take us to the attachment, which is  
10 HAM690, and in native form if possible. Thank  
11 you, Registrar.

12 So, Mr. White, this is the  
13 annotated version of the CIMA report that Mr.  
14 Moore sends back to Mr. Ferguson, and it has a  
15 number of sticky notes in it. Do you remember  
16 receiving these comments from Mr. Moore?

17 A. I got them from  
18 Mr. Ferguson.

19 Q. Mr. Ferguson sent it to  
20 you, but they are Mr. Moore's comments. Do you  
21 recall reviewing these comments?

22 A. Yes.

23 Q. Registrar, could you take  
24 us to image 34.

25 So you'll see at the top here

1 Mr. Moore's comment, and he is proposing to  
2 delete -- if you could leave the comment called  
3 out, Registrar, and expand it so that we can see  
4 the whole content. Thank you.

5 So he is suggesting that the  
6 sentence:

7 "Given the existing proportion  
8 of wet pavement collisions,  
9 50 percent, oversized slippery  
10 when wet signs should be  
11 infused in the study area."

12 And Mr. Moore proposes a track  
13 change deletion to that, and he says:

14 "Absolutely not. The sign  
15 should say drive according to  
16 road conditions. The road is  
17 not slippery when wet any more  
18 than any other road. The  
19 geometrics and the increased  
20 speed profile make it seem  
21 like it's slippery when wet.  
22 I can't increase skid  
23 resistance."

24 Do you recall reviewing that  
25 comment?

1 A. Yes.

2 Q. Is the view expressed by  
3 Mr. Moore consistent with the collision history  
4 analysis that CIMA had performed and that you had  
5 had Mr. Ferguson perform?

6 A. Is it consistent with the  
7 collision data? It's Mr. Moore's opinion there --  
8 the statement that is struck out is fact. Mr.  
9 Moore expresses an opinion.

10 Q. And your --

11 A. There's no such thing  
12 as -- what was that he says?

13 Q. He says the sign should  
14 say drive according to road conditions.

15 A. Yeah, there's no such  
16 sign in the manual.

17 Q. And he goes on in that  
18 comment to say "I can't increase the skid  
19 resistance." To your knowledge, are there methods  
20 by which skid resistance of a roadway can be  
21 increased?

22 A. I have no idea. I'm not  
23 an expert in asphalt.

24 Q. Was it your understanding  
25 that Mr. Moore was an expert in asphalt and

1 friction testing?

2 A. He was an expert in  
3 engineering, civil engineering, asphalt. I'm not  
4 sure his experience with friction testing at all.

5 Q. Perfect. Could you take  
6 us to image 42, please, Registrar. If you can  
7 pull out those comments just so that we can more  
8 clearly see where each of them is coming from.

9 So you'll see Mr. Moore also  
10 commented on the subsection under slippery when  
11 wet and bridge ices signs in section 7 of the  
12 report, which is under "Determination of Potential  
13 Countermeasures." This text says:

14 "OTM book 6 guidelines  
15 indicate that these signs  
16 should be installed at  
17 locations where the field  
18 investigations determine that  
19 the pavement has a  
20 significantly reduced wet  
21 weather skid resistance."

22 You'll see that at the end of  
23 that Mr. Moore makes his first comment. Sorry, at  
24 the end of that he makes a second comment.  
25 Registrar, could you click on that comment. It's

1 the next one down.

2 And he says that that is not  
3 the case here. Did you understand that comment to  
4 be a reference to his position that the skid  
5 testing results on the Red Hill Valley Parkway had  
6 resulted satisfactory?

7 A. Sorry, just a minute.

8 Q. Go ahead. Take your  
9 time.

10 A. I think he's referring to  
11 the fact that he believes, it's his opinion that  
12 the pavement has a significantly reduced wet  
13 weather skid resistance, but I note that the "or"  
14 after that is "where for no identifiable reason  
15 more than one-third of the collisions," and I  
16 think we identified more than one-third of the  
17 collisions are occurring on wet pavement.

18 Q. Right. And so did you  
19 understand that his opinion here, that is not the  
20 case here that there's inadequate skid resistance,  
21 is in reference to friction testing that he had  
22 conducted on the Red Hill Valley Parkway?

23 A. That's a giant jump. I'm  
24 not quite sure what he's referring to. He  
25 expresses a specific one-line opinion. I couldn't

1 make that leap.

2 Q. So at the end of the line  
3 that you just read out a moment ago, which is:

4 "...or where for no  
5 identifiable reason more than  
6 one-third of all collisions on  
7 a given section of road are  
8 occurring on wet pavement,  
9 among other criteria."

10 Mr. Moore comments --  
11 Registrar, could you click on the next comment  
12 down. He says:

13 "We know the reason, excessive  
14 speed."

15 Do you agree with that  
16 statement?

17 A. Excessive speed is a  
18 major contributing factor to the collisions on the  
19 RHVP, but he can't take it in isolation.

20 Q. There are other factors  
21 other than driver behaviour that could contribute  
22 to a collision pattern on wet pavements.

23 A. On the roadway in  
24 general, yes.

25 Q. And CIMA identified one

1 of those as inadequate skid resistance?

2 A. "Or where for no  
3 identifiable reason more than one-third," and  
4 that's where I am with this thing. That is  
5 something that I understood, that that's an  
6 applicable countermeasure when that occurs on any  
7 roadway, and we would have looked at using those  
8 signs under those conditions generically across  
9 the City.

10 Q. So for you it's more a  
11 question of whether or not to put up a sign than  
12 for what the underlying factor is that's  
13 contributing to the pattern?

14 A. But the manual allows you  
15 to put up the sign if you have a condition met and  
16 the "or" is a condition that could be met and is  
17 met at various points on the RHVP.

18 Q. Thank you. Registrar,  
19 could you take us to image 41, please.

20 So you'll see that Mr. Moore  
21 has struck out the section under "perform friction  
22 testing," and he comments -- Registrar, if you can  
23 make that so that we can read the whole thing --

24 "There is no basis, nothing to  
25 compare, and no other agency

1 in Ontario, including the MTO  
2 doing this. It means  
3 absolutely nothing except  
4 proving potential exposure to  
5 legal actions and confusion."

6 In your view would it be  
7 appropriate to delete this section from the 2015  
8 CIMA report?

9 A. I don't see that there's  
10 harm in leaving it in the report.

11 Q. How did you square Mr.  
12 Moore's comments that there was nothing to compare  
13 friction testing to with his comments to CIMA on  
14 October 20th that friction testing had been done  
15 on the Red Hill Valley Parkway and resulted  
16 satisfactory?

17 A. I just took this as Gary  
18 expressing an opinion on paper, but I don't  
19 believe that we acted on any of his comments that  
20 were in this document. It's my recollection that  
21 we moved on with the existing document.

22 Q. Did you recognize that  
23 there may have been a conflict between Mr. Moore's  
24 statement that there would be nothing to compare  
25 2015 friction testing data to with his comments

1 that friction testing had already been conducted  
2 on the Red Hill Valley Parkway and resulted  
3 satisfactory?

4 A. You know, I really don't  
5 remember how I felt at the time, and I don't  
6 remember having that thought.

7 Q. How did you square this  
8 statement from Mr. Moore with your knowledge that  
9 he had had friction testing conducted on the Red  
10 Hill Valley Parkway in November 2013?

11 A. I just -- you know, I  
12 quite honestly just wrote it off as Gary's opinion  
13 and moved on. I believe if I remember correctly,  
14 we included this in the report. We allowed it to  
15 stand.

16 Q. So Mr. Moore goes on to  
17 say in this comment that:

18 "Friction testing means  
19 absolutely nothing except  
20 proving potential exposure to  
21 legal actions."

22 Is potential exposure to legal  
23 action an appropriate consideration for public  
24 works staff when considering a consultant's  
25 recommendation to do further testing on a roadway?

1                   A.    You always have to be  
2    aware of potential exposure on behalf of the City.  
3    However, I still believe that you must always take  
4    the best way forward and take the best solutions  
5    and act in the best interest of the City.

6                   Q.    Registrar, could you take  
7    us to image 54, please.  So you'll see that there  
8    is another section under 9.1.4, "Conduct pavement  
9    friction testing," and Mr. Moore has written in a  
10   comment here that says under this section:

11                         "I don't have any frame of  
12                         reference to pass or fail this  
13                         against."

14                   A.    Yes.

15                   Q.    Did you turn your mind to  
16   Mr. Moore's statements on October 20th, 2013 when  
17   reviewing this section of the report?

18                   A.    Again I just discounted  
19   it.  We had heard from him that it was -- there  
20   was only a UK standard sometime before this.

21                   Q.    Is it your recollection  
22   that he had made comments about there only being a  
23   UK standard to you before he made these comments  
24   on the report?

25                   A.    You know, I can't put it

1 in context. I don't remember what came first. I  
2 certainly know I heard that. It may have been  
3 after. Honestly, I'm sorry, I just don't  
4 recollect the sequence of events.

5 Q. Thank you. Registrar,  
6 could you close this out and pull up HAM4781.  
7 HAM4781, Registrar. Thank you. Sorry.

8 Is there a second page of this  
9 document as well? Thank you.

10 So you'll see on October 25th  
11 Mr. Mater, you and Mr. Ferguson and Mr. Lupton  
12 engage in an e-mail exchange about the timing for  
13 the staff report on the 2015 CIMA LINC and Red  
14 Hill Valley Parkway reports.

15 Registrar, if you could call  
16 out Mr. Mater's e-mail at the very bottom of image  
17 1, please. Thank you.

18 And you'll see that Mr. Mater  
19 copies Mr. Moore on this e-mail, and he says that:

20 "In order to meet a December  
21 timeframe for this report, it  
22 needs to be to me by the 9th  
23 and Gerry by the 16th."

24 And he goes on to say:

25 "I know you gents are working

1 on the draft cover report for  
2 Gary and I to review with  
3 Gerry." (As read)

4 Could you please close this  
5 out, Registrar, and go up to the next -- the  
6 e-mail from Mr. White in this chain. Thank you.

7 So on October 30th, 2015 you  
8 respond to this mail by forwarding it to Mr.  
9 Lupton and Mr. Ferguson. You have removed Mr.  
10 Moore from this e-mail exchange, and you write:

11 "Dave, make those minor  
12 changes in the rec section to  
13 read the actions are by the  
14 GMPW, then send it to me  
15 again, CC Geoff." (As read).

16 You go on to say:

17 "Geoff, we have had a draft  
18 already written. It's in the  
19 binder I gave John, right in  
20 the front. I e-mailed it to  
21 you also. Dave is making some  
22 changes in the recs, and we  
23 will resend it to you. After  
24 that, I'm not sure what to  
25 say. It recs the guide rail

1 and lighting review and  
2 asphalt testing, all the  
3 things Gary argues against.  
4 Despite that, I believe them  
5 to be prudent and required  
6 that we do this ethically and  
7 technically responsibly. We  
8 can talk after Dave sends it  
9 to us. Thanks." (As read)  
10 And you go on to say:  
11 "Frankly, I think Chris Murray  
12 should be in on the  
13 discussions. He built the  
14 roadways. We can prevent some  
15 of these accidents from  
16 occurring and we should take  
17 action." (As read)  
18 Do you recall sending that  
19 e-mail?

20 A. Yes.

21 Q. Why did you remove Mr.  
22 Moore from the e-mail chain when you forwarded it?

23 A. I don't report to Mr.  
24 Moore. I'm expressing my concerns and opinions to  
25 my director.

1 Q. The concerns about Mr.  
2 Moore's comments on the report?

3 A. Well, just I'm giving him  
4 my best take on the report and what we were doing  
5 and just setting the scenario for him. If they  
6 are going to go have a DMT or a meeting, they need  
7 to be aware of what's happening.

8 Q. So you instruct  
9 Mr. Ferguson to change the recommendations section  
10 to read the actions are by the GM public works?

11 A. Yes, I believe that's the  
12 case.

13 Q. Was that to make it  
14 consistent with the standard practice in public  
15 works for staff reporting?

16 A. Yes, and it relieved some  
17 of the concerns that he had on funding and that  
18 forestry had on what their responsibility was,  
19 and -- so we're just basically -- it's still at  
20 the department level, not at the section level.  
21 But that didn't in essence change anything about  
22 the report or the recommendations.

23 Q. So you go on. We have  
24 this centre paragraph that you direct to Mr.  
25 Lupton. What did you mean when you said:

1 "I'm not sure what to say. It  
2 recs the guide rail and  
3 lighting review and asphalt  
4 testing, all the things Gary  
5 argues against. Despite that,  
6 I believe them to be prudent  
7 and require that we do this  
8 ethically and technically  
9 responsibly." (As read)

10 A. That's what I thought.

11 Q. Can you expand on that a  
12 bit for me? Why did you think that?

13 A. They were in the  
14 recommendations of the consultant. You know,  
15 disclosure to council was very important to me,  
16 and it would be -- I used the word "prudent," so  
17 I'll use it again -- prudent to make sure that  
18 council has the option and the information on all  
19 the things that came forward. They can reject  
20 them, but they should be aware of them. That was  
21 the ethically and technically responsible part.

22 Q. So it was your view that  
23 to report to the public works committee in an  
24 ethical and responsible way, these items needed to  
25 be included in the staff report?

1                   A.     Anything that was in the  
2     CIMA report recommendations, and there was  
3     nothing -- there was nothing that I objected to in  
4     their recommendations, so they should have been at  
5     least put in front of council.

6                   Q.     If there was something  
7     that you had objected to in the recommendations,  
8     and this is a hypothetical, would you also have  
9     thought that that needed to be put into the staff  
10    report to report in an ethical and responsible  
11    way?

12                  A.     Would depend on what it  
13    was.  It's too hypothetical.  I'm sorry, I can't  
14    answer that.

15                  Q.     Registrar, could you  
16    please take us to OD7, image 57, paragraph 172.

17                         So Mr. Ferguson circulates a  
18    revised version of the staff report on  
19    November 2nd, 2015.

20                         Registrar, you can close that  
21    out.  I just wanted Mr. White to have that  
22    context, and call out 176 to 177 which are on  
23    image 58.

24                         So on November 4th, 2015, you  
25    e-mail Mr. Ferguson in response to his circulation

1 of the draft staff report, and you say:

2 "Did, Gerry, John and Gary  
3 approve the last draft of the  
4 report?"

5 On November 4th, 2015, at 7:19  
6 p.m., Mr. Ferguson responds to you. He says:

7 "Yes and no. Let's say I have  
8 some work to do tonight and  
9 tomorrow. I will send to you  
10 once I update it again."

11 Do you know what work it was  
12 that Mr. Ferguson had to do to get approval for  
13 the staff report at this point?

14 A. No, I was kind of a  
15 middle man in this now, and Dave's proximity to  
16 John and to Lupton was driving the information  
17 that he was receiving. He was able to speak to  
18 them directly, and I was kind of left out at this  
19 point for a little while.

20 Q. In your view, at this  
21 time Mr. Mater and Mr. Lupton were giving their  
22 comments on the report directly to Mr. Ferguson?

23 A. I think so.

24 Q. Mr. Moore as well?

25 A. I don't know that. No, I

1 wouldn't think so. I think John and Geoff would  
2 have discussed it with him, but I don't think he  
3 was giving direct -- he couldn't give direct  
4 instruction to Mr. Ferguson.

5 Q. He couldn't give direct  
6 instruction to Mr. Ferguson, or Mr. Ferguson  
7 wouldn't be obligated to follow a direct  
8 instruction --

9 A. I mean, he could give the  
10 direction, but we don't follow him. He was not  
11 our director. We would follow the direction of  
12 our immediate supervisors, who were Geoff and  
13 John.

14 Q. Registrar, you can close  
15 this callout, thank you. Could you please take us  
16 to OD7, image 60, paragraph 183.

17 On November 12th, 2015,  
18 Mr. Ferguson e-mails Mr. Malone and he attached a  
19 revised version of the staff report summarizing  
20 the 2015 CIMA report and the 2015 LINC report to  
21 his e-mail, and he says:

22 "Further to my call, attached  
23 is the report we have compiled  
24 for the public works  
25 committee. With respect to

1 the reports, we are asking  
2 that the wording that states  
3 'recommendations' be changed  
4 to 'options for  
5 consideration.'" (As read)  
6 Do you know why that request  
7 was made to change the wording from  
8 "recommendations" to "options for consideration"?

9 A. No, I don't know why that  
10 was made.

11 Q. Did you --

12 A. I did not give that  
13 direction.

14 Q. You go on -- Mr. Ferguson  
15 goes on to say:

16 "Also, could you add a blurb  
17 that talks about how the  
18 short-term options may address  
19 the overall collision pattern  
20 that are occurring, and  
21 therefore potentially reducing  
22 the overall cost-benefit ratio  
23 for the need of barriers and  
24 lighting. You will also see  
25 in the attachment I have

1 identified short-term options  
2 and long-term options. Could  
3 the report have a similar  
4 layout." (As read)

5 Did you direct Mr. Ferguson to  
6 reach out to CIMA to ask if the 2015 CIMA report  
7 could have a similar layout to the staff report?

8 A. No.

9 Q. Do you know why he made  
10 that request?

11 A. No.

12 Q. Registrar, could you call  
13 out for us CIM9875.2.

14 Just for your reference, Mr.  
15 White, this is a copy of the appendix B to the  
16 report that Mr. Ferguson sends to Mr. Malone.  
17 You'll see that on this draft staff report,  
18 conduct pavement friction testing has been listed  
19 as a medium-term option?

20 A. Yes.

21 Q. Registrar, could you pull  
22 up CIM9859.2 at image 59.

23 Just for your reference, we  
24 possibly should have used a native version of  
25 this, but this is CIMA's response to the e-mail

1 that Mr. Ferguson sends, so they edit the report.  
2 And you'll see that they have done a track change  
3 here where they have changed the conduct pavement  
4 friction recommendation from a short-term to a  
5 medium-term option.

6 And in the native version,  
7 which, Registrar, actually I think we should call  
8 that out for Mr. White. If you could pull that  
9 document up in native just so we can see the  
10 comment. Thank you.

11 So you'll see that Mr. Hawash  
12 of CIMA makes this change, but then flags -- in a  
13 comment box he says:

14 "I don't agree with the City.  
15 Let us assess."

16 CIMA doesn't actually make  
17 this change, but do you recall having any  
18 discussions with Mr. Ferguson about putting a  
19 request to CIMA to change the content of the CIMA  
20 report around the length of the timeline for the  
21 conduct friction pavement recommendation?

22 A. I have no recollection of  
23 that.

24 Q. Registrar, you can close  
25 this down. Thank you very much. If you could



1 chart to reflect that we actually were able to  
2 conduct the items that are not shown on this  
3 appendix, the short-term ones, and complete them  
4 relatively expeditiously. And we did not change  
5 the overall timeframe for the friction testing  
6 from the original report.

7 Q. So in the 2013 report  
8 there is a reference to those timelines that you  
9 set out.

10 A. Right.

11 Q. There is not a reference  
12 to what the actual timeline is for the short-term,  
13 medium-term and long-term options in the 2015 CIMA  
14 report.

15 A. Yes.

16 Q. Was it your understanding  
17 that the same time periods that applied in the  
18 2013 CIMA report would apply to the  
19 recommendations in the 2015 report?

20 A. Yes.

21 Q. On what basis -- why did  
22 you have that understanding?

23 A. I just simply followed  
24 along with what they had been doing. So I just  
25 assumed -- I made an assumption at the time of the

1 report that their short-term was still the way  
2 they were reporting short-term from the first  
3 report.

4 Q. Did CIMA ever tell you  
5 that that was the case?

6 A. I don't recollect that.

7 MS. BRUCKNER: I am about to  
8 move on to another topic and I note that it is  
9 exactly 11:30, so now might be a nice time for our  
10 morning break.

11 JUSTICE WILTON-SIEGEL: That's  
12 fine. Is there a need for counsel to meet in the  
13 breakout room?

14 MS. BRUCKNER: I don't think  
15 there is at this time.

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

19 --- Recess taken at 11:30 a.m.

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

21 MS. BRUCKNER: May I proceed?

22 JUSTICE WILTON-SIEGEL: Yes,  
23 please proceed.

24 BY MS. BRUCKNER:

25 Q. Mr. White, just before

1 the break we were discussing the final version of  
2 the recommendation report on the 2015 CIMA report  
3 and the timing of the medium-term recommendations.

4 Registrar, could you pull up  
5 HAM24700, and put it split screen at image 1 and  
6 put it split screen with HAM24702. Thank you very  
7 much.

8 So, Mr. White, just for your  
9 reference, this is appendix B that we were just  
10 speaking about, and this the first page of that  
11 recommendation report.

12 Registrar, could you call out  
13 item B under "Recommendation." So, Mr. White,  
14 you'll see that the recommendation says that:

15 "The design with request to  
16 the medium and long-term items  
17 in report PW15091 as appendix  
18 B be deferred pending the  
19 outcome of the transportation  
20 master plan, TMP, update."

21 (As read)

22 At this point in time, when  
23 did you expect the outcome of the transportation  
24 master plan update to be available?

25 A. I can't answer that

1 question. I had nothing to do with it. The folks  
2 doing that work for Mr. Mater.

3 Q. Was it your understanding  
4 that these medium-term options, which are listed  
5 in the appendix as two to five years, were being  
6 deferred until that -- the outcome of that master  
7 plan was determined?

8 A. That's what the  
9 recommendation states.

10 Q. Did you know if that --  
11 the transportation master plan outcome or update  
12 would occur within two to five years of this staff  
13 report?

14 A. I think my recollection  
15 at the time was that the transportation master  
16 plan update was almost complete at that time, but  
17 I don't clearly recollect the target date.

18 Q. And you don't know when  
19 it was completed?

20 A. No. I know it was  
21 completed, but I don't know when that was.

22 Q. Registrar, you can take  
23 this down. Could you please take us to OD7, image  
24 71, paragraphs 222 to 228. Yes. I think you'll  
25 have to call up the next image as well.

1                   Mr. White, in December 2015  
2    there's some back and forth between yourself, Mr.  
3    Lupton and Mr. Ferguson about whether or not the  
4    2015 CIMA report will be appended to the staff  
5    report that we were just looking at. When your  
6    staff were working to prepare that 2015 CIMA  
7    report, was it your expectation that it would be  
8    shared with councillors?

9                   A.    Well, like the last  
10   report, we had never shared a report with  
11   councillors. This wasn't a discussion to put it  
12   into the report; it was a discussion about whether  
13   or not we should -- what was the appropriate thing  
14   to do to put it to councillors, and I think we  
15   ultimately provided it to Ms. Leduc.

16                  Q.    So it wasn't your  
17   expectation generally that a consultant report  
18   would be appended?

19                  A.    Yes, I think we at least  
20   between myself and yourself have established that  
21   I was never aware of that happening.

22                  Q.    Registrar, could you call  
23   out OD -- paragraph 228, which is just the next  
24   image over on image 73.

25                        And you'll see -- so this is

1 an e-mail that you send in response to Ms. Leduc's  
2 e-mail advising that she is going to make the 2015  
3 report available to Mr. Ferguson. You say:

4 "Ferg, she is right. John is  
5 cautious, but I would rather  
6 they had access now, between  
7 me and you, as it is done  
8 now." (As read)

9 Why did you want them to have  
10 access to the 2015 CIMA report if it wasn't  
11 generally -- if consultant reports were not  
12 generally appended to staff reports?

13 A. Because we said we would  
14 make it available to them. We had sent it  
15 already. I believe we had already sent it to Ms.  
16 Leduc at Clerks (ph). We were ready to have it  
17 circulated. And when I say it's done now, we had  
18 already told them.

19 Q. Why did you say in the  
20 report that you would make it available? Why did  
21 you want them to have it?

22 A. I don't really remember.

23 Q. Thank you, Registrar, you  
24 can close this down. Could you please call out  
25 OD7, image 74, paragraph 233. I think just for

1 context we should also call up image 73 as well.

2 So the staff report on the  
3 2015 CIMA LINC report and Red Hill Valley Parkway  
4 report is presented to the public works committee  
5 on December 7th, 2015. It's my understanding that  
6 you were not present at this public works  
7 committee meeting?

8 A. That is correct, I was  
9 not present.

10 Q. Registrar, could you  
11 please pull up paragraph 223. And, sorry, 233 and  
12 234, please, thank you.

13 So this is a summary of events  
14 at the meeting. Councillor Merulla asked Mr.  
15 Moore, who was present at the meeting, to  
16 elaborate on the quality of the asphalt used,  
17 asking whether the City used low-grade asphalt in  
18 comparison to that used by the MTO in constructing  
19 the Red Hill Valley Parkway. Mr. Moore replied  
20 that the City had used SMA in the construction of  
21 the Red Hill Valley Parkway, which was the MTO's  
22 top mix for high speed freeway type roadways. Did  
23 Mr. Ferguson or Mr. Cooper report Councillor  
24 Merulla's questions or Mr. Moore's statements to  
25 you about the mix pavement asphalt on the Red Hill

1 Valley Parkway?

2 A. I have no recollection of  
3 that.

4 Q. Mr. Moore also informed  
5 the public works committee that the MTO had  
6 performed the initial friction testing and  
7 received results at or above what the MTO  
8 typically expected from high grade friction mixes.  
9 He also informed the public works committee that  
10 they had performed subsequent testing five years  
11 after, in approximately 2012 to 2013, finding that  
12 the road mix -- finding that the road was holding  
13 up exceptionally well. He stated, "we have no  
14 concerns about the surface mix."

15 Did Mr. Ferguson or Mr. Cooper  
16 convey the information that Mr. Moore gave about  
17 friction testing on the Red Hill Valley Parkway  
18 back to you after this meeting?

19 A. I was made aware of it  
20 afterwards. I don't know who gave it to me and  
21 when, but I was certainly aware of these comments  
22 after the fact.

23 Q. What do you recall about  
24 how and when you became aware of these comments?

25 A. I don't recall how and

1 when I became aware of the comments, I'm sorry.

2 Q. Do you recall --

3 A. I just know that I was  
4 made aware of the comments, particularly the  
5 friction testing part. I don't know anything  
6 about asphalt, so it probably didn't register with  
7 me.

8 Q. Did anyone reach out to  
9 you with follow-up questions about the comments  
10 that Mr. Moore had made at this meeting?

11 A. No.

12 Q. When you became aware of  
13 Mr. Moore's comments about friction testing, did  
14 you ask Mr. Moore about the 2012, 2013 friction  
15 testing that he mentioned to the public works  
16 committee?

17 A. Well, I think at this  
18 point in time Geoff Lupton and John were aware of  
19 these comments, and quite frankly, at this point  
20 in time most of these discussions were being held  
21 at the director level, so I was letting that take  
22 its course.

23 Q. So I understand you to  
24 say that you didn't follow up because you  
25 understood that Mr. Lupton and Mr. Mater would be

1 dealing with this; is that fair?

2 A. Well, yes, that's true.

3 Q. So then you didn't direct  
4 your staff to reach out to Mr. Moore to ask him  
5 about the friction testing results or request  
6 them?

7 A. I have no memory of doing  
8 so.

9 Q. Registrar, could you  
10 please call out HAM43374, and pull up both image 1  
11 and 2, please.

12 THE REGISTRAR: Sorry,  
13 Counsel, HAM437?

14 BY MS. BRUCKNER:

15 Q. 43374. Thank you.

16 On December 9th, 2015, a  
17 community group called the Lakewood Beach  
18 Community Council sends an e-mail to the office of  
19 the mayor and a number of other councillors.

20 Registrar, could you pull out  
21 the e-mail from the Lakewood Community from "based  
22 on the Red Hill Valley Parkway safety review." So  
23 the second paragraph with the points as well, and  
24 then continuing on to the next page.

25 So the Lakewood Beach

1 Community Council says:

2 "Based on the Red Hill Valley  
3 Parkway safety review, the  
4 consultants are recommending a  
5 pavement friction test be  
6 conducted at a cost of  
7 \$40,000. This was not on the  
8 short-term list of  
9 recommendations from staff;  
10 however, we feel the cost  
11 benefit of conducting this  
12 test would be money well spent  
13 and is warranted because of  
14 the Red Hill Valley Parkway  
15 safety review study results."

16 And they go on to list  
17 collision statistics from the CIMA report.

18 Then they go on on the next  
19 page to say:

20 "In addition, when speaking to  
21 the public, most state that  
22 the road feels slippery on the  
23 Red Hill. We have not heard  
24 this about the LINC. This is  
25 backed by the fact that the

1 majority of comments during  
2 the on-line media articles  
3 following collisions state  
4 that the public feels the  
5 pavement might be a  
6 contributing factor to those  
7 collisions, in addition to  
8 speed obviously."

9 Registrar, you can close these  
10 callouts just so we can see the full e-mail chain.

11 Mr. White, do you recall this  
12 e-mail from the Lakewood Beach Community Council?

13 A. I don't think it was sent  
14 to me, but I ultimately read it, yes.

15 Q. Were you familiar with  
16 the Lakewood Beach Community Council?

17 A. Yes, they were a group  
18 out of the north end of Stoney Creek who were  
19 active in their local community.

20 Q. Registrar, could you  
21 please pull up HAM -- sorry, it's the same, at the  
22 top, image. If you could call out Councillor  
23 Jackson's response.

24 Councillor Jackson thanks the  
25 Lakewood Beach Community Council for their

1 comments, and he says that he will refer their  
2 correspondence to the next public works committee  
3 meeting.

4 Registrar, if you could please  
5 close this out and take us into OD7, image 80, at  
6 paragraph 251. Maybe leave the resolution in  
7 above as well and include 252, so the whole top of  
8 that. Yes. Thank you.

9 So there's a resolution that  
10 directs this correspondence to the public works  
11 committee. On December 13th Ms. Wonderledge (ph)  
12 forwards it, and Mr. Mater in turn forwards it to  
13 Mr. Lupton and you, copying Mr. Ferguson, and he  
14 writes:

15 "Please coordinate with Gary  
16 so that we can send a response  
17 to this group."

18 Mr. Ferguson cuts Mr. Mater  
19 and Mr. Lupton from the e-mail and responds only  
20 to you. He says, "Do we answer them? I'm  
21 confused."

22 Why would Mr. Ferguson be  
23 confused? Why was Mr. Ferguson confused about  
24 whether your group should respond to the Lakewood  
25 Beach Community Council?

1                   A.    I can only presume  
2    because friction testing was not within our  
3    portfolio.

4                   Q.    And is that your  
5    understanding as to why Mr. Mater directed you to  
6    coordinate with Gary for a response?

7                   A.    Yes, so Mr. Mater appears  
8    to be requesting us to find out the information  
9    and make the correspondence rather than sending  
10   the concern to Mr. Moore to do it himself.

11                  Q.    Registrar, could you take  
12   us to paragraphs 343 and 346, which are on page 1,  
13   image 109. I think call up the image before as  
14   well. Thank you.

15                  So on January 28, 2016  
16   Councillor Jackson e-mails Mr. Ferguson about the  
17   agenda for the public works committee meeting on  
18   February 1st, 2016, which I believe is the next  
19   meeting after the December meeting. And he  
20   says -- Registrar, could you please call out the  
21   e-mail that is sent to Mr. Ferguson.

22                  And he says:

23                  "Dear Superintendent Ferguson,  
24                  have you had a chance to look  
25                  over and review item number

1                   52? I had suggested to this  
2                   group that when I referred  
3                   this correspondence from a  
4                   past city council meeting to  
5                   this public works committee  
6                   meeting, that even though a  
7                   number of their suggestions  
8                   were already being considered  
9                   by your department and on your  
10                  council approved to-do list, I  
11                  would still consult with you  
12                  to determine if their  
13                  correspondence had any new  
14                  suggestions that were worthy  
15                  of your review and possible  
16                  report to committee in the  
17                  future." (As read)

18                  If you could close that down,  
19 Registrar, please.

20                  So item 52 on the agenda was  
21 correspondence from the Lakewood Beach Community  
22 Council respecting the Red Hill Valley Parkway  
23 safety review. So that's their e-mail requesting  
24 that friction testing be conducted as a short-term  
25 measure.

1 Registrar, could you please  
2 pull out Mr. Ferguson's reply, so paragraphs 345  
3 to 347. Mr. Ferguson responds the same day. He  
4 copies you into the e-mail chain. And he writes:

5 "I believe as part of the  
6 overall works this is already  
7 being covered, road friction  
8 testing. I have copied  
9 Director Moore for  
10 clarification."

11 Councillor Jackson replies  
12 that he will move to receive the correspondence  
13 only as a result of that information if Director  
14 Moore concurs. And Mr. Ferguson agrees with that  
15 direction.

16 What basis did Mr. Ferguson  
17 have to provide Councillor Jackson with  
18 information about how the -- I'm sorry, let me  
19 rephrase this.

20 At the time that he sent this  
21 e-mail, what knowledge did Mr. Ferguson have about  
22 engineering services' intentions to conduct  
23 friction testing on the Red Hill Valley Parkway?

24 A. I don't really -- I don't  
25 really know.

1 Q. Registrar, could you  
2 please pull up HAM43575. If you could call out  
3 the bottom e-mail from Mr. Ferguson.

4 So on February 16, 2016  
5 Mr. Ferguson e-mails the Lakewood Beach Community  
6 Council and he says -- so the second paragraph in  
7 this e-mail, he says:

8 "Your e-mail was requesting  
9 that the identified friction  
10 test for the Red Hill Valley  
11 Parkway be considered for  
12 short-term testing. Through  
13 support from the public works  
14 committee, I am pleased to  
15 inform you that this testing  
16 will be completed by  
17 engineering services in 2016."

18 Do you recall seeing this  
19 e-mail? For your reference, you're copied at the  
20 top of it.

21 A. Yeah, I don't remember  
22 this particular e-mail. I remember the entire  
23 issue, but I don't remember the detail of the  
24 e-mail.

25 Q. Mr. Ferguson copies the

1 office of the mayor and a number of -- I believe  
2 the public works committee councillors on this  
3 e-mail.

4 A. Yeah, it seems so.

5 Q. As well as Mr. Moore?

6 A. Looks like he got all the  
7 members of council and Mr. Moore.

8 Q. Registrar, could you  
9 close down this callout.

10 What basis did Mr. Ferguson  
11 have to advise the Lakewood Beach Community  
12 Council that engineering services would be  
13 conducting friction testing on the Red Hill Valley  
14 Parkway in 2016?

15 A. I don't know. John had  
16 requested that he coordinate with Gary. This is  
17 an e-mail he sends not long after. I wasn't  
18 involved in the discussions.

19 Q. So you'll see you're not  
20 copied on this e-mail, but Mr. Moore responds to  
21 Mr. Ferguson and he says "perfect." Would that be  
22 consistent with your assumption that this  
23 direction or information is coming from Mr. Moore  
24 to Mr. Ferguson?

25 A. I don't know. Mr. Moore

1 is commenting on the e-mail as being appropriate  
2 for him I suppose. I can only imagine that the  
3 friction testing is coming from Mr. Moore because  
4 it was his responsibility to conduct it.

5 Q. So the e-mail that says  
6 engineering services will be completing friction  
7 testing in 2016, Mr. Moore is saying it's perfect.

8 A. Sorry, Mr. Moore is what?

9 Q. Responding -- you said  
10 he's responding that the mail is perfect.

11 A. Yes, I believe that to be  
12 true.

13 Q. Was it your understanding  
14 at this point in time that engineering services  
15 would conduct pavement friction testing on the Red  
16 Hill Valley Parkway in 2016?

17 A. Yes.

18 Q. Why?

19 A. Because it says so in  
20 Dave's e-mail. I don't think Dave would have  
21 written that if it was not happening or if he had  
22 not been told it was happening.

23 Q. Had you had any  
24 discussions with Mr. Ferguson about the friction  
25 testing on the Red Hill Valley Parkway outside of

1 this e-mail chain?

2 A. Generically or about this  
3 particular item?

4 Q. About this particular  
5 item, so friction testing on the Red Hill Valley  
6 Parkway.

7 A. Well, David was asked by  
8 John Mater to coordinate with Mr. Moore and he did  
9 so.

10 Q. Registrar, if you could  
11 take this down and take us to OD7, image 112,  
12 paragraphs 353 and 354.

13 Shortly after that e-mail  
14 exchange February 23rd, 2016, the Lakewood Beach  
15 Community Council puts in a delegation request to  
16 the public works committee. Ms. Cameron, who is  
17 Mr. Moore's administrative assistant, forwards  
18 this e-mail to a number of people, including Mr.  
19 Mater and Mr. Moore. Mr. Mater in turn forwards  
20 this e-mail chain to you, Mr. Lupton and  
21 Mr. Ferguson. And Mr. Lupton responds:

22 "Guys, let's make sure we  
23 attend. I think we have some  
24 history on this one."

25 Do you recall this e-mail

1 exchange?

2 A. Not particularly.

3 Q. What history did you  
4 understand Mr. Lupton to be referring to?

5 A. Well, we had some history  
6 with that group and Ms. Saunders for a number of  
7 traffic safety related items, along with the  
8 motion or the council receiving them as their  
9 request that Mr. Jackson put forward, Councillor  
10 Jackson.

11 Q. Registrar, could you  
12 close this callout and call out paragraph 355.  
13 Actually, can you close this and do 355 and 356  
14 simultaneously, please. Thank you.

15 So you'll see that later that  
16 day, you respond to Mr. Lupton, Mr. Mater and  
17 Mr. Ferguson, and you say:

18 "Without looking at it, it's  
19 the Red Hill Valley Parkway  
20 safety staff. Dave provided  
21 this group and council an  
22 e-mail update last week at  
23 Councillor Jackson's request.  
24 The issue is mostly the  
25 asphalt friction test, which

1 Gary says is done. We have  
2 asked for a copy of the  
3 results, but we haven't seen  
4 it yet. We will be in  
5 attendance."

6 When did Mr. Moore tell you  
7 that the friction testing had been done?

8 A. You know, I'm sorry, I  
9 just can't pinpoint that. We obviously knew it  
10 had been done at this point. This is three years  
11 after it was initialized. I don't know what date  
12 I knew.

13 Q. So you said this is three  
14 years after it was initialized. So when you wrote  
15 this e-mail, were you referencing the friction  
16 testing from 2013 or the friction testing that  
17 Mr. Ferguson had advised the Lakewood Beach  
18 Community Council that engineering services would  
19 conduct in 2016?

20 A. I only knew of the 2013.  
21 At this point we knew that it was being conducted.  
22 I had no other further information other than when  
23 Gary said it was -- he commented on it.

24 Q. At this point in time,  
25 the only friction testing results that you knew

1 had been done were those from 2013?

2 A. Correct.

3 Q. You say:

4 "We have asked for a copy of  
5 the results, but haven't seen  
6 it yet."

7 Does that help to refresh your  
8 memories about when you asked Mr. Moore for a copy  
9 of the friction testing results?

10 A. No, it does not, but it  
11 certainly confirms in my mind that we asked for  
12 it. I just --

13 Q. Do you recall -- sorry,  
14 go ahead.

15 A. I just doing remember  
16 doing so.

17 Q. Do you recall how Mr.  
18 Moore responded to request for the friction  
19 testing data?

20 A. Frankly, I don't think I  
21 ever got a response. I don't know. I don't  
22 really remember.

23 Q. When you say you don't  
24 think you ever got a response, do you mean there  
25 was just silence when you asked him?

1                   A.    I'm sorry, I just don't  
2    remember the actual occurrence of asking him, but  
3    I certainly know I never got anything, and, you  
4    know, in the middle there is I got no answer.

5                   Q.    So on February 25th,  
6    2016, Mr. Moore responds to Ms. Cameron's e-mail  
7    about the delegation request, so this is not the  
8    chain that you and Mr. Lupton and Mr. Mater and  
9    Mr. Ferguson have been on, and he says -- but you  
10   are copied on this, and he says:

11                   "Some roughness skid  
12                   resistance friction testing  
13                   has been done; however, I'm  
14                   still trying to get the  
15                   analysis for it and to put it  
16                   into context. Like, how does  
17                   this compare to other highways  
18                   of similar types? MTO is very  
19                   guarded of this information  
20                   and does not share numbers due  
21                   to liability and concerns they  
22                   will form part of a legal  
23                   action. We should be  
24                   similarly wary." (As read)  
25                   I can pull out this e-mail

1 chain for you if you would like to look at the  
2 entire exchange, but what was your understanding  
3 about which friction testing Mr. Moore was  
4 referencing when he said that it had been  
5 conducted and needed to be analyzed?

6 A. I only know of the 2013  
7 request for friction testing. That's all I knew  
8 about. That's all I still know about.

9 Q. So you didn't understand  
10 this e-mail to suggest that engineering services  
11 had completed the friction testing that  
12 Mr. Ferguson advised they would conduct on the Red  
13 Hill Valley Parkway in 2016?

14 A. I think it was that. It  
15 was still in February of 2016, so it could only  
16 have been, in my mind, one source.

17 Q. Did you take any steps  
18 after receiving this e-mail to ask for the  
19 analysis and context for the friction testing that  
20 Mr. Moore referenced?

21 A. I do not recollect. I  
22 don't remember that.

23 Q. Would it have been your  
24 practice to follow up on an e-mail like this?

25 A. You know, we're sitting

1 here later on, Gary has been asked for it a number  
2 of times, I wasn't -- at this point I still feel  
3 that it was at the director level to get this  
4 information and -- or at the GM level, and I was  
5 unable to obtain this information. So repeatedly  
6 asking a question without an answer is pointless.

7 Q. So your evidence is that  
8 you had repeatedly asked for it at this point, and  
9 in your view it was now the responsibility of Mr.  
10 Lupton and Mr. Mater to follow up with Mr. Moore?

11 A. My evidence is that I had  
12 asked for it. "Repeatedly" is maybe misleading.  
13 I had asked for it more than once, and that  
14 includes my staff. I certainly am pretty certain  
15 I made Mr. Lupton aware that we didn't have it.  
16 He knew and Mr. Mater knew that we did not have  
17 it, and I was unable to obtain it.

18 Q. To your knowledge, did  
19 Mr. Lupton or Mr. Mater take steps to obtain the  
20 friction testing results?

21 A. Well, I don't have a clue  
22 what they did, and I have never attended nor saw  
23 minutes of meetings from BMT or with Gary.

24 Q. Registrar, if you could  
25 close this out and take us to OD7, image 124,

1 paragraphs 395 to 398, and you'll probably have to  
2 go over to the next image.

3 So in May of 2016, you  
4 exchange e-mails with Mr. Moore about the timeline  
5 for the implementation of countermeasures on the  
6 2015 CIMA report.

7 And, Registrar, if you can  
8 pull out paragraph 397 for Mr. White.

9 So you'll see that you reach  
10 out to him about an update, and Mr. Moore  
11 responds:

12 "The only comment I have is  
13 that we are possibly looking  
14 at pavement rehab work on the  
15 Red Hill in 2017. I would not  
16 plan on any pavement work this  
17 year, as it will likely be  
18 overlaid next year."

19 Was this the first you had  
20 heard of plans to rehabilitate the Red Hill Valley  
21 Parkway in 2017?

22 A. Yes.

23 Q. Registrar, you can close  
24 that, thank you. If you could please take us to  
25 OD7, image 150, paragraphs 454 and 456.

1 I'm jumping ahead a bit in  
2 time, just for your reference, Mr. White. We are  
3 now in January of 2017, and you'll see  
4 Mr. Ferguson e-mails Mr. Moore and Mr. Sidawi, who  
5 I believe is the manager of asset management; is  
6 that right?

7 A. Mr. Sidawi was manager --  
8 I'm sorry, I don't remember the name of his actual  
9 title, but he managed that group, yes.

10 Q. Under the subject line  
11 "Repaving Red Hill Valley Parkway," he copies you  
12 and he says:

13 "Just following up on plans  
14 for the Red Hill Valley  
15 Parkway. You had mentioned  
16 last year that you were  
17 planning on repaving the Red  
18 Hill and that we should be  
19 holding off on installing the  
20 reflective markers until that  
21 time."

22 And he asked for a timeline  
23 for the repaving.

24 A. Yes.

25 Q. Was this a follow-up to

1 the e-mail exchange that we just looked at from  
2 May 2016?

3 A. Sorry, I can't connect  
4 it. I'm not sure.

5 Q. Why did Mr. Ferguson  
6 reach out to Mr. Moore about the resurfacing plans  
7 for the Red Hill in January 2017?

8 A. I think this is at the  
9 time when we were trying to install the pavement  
10 markers in the roadway, but I'm not confident of  
11 that because I've lost the timeline again.

12 Q. So I think the May 16th  
13 e-mail that we had just looked at, Mr. Moore had  
14 suggested that you might want to hold off on the  
15 installation of the traffic reflectors, the  
16 planned repaving, and then we have Mr. Ferguson  
17 asking about the timeline again. Does that help  
18 to refresh your memory about why he's following up  
19 on it?

20 A. Yes.

21 Q. Why is he following up on  
22 it?

23 A. Because we wanted to  
24 install the reflectors, and if they were going to  
25 resurface the roadway, they would all be

1 immediately removed. So it wouldn't be  
2 cost-effective to put them in and have them  
3 removed when they removed the top sheet of  
4 asphalt.

5 Q. And you'd held off on  
6 installing them in May 2016 because Mr. Moore had  
7 advised of potential rehabilitation?

8 A. Correct.

9 Q. Registrar, could you take  
10 us to OD7, image 151, at paragraphs 458 and 459.  
11 And if you could call up image 2 so that Mr. White  
12 can see the full e-mail exchange. Thank you.

13 So there's a meeting on  
14 February 6, 2017, about repaving work on the Red  
15 Hill Valley Parkway. Do you recall attending this  
16 meeting?

17 A. Just give me a moment to  
18 see --

19 Q. Oh, yeah, absolutely.  
20 Take your time.

21 A. I also think I might have  
22 been working for Ms. Matthews-Malone at this  
23 point. Okay. So Betty is asking for scope  
24 basically.

25 Q. Do you recall what was

1 discussed at this meeting?

2 A. I don't recall being at  
3 the meeting.

4 Q. As of February 2017 was  
5 it your understanding that there was any  
6 connection with the friction testing that Mr.  
7 Moore and engineering services had done on the Red  
8 Hill Valley Parkway and the planned repaving?

9 A. I had no reason to  
10 believe there was a connection.

11 Q. Registrar, could you  
12 please take us to OD7, image 165, paragraph 490.

13 So on February 22nd, 2017, Mr.  
14 White e-mails -- or sorry, you e-mail Mr. Mater,  
15 Mr. Ferguson and Mr. Lupton under the subject line  
16 "Red Hill Valley Parkway," and you notify them  
17 about a fatal crossover collision. You say:

18 "Just a heads up that there  
19 was another crossover fatality  
20 on the Red Hill Valley Parkway  
21 last night. We need to review  
22 the CIMA report on barriers,  
23 as these fatals can likely be  
24 mitigated with a barrier  
25 system. Vision Zero is about

1 reducing fatalities and  
2 serious injuries." (As read)

3 At this point in time was it  
4 your view that a barrier system on the Red Hill  
5 Valley Parkway could mitigate fatal crossover  
6 collisions?

7 A. Specifically it could  
8 mitigate serious injury and fatalities because --  
9 you could still have the crossover, but if there  
10 was a barrier, the vehicle would not necessarily  
11 travel into the opposing direction lanes.

12 Q. I understand there was a  
13 bit of a difference of opinion on this within the  
14 public works department. Is that a fair  
15 assessment?

16 A. Well, maybe you could  
17 define that difference of opinion. I'm not sure  
18 I -- Dave and I were of the same opinion.

19 Q. Registrar, could you  
20 please take us to HAM858, and if you could pull up  
21 the second page as well, please.

22 So on February 24th, 2017  
23 Mr. Andoga, who is in asset management, reaches  
24 out to you and Mr. Ferguson and advises of the  
25 planned repaving schedule for the Red Hill Valley

1 Parkway.

2 You'll see -- Registrar, if  
3 you can highlight "in addition to identifying" at  
4 the last e-mail there. He says:

5 "In addition to identifying  
6 the traffic needs, is there a  
7 preference to the schedule of  
8 work to be performed?"

9 You can close that down.

10 So my understanding of this  
11 e-mail is that Mr. Andoga is effectively asking  
12 for information about what your department would  
13 propose be included in the scope for the Red Hill  
14 Valley Parkway --

15 A. That was a standard  
16 practice for all construction projects. Traffic  
17 was a partner in putting scope into projects along  
18 with other departments, and so we were following  
19 the process. We put in scope the things we felt  
20 should be reviewed, looked at, or funded or  
21 investigated into the scope of the project.

22 Q. And who made the ultimate  
23 decision about what was and wasn't included in the  
24 scope of a project?

25 A. Not us. Somebody on

1 the -- that side of the engineering services  
2 world.

3 Q. So someone in the  
4 engineering services department made that  
5 decision?

6 A. Asset management or  
7 whatever, yes, somebody over there made those  
8 decisions.

9 Q. Registrar, could you call  
10 out Mr. Ferguson's response to Mr. Andoga, so the  
11 middle e-mail in this chain.

12 So you'll that on February 28,  
13 Mr. Ferguson says that "your group has completed a  
14 review of the safety reports for both of the  
15 roadways," and then provides a number of comments.

16 A. Okay.

17 Q. If you can call out the  
18 points. You'll see slightly down the page at 6,  
19 at .6, Mr. Ferguson says:

20 "We have also conducted a  
21 five-year collision history  
22 review of both roadways, with  
23 a specific focus on crossover  
24 incidents. Based on this  
25 evaluation, we have identified

1 two segments of concern that  
2 barriers would be installed:  
3 The LINC, Upper Paradise to  
4 West 5th, and the Red Hill  
5 Valley Parkway, Dartnall to  
6 King Street." (As read)

7 So your group was proposing  
8 the inclusion of barriers in the scope for the  
9 resurfacing?

10 A. That's correct.

11 Q. Registrar, if you could  
12 please close this and call out Mr. Andoga's reply.  
13 So Mr. Andoga replies, and on item 6, he says:

14 "Item 6, being the  
15 installation of barriers, will  
16 be a sensitive issue."

17 What was your understanding  
18 about why the installation of barriers on the Red  
19 Hill or LINC would be a sensitive issue at this  
20 time?

21 A. I don't really know.  
22 That's Mr. Andoga's comment.

23 Q. In your view would it be  
24 a sensitive issue?

25 A. I didn't think so.

1 Q. Thank you, Registrar, you  
2 can close this out. If you could please take us  
3 to HAM25870 at image 3. Actually, let's keep the  
4 first page of this report up as well and call out  
5 image 3 beside it so Mr. White can see the title  
6 of the report.

7 A. Yeah, this is not a  
8 council report.

9 Q. You're right, this is an  
10 information update. Thank you for that.

11 Can you explain the difference  
12 between an information update and a staff report?

13 A. Yes, it doesn't go to  
14 committee. It's just information that is  
15 distributed to councillors for their information,  
16 and they can use it for whatever purposes they  
17 need. It didn't go to a committee, didn't need to  
18 be voted or on approved; it simply was  
19 information.

20 Q. I see that you have  
21 submitted this information update. Why did you  
22 submit it?

23 A. I believe if you look at  
24 the title bar, John must've been off and asked me  
25 to -- or Betty might have been off. I'm not sure

1 who I reported to at that day. Probably Betty. I  
2 was appointed as acting director in their absence.  
3 I believe I was reporting to Betty then, frankly.

4 Q. This is an information  
5 update on the short-term improvements on the Red  
6 Hill Valley Parkway and LINC, CIMA reports from  
7 2015?

8 A. I believe so.

9 Q. You'll see appendix B,  
10 which is called out beside the front page,  
11 includes the medium and long-term safety  
12 improvements from the LINC and Red Hill Valley  
13 Parkway?

14 A. Yes.

15 Q. It's listed "conduct  
16 pavement friction testing as completed"?

17 A. Yes.

18 Q. Why is pavement friction  
19 testing listed as completed there?

20 A. Because Gary said it was  
21 completed.

22 Q. So that information was  
23 included based on representations from Mr. Moore?

24 A. Yes.

25 Q. Did you reach out to Mr.

1 Moore for the friction testing results in  
2 connection with the preparation of this report?

3 A. Again, at this point in  
4 time we'd asked a number of times. We did not get  
5 the answer, and I don't recollect asking  
6 specifically again at this point.

7 Q. Do you recall if you  
8 directed your staff to follow up with Mr. Moore  
9 about those friction testing results before you  
10 submitted this report -- or the information  
11 update, sorry?

12 A. I do not recall.

13 Q. Were you content to rely  
14 on Mr. Moore's representation in submitting this  
15 information to council?

16 A. Again, Mr. Moore was a  
17 credible engineer and gave advice, and I was  
18 following along with the things he was stating as  
19 fact.

20 Q. Thank you, Registrar, you  
21 can close this down, and if you could call up  
22 HAM888, please.

23 So just to orient you, the  
24 information update that we were just looking at  
25 goes to -- is circulated on March 24th, 2017.

1 This is a calendar invitation for a May 1st  
2 meeting that is circulated to Mr. Mater, Mr. Dan  
3 McKinnon, Mr. Moore, Ms. Matthews-Malone,  
4 yourself, Mr. Ferguson, and Jason Worrton. At this  
5 point --

6 A. I just don't -- sorry, Al  
7 Kirkpatrick's there, too, and he was the guy doing  
8 the TMP.

9 Q. Thank you. That's very  
10 helpful. And Mr. McKinnon at this point was the  
11 general manager of public works, correct?

12 A. Yes, correct.

13 Q. Do you recall this  
14 meeting on May 1st?

15 A. I recall several similar  
16 meetings. If you have any information that can  
17 guide me a little bit more --

18 Q. I am happy to assist.  
19 Registrar, could you please call out HAM889.

20 So you'll see that attached to  
21 this calendar appointment there is an agenda, so  
22 this is the agenda for the meeting that's  
23 circulated with the calendar appointment.

24 A. Right.

25 Q. You'll see it lists a

1 number of items, including item 4, which is  
2 friction testing.

3 A. Right.

4 Q. Does that help to assist  
5 you with your recollection about this meeting?

6 A. It certainly rings a  
7 bell, yes.

8 Q. Okay.

9 A. I would not have passed  
10 up a meeting like this, so I'm sure I was there.

11 Q. I note that this  
12 gathering lists mostly directors on the attendees,  
13 save for yourself, Mr. Ferguson and Mr. Worrton.

14 A. And Mr. Kirkpatrick was a  
15 manager.

16 Q. What was his role? He  
17 was a manager?

18 A. His role was manager of  
19 transportation planning. He was my counterpart in  
20 John's department, whatever they called us that  
21 day. I'm not sure what our title was at that  
22 point.

23 Q. What was the purpose of  
24 this meeting?

25 A. Well, I didn't call it,

1 so it looks like an update type of meeting to  
2 discuss all the outstanding items.

3 Q. Do you know why the  
4 agenda lists friction testing?

5 A. No, it's not my agenda,  
6 so I don't know.

7 Q. Were the friction testing  
8 results for the Red Hill Valley Parkway discussed  
9 at the meeting?

10 A. I don't have a clear  
11 recollection of that at all.

12 Q. You don't know one way or  
13 the other if it was discussed?

14 A. That is correct.

15 Q. Do you recall if Mr.  
16 Moore was asked for the friction testing results  
17 for the Red Hill Valley Parkway at this meeting?

18 A. Well, I certainly know  
19 that he was asked for them at a meeting that had  
20 directors at it. I don't know if this was it  
21 because there was also another one very similar,  
22 so I'm confused between the two. I know for a  
23 fact he was asked for it, and I didn't have any  
24 result.

25 Q. So it's my understanding

1 that at this meeting Mr. Worrton gave a PowerPoint  
2 presentation. Registrar, could you call up  
3 HAM25976.

4 A. Ah, okay, that rings a  
5 bell now. That just clarified which meeting this  
6 was.

7 Q. Can you tell me a little  
8 bit about how that helped to clarify the purpose  
9 of this meeting for you?

10 A. Because I had asked Dave  
11 to have his staff prepare an update of all the  
12 things going on with the RHVP and LINC, and I  
13 recollect the PowerPoint presentation now. I  
14 don't remember the talking points so much as I  
15 remember Mr. Worrton presenting this document.

16 Q. Do you recall why you  
17 directed Mr. Ferguson to have Mr. Worrton prepare  
18 this PowerPoint in the first place?

19 A. I think John wanted to  
20 update everybody and put us all on the same page,  
21 and I saw that as a prudent thing to do at this  
22 point in time.

23 Q. Was there concern that  
24 between the various departments you weren't on the  
25 same page about the Red Hill Valley Parkway?

1                   A.    I think the concern was  
2    that -- well, you know, here, go back in time now.  
3    I don't even remember if John was there.  If you  
4    have an attendance, that would be useful.

5                   Q.    Sorry, Mr. Mater is the  
6    one who circulates the calendar invitation.

7                   A.    Okay.  So Betty isn't my  
8    director yet, okay.

9                   Q.    I believe that Ms.  
10   Matthews-Malone becomes your director in  
11   January 2018.

12                  A.    Okay, thank you.  It went  
13   through a few changes.  Yes, so Mr. Mater wanted  
14   to make sure everybody knew what was going on and  
15   be on the same page, and hence this PowerPoint put  
16   together by Mr. Worrton.

17                  Q.    Registrar, could you take  
18   us to image 9 of this PowerPoint presentation.  
19   And call it so it's a little bit more visible.  It  
20   is not -- I think in the red box it says  
21   incomplete.

22                  But -- so this is an update  
23   from the PowerPoint presentation about the  
24   November 2013 staff report on the 2013 CIMA  
25   report, and you'll see there at the top that

1 friction testing is listed as completed. To your  
2 knowledge was that accurate?

3 A. That is what Mr. Moore  
4 had told us.

5 Q. And you had -- your staff  
6 had included that information based on Mr. Moore's  
7 representations, friction testing had been  
8 completed?

9 A. That is correct.

10 Q. As of May 1st, 2017, so  
11 that's the time of this meeting, had you seen any  
12 of the friction testing results?

13 A. No.

14 Q. Registrar, could you  
15 please take us to image 18, and call it out as  
16 well. Thank you.

17 So you'll see this is a  
18 similar slide with respect to the 2015 CIMA  
19 report, and again at the top there it lists  
20 conduct pavement friction testing as complete. To  
21 your knowledge was that accurate, had pavement  
22 friction testing been conducted pursuant to the  
23 recommendation in the 2015 CIMA report?

24 A. I think that's referring  
25 to the other -- to the 2013 friction testing as

1 being completed.

2 Q. So you think that that is  
3 marked completed with respect to the 2015 report  
4 because of the testing completed in 2013?

5 A. Yes.

6 Q. To your knowledge had  
7 friction testing been completed on the Red Hill  
8 Valley Parkway in 2015 or 2016?

9 A. I'm not aware of any  
10 other friction testing other than the friction  
11 testing Gary told us he had conducted.

12 Q. You always understood Mr.  
13 Moore's references to be with respect to the  
14 November 2013 friction testing?

15 A. Correct.

16 Q. Had you heard anything  
17 from Mr. Moore about Mr. Ferguson's statement to  
18 Lakewood Beach Community Council and to council  
19 that engineering services would conduct friction  
20 testing on the Red Hill Valley Parkway in 2016?

21 A. Well, I didn't hear that  
22 directly at all.

23 Q. You were copied on the  
24 e-mail?

25 A. Yes, but I didn't have

1 that discussion. And I would say I think there  
2 was an intent to redo it for the rest of the  
3 facility. If you recollect, 2013 dealt with a  
4 very short segment of roadway, and it would be my  
5 impression that it should be conducted at other  
6 points along the roadway if in fact we were going  
7 to use it or do it.

8 Q. It was your understanding  
9 that the friction testing conducted in 2013 was  
10 not the entire -- it was not conducted along the  
11 entire Red Hill Valley Parkway?

12 A. Well, it wasn't, because  
13 it was associated with the limitations of the 2013  
14 study area.

15 Q. I just want to give you a  
16 chance to clarify. I think that yesterday you had  
17 said that your understanding was that the friction  
18 testing in November 2013 was not connected to the  
19 2013 CIMA report, and I just want to put that to  
20 you --

21 A. Well, really, no, I don't  
22 think that. I thought that he -- well, now I'm a  
23 bit confused. Following the 2013 report he moved  
24 forward with doing friction testing, so I assume  
25 it was related to the report.

1 Q. And you assumed that it  
2 was on a limited area of the Red Hill?

3 A. Well, the scope of the  
4 2013 was just that segment between Greenhill and  
5 Mud Street. I don't know where it occurred. I've  
6 never seen the results to this date.

7 Q. Understood. Registrar,  
8 could you please take us to image 31, and call  
9 that out again as well.

10 So you'll see that at the end  
11 of the PowerPoint presentation there is a listing  
12 of a number of outstanding business items. What  
13 did your group want to do in order to address  
14 these items as of May 1st, 2017?

15 A. Sorry, what did I want to  
16 do? I have to see what they are.

17 Q. Yeah, absolutely, review  
18 it.

19 A. I'm not sure what each of  
20 them are because there's no -- expansion of the  
21 RHVP and LINC, that was tied to the TMP. That  
22 would have been basically widening. It's not my  
23 jurisdiction. That was -- transportation was  
24 doing the TMP, and if anything came of that Mr.  
25 Moore's group would be responsible for the design

1 and build. Photo radar on the LINC and RHVP was  
2 traffic's and transportation's. We had to  
3 accomplish something there.

4 Traffic count feasibility  
5 study. I'm not exactly clear on what that is at  
6 this point in time. Traffic counts were still  
7 under Gary Moore's group at that time.  
8 Engineering services. So traffic incidents on the  
9 LINC and RHVP. We continued to monitor collisions  
10 on the facilities. I'm not sure what we were to  
11 report back on. At this point looking backwards  
12 at this, it doesn't have the direction with it.

13 Q. Registrar, you can close  
14 this out, thank you. If you could take us to OD7,  
15 image 182, paragraph 528, and I think for context  
16 pull up the next page. Yes, thank you very much.

17 So on May 26, 2017, so that's  
18 after the meeting that we were just discussing,  
19 Ms. Graham, who is in communications, e-mails Mr.  
20 Moore under the subject line "reporter questions,"  
21 and she says:

22 "Martin and David Ferguson met  
23 with a reporter from the Spec  
24 yesterday to go over safety  
25 improvements along the LINC

1 and Red Hill. They did not  
2 answer some questions related  
3 to lighting and pavement, and  
4 have referred the reporter to  
5 you. Do we have anything we  
6 can provide here? Council  
7 updates about lighting and  
8 pavement?" (As read)  
9 And then, Registrar, if you  
10 could pull out that line on the next page. Thank  
11 you.

12 She goes on to say:  
13 "She has also asked for a copy  
14 of the pavement friction  
15 testing done on the Red Hill  
16 Valley Parkway. I had not  
17 heard of this before. Is it a  
18 public document?"

19 Do you recall meeting with a  
20 reporter from the Hamilton Spectator in or around  
21 May 25th, 2017?

22 A. I met with a reporter.  
23 Dave and I met with a reporter in my office, and I  
24 presume it was that meeting that is being referred  
25 to.

1 Q. Do you recall if it was  
2 Nicole O'Riley from the Hamilton Spectator?

3 A. Actually, yes, it was  
4 Nicole O'Riley.

5 Q. Did she ask you about  
6 friction testing on the Red Hill Valley Parkway at  
7 that meeting?

8 A. You know, I don't really  
9 remember that she asked me that question.

10 Q. Okay.

11 A. She might have.

12 Q. Registrar, if you could  
13 close this out, please, and take us to  
14 paragraph 529, which is on image 183.

15 Shortly after that exchange,  
16 Ms. O'Riley from the Spectator e-mails Councillor  
17 Connelly and she says:

18 "Nice chatting to you. If you  
19 can, I'm interested in info on  
20 the pavement friction testing  
21 conducted on the Red Hill  
22 Valley Parkway last year."

23 And you're copied on this.

24 I'm just taking you through it to give you some  
25 context.

1                   If you could take us now,  
2 Registrar, to paragraph 531.

3                   On June 1st, 2017, Mr.  
4 Riberick (ph), who is Councillor Connelly's  
5 assistant, e-mails Mr. Ferguson under the subject  
6 line "Red Hill Valley Parkway pavement friction  
7 testing," and he copies Councillor Connelly, and  
8 he asks:

9                   "Was there pavement friction  
10 testing done on the Red Hill  
11 Valley Parkway last year, and  
12 if so, what were the results?"

13                  Around the same time, or a few  
14 days later -- Registrar, if you can take us to  
15 537, which is on 184. Thank you.

16                  So a few days later, on  
17 June 5th, 2017, Councillor Connelly e-mails Mr.  
18 Moore and you under the subject line "payment  
19 friction testing," which I believe is a typo, he  
20 copies Mr. Riberick, and he says:

21                  "On my update sheet it says  
22 the pavement friction testing  
23 is completed. What were the  
24 results of that testing?"

25                  Do you remember receiving this

1 e-mail from Councillor Connelly?

2 A. I do.

3 Q. Did you understand this  
4 question to be in reference to the information  
5 update that you had circulated in March -- or May,  
6 I believe, advising that friction testing had been  
7 completed on the Red Hill Valley Parkway?

8 A. That's very likely.

9 Q. At this point have you  
10 seen the results of any friction testing for the  
11 Red Hill Valley Parkway?

12 A. No, I have never seen the  
13 results of any friction testing on the Red Hill  
14 Valley Parkway, and still haven't.

15 Q. Registrar, if you could  
16 close this out, please, and call out paragraph  
17 539.

18 So you forward this e-mail  
19 from Councillor Connelly to Mr. White -- sorry, to  
20 Mr. Ferguson and Mr. Mater, and you say, "let's  
21 see what answer he gets." Why did you respond to  
22 this e-mail in that way?

23 A. Because I was curious to  
24 see what answer he gets; literally to see if he  
25 got an answer.

1 Q. Because you hadn't  
2 received an answer?

3 A. Because none of us have  
4 received an answer.

5 Q. At this point was it well  
6 known within your group that Mr. Moore would not  
7 release the friction testing results from the Red  
8 Hill Valley Parkway when asked?

9 A. At this point in time we  
10 were all aware that we did not have the friction  
11 testing results, so we had nothing to go by.

12 Q. Were you all aware that  
13 requests had been made to Mr. Moore for those  
14 results?

15 A. Well, I was. Dave was.  
16 John and Geoff were. I can't speak to the rest of  
17 my group.

18 Q. Were you, Mr. Ferguson,  
19 Mr. Mater and Mr. Lupton of the view that Mr.  
20 Moore would not respond to results for friction  
21 testing results at this point in time?

22 A. I don't know what view  
23 that Mr. Mater or Mr. Lupton had. I think Dave  
24 and I had sort of resigned ourselves to the fact  
25 that we were moving along anyway.

1 Q. Without the results?

2 A. Yes.

3 Q. Registrar, you can close  
4 this, thank you very much, and if you could call  
5 up paragraph 544 which is on the next image.

6 So you respond to Councillor  
7 Connelly and Mr. Moore. You copy Mr. Riberick,  
8 Mr. Andoga, and Mr. Sidowi, who I believe we've  
9 established Mr. Andoga and Mr. Sidowi were in  
10 asset management.

11 A. Yes, correct.

12 Q. And you say:

13 "Hi Doug, traffic doesn't have  
14 the Red Hill Valley Parkway  
15 pavement friction testing  
16 results. I believe asset  
17 management has this info."

18 Why did you believe that asset  
19 management would have the Red Hill Valley Parkway  
20 friction testing results?

21 A. Because they were a  
22 division under Gary, I just assumed that that's  
23 the location it would be, perhaps erroneously.

24 Q. Was it in connection to  
25 the e-mail in September 2013 in which Mr. Moore

1 had said he would conduct the testing for asset  
2 management purposes?

3 A. Well, I probably wouldn't  
4 have remembered that connection four years later,  
5 so I probably would say no.

6 Q. Registrar, if you could  
7 close this callout and call out paragraphs 204 and  
8 205 which are at image 187. I'm sorry, I think I  
9 have that wrong. 187, paragraph 254 and 255.

10 If you could call out on to  
11 the next page, the next image. If you could --  
12 sorry, could you minimize that callout, please.  
13 If you could put the previous image up, so 187.  
14 Thank you. So if you could call out  
15 paragraph 248, please. 548, I'm sorry, Registrar.

16 On June 27, 2017, Mr. Riberick  
17 e-mails Mr. Sidowi, you, Mr. Moore and Councillor  
18 Connelly under the subject line "pavement friction  
19 testing," and he says:

20 "Doug is still looking for  
21 this information. Has anyone  
22 found it yet?"

23 Registrar, you can close this  
24 down, thank you.

25 And you respond to that. If

1 you could call out 249, please. You respond to  
2 that e-mail from Mr. Riberick. You say to Mr.  
3 Mater, "This isn't going to go away, I don't  
4 think."

5 Why did you send that mail to  
6 Mr. Mater?

7 A. Because I thought John  
8 should be aware that this was a continuing theme  
9 that was going on, that he needed to know that it  
10 was continuously going forward, and that now  
11 Councillor Connelly had asked for it and it wasn't  
12 going to just disappear. I guess in a back-handed  
13 way I was hoping that he might action something  
14 with it, but that was just my personal hope.

15 Q. When you say "this was a  
16 continuing theme," can you tell me what exactly  
17 you're referring to?

18 A. People asking for the  
19 results of the friction testing and having no  
20 results.

21 Q. Thank you. Registrar,  
22 could you call up paragraph 552.

23 So shortly after that,  
24 Mr. Sidowi responds to Mr. Riberick, you and Mr.  
25 Moore and Councillor Connelly, copying Mr. Andoga,

1 and he says:

2 "I wasn't able to track down  
3 skid resistance information.

4 We are proposing to resurface  
5 the Red Hill Valley Parkway  
6 starting next year."

7 Mr. Sidowi is manager of asset  
8 management?

9 A. Yes.

10 Q. I understand from the  
11 previous e-mails that we looked at that you  
12 expected that it would be asset management that  
13 had the friction testing results; is that fair?

14 A. Well, I thought so at the  
15 time.

16 Q. Did you find it  
17 concerning when you saw this e-mail from  
18 Mr. Sidowi advising that asset management didn't  
19 have the friction testing results?

20 A. No, I wasn't surprised.

21 Q. Why weren't you  
22 surprised?

23 A. Because nobody had the  
24 reports.

25 Q. You didn't think anyone

1 at the City had the reports?

2 A. Well, I certainly don't  
3 think -- I don't know. I don't know where the  
4 report was, the results of the friction testing,  
5 but I wasn't surprised that they didn't have it.  
6 I don't know why. It just -- I wasn't even sure  
7 who should have had it.

8 Q. Who did you think would  
9 have a copy of the results?

10 A. Well, quite frankly I  
11 would have thought that they would if they were  
12 programming, but I'm not confirmed that that is  
13 the way it works.

14 Q. Did you think --

15 A. I'm not internal in that  
16 department, so I don't know.

17 Q. Understood. Did you  
18 think that Mr. Moore had a copy of the reports at  
19 this point in time?

20 A. If it was complete and he  
21 made comments about it, then I would think  
22 logically he knew what it was.

23 Q. Registrar, you can close  
24 this callout, and if you could call out HAM52704.

25 This is an article Ms. O'Riley

1 publishes in the Spectator on July 15th, 2017,  
2 called "Highway Traffic Tragedies: Why are there  
3 so many crashes on the Red Hill?" Do you recall  
4 reviewing this media article?

5 A. Yeah, I know I read it  
6 because I was contributing to the portion of it  
7 that was traffic's, Dave and I.

8 Q. Registrar, could you call  
9 up image 2, please. At the bottom of this -- if  
10 you could call out the bottom half of this just so  
11 we can see it a little bit better.

12 So you'll see about halfway  
13 down the call out there's a line that starts:

14 "The Red Hill Valley Parkway  
15 was originally paved with  
16 stone mastic asphalt - a more  
17 expensive mix that's supposed  
18 to last longer. It is known  
19 to be slightly more slippery  
20 (though still meeting  
21 provincial standards) in first  
22 few months, but typically has  
23 better friction once the road  
24 is worn down."

25 It goes on to say:

1 "Yet that 2015 engineering  
2 report --"  
3 And that's a reference to the  
4 2015 CIMA report.  
5 "-- found crashes when the  
6 road is wet are inexplicably  
7 going up, not down, and  
8 recommended the City study  
9 friction.  
10 And the City did test friction  
11 later that year, the Spectator  
12 has learned, but the results  
13 were never made public.  
14 There is no official report,  
15 Moore said, only an informal  
16 chart sent in an email in  
17 December 2015. The friction  
18 testing was not fulsome and  
19 the results were  
20 'inconclusive,' he said.  
21 But instead of doing further  
22 testing as was recommended,  
23 the City has decided to  
24 repave." (As read)  
25 Did Mr. Moore ever tell you

1 about there being an informal chart setting out  
2 the friction testing results for the Red Hill  
3 Valley Parkway?

4 A. No.

5 Q. And he never provided you  
6 with a copy of an informal chart?

7 A. I have not seen any  
8 results of friction testing on the facility ever,  
9 of any kind.

10 Q. Understood. Registrar,  
11 could you close this callout and pull up image 3.  
12 Just pull out the very top couple of sentences  
13 there. Thank you.

14 So you'll see at the top the  
15 article goes on, and it says that Mr. Moore says:

16 "All we got was an indication  
17 that we should do further  
18 work. It was moot when we  
19 decided to go ahead with the  
20 repaving.

21 The City refused to share the  
22 chart with the Spectator.

23 No one ever releases that type  
24 of information because it's  
25 the first thing anybody would

1 use in a lawsuit, Mr. Moore  
2 said." (As read)

3 Had you been advised at this  
4 point in time by Mr. Moore or anyone else about  
5 the friction testing results for the Red Hill  
6 Valley Parkway giving an indication that the City  
7 should do further work on the Red Hill Valley  
8 Parkway?

9 A. No, I have never seen the  
10 results of friction testing on the Red Hill Valley  
11 Parkway or anywhere else, ever.

12 Q. And you've never had any  
13 discussions with Mr. Moore about indicating that  
14 the City should consider further work?

15 A. No.

16 Q. Did you have any  
17 discussions with Mr. Moore about this article or  
18 the friction testing references or comments  
19 attributed to him in it?

20 A. I don't believe I talked  
21 to him about it, no.

22 Q. Did you note those  
23 references when you reviewed the article?

24 A. I don't really remember,  
25 but I did read the article.

1 Q. To your knowledge, again,  
2 had engineering services done friction testing on  
3 the Red Hill Valley Parkway in late 2015 or 2016  
4 as suggested by the article?

5 A. I had no idea that  
6 anything further had been done.

7 Q. At this point in time had  
8 you ever been advised that the repaving of the Red  
9 Hill Valley Parkway had a connection to friction  
10 testing?

11 A. No, I had no indication  
12 that it was -- the two were connected.

13 Q. The article says that the  
14 City refused to share the chart with the  
15 Spectator, as no one releases that type of  
16 information because it's the first thing anybody  
17 would use in a lawsuit, and that comment is  
18 attributed to Mr. Moore. Were you involved in the  
19 City's decision not to share the informal chart  
20 with the Spectator?

21 A. I didn't see the informal  
22 chart. I don't know anything about the informal  
23 chart. I never referenced the informal chart to  
24 the reporter, and I -- you know, like, no.

25 Q. Do you know who would

1 have made that decision about releasing friction  
2 testing information to the Spectator?

3 A. I can only presume Mr.  
4 Moore.

5 Q. Why would you think it  
6 would be Mr. Moore?

7 A. Because he's the one who  
8 says it and he's the one who was interviewed.

9 Q. Thank you. Registrar,  
10 you can close this. If you could take us to OD7,  
11 image 158, at paragraph 475. If you could pull up  
12 the next image as well, thank you.

13 So in June 2017 there is some  
14 back and forth between your group and asset  
15 management about the scope of the repaving for the  
16 Red Hill Valley Parkway?

17 A. Okay.

18 Q. Mr. Worrton sends a  
19 proposed scope to Siref Valla (ph), who I believe  
20 is the project manager in design?

21 A. Okay.

22 Q. On June 12th, 2017. I'm  
23 not going to ask you questions. I'm just  
24 orienting you to this exchange.

25 A. Okay, thank you.

1 Q. Not for a minute anyways.  
2 And then Mr. Andoga responds, and that's at  
3 paragraph 479. Registrar, if you can pull that up  
4 for Mr. White as well.

5 So this is in response to some  
6 back and forth about the scope that you're  
7 proposing for the Red Hill Valley Parkway  
8 repaving, and Mr. Andoga makes the following  
9 comment to you:

10 "Upon further review, we will  
11 proceed with the project scope  
12 as outlined in your e-mail.

13 We are assuming the request  
14 for mentioned the placement of  
15 continuous guide rail and/or  
16 the previous discussion  
17 surrounding lighting  
18 improvements will not be  
19 required. Council direction,  
20 as well as a funding source,  
21 will be required for any such  
22 enhancements." (As read)

23 Registrar, could you please  
24 close this and pull up paragraph 480 to 482, and  
25 you'll have to call up next image, so image 162 as

1 well.

2 So you and Mr. Ferguson  
3 exchange e-mails back and forth including Mr.  
4 Mater about this response from Mr. Andoga. You'll  
5 see that you respond to this e-mail from  
6 Mr. Ferguson, and that's the top e-mail, so at  
7 that paragraph 480, and you say:

8 "David, if I read this  
9 correctly, they are stating  
10 that they are rejecting the  
11 centre barrier and street  
12 lighting as they are not  
13 required, unless we provide a  
14 funding source and get council  
15 approval. Council direction  
16 is still required for the  
17 paving as well, so it could  
18 all be approved as one capital  
19 budget item. From a safety  
20 perspective, the barriers will  
21 prevent crossover collisions.  
22 Should this not be council's  
23 call, not Rick Andoga's and  
24 Gary's? What is the cost of  
25 the barriers for each section

1 of the four sections of the  
2 repaving? Where do we go with  
3 this now?"

4 Can you tell me why you sent  
5 this e-mail to Mr. Ferguson and why you reacted  
6 this way to Mr. Andoga's e-mail?

7 A. Well, where is Mr.  
8 Andoga's e-mail? Sorry, I lost context again.

9 Q. We can pull it up again,  
10 so Mr. Andoga's e-mail -- Registrar, could you  
11 take us back to paragraph 479.

12 A. Sorry, is it the one we  
13 just read?

14 Q. Yeah, it's the one we  
15 just looked at.

16 A. Indicates the barriers  
17 and the --

18 Q. Yes, about the barriers  
19 and lighting.

20 A. Somewhere in here is  
21 there not some connection to a widening? I  
22 remember something about that. Thank you.

23 Q. Registrar, could we call  
24 Mr. White's e-mail again, which is at  
25 paragraph 480.

1                                   Do you recall why you sent  
2    this e-mail to Mr. Ferguson?

3                                   A.    Yes, I was confused.  We  
4    had put scope in a project.  Following the  
5    comments we just read on that, that it appeared  
6    that not all of the things we put in scope were  
7    going to be done.  Unless we provided a funding  
8    source, which was extremely unusual as far as I  
9    know, because it was a capital project.  But I  
10   don't know how much was budgeted for it.  So I was  
11   confused, and that's what I was -- I was just sort  
12   of talking to Dave through an e-mail, but I was  
13   letting John Mater know as well what was going on,  
14   and I wasn't quite sure where we went with this  
15   now that that had been rejected.

16                                  Q.    Was it out of the  
17    ordinary for asset management to ask you to  
18    identify a funding source for something that was  
19    going to be included in a capital budget project?

20                                  A.    Traffic provided funding  
21    for traffic signal rehabilitation during all  
22    capital-funded roads projects.  I'm not familiar  
23    with the fact -- with what other things may have  
24    been funded or not funded.  So at this point in  
25    time I still thought it should have been covered

1 by the capital budget, frankly, at that point in  
2 time.

3 Q. When you say "council  
4 direction is still required for the paving as well  
5 so it could all be approved as one capital budget  
6 item," you're indicating your belief that they  
7 could all be compiled and approved by council  
8 simultaneously?

9 A. That was my belief at  
10 that point, yes.

11 Q. And then you say towards  
12 the end of this e-mail:

13 "From a safety perspective,  
14 the barriers will prevent  
15 crossover collisions. Should  
16 that not be council's call,  
17 not Rick Andoga's and Gary's?"  
18 What did you mean by that?

19 A. Well, I was musing about  
20 really whose call is it to do these remedial  
21 measures that came forward from the CIMA report.  
22 As you can see, we were trying to achieve the  
23 recommendations sooner rather than later, but they  
24 were not deemed to be in scope of the repaving.  
25 So I was confused.

1 Q. If these items had been  
2 put to council for approval as part of the  
3 repaving, would it have been council's call as to  
4 whether or not that funding was granted?

5 A. I think that's always the  
6 case, yes.

7 Q. Is that what you wanted  
8 to see done here?

9 A. I was confused. I don't  
10 know what I wanted to see done. I said, where do  
11 we go with this now. I wasn't sure what -- I was  
12 basically hoping that Dave might have a good idea.  
13 He and I shared things all the time, and I copied  
14 John because I wanted him to know that I was  
15 baffled about where we were going.

16 Q. Okay. Were you concerned  
17 that Mr. Andoga and Mr. Moore were making this  
18 decision about lighting and barriers on -- in  
19 council's place?

20 A. Well, I mused at that.  
21 You know, I kind of put that out there I guess,  
22 didn't I. But really is that they had the right  
23 to scope these projects and fund them.

24 Q. Registrar, if you could  
25 close that callout and call out paragraph 481

1 which is the next one.

2 So this is Mr. Ferguson's  
3 response back to you. And he says, he would  
4 concur --

5 "I would concur. They are  
6 saying the barrier and  
7 lighting is not required."

8 And he goes on to say:

9 "I would recommend that we  
10 respond stating that the  
11 transportation division  
12 requires the inclusion of  
13 barriers as originally  
14 submitted in the previous  
15 scope."

16 And that's the top of the  
17 second paragraph there. Did you agree with  
18 Mr. Ferguson's position as put out -- as set out  
19 in this e-mail?

20 A. Yeah, just let me --

21 Q. Yeah. Absolutely.

22 A. Yeah, I do. I did.

23 Q. Registrar, if you could  
24 close this and call out the next paragraph, so  
25 paragraph 482 which will continue over onto the

1 next image.

2 And so you reply to  
3 Mr. Ferguson's e-mail which copies Mr. Mater, and  
4 you say:

5 "Hi John. Do you wish us to  
6 pursue the barriers as Dave  
7 suggests below, or do you wish  
8 us to forgo the barriers or go  
9 it alone later? I will need  
10 your support if we are to make  
11 any progress with engineering  
12 services on this matter as  
13 they have unilaterally decided  
14 not to include them in the  
15 project. The overhead  
16 lighting will not happen while  
17 Gary controls the asset I  
18 would expect. How would you  
19 like us to proceed, please?"

20 Do you recall what the outcome  
21 of this exchange with Mr. Mater was?

22 A. No, I don't. I'm curious  
23 to see what he says back to me. I forget.

24 Q. If you could close this.  
25 I believe that the next paragraph down is the

1 response. If you can call out 483.

2 So Mr. Mater responds. He

3 says:

4 "Hold on a sec guys. I  
5 thought the barriers were  
6 suggested in the CIMA report  
7 to be done in conjunction with  
8 a widening. The question of  
9 lighting is restricted by the  
10 environmental conditions.  
11 Let's discuss before we  
12 respond."

13 Does that assist you with what  
14 Mr. Mater's response was?

15 A. Well, that is Mr. Mater's  
16 response, I guess, isn't it? Okay. Thank you.

17 Q. Okay. Did he direct you  
18 not to pursue the barriers because it was to be  
19 considered in conjunction with the widening?

20 A. Well, that's not in an  
21 explicit direction in that --

22 Q. No, I'm not asking in the  
23 e-mail. I'm asking if --

24 A. -- little clip.

25 Q. -- after this exchange,

1 he directed you not to pursue the barriers?

2 A. I don't remember,  
3 honestly.

4 Q. And just circling back to  
5 your e-mail to Mr. Mater. You said at the end of  
6 that e-mail:

7 "The overhead lighting will  
8 not happen while Gary controls  
9 the asset I would expect."

10 What did you mean "Gary  
11 controls the asset"?

12 A. Street lighting was  
13 Mr. Moore's asset to manage.

14 Q. And he was against  
15 overhead lighting on the Red Hill Valley Parkway?

16 A. I don't know if I would  
17 use the word 'against.' He stated repeatedly that  
18 the environmental conditions would not allow the  
19 installation of lighting on the RHVP.

20 MS. BRUCKNER: Okay, thank you  
21 very much. I see that I have gone slightly over  
22 our scheduled lunch break. I think that I have 10  
23 to 15 more minutes of questions, so I will ask the  
24 Commissioner if he would like us to break now or  
25 if he'd prefer me to continue?

1 JUSTICE WILTON-SIEGEL: I  
2 think we should break now. We'll return at 2:20.

3 --- Recess taken at 1:07 p.m.

4 --- Upon resuming at 2:20 p.m.

5 BY MS. BRUCKNER:

6 Q. Mr. White, a couple more  
7 questions for you.

8 I'm going to step forward a  
9 bit in time, so bear with me. Registrar, could  
10 you pull up HAM46147, please.

11 So for your reference,  
12 Mr. White, this is a recommendation report that is  
13 prepared for January 15th, 2018. And you'll see  
14 there under "prepared by" you're listed with  
15 Mr. Ferguson. Do you remember working on this  
16 recommendation report?

17 A. Vaguely, yes.

18 Q. Do you recall what the  
19 purpose of the report was?

20 A. You would have to  
21 refresh -- let me refresh myself.

22 Q. Sure.

23 Registrar, why don't we put up  
24 the second page, so Mr. White can take a look at  
25 all the recommendations.

1 A. Thank you.

2 Q. So let me know when  
3 you're done?

4 A. Yes, I remember. I'll  
5 have to go through this, but it's basically  
6 putting together all the outstanding items and  
7 going to public works with recommendations related  
8 to them.

9 Q. Okay.  
10 Registrar, can we replace  
11 image 2 here with image 12.

12 So this report has an  
13 appendix, and you'll see again about halfway  
14 down -- more than halfway down the page, there's a  
15 reference to "conduct pavement friction testing,"  
16 which was a medium-term option under the staff  
17 report that went to council in December 2015.

18 A. Yes.

19 Q. And it is marked as  
20 completed here.

21 A. Yes.

22 Q. Do you recall why you  
23 marked friction testing as completed in this  
24 report on January 15, 2018?

25 A. I think it's following

1 along the lines of the 2013 report where we asked  
2 for friction testing, and Gary says it's complete,  
3 so we continued to move that along as a completed  
4 item.

5 Q. Okay. And at this point,  
6 so January 15, 2018 had you seen the results of  
7 any friction testing for the Red Hill Valley  
8 Parkway?

9 A. No.

10 Q. Okay. And you made that  
11 entry in the report then based on Mr. Moore's  
12 representations to you?

13 A. That's correct.

14 Q. Okay. Thank you.

15 Registrar, you can close this  
16 out. And if you could take us into OD9, image 44,  
17 paragraphs 107 and 108.

18 Sorry, I'm stepping ahead  
19 again, Mr. White, for your in reference, in time  
20 into August of 2018.

21 So in and around this time, so  
22 August 2018, your group is preparing the 2017  
23 annual traffic safety status report. Do you  
24 recall that?

25 A. Yes.

1 Q. What was the purpose of  
2 that report?

3 A. Well, for -- let's just  
4 to say there's some history on this. There was a  
5 always a standard collision report outlining the  
6 collision statistics for the municipality, and it  
7 kind of fell by the wayside for a few years, and  
8 we were re-establishing a number of safety  
9 programs all of which required collision data, and  
10 this collision report was the re-embodiment, if  
11 you will, of the safety report based on  
12 collisions.

13 Q. Do you recall why it fell  
14 by the wayside?

15 A. Hart Solomon had left the  
16 group that did the safety report and went  
17 somewhere else, and when they came back, I only  
18 got a portion of the staff, and so we took a year  
19 to re-establish all our safety programs again.  
20 This is -- this, the network screening, the  
21 implementation of Vision Zero, the re-creation of  
22 the strategic road safety program and other  
23 programs that had gone off the rails, and we  
24 brought that back on. So this is all part of that  
25 same effort to bring all the safety items back to

1 the forefront of what we did.

2 Q. Okay. To follow up on  
3 that, after Hart Solomon left the group that was  
4 responsible for these safety initiatives, you said  
5 they weren't reporting to you; they went somewhere  
6 else. Do you know where they went?

7 A. I could be wrong, but I  
8 think they went to Robin Norman, one of the  
9 directors in public works. I don't really  
10 remember who Rob worked for.

11 Q. Okay. And do you know  
12 what group he was responsible for?

13 A. Well, it was with the  
14 transportation planning group --

15 Q. Okay.

16 A. -- but I don't remember  
17 the exact way that they were organized.

18 Q. And the initiatives that  
19 you referenced, picking back up when you became  
20 responsible for the staff again, these hadn't --

21 A. When we -- yes, sorry.

22 Q. Sorry. These hadn't been  
23 carried through under Ron (sic) when he was in  
24 charge of these staff members?

25 A. I don't believe so.

1 Q. Okay. Thank you.

2 Registrar, could you take us  
3 down to image 46 at paragraph 110.

4 So these are some -- so these  
5 are collision statistics that are being pulled  
6 from the 2017 annual collision report.

7 Registrar, can you call out  
8 the graphs there under -- yes, section 6. Thank  
9 you.

10 So these are graphs from that  
11 report showing the 2013 to 2017 LINC and Red Hill  
12 five-year collision trends as compared to one  
13 another.

14 A. Yes.

15 Q. Do you remember reviewing  
16 those statistics?

17 A. Yes.

18 Q. And it shows that  
19 65 percent of collisions on the Red Hill are  
20 occurring when the road surface is wet as compared  
21 to 80 percent of collisions on the LINC when the  
22 road was dry?

23 A. Correct.

24 Q. Was that surprising to  
25 you at this point in 2018?

1                   A.    Not particularly, because  
2    we had done the analysis in a much looser fashion  
3    earlier to determine that there was more -- the  
4    wet collisions were a predominant collision type  
5    on the RHVP which led us to -- helped us guide us  
6    into the report, the 2015 CIMA report.  And  
7    actually this is the manifestation of that  
8    original analysis.

9                    In the previous collision  
10   reports these facilities were not separated out  
11   from the rest of the arterial road system in  
12   Hamilton, and this is how we brought that data  
13   forward into the collision report.  We included  
14   the analysis for the two parkway facilities.

15                  Q.    So just to make sure that  
16   I have this right.  The collision history that  
17   Mr. Ferguson performed for you in 2013, this is --  
18   is this the same type of data then, or it's  
19   consistent with that data that he pulled in 2014?

20                  A.    I can't remember the year  
21   he pulled it.  It was where I used the data to  
22   establish that we had a lot of wet collisions on  
23   the RHVP.  I forget the date of that.  It wasn't  
24   2013.  It was just the end of 2014 leading into  
25   the CIMA report of --

1 Q. Okay.

2 A. -- 2015 I believe.

3 Q. Okay. Thank you.

4 Registrar, could you take us  
5 to paragraph 111, which is a version of these  
6 charts that's strictly for 2016. You'll have to  
7 go onto the next page to get the graphs,  
8 Registrar.

9 So you'll see that there's a  
10 similar pattern of collisions occurring as of  
11 2017.

12 A. Sorry, I'm just trying to  
13 figure out what I'm looking at. So in 2018 we  
14 would have summarized the 2017, and the previous  
15 chart is -- sorry, for speaking aloud. I'm just  
16 trying to orient myself.

17 Q. No, go ahead.

18 Registrar, I believe that  
19 there's another series of charts on the next image  
20 over.

21 And so you'll see that one, I  
22 believe, is the one that is divided up by road  
23 surface condition, the last series of charts there  
24 for 2017.

25 A. Yes, yes.

1 Q. So, again, it's showing  
2 that -- the same collision pattern that you had  
3 been observing with your group on the Red Hill  
4 versus the LINC?

5 A. Yes. And as I say, this  
6 is the published manifestation of that early  
7 analysis we did and presenting it within the  
8 collision report, and the intent was to continue  
9 to report this information on an ongoing basis on  
10 these facilities.

11 Q. Okay. As of August 27 --  
12 August 2018, my apologies, did you have a sense of  
13 what might account for the difference in the  
14 collision pattern on surface condition as -- on  
15 the Red Hill as compared to the to the LINC?

16 A. Well, I think David and I  
17 were looking at speeding -- the speed of the  
18 traffic, and we had the police concerned with the  
19 speed, and we also had some concern that the speed  
20 based on the geometrics of the roadway was of  
21 issue.

22 Q. Okay.

23 A. The police department  
24 were concerned about the speed of traffic, and we  
25 actually did some speed studies along there.

1 Q. Okay. Did you think that  
2 skid resistance on the Red Hill could be a factor  
3 in this trend?

4 A. Well, you know, as I  
5 stated before skid -- the friction of the roadway  
6 could be a factor, but at this point in time we  
7 were more concerned with the speed of the  
8 vehicles.

9 Q. Why?

10 A. Well, because we had been  
11 told that the asphalt was operating improperly.

12 Q. So on the basis of  
13 Mr. Moore's representation about the testing  
14 results?

15 A. That's correct.

16 Q. Okay. Thank you.

17 Registrar, you can close this  
18 down, and if you could take us, just to close this  
19 off, to paragraph 112, which is at image 48, yes.

20 So the City compiled a  
21 timeline following the discovery of the Tradewind  
22 report which contains an entry for August 15,  
23 2018, and it says:

24 "Martin White e-mails Edward  
25 Soldo the draft of the 2017

1 annual collision report --"  
2 which is what we were just  
3 taking a look at "-- shows wet  
4 weather issues on the Red Hill  
5 Valley Parkway. Soldo  
6 requests meeting with key  
7 players held on August 30th."

8 (As read)

9 Do you recall Mr. Soldo, who I  
10 believe as of August 2018 is director roads and  
11 traffic, requesting a meeting after he received  
12 the 2017 annual collision report?

13 A. I don't remember that  
14 particularly, no. He was my director at that  
15 time.

16 Q. Okay. Do you recall him  
17 raising concerns about the pattern of wet weather  
18 issues on the Red Hill Valley Parkway?

19 A. I'm sorry, I don't  
20 remember that.

21 Q. Okay.

22 Registrar, you can close this  
23 down. Thank you. And if you could take us to OD9  
24 image 86, paragraph 215 and 216.

25 So I'm skipping a little bit

1 ahead in time again, Mr. White. So we're now in  
2 October of 2018.

3 A. Yes.

4 Q. Okay. In October of 2018  
5 Mr. Ferguson contacts Mr. Malone at CIMA and asks  
6 him for a quote for a safety assessment of the Red  
7 Hill Valley Parkway. Do you recall Mr. Ferguson  
8 reaching out to Mr. Moore about the roadside  
9 safety assessment in the fall of 2018?

10 A. Well, I can tell you that  
11 I recollect the meeting with the general manager,  
12 Mr. Soldo, myself, David, I don't know who else  
13 was there, and we were going over all this  
14 information, and Mr. Soldo felt it prudent that we  
15 develop a roadside safety assessment going into  
16 the resurfacing phase of the RHVP, and hence,  
17 Mr. Ferguson continued in his role of project  
18 managing traffic staff to get -- to achieve the  
19 roadside safety assessment with CIMA.

20 Q. Understood. And so  
21 you've had a couple -- the 2013 and the 2015 CIMA  
22 report done at this point. Can you explain to me  
23 why the roadside safety assessment was necessary  
24 as well or what is the distinction?

25 A. I think this extended the

1 study to what is along the side of the roadway --

2 Q. Okay.

3 A. -- as well as just the  
4 safety concerns operating on the roadway.

5 Q. Okay. And why did  
6 Mr. Soldo feel this work would be prudent?

7 A. I think you're probably  
8 best to ask him. I forget the conversation of the  
9 day. I don't recollect.

10 Q. Understood. In  
11 connection with the roadside safety assessment  
12 that CIMA performs, did you advise CIMA that  
13 Mr. Moore had conducted friction testing on the  
14 Red Hill Valley Parkway?

15 A. I did not. But as I  
16 said, I didn't have any direct contact with CIMA  
17 through 99.9 percent of the process.

18 Q. Okay. Did you direct  
19 Mr. Ferguson to inform CIMA that Mr. Moore had  
20 conducted friction testing on the Red Hill Valley  
21 Parkway?

22 A. I don't recollect.

23 Q. You don't recall one way  
24 or the other?

25 A. I don't recall saying so.

1 Q. Okay. Do you recall ever  
2 making efforts to secure the friction testing  
3 results for CIMA's use?

4 A. You know we've gone over  
5 a number years where we've asked for this  
6 information. All I can tell you is I never  
7 received it through the entire process, and  
8 therefore I had nothing to share with anybody.

9 Q. Understood.

10 Registrar, you can take this  
11 down, and if you could call up HAM35785.

12 THE REGISTRAR: Sorry,  
13 counsel, do mind just repeating that --

14 MS. BRUCKNER: Absolutely.  
15 HAM35785.

16 THE REGISTRAR: Thank you.

17 MS. BRUCKNER: Thank you. And  
18 if you could call out first Mr. Soldo's e-mail.

19 BY MS. BRUCKNER:

20 Q. So this -- Mr. White,  
21 again I've skipped forward in time a bit. So this  
22 is January 14, 2019 and Mr. Soldo sends an e-mail  
23 to you and Mr. Ferguson, and he says:

24 "Gents, as there are some  
25 issues related to the Red Hill

1 Valley Parkway reporting. I  
2 need written confirmation from  
3 both of you on the following,  
4 that the 2013 Tradewind  
5 consulting report was never  
6 shared with you or any of your  
7 staff regarding the friction  
8 testing." (As read)  
9 And then he asks you:  
10 "The table in the staff report  
11 PW18008 dated January 15, 2018  
12 --" so that's the report that  
13 we looked at at the beginning  
14 of my questioning this  
15 afternoon "-- states that  
16 friction testing was  
17 completed. How did you know  
18 it was completed?" (As read)  
19 Registrar, if you can close  
20 this out, and call out Mr. White's response so he  
21 can take a look at it.  
22 So you respond Mr. Soldo:  
23 "Edward, I can confirm that I  
24 have never seen the report. I  
25 did ask for it several times.

1 I can also state that Gary did  
2 admit it was done at one  
3 point, but he discounted the  
4 results and minimized the  
5 value of the tests. At a  
6 meeting with Mater and Dan,  
7 Dave and myself I recollect  
8 him saying something about it  
9 being an English test or  
10 standard or something similar,  
11 and then he declined to share  
12 the results with Dan and John  
13 Mater. He also stated that  
14 the asphalt was filled with  
15 rubber from tires. I never  
16 saw the test results or any  
17 reports from anybody." (As  
18 read)

19 Do you remember this  
20 interaction with Mr. Soldo?

21 A. I do.

22 Q. Registrar, could you  
23 close this callout just so we can see both  
24 e-mails.

25 So Mr. Soldo e-mails you, and

1 he asks about the 2013 Tradewinds consulting  
2 report. At that time did you know what the 2013  
3 Tradewinds consulting report was?

4 A. Not sure I knew  
5 specifically, but I believe I must've known that  
6 it was related to friction testing because now  
7 we're, how many years later, six years later and  
8 probably clued in. So I think I knew what  
9 Tradewinds was now at that point, and I can  
10 reiterate for you that I did not ever see  
11 Tradewinds report or any other report on friction  
12 testing, and I was not aware of anything beyond  
13 the 2013 direction or 2013 study that my staff  
14 assisted the traffic control with, and therefore I  
15 had no information whatsoever, including and up to  
16 this day, about the results of that study or  
17 report.

18 Q. If you hadn't seen the  
19 Tradewind report at this point, how did you know  
20 that -- had did you know what the reference to the  
21 2013 Tradewinds report was in this e-mail?

22 A. I don't know how I know  
23 that connection. I just know by now Tradewinds  
24 was responsible for that friction testing.

25 Q. Registrar, can you call

1 out Mr. White's e-mail again.

2 So you say to Mr. Soldo that  
3 you asked for it several times, and I know we've  
4 gone over this a couple of times. Are you able to  
5 give me any more information about when you asked  
6 Mr. Moore for the friction testing results?

7 A. No.

8 Q. And so you go on to say:  
9 "At a meeting with Mater, Dan,  
10 Dave and myself I recollect  
11 him is saying something about  
12 it being an English test or  
13 standard or something similar,  
14 and then he declined to share  
15 the results are Dan and John  
16 Mater." (As read)

17 What can you tell me about  
18 that meeting other than what is set out here in  
19 this e-mail?

20 A. It was short. That was  
21 basically the topic of conversation, and we -- I  
22 was not party to any information at that time that  
23 he provided that information to the general  
24 manager.

25 Q. Okay. So the reference,

1 then, to Dan is a reference to Dan McKinnon?

2 A. Yes.

3 Q. Okay. My understanding  
4 is that Dan McKinnon becomes the manager of public  
5 works in September of 2016. Does that accord with  
6 your recollection?

7 A. I'm sorry. I just don't  
8 remember. It was somewhere in that timeframe I'm  
9 sure.

10 Q. I can ask the question a  
11 different way. Do you believe that this meeting  
12 that you're referencing here would have occurred  
13 after Mr. McKinnon became the general manager of  
14 public works?

15 A. Okay. I can confirm that  
16 for you. At the point of this meeting Dan  
17 McKinnon was the general manager of public works.

18 Q. Okay. And you go on to  
19 say, "he declined to share the results with Dan"  
20 who I believe is -- so Dan McKinnon and John  
21 Mater. So John Mater is your director; Dan  
22 McKinnon is the general manager of public works.

23 A. Correct.

24 Q. How did they respond when  
25 Mr. Moore refused to provide them with friction

1 testing results?

2 A. You know, I really don't  
3 recollect how they responded.

4 Q. Okay. And following this  
5 meeting -- to your knowledge did they ever receive  
6 friction testing results for the Red Hill Valley  
7 Parkway?

8 A. I have no idea what they  
9 might have received. I'm not aware that they  
10 received anything.

11 Q. Okay.

12 Thank you, Registrar. You can  
13 close this down. And if you could please call out  
14 RHV890. Thank you. And if you could call out  
15 image 2 as well.

16 So, Mr. White, this is an  
17 anonymous letter that the auditor for the City of  
18 Hamilton receives following the discovery of the  
19 Tradewind report in March 2019. Are you familiar  
20 with this letter?

21 A. I've only seen it once  
22 just the other day, and that's the extent of it.

23 Q. Okay. You saw it in  
24 preparation for these proceedings?

25 A. Correct.

1 Q. Registrar, could you  
2 please call up the very top of image 2 where  
3 Mr. White's name is set out there.

4 So there is an allegation  
5 about you in this letter, and I want to put it to  
6 you so you have an opportunity to respond. So it  
7 says here at the very top:

8 "Martin White, current manager  
9 of traffic, absolutely knew  
10 Mr. Moore hired a consultant  
11 to do investigation because he  
12 was held -- he was held off --  
13 because he held off  
14 implementing improvements on  
15 the Red Hill Valley Parkway  
16 until a decision was made to  
17 repave and implementation  
18 cat's eyes, repaint the lane  
19 lines et cetera." (As read)

20 And I think based on our  
21 evidence -- based on your evidence in these  
22 proceedings, you knew that Mr. Moore had retained  
23 a consultant to do friction testing on the Red  
24 Hill Valley Parkway in November of 2013. Is that  
25 right?

1                   A.    Yes.  And I would say  
2    that when I read this, it's kind of a  
3    misconception of fact.  It has something from  
4    2013, and then it skips way up to 2015, and it  
5    leaves all the parts out in the middle.

6                    It's true I knew that there  
7    was an investigation ultimately in 2013, and we  
8    didn't really hold off most of the cat's eyes, as  
9    they are referred to here --

10                  Q.    Okay.

11                  A.    -- the inlaid pavement  
12    markers, until we were sure the road wasn't being  
13    resurfaced many years later.  So they're  
14    incongruous.  They do not fit together.  But in  
15    isolation both statements are true, but they are  
16    not linked.

17                  Q.    Understood.  Okay.

18                  Registrar, you can close this  
19    callout, and if you can call out the italicized  
20    text down on image 2.  Thank you.

21                  So, Mr. White, there are a  
22    number of comments in this letter that are  
23    attributed to Mr. Moore, and I will give you an  
24    opportunity review them.  But before I do that, I  
25    just want you to have my question in mind when you

1 take a look.

2 So my question for you once  
3 you've had a chance to look at those statements,  
4 is whether you ever observed Mr. Moore speak to  
5 you or members of your staff in the manner set out  
6 in this letter in connection with projects related  
7 to the Red Hill Valley Parkway?

8 A. (Witness reviews  
9 document). In connection to the Red Hill Valley  
10 Parkway I have not heard him utter any of these  
11 statements.

12 Q. Have you heard him utter  
13 similar statements?

14 UNIDENTIFIED SPEAKER:  
15 (Indiscernible).

16 JUSTICE WILTON-SIEGEL: What?

17 THE WITNESS: Sorry?

18 MS. BRUCKNER: I think that  
19 that was not a response.

20 BY MS. BRUCKNER:

21 Q. Have you heard him  
22 utter -- did you hear him or observe him to utter  
23 similar statements in connection with Red Hill  
24 Valley Parkway projects?

25 A. Not in connection with

1 the Red Hill Valley Parkway projects.

2 Q. Okay. In connection with  
3 the 2013 CIMA report or 2015 CIMA report?

4 A. Those were all part of  
5 the Red Hill Valley projects. I have not heard  
6 him utter these statements where I was able to  
7 hear them about this extended project, if you  
8 will.

9 Q. Okay. Did you ever  
10 receive reports from any of your staff that  
11 Mr. Moore had made comments along these lines to  
12 them in connection with Red Hill Valley Parkway  
13 projects?

14 A. No, not like this.

15 Q. Not like this.

16 A. Yeah. The --

17 Q. What does that mean?

18 A. -- profanities and all  
19 that stuff.

20 Q. What --

21 A. I didn't really have any  
22 complaints from my --

23 (Speaker overlap)

24 A. -- staff. Let's clarify  
25 that, other than the one Stephen Cooper brought

1 forward that we already brought forward today.

2 Q. Okay. Understood. Thank  
3 you very much.

4 Registrar, you can close this  
5 out.

6 MS. BRUCKNER: And those are  
7 all of my questions for Mr. White today. I  
8 understand that counsel for the participants has  
9 questions, and that Golder estimates that they  
10 have about 20 minutes of questions.

11 JUSTICE WILTON-SIEGEL: Okay.  
12 Ms. Roberts?

13 EXAMINATION BY MS. JENNIFER ROBERTS:

14 Q. Good afternoon.  
15 Mr. White, I'm Jennifer Roberts. I'm counsel for  
16 Golder. Hello.

17 A. Hello, counsel for  
18 Golder.

19 Q. I have a few questions,  
20 and I'll try and be brief and to the point.

21 MS. JENNIFER ROBERTS:  
22 Commissioner, may I begin?

23 JUSTICE WILTON-SIEGEL: Yes,  
24 please.

25 MS. JENNIFER ROBERTS: Thank

1 you.

2 BY MS. JENNIFER ROBERTS:

3 Q. Okay. I want to go back  
4 and just address briefly some evidence that you  
5 gave in connection with friction testing done on  
6 November 20, 2013.

7 Registrar, could I ask you  
8 please to turn up Golder 2647. Thank you. Okay.

9 So Ms. Bruckner took you to  
10 this document, and I just want to go back it to  
11 briefly.

12 So this begins with an e-mail  
13 from Dr. Uzarowski of Golder to Mr. Moore and  
14 copied to Dr. Henderson friction testing, and it's  
15 his quote for conducting friction testing. Do you  
16 see that?

17 A. Yes.

18 Q. Okay. And then in reply  
19 Gary copies -- Mr. Moore rather, copies a number  
20 of people.

21 Sorry, Registrar, can you make  
22 that a little bigger, please. Is it just the  
23 whole document? Is it possible to make the font a  
24 little bigger? Hmm. Okay.

25 Can you see that, Mr. White?

1 A. Yes, I'm good.

2 Q. Okay. Good. I'm  
3 struggling with my eyes. There we go. All right.

4 So in reply Mr. Moore replies  
5 to Dr. Uzarowski but also copies a number people,  
6 including yourself. Do you see that?

7 A. Yes, I do.

8 Q. And a number of others.  
9 So Rich Shebib?

10 A. Yes.

11 Q. And who is -- why would  
12 he have been copied?

13 A. I have no idea. He  
14 worked for Mr. Moore.

15 Q. Okay. And Marco Oddi, I  
16 gather was project manager on a number of things  
17 for Mr. Moore?

18 A. He was an engineer in  
19 Mr. Moore's department. I'm not sure what his  
20 role was at that point.

21 Q. Okay. And the  
22 instruction from Mr. Moore to Marco, Rich, Martin:

23 "Golder is going to do  
24 friction testing as below.

25 They will need traffic control

1 coordination. Please contact  
2 Vimy in this regard." (As  
3 read)

4 Vimy is Dr. Henderson.

5 And you reply, and that's the  
6 top of this e-mail, "Thanks Gary, appreciate  
7 that." (As read). And then you've got a note  
8 saying:

9 "Chris, please assist with  
10 traffic control. Crosscheck  
11 if required our cost. Please  
12 coordinate with Vimy." (As  
13 read)

14 And that's at the top.

15 And if I understood your  
16 evidence, it was that you forwarded this to Chris,  
17 and that was his instruction to do the  
18 coordination.

19 A. Correct.

20 Q. Can I ask you, please,  
21 Registrar, to turn up Hamilton 36707.

22 So this is the same e-mail  
23 string except it has got an e-mail from Vimy,  
24 Dr. Henderson, to you as well as Mr. Moore and  
25 Dr. Uzarowski, copy Diane Cameron, Rich Shebib,

1 Marco Oddi, Chris Jacobson and Joe Guerretta.

2 And, sorry, who is Joe

3 Guerretta?

4 A. Joe Guerretta was the  
5 traffic signs and markings foreman at the traffic  
6 operations centre.

7 Q. And just for clarity, who  
8 is Chris Jacobson?

9 A. Chris Jacobson is the  
10 superintendent of traffic operations responsible  
11 for our field work, and the person that I had  
12 charged with assisting the consultant with  
13 providing the adequate traffic control.

14 Q. Okay. Okay.

15 Can I please ask, then, to  
16 turn up -- Registrar, could you please turn up  
17 Golder 4441.

18 The evidence from Golder and  
19 from Dr. Henderson is that these are her notes  
20 taken on November 20, 2013 of the actual friction  
21 testing. There are a number of people who have  
22 signed in on this -- on these notes. On the left  
23 Michael Hogarth and then Joe Guerretta and some --  
24 I think that's Larry Stevenson. Can you see that?

25 A. Larry Stewart I believe.

1 Q. Larry Stewart and Jason  
2 Medeiros. Larry Stewart, is he also in traffic?

3 A. He was a front line  
4 worker, an operator, and so was Jason Medeiros.

5 Q. When you say "operator,"  
6 what do you mean?

7 A. They were front line  
8 labour operating vehicles and....

9 Q. Okay. So employed within  
10 the traffic division?

11 A. Yes.

12 Q. Okay. And did all of  
13 these people report to you through various  
14 streams, Joe, Larry, Jason?

15 A. Larry and Jason reported  
16 to Joe, Joe reported to Chris Jacobson, and Chris  
17 reported to me.

18 Q. Okay. That's the chain.  
19 Thank you. Okay.

20 So you'll agree with me,  
21 though, that at this point on November 20, you've  
22 got quite a few people within the City of Hamilton  
23 who know that friction testing has been conducted.

24 A. I'm not sure these  
25 gentlemen really understood what was happening.

1 They were providing traffic control, so they would  
2 have been operating the trucking behind them with  
3 the attenuation devices. I can't speak to whether  
4 or not they knew what the process was going on. I  
5 don't know that.

6 Q. Okay. But wait a second  
7 here. We've got Chris and Joe who have already  
8 been copied on the e-mail string that says that  
9 friction testing is going to be conducted.

10 A. That is true. I'm just  
11 saying, I don't know what these other gentlemen  
12 knew.

13 Q. These other gentlemen,  
14 meaning Jason Medeiros and --

15 A. And Larry Stewart.

16 Q. -- Larry Stewart --

17 A. Correct.

18 Q. -- the operator. Okay.  
19 All right. But you'll agree with me that we have  
20 Mr. Jacobson and Mr. Guerretta and yourself who  
21 all know that friction testing has been conducted  
22 on the Red Hill Valley Parkway?

23 A. I think that's relatively  
24 true. When I say "relatively," I read that  
25 e-mail, flashed it off, and I don't really think I

1 thought about it for a long time. Did I read it,  
2 yes. Did I know, yes. So if that helps, then  
3 let's -- that's the way it is.

4 Q. All right. And if -- but  
5 you know one thing more than this. You also know  
6 that Golder's coordinated the testing, don't you?

7 A. Yes, with Chris. That  
8 was my -- that's how I wished it to be.

9 Q. Okay.

10 A. And he spoke to the  
11 person from Golder and made the arrangements. I  
12 didn't know exactly what they were, nor did I know  
13 exactly what kind of devices would be required. I  
14 left to Chris to determine the scope of what he  
15 needed to do.

16 Q. And you also, though,  
17 know -- you've got contacts -- you've got -- for  
18 Golder. You've got Dr. Henderson's contact, and  
19 you've got Dr. Uzarowski's contact. That's true.

20 A. Well, I have their  
21 e-mails in my e-mail chain.

22 Q. You've got their e-mail  
23 chains. And in your evidence, and you've been  
24 consistent on this, that you were -- you  
25 repeatedly asked Mr. Moore for friction testing,

1 and you've said that over the course of these last  
2 two days and repeatedly and consistently without  
3 response.

4 And, Mr. White, why didn't you  
5 reach out to Golder to request the results of the  
6 friction testing that was consulted on  
7 November 20th?

8 A. I never considered that  
9 an option. After not getting that information, I  
10 asked through my -- you can see some of my  
11 evidence, I put it to my bosses to go and talk to  
12 Gary. I felt that was the way I needed to  
13 proceed.

14 Q. Thank you. I want to  
15 just some -- a question that's on a different  
16 line. Can we please -- well, let me ask a  
17 question -- begin this a way.

18 You were asked questions about  
19 the CIMA 2015 report and CIMA's findings of  
20 potential contributing factors. Do you remember  
21 those questions?

22 A. Yeah. Yes.

23 Q. Perhaps we can go to,  
24 Registrar, Hamilton 702, image 26, please. One of  
25 the factors identified -- let me start over.

1                   This is in the context of  
2   CIMA's finding that there's a disproportionate  
3   number of wet surface collisions on the Red Hill  
4   Valley Parkway, and then they put forward three  
5   potential contributing factors. And one of them  
6   as you see is skid resistance. You were asked  
7   about the contribution of skid resistance, and you  
8   said that skid resistance was a factor, but there  
9   were -- there are others like geometry, and you  
10  referenced superelevation and grade change and  
11  speed. Do you remember that?

12                   A. Yes.

13                   Q. And it's implicit in your  
14  answer, but is your -- is the question of the wet  
15  weather collisions, is your answer that there were  
16  a number of factors because the loss of friction  
17  is a function of many factors, and friction would  
18  be one, but not the only one?

19                   A. I'm not sure I thought of  
20  it in that context. However, when a vehicle  
21  slides is different than if it rolls. It's  
22  different than -- so I'm not -- can you maybe give  
23  me something more to....

24                   Q. Sure. So we've got wet  
25  surface collisions. We've got --

1 A. Yes, what do --

2 Q. -- the question of what  
3 factors may be contributing, and one of them is  
4 skid resistance. And in your evidence this  
5 morning, you said, well, that's one, but it's not  
6 the only one, and I'm just pressing on that point.  
7 And is that because you understood that a loss of  
8 friction is a function of a number of factors --

9 A. I would say that is true.

10 Q. -- including the ones you  
11 raised? Sorry?

12 A. I would say that is true.

13 Q. Okay. And when you  
14 raised the potential contributing factors like  
15 geometry, superelevation and grade, what is it you  
16 understood of them? Like, how do you understand  
17 them to be potential contributing factors?

18 A. Well, I think you have to  
19 combine that with the speed of the vehicles as  
20 well, and it's no different than -- I can think of  
21 several examples where the superelevation promotes  
22 a vehicle to roll towards the median of the -- or  
23 the edge of the pavement. Several 403 ramps are  
24 like that, specifically in Burlington. I can  
25 think of situations where the curvature of the

1 roadway, if not adequately driven properly, can  
2 force a vehicle to go towards the edge of the  
3 roadway depending on the speed of the vehicle.  
4 And we had seen substantial speeds when we did our  
5 speed tests, speed studies on the RHVP.

6 Q. Okay. And just let me  
7 follow on the superelevation. My understanding of  
8 superelevation that it's the banking of a turn  
9 that's intended to assist the driver in  
10 maintaining -- in staying on the road essentially?  
11 That's what --

12 A. I would agree with that.

13 Q. -- it's supposed to be.  
14 Okay.

15 A. I would agree with that.

16 Q. Okay. And your  
17 description of superelevation, is that where a  
18 superelevation actually is not correct and is --  
19 the cant or the -- is going the wrong way?

20 A. There are, and there's a  
21 corrective sign for that as well, and I've cited a  
22 ramp in Burlington from the 403.

23 Q. Okay. And --

24 A. We never got into the  
25 design elements here.

1 Q. Well, that's exactly my  
2 question. So have you seen the drawings for the  
3 Red Hill Valley Parkway?

4 A. Not -- none. Nothing,  
5 no.

6 Q. No. And were they not  
7 available to traffic?

8 A. Nobody provided them.  
9 I'm not sure we even asked for them. At this  
10 point in time, I don't remember asking for them.

11 Q. Okay. And so your  
12 reference to geometry, to the curvature and to  
13 superelevations and the grade change, those are  
14 comments that you make from your experience,  
15 that's correct?

16 A. Yes.

17 Q. And your observations of  
18 the highway?

19 A. I observed the highway on  
20 a number of occasions, the parkway, yes.

21 Q. Okay. And who would you  
22 expect to be the repository for the design  
23 information on the Red Hill?

24 A. Well, they originated  
25 with the freeway project office which was

1 amalgamated, I believe, into engineering services.

2 Q. So the engineering  
3 services department should have had the drawings  
4 and any design records for the design and  
5 construction of the Red Hill; is that true?

6 A. I can't confirm that, but  
7 I believe that to be true.

8 Q. Okay. And you said that  
9 you didn't have them. Do you remember requesting  
10 them as part of the investigation of accidents --  
11 sorry, collisions on the Red Hill?

12 A. No. I think we were  
13 looking at them in two dimensions based on the  
14 mapping and the location of the collisions.

15 Q. Sorry, I didn't follow  
16 you there. Did you ask for them and obtain them  
17 at some point?

18 A. No.

19 Q. You didn't. Okay. And  
20 so you were aware of the curvature through the  
21 alignment, but not necessarily aware of how tight  
22 those turns were; is that accurate?

23 A. That is correct. I would  
24 say the one thing I did ask is, and I remember  
25 asking this, is what is the design speed of the

1 facility.

2 Q. And who did you ask that?

3 A. I'm sorry. I don't  
4 recollect who I asked it too, but I remember  
5 asking it, and it might have been to CIMA. I  
6 think it likely was to CIMA.

7 Q. Oh, I think, yes, and  
8 actually there is an e-mail, isn't there, where  
9 you ask that?

10 A. Well, probably --  
11 (Speaker overlap)

12 Q. -- go over that  
13 yesterday?

14 A. -- I'm sorry, I don't  
15 remember that specifically. I just remember that  
16 I wanted to know it.

17 Q. Right. And why did you  
18 want to know, sir?

19 A. Well, because the  
20 operating speed, the sign speed -- sorry, the  
21 signing of the roadway speed limit is related to  
22 the design speed of the facility. Generally  
23 speaking, you sign it for 20 kilometres less than  
24 the design speed. So I was trying to establish  
25 what the design speed was in order to determine if

1 the sign speed limit was appropriate.

2 Q. Right, okay. And are you  
3 aware that radius of turns is also related to  
4 design speed?

5 A. Yes.

6 Q. Okay. In other words --

7 A. Only from my original  
8 training, but I don't have much experience with  
9 that since I graduated.

10 Q. Right. Okay.

11 Let's just go -- can we please  
12 go to the overview document 3.1, Registrar, and  
13 image 13, please.

14 And, Mr. White, is this  
15 overview document -- overview chapter 3.1  
16 addresses the design, and Dufferin produced  
17 drawings and subsequently Hamilton as well, that  
18 have -- the details of the drawings have been  
19 pulled out in this document as well as some  
20 preliminary design records. I don't know whether  
21 you've had a chance to review it in preparation  
22 for your testimony.

23 A. No, I've never seen the  
24 document.

25 Q. Okay. So I just want to

1 call out the drawing at the top of this page.  
2 This is the middle section. And you'll agree with  
3 me this section is between Greenhill, King, and  
4 Queenston is the area of most accidents along the  
5 alignment?

6 A. Okay.

7 Q. Well, that's true, is it  
8 not, sir?

9 A. Well, this is virtually  
10 the entire length of the RHVP except for the curve  
11 at the top. So it would contain most of the  
12 collisions.

13 Q. Okay. So -- and I think  
14 CIMA specifically identifies the area in King  
15 Street and Queenston as being the area of the most  
16 accidents. Is that consistent with your  
17 understanding?

18 A. I think that's how I  
19 recollect it, yes.

20 Q. Okay. Okay. And when  
21 you talk about the geometry, I take it that you  
22 weren't aware that, in fact, the radius of the  
23 turn, if we're going northbound -- that is to the  
24 right of this drawing -- is 420 metres to another  
25 450 and to another at 690?

1                   A.    No, I was not aware of  
2    the actual radiuses.

3                   Q.    Right.  So you were aware  
4    that they were tight, but you were not aware of  
5    actually what they were?

6                   A.    I was aware that when you  
7    drove it, the road felt like you were switching  
8    back and forth through the alignment as you drove  
9    down through it.

10                  Q.    Right.  And in your  
11    experience that alignment change would have been  
12    relevant as a potential contributing factor in the  
13    location and number of wet weather accidents?

14                  A.    I think it would be, yes.

15                  Q.    Okay.  Thank you.  Those  
16    are my questions, sir.  Thank you for your  
17    patience.

18                  MS. BRUCKNER:  Okay.  
19    Commissioner, I understand that counsel for  
20    Dufferin has approximately five minutes of  
21    questions for Mr. White.  Mr. Buck, is that the  
22    case?

23                  MR. BUCK:  That is correct.

24                  JUSTICE WILTON-SIEGEL:  Okay.  
25    Please proceed, Mr. Buck.

1 EXAMINATION BY MR. BUCK:

2 Q. So, Mr. White, I have one  
3 topic of questions for you, and it's in relation  
4 to something that Ms. Bruckner asked you about  
5 yesterday in relation to an area of the Red Hill  
6 Valley Parkway near where it coincides and  
7 transitions into the Lincoln Alexander Parkway, or  
8 the LINC.

9 It's been referred to, I  
10 think, in documentation as a kink in the  
11 alignment. Is that something you're familiar  
12 with?

13 A. That was something  
14 identified by traffic engineering prior to them  
15 reporting to me, yes, and so I think Hart Solomon  
16 referred it to as the kink.

17 Q. Perfect. So yesterday I  
18 think Ms. Bruckner asked you about the kink, and I  
19 think she said -- she described it as -- the  
20 location as being just past Pritchard Road, just  
21 past Pritchard Road overpass, and I believe you  
22 agreed with that statement. And I just wanted to  
23 focus in a little bit and get some more clarity of  
24 exactly where the kink was.

25 Do you recall whether the kink

1 that was identified by Mr. Solomon was east or  
2 west of that Dartnall Road bridge? And if it  
3 would help, I can bring up an image of that area  
4 of the parkway.

5 A. Sorry, sitting here right  
6 now I don't recollect exactly where this kink is.  
7 I know it's in that general vicinity, but I  
8 couldn't pinpoint it for you at the moment.

9 Q. Okay. And would it  
10 assist if you saw an image or not?

11 A. It may. I don't know.

12 Q. So, Registrar, in that  
13 case can we just bring up Hamilton 41675. And I  
14 think this is the final draft from August 2013 of  
15 the CIMA 2013 report. And if we can go to  
16 image 11, I think. That's not it. It must be  
17 image 12. I beg your pardon. So if you can call  
18 out that plan view.

19 I'm not sure this may or may  
20 not assist you, but Pritchard Road is the road at  
21 the bottom which crosses -- it's the straight road  
22 that crosses the pink section in the middle.

23 A. Okay. Yes, I see that.

24 Q. And to the east of there  
25 we have the Mud Street intersection, and to the

1 west we have the Dartnall Road intersection?

2 A. Okay.

3 Q. Can you identify from  
4 this room where the kink would be on the main  
5 line?

6 A. I can't, no.

7 MR. BUCK: No, okay. In that  
8 case I have no further questions.

9 MS. BRUCKNER: Commissioner, I  
10 understand that counsel for the MTO has reserved  
11 five minutes of questions for Mr. White.

12 Mr. Bourrier, can you confirm  
13 if you have any questions?

14 MR. BOURRIER: I confirm I  
15 don't have any questions for Mr. White.

16 JUSTICE WILTON-SIEGEL: Okay.  
17 Thank you, Mr. Bourrier.

18 MS. BRUCKNER: In that case I  
19 understand that Ms. Contractor for the City has an  
20 hour to an hour and a half of questions for  
21 Mr. White.

22 JUSTICE WILTON-SIEGEL: Okay.

23 MS. CONTRACTOR: Thank you.

24 Good afternoon, Mr. White. And Mr. Commissioner,  
25 may I proceed?

1 JUSTICE WILTON-SIEGEL: Yes.  
2 Please proceed. I just note, though, that we will  
3 be taking a break at 3:30, and we would expect to  
4 close at 4:30.

5 MS. CONTRACTOR: I think I  
6 should be able to finish my questions within the  
7 hour, Mr. Commissioner. If you would like to take  
8 the break now, I'm happy to do that.

9 JUSTICE WILTON-SIEGEL: I  
10 think we should probably -- well, I'm in your  
11 hands. If it's easier for you in terms of  
12 organizing your thought to take a 15-minute break  
13 now, I'm happy to do that.

14 MS. CONTRACTOR: I'm happy to  
15 proceed.

16 JUSTICE WILTON-SIEGEL: Okay.  
17 Well, then why don't you proceed.

18 EXAMINATION BY MS. CONTRACTOR:

19 Q. And, Mr. White, I would  
20 like to start by asking questions about the  
21 division of labour between some of the departments  
22 in public works. And just to set the stage back  
23 in 2013, one of the departments in the public  
24 works group was the corporate assets and strategic  
25 planning department which included the energy,

1 fleet and traffic division. Do I have that right  
2 so far?

3 A. Yes.

4 Q. And that division  
5 included the traffic engineering operations  
6 section?

7 A. No. Just the traffic  
8 operations section at that time. Until we  
9 re-orged again.

10 Q. Right. And you become  
11 the manager of traffic operations and then  
12 subsequently traffic engineering and operations;  
13 is that right?

14 A. That's correct.

15 Q. And the other department  
16 in public works -- one of the other departments  
17 was engineering services. And that department  
18 included several groups and -- including design  
19 and asset management, correct?

20 A. Correct.

21 Q. I would like to  
22 understand the primary difference between traffic  
23 engineering which was in energy, fleet and  
24 traffic, and asset management which was in  
25 engineering services. And generally speaking, is

1 it fair to say that traffic engineering and  
2 operations looked after the safety of the roadway,  
3 and asset management looked at the durability of  
4 roadways?

5 A. That's a fair -- that is  
6 a fair statement.

7 Q. Thank you.

8 Mr. Registrar, could we please  
9 go to HAM41413.

10 Commission counsel took you to  
11 this e-mail which was from January 2013 between  
12 yourself and a number of other staff members  
13 discussing the scope of the 2013 motion and  
14 subsequently the CIMA report.

15 And commission counsel asked  
16 you specifically whether Mr. Gallo or anyone else  
17 reporting to you advised you of the exchange, and  
18 at the top of the e-mail which says:

19 "After discussing with Gord  
20 and Gary, it's our opinion  
21 that safety issues should be  
22 reviewed holistically." (As  
23 read)

24 And you're not on the top part  
25 of that e-mail, but you are at bottom of the

1 chain.

2 And so she asked you whether  
3 anyone reporting to you advised you that  
4 engineering services felt safety issues should be  
5 reviewed holistically and that the consultant  
6 retained should be looking at lighting as well as  
7 the other items that you list at the bottom of the  
8 e-mail.

9 And I think your evidence was  
10 that you don't recall that happening, correct?

11 A. Correct.

12 Q. Okay.

13 Actually, Mr. Commissioner --  
14 sorry, Mr. Registrar, if you could please keep the  
15 top of that e-mail called out and also pull up  
16 OD6, image 8, paragraph 11, please. Pull out the  
17 excerpted part at paragraph 11. Thank you.

18 That of course, Mr. White, is  
19 language of the actual motion in 2013. And  
20 commission counsel also asked you about your  
21 understanding of the primary focus of the 2013  
22 CIMA report which of course was prepared in  
23 response to this motion. And your evidence was  
24 that in your view the primary purpose was to do a  
25 safety audit of all aspects of the facility in the

1 study area; is that correct?

2 A. That is correct.

3 Q. In light of all that, in  
4 your view, is Mr. Field's statement that or  
5 opinion that the safety issues should be reviewed  
6 holistically consistent with the language of the  
7 motion itself, which as you'll see has three parts  
8 it to, the first asks staff to investigate  
9 upgrading lighting on the Red Hill in the vicinity  
10 of the Mud/Stone Church interchanges, and staff --  
11 direct staff to investigate signage, lane markings  
12 or other initiatives to assist motorists in the  
13 same area.

14 And in your view, just taking  
15 those top two paragraphs, is that consistent with  
16 Mr. Field's opinion that the safety issue should  
17 be reviewed holistically?

18 A. I believe so, yes.

19 Q. Thank you.

20 Mr. Registrar, you can take  
21 that down. If you could pull up HAM40184, please.

22 And you were also asked about  
23 what we're all calling the kink area, the area  
24 between the LINC and the Red Hill. And commission  
25 counsel took you to the July 21st e-mail from

1 Mr. Solomon.

2 And, Mr. Registrar, if you  
3 could call that up.

4 And here Mr. Solomon  
5 references a collision history analysis that was  
6 completed and states that:

7 "It does not justify the cost  
8 that would be necessary to  
9 address this issue." (As  
10 read)

11 And commission counsel asked  
12 you whether were you aware who was responsible for  
13 monitoring the collisions in this area between  
14 2010 and 2013. However, you were not taken to the  
15 actual collision review which I think is  
16 important.

17 So if you could leave that up  
18 please, Mr. Registrar, and also pull up HAM40065.  
19 Just the top paragraph would be fine.

20 And so this is an e-mail from  
21 Mr. Spoletti to Mr. Solomon in which he's  
22 detailing the collision review of the kink. And  
23 you'll see that he says:

24 "Hi, Hart. We were able to  
25 define a road segment in order

1 to put together a collision  
2 summary for the Red Hill/LINC  
3 transfer area. There have  
4 been a total of five  
5 collisions, two of which  
6 occurred in the area of the  
7 kink. Of these two, one  
8 involved a motorist who was  
9 charged with impaired driving;  
10 the other collision involved a  
11 motorist who lost control  
12 along the curve on icy road  
13 conditions. I think it would  
14 be difficult to attribute any  
15 collisions as a result of the  
16 noted kink in the road." (As  
17 read)

18 And so essentially the  
19 conclusion was that there was no collision history  
20 attributable to the issue that Mr. Solomon was  
21 looking into, correct?

22 A. Well, I'm sorry, I hadn't  
23 seen that e-mail before, but that appears to be  
24 the case, yes.

25 Q. Thank you.

1                   Okay. We can take that down,  
2 Mr. Registrar. In the context of the 2013 CIMA  
3 report and -- you were asked about a meeting that  
4 Mr. Cooper and Mr. Ferguson had with Councillor  
5 Collins and Jackson and regarding a draft of the  
6 CIMA report that was sent to these councillors as  
7 well as Councillor Clark. If I understand your  
8 evidence, you didn't have any concerns with  
9 Mr. Cooper and Mr. Ferguson meeting with the  
10 councillors, and I believe it was because traffic  
11 had a history of open discussions with councillors  
12 and would meet with councillors on matters that  
13 are particularly relevant to their wards. Is that  
14 correct?

15                   A. That is correct.

16                   Q. And would these types of  
17 status updates be helpful to councillors to  
18 provide their constituents in turn with status  
19 updates on a motion or investigation that was  
20 pending?

21                   A. Well, once they are aware  
22 of the direction that we're taking, they are free  
23 to choose what they do with the information. They  
24 could update their constituency, or they may wish  
25 to wait until items go through committee. That's

1 entirely up to the councillor themselves.

2 Q. Okay. We know that in --  
3 on November 19th, 2013 staff presented a report in  
4 response to the motion that we were looking at  
5 moments ago, and I take it you would have been at  
6 that committee meeting, Mr. White?

7 A. I don't remember actually  
8 at this point in time whether I was there or not  
9 in 2013.

10 Q. Fair enough.

11 And, Mr. Registrar, could we  
12 please go to RHV986.

13 This is a transcript of the  
14 PWC meeting from November 18th, 2013 that  
15 commission counsel has helpfully provided. And I  
16 just want to take you through a couple of  
17 sections, and you can let me know if it helps you  
18 recall whether you were in attendance.

19 So the first paragraph under  
20 "Councillor Collins," you'll see that it starts  
21 with him stating:

22 "Mr. Chairman, this is the  
23 motion that I put I believe it  
24 was last year. I just first  
25 want to thank staff for the

1                    recommendations, and Steve and  
2                    Dave who are the authors of  
3                    the report were kind enough to  
4                    sit down with me and go over  
5                    the recommendations." (As  
6                    read)

7                    And here Councillor Collins is  
8 referring to Steve Cooper and Dave Ferguson?

9                    A.     Correct.

10                  Q.     And specifically the  
11 meeting that Mr. Ferguson and Mr. Cooper had with  
12 Councillor Collins and Councillor Jackson to  
13 discuss the report?

14                  A.     Correct.

15                  Q.     If we go to image 3, if  
16 you look at than Councillor Jackson's remarks in  
17 the first paragraph there, and the first -- or  
18 sorry, Councillor Jackson states:

19                         "I was in the meeting for a  
20                         while with Councillor Collins  
21                         and Stephen Cooper and Dave  
22                         Ferguson, and I want to thank  
23                         Steve and Dave for their  
24                         leadership in the traffic  
25                         department and their

1 availability always." (As  
2 read)

3 Similarly, this is referring  
4 to the meeting that Mr. Cooper and Mr. Ferguson  
5 had to discuss where things were at with the CIMA  
6 report and the staff report; is that correct?

7 A. That's correct.

8 Q. Okay. Do you recall  
9 whether during this committee meeting or  
10 afterwards if any of the other councillors  
11 expressed concerns that staff were discussing  
12 reports with council members whose wards were  
13 directly affected by those reports and not the  
14 other councillors?

15 A. I'm not aware of a single  
16 complaint during or after the meeting --

17 Q. No one suggested -- I'm  
18 sorry to cut you off, Mr. White. Please continue.

19 A. Sorry, I was finished. I  
20 was not aware of any concerns expressed by any  
21 councillors before or after or during the  
22 committee meeting.

23 Q. And no one suggested that  
24 this was an inappropriate practice?

25 A. No. Correct.

1 Q. Okay. Do you recall  
2 whether during this committee meeting or  
3 afterwards whether Councillor Collins, Jackson or  
4 Clark, the three of whom received a draft copy of  
5 the CIMA report, suggested that staff provide a  
6 copy of the CIMA report to the other committee  
7 members?

8 A. I don't recollect that  
9 occurring.

10 Q. And I believe your  
11 evidence was that certainly 2013 you had never  
12 seen a consultant report appended to a staff  
13 report at PWC?

14 A. That is correct.

15 Q. And commission counsel  
16 asked how a member of the public could go about  
17 getting a copy of the consultant's report if it  
18 was not appended to a staff report, and you  
19 indicated that the FOI process is probably the  
20 most common process?

21 A. That is correct.

22 Q. Okay. Could members of  
23 the public also contact their councillors directly  
24 for a copy?

25 A. Did they? I don't know

1 if they did. Could they?

2 Q. Could they?

3 A. They could.

4 Q. And a councillor could at  
5 that point direct the staff -- or sorry, direct  
6 staff to provide a copy to the public if they  
7 thought it was appropriate to do so?

8 A. Probably through the  
9 clerk, but, yes, they could.

10 Q. Thank you. I would like  
11 to chat a little bit more about working with  
12 consultants. In your experience is there a  
13 difference between the use of could consider and  
14 should consider in a consultant's report?

15 A. Could is questionable and  
16 you don't have to, and should infers that you  
17 probably need to do it.

18 Q. And is it your  
19 expectation that a consultant would be intentional  
20 in its use of those terms?

21 A. Yes, absolutely.

22 Q. And what was your  
23 expectation regarding how consultants would assign  
24 timelines to a particular countermeasure?

25 A. They probably would look

1 at the cost and effectiveness of the  
2 countermeasure and rank it that way, but probably  
3 wouldn't look at what was easy to do as opposed to  
4 more time-consuming things, and so certain items  
5 might not be easy to do in a short timeframe.

6 Q. Would you expect them to  
7 identify investigations or countermeasures that in  
8 their view needed to be done urgently on a more  
9 compressed timeline than other investigation or  
10 countermeasures that they --

11 A. Yes, absolutely I would.  
12 If they noted something of extreme urgency, I  
13 would expect them to point that out immediately.

14 Q. Thank you. And in your  
15 experience, Mr. White, is it common for City staff  
16 to provide feedback to consultants with respect to  
17 an ongoing engagement and report?

18 A. That is correct. It's an  
19 ongoing dialogue between the client and the  
20 consultant to develop a final report.

21 Q. And do you have any  
22 concerns with staff providing such feedback or  
23 recommendations to the consultant?

24 A. Not at all.

25 Q. Why not?

1                   A.    Well, because it's an  
2    interactive process, and so the consultant can't  
3    move forward without hearing the opinions of the  
4    City and evaluating some of the commentary the  
5    City might have, and vice versa, the City needs to  
6    heed the consultant's conclusions.

7                   Q.    And then I expect that  
8    your expectation would be that a consultant would  
9    not make any changes to a report that they didn't  
10   agree with?

11                  A.    I absolutely believe  
12   that.  A consultant would say no, if they were  
13   being asked to describe something inappropriate;  
14   I'm sure.

15                  Q.    Thank you.

16                         And, Mr. Registrar, could you  
17   please pull up OD6, image 8, paragraph 11.  And I  
18   don't know if you can also pull up another OD  
19   section at the same time, OD7, image 10, para 29.  
20   Excellent.

21                         And so, Mr. White, you see  
22   before you the wording of the 2013 and the 2015  
23   motions that gave rise to the 2013 and '15 CIMA  
24   reports.

25                   A.    Okay.

1 Q. Am I correct that  
2 generally when counsel brings a motion,  
3 councillors are looking for staff's recommendation  
4 to the issues raised in the motion?

5 A. Yes, that's 100 percent  
6 true.

7 Q. And certainly that's the  
8 case with the motions you see before you?

9 A. As with all motions, yes.

10 Q. And it may be that staff  
11 wished to engage a consultant as part of  
12 responding to that motion?

13 A. True.

14 Q. And we know of course  
15 that that's what happened here. And when City  
16 staff ask for advice from a consultant, fair to  
17 say that they are relying on the consultant's  
18 expertise?

19 A. Yes.

20 Q. And City staff may also  
21 have their own technical expertise depending on  
22 their position and area?

23 A. Yes.

24 Q. So is it expectation that  
25 staff will rely on their own judgment in

1 conjunction with the advice from consultants when  
2 they're making decisions?

3 A. Yes.

4 Q. And would you expect that  
5 City staff and particularly staff in leadership  
6 positions would use their judgement in applying  
7 the advice that's contained in a consultant's  
8 report?

9 A. I absolutely believe  
10 that, yes.

11 Q. Right. Because  
12 ultimately what council is looking for is staff's  
13 recommendation which takes into consideration the  
14 consultant's report?

15 A. Correct.

16 Q. Commission counsel asked  
17 you a little bit about this and about the contents  
18 of staff reports in circumstances where the  
19 consultant's report is not appended to the staff  
20 report, and your evidence was that, it's important  
21 for staff to interpret the consultant report and  
22 to provide council with their best recommendations  
23 or course of action based on the data in the  
24 consultant's report, and that staff should review  
25 consultant reports to ensure they are not

1 recommending something that's untenable or that  
2 council has ruled out in the past; is that  
3 correct?

4 A. Correct.

5 Q. They also asked if staff  
6 are obliged to ensure that a staff report is a  
7 fair and accurate summary of the consultant's  
8 reports, including with respect to any concerns  
9 raised by the consultant, and your response was  
10 yes. To what extent would the significance of the  
11 concern raised by the consultant impact staff's  
12 discretion in determining whether to summarize  
13 those concerns in the staff report or not?

14 A. I think if it was in --  
15 the consultant recommended something as an  
16 immediate requirement or an immediate remediation,  
17 that we would take that extremely seriously, and  
18 as you go down through the list of things, if  
19 you -- there are always a list of things at the  
20 end or usually in a consultant report that you  
21 could consider, but you don't necessarily have to  
22 consider. So it depends on the severity of the  
23 issue and the recommendation for mitigation.

24 Q. Okay. Thank you. And in  
25 your view did the 2013 CIMA report identify any

1 immediate or severe issue?

2 A. No, I don't think it  
3 really did.

4 Q. In fact, it confirmed  
5 that the facility was overall operating safely  
6 when compared with other roads with similar  
7 characteristics; that's correct?

8 A. That is the wording in  
9 the report, yes.

10 Q. Now, the report does  
11 state that there was a higher proportion of wet  
12 weather and non daylight conditions, and I can  
13 take you to it, but -- and do you recall that that  
14 information was included in the appendix of the  
15 2013 staff report?

16 A. Yes.

17 Q. Thank you.

18 Mr. Registrar, could you  
19 please go to CIM8082.0001 at image 16.

20 JUSTICE WILTON-SIEGEL: I'm  
21 just wondering, Ms. Contractor, we're a little  
22 past 3:30.

23 MS. CONTRACTOR: My apologies.  
24 I got carried away.

25 JUSTICE WILTON-SIEGEL: I'm

1 wondering whether this would be an appropriate  
2 time to take our break?

3 MS. CONTRACTOR: It certainly  
4 would. Thank you.

5 JUSTICE WILTON-SIEGEL: Let's  
6 take a 15-minute break. We'll come back at  
7 quarter to 4:00, and adjourned until quarter to  
8 4:00.

9 --- Recess taken at 3:33 p.m.

10 --- Upon resuming at 3:45 p.m.

11 BY MS. CONTRACTOR:

12 Q. Thank you.

13 Mr. Registrar, could you  
14 please pull CIM8082.0001, image 16. Perfect.  
15 Thank you.

16 And, Mr. White, as part of the  
17 2013 CIMA report, CIMA conducted a collision  
18 analysis of the study area.

19 And if you could call out 4.1,  
20 please, Mr. Registrar.

21 And that section notes the  
22 objective of the analysis, which is to identify  
23 locations that have a higher than average number  
24 of collisions and locations where the proportion  
25 of different type of collisions are usually high.

1 Do you see that?

2 A. Yes.

3 Q. In your experience why is  
4 it important to understand whether different types  
5 of collisions are usually high?

6 A. Well, it would provide  
7 you with information about what could be happening  
8 on the roadway, and it would lead you to make  
9 different conclusions regarding the rehabilitation  
10 or the correction to those collision issues.

11 Q. And in order to assess  
12 this is it important to compare the average  
13 collision numbers for similar facilities?

14 A. Well, on a facility of  
15 this nature we needed to get a comparative figure,  
16 and so it is important to understand what the  
17 baseline is or at least what comparative  
18 facilities of the similar nature are -- what those  
19 collision rates are in those facilities.

20 Q. And here if we go to  
21 image 23, the one way that CIMA provides that  
22 comparison is to look at the provincial and  
23 municipal averages to determine whether the  
24 collision numbers on the Red Hill are unusually  
25 high. And if we look at image 23, you'll see at

1 the bottom there, it says "the study area."

2 Thank you, Mr. Registrar.

3 Here CIMA provides a breakdown  
4 collision analysis by roadway surface attribute,  
5 and it states the overall average of collisions  
6 that occurred under wet road surface is 46 percent  
7 which is higher than the provincial and municipal  
8 average.

9 And you can call that down,  
10 Mr. Registrar. Thank you.

11 Mr. White, are there any roads  
12 that are comparable to the Red Hill in Hamilton?

13 A. No, not in Hamilton.

14 Q. And would that include  
15 the LINC?

16 A. The LINC didn't have the  
17 same geometry as the RHVP.

18 Q. Right. And so what does  
19 the comparison to the municipal average and the  
20 Red Hill tell you?

21 A. It's more of a general  
22 guide of thumb rather than specifically empirical  
23 data.

24 Q. And can it tell you  
25 whether the collisions on the Red Hill are

1 unusually high?

2 A. Not in comparison to  
3 similar facilities it cannot.

4 Q. Right. And if we look at  
5 the comparison to the provincial average, which is  
6 17.4, you see the footnote 9, and that footnote is  
7 to the Ontario Road Safety Annual Report. And as  
8 I understand it, this report provides a breakdown  
9 of all the collisions that take place in Ontario  
10 and also of provides a breakdown by road surface.

11 And the 17.4 figure that  
12 they've provided here, I understand that that is  
13 based on the number of collisions on all roads in  
14 Ontario that they had data for and that took place  
15 in wet weather conditions; is that correct?

16 A. That is my understanding.

17 Q. It's not broken down by  
18 the -- whether it's a high speed facility, whether  
19 it's a straight road, a curvy road, correct?

20 A. That is also my  
21 understanding.

22 Q. Given that, what did the  
23 comparison to the provincial average to the  
24 average number of wet weather collisions tell you  
25 here?

1                   A.    Nothing.  It's not really  
2    comparing apples to apples.  So, again, it was  
3    just a means of looking at the collisions, but you  
4    have to factor in the fact that there's no  
5    comparative road facility when doing the data  
6    comparison.

7                   Q.    And just to close the  
8    loop on that then, it can't tell you whether the  
9    collisions are unusually high; is that fair?

10                  A.    Well, there's -- yes,  
11    that's correct.  There's no baseline for the RHVP  
12    specifically.

13                  Q.    Thank you.  And in the  
14    2013 report CIMA provided guidance and included  
15    some countermeasures and a timeline for  
16    implementation, and we've talked a little bit or  
17    you've talked a little bit about the short-term  
18    recommendation being zero to five years.  What  
19    specifically did you understand that to mean?

20                  A.    That those collision  
21    countermeasures should be completed within a  
22    five-year timeframe.

23                  Q.    Okay.

24                            And if we could please,  
25    Mr. Registrar, go to image 50.  And if you could

1 please call out 6.1.1, including the cost benefit  
2 ratio section.

3 Commission counsel took you to  
4 this section, and specifically the last sentence  
5 of that first paragraph which states:

6 "Because of the high  
7 proportion of wet surface  
8 condition and SMV collisions,  
9 the City could consider  
10 undertaking pavement friction  
11 testing on the asphalt to get  
12 a baseline friction  
13 coefficient for which to  
14 compare it to design  
15 specifications." (As read)

16 What did CIMA's use of "could  
17 consider" tell you about the recommendation here?

18 A. I essentially believe  
19 that the word "could" makes that optional.

20 Q. Okay. And under "Cost  
21 Benefit Ratio," what is a cost benefit ratio in  
22 your view on your experience?

23 A. Well, I think there's a  
24 calculation that uses the cost as a function of  
25 how much impact you would get from the, in this

1 case, the remedial measure.

2 Q. Right. And so if there's  
3 a high benefit and low cost, the City is more  
4 likely to undertake the recommendation?

5 A. That is correct.

6 Q. And here the cost benefit  
7 results for friction testing are stated as:

8 "Based on the results, the  
9 City may be in a better  
10 position to determine if  
11 further action is required."

12 (As read)

13 And so no -- CIMA did not  
14 provide a cost benefit analysis.

15 A. That is correct.

16 Q. And you understood that  
17 this recommendation was a short-term  
18 recommendation which, again, was zero to five  
19 years?

20 A. Correct.

21 Q. Would you have expected  
22 CIMA to identify a shorter timeline or use  
23 stronger language if they understood this  
24 investigation was urgent or significant?

25 A. Absolutely.

1 Q. Okay.  
2 If we could please go to  
3 image 66 and call out the bottom "ramp 6." Thank  
4 you. I'm sorry. Just give you one moment. Hold  
5 on a sec. Bear with me, please. If we could  
6 please go to image -- it's page 46 of the report.  
7 And I apologize, I don't know exactly what the  
8 image number is. Perfect. Oh, just one over.  
9 There we go. And if you could pull out the  
10 "install high friction pavement." Thank you very  
11 much.

12 And this recommendation was  
13 with respect to ramp 6 specifically, and you'll  
14 see here CIMA uses "could consider." And I take  
15 it you interpret it in the same way as you did  
16 friction testing?

17 A. Correct.

18 Q. And so you viewed this as  
19 optional as well?

20 A. That's what I get implied  
21 from the word "could" in that statement.

22 Q. Right. And this was also  
23 a short-term countermeasure. And so am I correct  
24 that what the guidance that CIMA is providing here  
25 is that the City could consider implementing or

1 installing high friction pavement at some point in  
2 the next five years?

3 A. Yes, that is true.

4 Q. Okay.

5 And if we could go to HAM24142  
6 and to image 3.

7 This is a draft staff report  
8 that David Ferguson sends to Mr. Moore and  
9 Mr. Field in March of 2015 providing an update on  
10 the countermeasures following the 2013 CIMA  
11 report.

12 And you'll see here "install  
13 high friction pavement." That countermeasure  
14 beside that the status is listed as:

15 "To be reviewed and completed  
16 during future pavement --  
17 sorry -- future repaving."

18 (As read)

19 Do you see that?

20 A. Yes.

21 Q. Okay. Do you recall  
22 whether that was a discussion that was had within  
23 traffic that consideration of high friction  
24 pavement would be reviewed during a future  
25 repaving?

1                   A.    I don't think it would've  
2    only been traffic.  I didn't have that  
3    conversation, I think Dave did.  But he would have  
4    called on the resources he was dealing with in  
5    engineering services.

6                   Q.    So it's something that --

7                   A.    It was something we were  
8    not in control over.

9                   Q.    Understood.  So would it  
10   be in conjunction with engineering services or at  
11   their direction, but it does appear that it was  
12   considered, and the decision was made to take a  
13   look at it during a future repaving?

14                  A.    That's correct.

15                  Q.    Did you have any concerns  
16   with that?

17                  A.    Not at all.

18                  Q.    Okay.

19                            If we could please go to OD6,  
20   page 127.

21                            And commission counsel asked  
22   you about the collision analysis that Mr. Ferguson  
23   had completed following the comments you received  
24   from road staff about slippery conditions on the  
25   LINC and the Red Hill.  And I believe that you

1 mentioned that at some point at once collision  
2 analysis was completed, it was determined that a  
3 full review of the Red Hill and the LINC would be  
4 completed and that that was also consistent with  
5 the direction you received from Councillor  
6 Collins; is that right?

7 A. That is correct.

8 Q. And I believe you had  
9 suggested that that was near the end of 2014.

10 And I just want to pull out  
11 paragraph 361 if you would, Mr. Registrar. Thank  
12 you. And perhaps the -- yeah. Thanks.

13 Is this the e-mail that you  
14 were referring to? So this is an e-mail from  
15 Mr. Mater to Mr. Davis, and it says:

16 "As per our conversation,  
17 staff have been reviewing the  
18 collision history on the Red  
19 Hill and LINC. While I don't  
20 have the final picture yet,  
21 there is enough of a concern  
22 that I believe we need to do  
23 more in-depth review. As per  
24 your direction, I've  
25 instructed staff to begin the

1 process by scoping out what we  
2 would like to have done in  
3 terms of a safety review and  
4 begin processing -- begin the  
5 process of selecting a third  
6 party expertise to complete  
7 the work." (As read)

8 A. Yes.

9 Q. Okay. And then the last  
10 sentence --

11 A. And so that was the  
12 collision analysis that led us to require  
13 additional work to verify what we were seeing and  
14 move forward with the facility review.

15 Q. Thank you.

16 And, Mr. Registrar, could we  
17 please go to HAM702. I'm sorry, HAM24709,  
18 image 41.

19 So moving forward to 2015, I  
20 want to take a look at the guidance provided in  
21 the 2015 report with respect to friction testing.  
22 And I'll take you to a couple of sections here.

23 And so here 7.1.21, if you  
24 could pull that out, please. And the second --  
25 the start of the second paragraph:

1 "Because of the high  
2 proportion of wet surface  
3 conditions and SMV collisions,  
4 the City could consider  
5 undertaking pavement friction  
6 testing." (As read)  
7 So exactly what we saw in the  
8 2013 report.

9 A. Correct.

10 Q. And if you could keep  
11 that up, please, Mr. Registrar, and also pull up  
12 image 53, and at the bottom 9.1.3. And the first  
13 sentence of this paragraph states:

14 "In order to determine whether  
15 low pavement friction may be  
16 contributing to collisions the  
17 City should consider  
18 conducting pavement friction  
19 tests under normal conditions  
20 as well as under typical wet  
21 pavement conditions." (As  
22 well)

23 And what guidance did you  
24 understand CIMA to be providing the City with  
25 respect to friction testing in this report when it

1 said "could consider" in 7.1.2.1, and in that  
2 section also said, you know, based on the results  
3 "the City may be in a better position to determine  
4 if further action is required," and 9.1.3 in which  
5 it says that it "should consider." How did you  
6 interpret that?

7 A. It's slightly conflicting  
8 in that "should" implies that I should go ahead  
9 and do it. But I think what they're suggesting is  
10 to establish friction testing and then create a  
11 baseline for it and continue to measure friction  
12 as we move forward. So there's a comparator of  
13 the same facility.

14 Q. And so when we look at  
15 7.1.21, it says:

16 "The City could consider  
17 undertaking pavement friction  
18 testing on the asphalt to get  
19 a baseline friction  
20 coefficient for which to  
21 compare it to design  
22 specifications." (As read)

23 Now, I don't see that it says  
24 to get a baseline to compare to subsequent  
25 testing. Is that --

1 A. Okay.

2 Q. Do you see that anywhere?

3 I might be missing it.

4 A. No. Sorry, I think I  
5 misinterpreted that. Okay.

6 Q. And we know that the  
7 friction testing here was also a short-term  
8 countermeasure which you've previously indicated  
9 you understood also to be zero to five years. So,  
10 again, with that in mind, what guidance did you  
11 understand CIMA to be providing you with respect  
12 to friction testing in the '15 report?

13 A. That we should look at  
14 friction testing as one of the factors, and that  
15 it's possible that we need to do further work with  
16 it, but they weren't being specific in that  
17 direction and left it as a option really is what I  
18 read out of the should.

19 Q. Did you understand it to  
20 be an urgent issue the City needed to investigate?

21 A. No.

22 Q. Okay.

23 And if we could please go to  
24 HAM24700.

25 Commission counsel in

1 discussing the 2015 staff report asked you about  
2 why friction testing was listed as a medium-term  
3 countermeasure when the CIMA report listed it as a  
4 short-term countermeasure. And I believe your  
5 response was that there was a different definition  
6 of short term and medium term. So CIMA  
7 understood -- or defined short term as zero to  
8 five, and in the staff report short term was  
9 defined as zero to two, and so really the City's  
10 medium term fit the definition of CIMA's short  
11 term. Do I have that right?

12 A. That is correct.

13 Q. And she also took you to  
14 recommendation B, that the -- which essentially  
15 states that the medium-term items, consideration  
16 of those items and long term be deferred pending  
17 the outcome of the TMP and asked whether at the  
18 time of this report you were aware if the TMP  
19 outcome or update would occur within two to five  
20 years of the staff report. And I believe your  
21 evidence was that it was almost complete but you  
22 don't quite recall.

23 And so we can keep that,  
24 Mr. Registrar, and also go to OD7, image 20 and  
25 pull out paragraph 49, please.

1                   So this paragraph -- oh,  
2     that's fine. It is an e-mail from May 25th, 2015,  
3     so months before the 2015 CIMA report is  
4     finalized, including the staff report. And this  
5     is an e-mail from Mr. Lupton to a number of your  
6     colleagues. You're not on this, but to  
7     Mr. Ferguson, Mr. Jacobson and Mr. Mater and  
8     others, and it -- Mr. Lupton is attaching an  
9     article from the Spectator which indicated that  
10    the City was considering widening the LINC and the  
11    Red Hill as part of the ongoing review of the  
12    City's transportation master plan which is  
13    expected to be finished in the next 12 months.

14                   Do you recall whether you  
15    would have reviewed this article around that time?

16                   A. The article. I think I  
17    was off.

18                   Q. You were off. Okay.  
19    Does this help refresh your recollection as --

20                   A. Yes, it does, absolutely,  
21    but I think I knew those things after the fact  
22    upon my return.

23                   Q. Understood.

24                   If we could please go to  
25    HAM5102.

1                   The document that  
2   Mr. Registrar is going to pull up is an  
3   information update from May 2016, so about a year  
4   after the 2015 CIMA report, and the purpose of the  
5   report is to provide an update on the steps staff  
6   have taken.

7                   And if we could go to images 2  
8   and 3. Is this a summary of the improvements or  
9   safety enhancements that your group would have  
10   undertaken since the 2015 report?

11                  A. Yes.

12                  Q. And you'll see that one  
13   of -- the third row of the table states "install  
14   slippery when wet signs in June to July." (As  
15   read)

16                  That's the completion date?

17                  A. That is the target date.

18                  Q. Sorry, this is the target  
19   date or the completion date?

20                  A. I'm not sure now. In  
21   context I don't really recollect.

22                  Q. Okay. That's fine.

23                  Can we go back to the first  
24   page.

25                  And so, sorry, is your --

1 because the report is dated May 2016, you  
2 understand that the June to July may be a  
3 completion date and not when the work was  
4 completed, but when the work is expected to be  
5 completed.

6 A. I think we were working  
7 on all those things, and I think that was when we  
8 would have been finished, but is there any text to  
9 that effect? I don't know. I think that's the  
10 completion date.

11 Q. Let me just double check  
12 here. Can we have the first two pages up, please,  
13 Mr. Registrar. Right. So underneath the table it  
14 says:

15 "In addition to the work noted  
16 above, staff have been working  
17 in partnership with Hamilton  
18 police investigating various  
19 types of digital radar speed  
20 feedback signs that would meet  
21 the need of both  
22 organizations." (As read)

23 I'm not sure if that helps  
24 provide you with the context.

25 A. Yes. I think I read that

1 as the completion date. It would be just shortly  
2 after -- this is May. We're saying we're going to  
3 be finished the work in the summer. A lot of that  
4 work cannot be done in the winter.

5 Q. Understood. And do you  
6 know whether that work was completed?

7 A. I believe it was.

8 Q. Okay.

9 Could we please go,  
10 Mr. Registrar, to OD7, image 105.

11 And commission counsel took  
12 you to a chain of e-mails with respect to  
13 Councillor Connelly's request for friction testing  
14 from staff and specifically to your e-mail on  
15 June 5th there at paragraph at 539 where you  
16 say -- you forwarded Councillor Connelly's e-mail  
17 to Mr. Ferguson and Mr. Mater and state, "let's  
18 see what answer he gets."

19 And commission counsel asked  
20 you why you stated that and your answer was you  
21 were curious because none of us had received an  
22 answer. And just to orient you in time, this is  
23 June 2017.

24 A. Okay.

25 Q. And you also told us that

1 Mr. Moore had advised you that friction testing  
2 was completed, that he had received the results  
3 and that he was waiting for an analysis of that  
4 data to put it into context because there was no  
5 standard for friction testing, or for friction  
6 rather, in Ontario or in Canada; is that correct?

7 A. That's correct.

8 Q. And at the time were you  
9 aware of any friction standards that were  
10 applicable in Ontario or Canada?

11 A. I have -- no. Because  
12 friction testing is far outside of my professional  
13 knowledge, but --

14 Q. Right.

15 A. -- I'm not aware of any  
16 standards.

17 Q. Right. And I believe  
18 part of your professional education was the  
19 traffic safety program at Mohawk; is that right?

20 A. Yes.

21 Q. And that program did not  
22 cover friction testing as part of managing roadway  
23 safety?

24 A. That's correct.

25 Q. And any of the other

1 continuous education programs that you may have  
2 attended with respect to roadway safety did not  
3 talk about friction testing?

4 A. That is correct.

5 Q. Oka. Mr. White, am I  
6 correct what you were looking for from Mr. Moore  
7 was not the friction testing data, but an  
8 interpretation of --

9 JUSTICE WILTON-SIEGEL: I'm  
10 going to stop here. It seems to me that this is a  
11 leading question in an area which is relatively  
12 sensitive. So I'll ask you to rephrase the  
13 question.

14 MS. CONTRACTOR: Certainly.  
15 Thank you, Mr. Commissioner.

16 BY MS. CONTRACTOR:

17 Q. Mr. White, what were you  
18 specifically looking for from Mr. Moore with  
19 respect to information regarding friction testing?

20 A. I think for me it was  
21 simply, is the test -- render the asphalt good or  
22 not good in terms of its friction. It was pretty  
23 black and white the way I was looking at it. It  
24 probably isn't that way technically, but I wanted  
25 to know, is the asphalt one of the contributing

1 factors or is it not.

2 Q. And so am I correct,  
3 then, that you weren't solely looking for numbers  
4 or dataset?

5 A. I would not be able to  
6 interpret those. I would need somebody to  
7 interpret them.

8 Q. Thank you. I wanted to  
9 ask you about HAM35785, which was the e-mail  
10 exchange you had with Mr. Soldo with respect to  
11 whether you were aware of the Tradewind report.  
12 And I just wanted to clarify a quick point here,  
13 and I believe commission counsel asked you if you  
14 hadn't seen the Tradewind report prior to this, at  
15 this point how did you know that the reference to  
16 Tradewind -- how did you know about the reference  
17 to Tradewind or that it related to friction. And  
18 I believe your answer was, I don't know how I  
19 know, I just know by now that Tradewind was  
20 responsible for friction testing.

21 And if we could pull up  
22 Mr. Soldo's e-mail. The second paragraph he  
23 states:

24 "I need written confirmation  
25 from you both on the

1 following; that the 2013  
2 Tradewinds consulting report  
3 was never shared with any of  
4 you -- with you or any of your  
5 staff regarding the friction  
6 testing." (As read)

7 And is that how you connected  
8 the Tradewind report to friction testing in 2013?

9 A. Well, you know I'm angry  
10 (ph) that I read 2013 friction testing, and  
11 Tradewind is just a matter of fact in there. So  
12 I'm reading this like, did I see any report with  
13 regard to friction testing, and I did not.

14 Q. Thank you. And,  
15 Mr. White, did you at any point complain to  
16 Mr. Lupton or to anyone else that you found  
17 Mr. Moore to be intimidating?

18 A. No, I never did that. I  
19 didn't feel intimidated by Mr. Moore.

20 Q. Thank you. And you were  
21 taken to a few pie charts by commission counsel  
22 showing the collisions on the LINC and Red Hill,  
23 and specifically showing that the percentage of  
24 wet weather conditions on the Red Hill was higher  
25 than the LINC. And commission counsel asked if

1 you had a sense of what was contributing to this  
2 on the Red Hill, and your answer was, Dave and I  
3 were looking at speed of traffic, and the police  
4 were concerned about the speed.

5 Mr. Registrar, could you  
6 please go to HAM57004 and image 18 and 19.  
7 Actually why don't we stop at the first page so I  
8 can just orient Mr. White.

9 So this report is from the  
10 Hamilton Police Services to the board, and it  
11 provides an analysis of fatal collisions in  
12 Hamilton for five years, and the report is dated  
13 2017 which is also the date of the pie charts.

14 And if we could please go to,  
15 Mr. Registrar, image 18 and 19, please. And  
16 you'll see on the left-hand side, the bottom chart  
17 says:

18 "Fatality chart, contributing  
19 factors for the Red Hill  
20 Valley Parkway and the LINC  
21 for the last five years." (As  
22 read)

23 And on the right-hand side it  
24 states:

25 "From figures contained in the

1                   stated chart the three most  
2                   common contributing factors to  
3                   a fatal collision is speed,  
4                   intoxicating substance and  
5                   inattentiveness. It's not  
6                   surprising that the three  
7                   contributing factors mentioned  
8                   above are the root cause of  
9                   fatal motor vehicle collisions  
10                  over the past five years are  
11                  getting the frontrunners of  
12                  the present 2017." (As read)  
13                  Is that consistent with the  
14                  understanding that you and Mr. Ferguson had in  
15                  2017 that speed was a primary factor in  
16                  contributing to wet weather conditions on the Red  
17                  Hill?

18                               A.    Yes.

19                               Q.    Okay. Thank you,  
20                  Mr. White. Those are all of my questions.  
21                  Appreciate your time today, and thank you for  
22                  being flexible and reorganizing your schedule to  
23                  attend earlier.

24                               JUSTICE WILTON-SIEGEL: Okay.

25                  Ms. Bruckner?

1 MS. BRUCKNER: Thank you,  
2 Commissioner. I have about five minutes of  
3 re-examination for Mr. White.

4 JUSTICE WILTON-SIEGEL: Please  
5 proceed.

6 EXAMINATION BY MS. BRUCKNER (CONT'D):

7 Q. Registrar, could you  
8 please call up HAM24709 at image 41.

9 So, Mr. White, just to orient  
10 you, this is the copy of the 2015 CIMA report that  
11 Ms. Contractor put to you earlier.

12 Registrar, could you please  
13 pull up on the other side of the screen, HAM41871  
14 at image 50.

15 And so, Mr. White, for your  
16 reference this is the 2013 CIMA report, and you'll  
17 see that we have pulled out on one side of the  
18 screen under 712 "Pavement Friction," that is the  
19 information from the 2015 report that the  
20 Ms. Contractor was speaking to you about, and  
21 under 6.1 on the other side of the screen, it's  
22 the general pavement friction testing information  
23 from the 2013 CIMA report.

24 A. Okay.

25 Q. So Ms. Contractor put the

1 section, and, Registrar, can we call out "perform  
2 friction testing" under 7121. She put this  
3 section of the 2015 report to you and noted that  
4 there is a line that says, that recommends that  
5 the friction testing would be for the purpose of  
6 getting a baseline friction coefficient for the  
7 Red Hill Valley Parkway.

8 Thank you, Registrar.

9 And she asked you if there was  
10 a reference in this section of the 2015 CIMA  
11 report to comparing friction data to subsequent  
12 friction testing, which there is not. And I  
13 believe you agreed to that statement.

14 Registrar, could you put that  
15 down, please, and call out 6.11 from the 2013  
16 friction test -- under -- from the 2013 CIMA  
17 report. Could you please highlight the final line  
18 of that paragraph:

19 "Because of the high  
20 proportion of wet surface  
21 conditions." (As read)  
22 So you see that in 2013 CIMA  
23 said:

24 "Because of the high  
25 proportion of wet surface

1 conditions and SMV collisions,  
2 the City could consider  
3 undertaking pavement friction  
4 testing on the asphalt to get  
5 a baseline friction  
6 coefficient for which to  
7 compare to design  
8 specifications."

9 So as of 2015 would you agree  
10 that that's the second time that CIMA has  
11 suggested that you might want to get a baseline  
12 coefficient for the Red Hill Valley Parkway?

13 A. Sorry, I'm a little  
14 confused again. Again, it says "could consider."

15 Q. Right.

16 A. So it's there in both  
17 documents.

18 Q. Okay. So it's the second  
19 time they have suggested that the City may want to  
20 get a baseline friction coefficient for the Red  
21 Hill Valley Parkway?

22 A. It doesn't say that in  
23 this piece. It says that in the other piece, I  
24 believe. This one says, compare it to the design  
25 specifications, not get a baseline --

1 Q. Sorry, Mr. White, it  
2 says:

3 "On the asphalt to get a  
4 baseline coefficient for which  
5 to compare to design  
6 specifications."

7 A. Yes. Okay. So I agreed  
8 with that; it says that. The design specs would  
9 have asphalt conditions I expect. I don't know  
10 anything about that sort of thing.

11 Q. And, Registrar, could you  
12 pull out again under 7.2.121 the same section that  
13 we were looking at. So because -- the second  
14 paragraph:

15 "Because of the high  
16 proportion of wet surface  
17 conditions." (As read)  
18 So you'll see it says:  
19 "Because of the high  
20 proportion of wet surface  
21 condition and the single motor  
22 vehicle collisions, the City  
23 could consider undertaking  
24 pavement friction testing on  
25 the asphalt to get a baseline

1 friction coefficient for which  
2 to compare to design  
3 specifications." (As read)

4 A. Yes, I agree. That's the  
5 same basic suggestion in both -- in both of their  
6 reports?

7 Q. Okay. To your knowledge,  
8 as of 2015 had anyone at the City advised CIMA  
9 that Mr. Moore had conducted friction testing on  
10 the Red Hill Valley Parkway?

11 A. Well, certainly not  
12 anybody from traffic because we did not have that  
13 data.

14 Q. Okay. Would CIMA have  
15 had enough information to propose a comparison to  
16 subsequent friction testing in the 2015 report?

17 A. Sorry, again ask that.  
18 Would CIMA?

19 Q. Would CIMA have had  
20 enough data about friction testing in 2015 to  
21 propose a comparison between friction testing  
22 results from the Red Hill Valley Parkway from  
23 prior dates?

24 A. I'm not aware of what  
25 friction testing data they might have had or --

1 nor what information was transmitted to them from  
2 outside of traffic.

3 Q. Okay. Thank you very  
4 much, Mr. White. Those are my re-examination  
5 questions.

6 JUSTICE WILTON-SIEGEL: Okay.  
7 Mr. White, thank you very much both for  
8 accommodating our schedule by appearing somewhat  
9 earlier than was originally scheduled, and also  
10 for your attendance both days today. Your  
11 evidence is appreciated, and I can say at this  
12 point, the end of the day, you're excused.

13 THE WITNESS: Thank you,  
14 Mr. Commissioner.

15 JUSTICE WILTON-SIEGEL: Thank  
16 you. I don't think there's anything else we have  
17 to address this evening. Is there, Ms. Bruckner?

18 MS. BRUCKNER: Commissioner,  
19 we may wish to note for the record that we'll be  
20 starting at 10 a.m. tomorrow as opposed to 9:30.

21 JUSTICE WILTON-SIEGEL: Yes.  
22 Okay. And I understand at the request of  
23 Ms. Contractor, we may be taking an earlier than  
24 customary luncheon break; is that correct?

25 MS. BRUCKNER: That would be

1 very much appreciated, Mr. Commissioner.

2 JUSTICE WILTON-SIEGEL: So  
3 we'll proceed from 10 o'clock to noon and then  
4 take our break at that point. So thank you very  
5 much. We'll stand adjourned until tomorrow at  
6 10 o'clock.

7 --- Whereupon at 4:25 p.m. the proceedings were  
8 adjourned until Friday, June 10, 2022 at  
9 10:00 a.m.

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