

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Monday, June 13, 2022, at 9:30 a.m.

VOLUME 29

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Chris Buck For Dufferin Construction

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1 Arbitration Place Virtual

2 --- Upon resuming on Monday, June 13, 2022,

3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,  
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good  
7 morning.

8 MS. LAWRENCE: Our witness  
9 this morning is Stephen Cooper and he is here.  
10 He's not yet been sworn in.

11 JUSTICE WILTON-SIEGEL: I  
12 think, actually, before we swear him in, we should  
13 acknowledge the land.

14 MS. LAWRENCE: Thank you,  
15 Commissioner. Apologies for that.

16 I would like to open this  
17 week's hearing by acknowledging that the City of  
18 Hamilton is situated on the traditional  
19 territories of the Erie, Neutral, Huron-Wendat,  
20 Haudenosaunee and Mississaugas. This land is  
21 covered by the Dish With One Spoon Wampum Belt  
22 Covenant, which was an agreement between the  
23 Haudenosaunee and Anishinaabek to share and care  
24 for the resources around the Great Lakes.

25 We acknowledge that the land

1 on which Hamilton sits is covered by the Between  
2 the Lakes Purchase, 1792, between the Crown and  
3 the Mississaugas of the Credit First Nation.

4 Many counsel appearing today  
5 are in Toronto, which is on the traditional land  
6 of the Huron-Wendat, the Senecas and most recently  
7 the Mississaugas of the Credit River. Today this  
8 meeting place is home to many indigenous people  
9 from across Turtle Island and I'm grateful to have  
10 the opportunity to work on this land.

11 AFFIRMED: STEPHEN COOPER

12 EXAMINATION BY MS. LAWRENCE:

13 Q. Good morning, Mr. Cooper.

14 A. Good morning.

15 Q. Just in terms of our day  
16 today, we're going to go straight between now and  
17 about 11:30 or so and take a break, but if you  
18 require a break before then, just let me know.  
19 And we will then proceed for another hour and  
20 15 minutes after that break until the lunch hour,  
21 so that's our morning. Okay?

22 A. Thank you.

23 Q. I'm going to start with  
24 some questions about your background. I  
25 understand that you're a graduate of Mohawk

1 College traffic engineering program. Is that  
2 correct?

3 A. Yes.

4 Q. Do you have any other  
5 education or certifications?

6 A. I'm a certified  
7 engineering technologist with OACETT.

8 Q. And do you have any  
9 accreditations or qualifications with pavement  
10 marking or signs?

11 A. I'm a signs and markings  
12 specialist through IMSA.

13 Q. When did you graduate  
14 from Mohawk?

15 A. 2006, I believe.

16 Q. And am I correct that you  
17 joined the City of Hamilton directly after your  
18 graduation from Mohawk?

19 A. That's correct.

20 Q. What was your first  
21 position at the City?

22 A. I was a traffic  
23 engineering technologist.

24 Q. And, at that time, who  
25 was your immediate supervisor?

1 A. Gary Kirchknopf.

2 Q. And were you, and above  
3 you Gary Kirchknopf, under Hart Solomon?

4 A. Yes.

5 Q. Am I correct that you  
6 held that role until 2014?

7 A. Yes, around there, I  
8 believe. No, no. It would have been, yeah, maybe  
9 2013, 2014. I'm not exactly sure when I became  
10 the project manager.

11 Q. Okay.

12 A. It was after Hart left,  
13 so maybe 2012.

14 Q. Okay. And then did you  
15 take on the role of traffic roadway safety east?

16 A. I did. Well, it was  
17 actually at that time it was community traffic  
18 services. Same section, it was just a name  
19 change, so...

20 Q. Okay. Can you describe  
21 the role of project manager in community traffic  
22 services?

23 A. So, we oversaw all of the  
24 concerns that came in. We oversaw some  
25 technologists and we looked at all the concerns

1 that came in from council, the public, school  
2 boards, that sort of thing, relating to community  
3 traffic issues, such as speeding, stop signs  
4 requests, that sort of thing. I also represented  
5 the City on numerous litigations that the City was  
6 involved in.

7 Q. Okay.

8 A. We prepared by-laws and  
9 legal documents and that sort of thing.

10 Q. Okay. So, after  
11 Mr. Solomon retired in, I believe it was 2012, who  
12 was your immediate supervisor?

13 A. Still Gary, I think,  
14 until we got reorganized into, I believe it was  
15 transportation services. At that time, it was  
16 Lorissa Skrypniak.

17 Q. Okay. So, at some point  
18 in 2012 or 2013 there was a reorganization and  
19 your group went into a different department within  
20 Public Works. Is that fair to say?

21 A. Yes, for a short time we  
22 were there.

23 Q. Okay. And I understand  
24 that, after reorganization, your group reported to  
25 Martin White. Is that correct?

1                   A.    Not immediately.  We  
2    reported to Al Kirkpatrick for a short time under  
3    that transportation group, and then we got  
4    reorganized again, at which time we went under  
5    Martin.

6                   Q.    Okay.  So, by 2013, your  
7    group was under Martin White?

8                   A.    Around there.  I'm not  
9    exactly sure when that transition occurred.  We  
10   got reorganized twice in a very short time, so I'm  
11   not sure.

12                  Q.    Okay.  And I understand  
13   David Ferguson joined the City in August of 2013.  
14   From that point, did you report to him?

15                  A.    Yes.

16                  Q.    Once David Ferguson had  
17   started, did you report to him or to Martin White  
18   or to both?

19                  A.    Primarily to David, but  
20   sometimes directly to Martin.

21                  Q.    What is your current  
22   position?

23                  A.    I'm a project manager of  
24   roadway maintenance.

25                  Q.    What department does that

1 fall under?

2 A. Roads. Still Public

3 Works, just different section.

4 Q. Okay. And how long have  
5 you been in that position?

6 A. About two and a half  
7 years.

8 Q. And how does that differ  
9 from the traffic engineering community traffic  
10 project management that you did before?

11 A. Roadway safety?

12 Q. Yeah.

13 A. Now I take care of the  
14 maintenance of road assets within the  
15 right-of-way, so I don't deal with traffic issues  
16 anymore.

17 Q. Okay. And to whom do you  
18 report now?

19 A. Bob Marks or Robert  
20 Marks.

21 Q. And who does Mr. Marks  
22 report to?

23 A. Peter Sneelings [ph].

24 Q. And then just going up  
25 that chain, does Mr. Sneelings report to Bob Paul?

1                   A.    No, Mike Field.  Bob Paul  
2    is no longer with the City.

3                   Q.    Thank you.  And does Mike  
4    Field then report to Edward Soldo?  Is that the  
5    line up?

6                   A.    No.  He reports to the GM  
7    of Public Works.

8                   Q.    Okay.  Thank you.  So,  
9    I'm just going to go back in time to before  
10   Mr. Solomon retired and you were working under  
11   him.  I understand that there was a collision  
12   countermeasure program under Mr. Solomon's  
13   department.  Is that right?

14                  A.    Yes.

15                  Q.    What can you tell me  
16    about the collision countermeasure program?

17                  A.    It was a program that  
18    proactively looked at locations on the network  
19    screening list where we could look at locations  
20    with a relatively high collision rate and look at  
21    what we could do to mitigate those collisions.  It  
22    was something that the whole department did and  
23    everybody was given a certain number of locations,  
24    which they presented to the group every other  
25    month, so they were monthly meetings and you

1 presented by-monthly, so half the group did one  
2 month, the other half the other month, and  
3 Hamilton Police are involved and everyone from  
4 traffic engineering from the signals, the planning  
5 managers, senior project managers, technologists,  
6 students, everyone took part.

7 Q. And you mentioned it was  
8 looking at areas on the network screening list.  
9 What's the network screening list?

10 A. It's a list of collision  
11 locations throughout the City broken down.  
12 There's an overall list and then it's broken down  
13 by signals or by roadway traits basically, so it  
14 would be roadway segments or signalized locations,  
15 all-way stops locations, rural road, that sort of  
16 thing.

17 Q. What is the purpose of  
18 the network screening list? Like, how is it used?

19 A. It would be used to rank  
20 locations in the City based on collision rate, so  
21 you could -- it was so that you were comparing  
22 apples to apples, so you could weight collisions  
23 based on certain factors and a big mathematical  
24 formula to create that. I'm not going to try to  
25 attempt to even explain that, but basically it

1 weights locations throughout the City and ranks  
2 them accordingly.

3 Q. Okay. So, you said that  
4 that network screening list existed under Hart  
5 Solomon. How, if at all, were the rankings and  
6 the network screening list reported to the public?

7 A. There was an annual  
8 report put out, so I'm assuming it was the annual  
9 collision report at the time.

10 Q. Okay. And did the  
11 existence of the network screening list, did that  
12 continue after Mr. Solomon left and into --  
13 recognizing there was some reorganization there --  
14 Mr. White's time?

15 A. I can't say for sure. It  
16 was kind of a five-year cycle, so it kept five  
17 years' worth of data year over year. And I can't  
18 say for sure. I can't recall if it kept going  
19 after that for certain. I'm not sure.

20 Q. Okay. Back to the  
21 collision countermeasure program, did that include  
22 the Red Hill Valley Parkway once the Parkway  
23 opened?

24 A. Well, there was locations  
25 of the Parkway on the list, yes.

1                   Q.    You said that staff, that  
2    this was a whole group effort and that staff would  
3    present.  How were the road segments or the roads  
4    selected and given to staff to do that  
5    presentation?

6                   A.    It depended on what we  
7    were targeting that year.  So, if we were looking  
8    at overall collisions, we would break down, you  
9    know, for simplicity, if there was ten staff at  
10   100 locations, each person would get ten.  I think  
11   it was just an arbitrary list handed out to staff  
12   to look at.  You know, one year we focused on  
13   vulnerable road users, so we would look at the top  
14   locations that identified issues with vulnerable  
15   road users, so it depended on what our focus was.

16                  Q.    So, it wasn't the case  
17   that particular staff had particular geographic  
18   areas or particular roadways and they monitored  
19   them over years?

20                  A.    No, it was not.

21                  Q.    Okay.  Mr. Cooper, we're  
22   going to have the registrar pull up some documents  
23   to screen share for all of us, and once we get  
24   this first one up we'll just make sure that your  
25   screen is set up appropriately.

1 Registrar, can you bring up  
2 HAM62336, please. Thank you. And can you bring  
3 up the next image side by side, please. Thank  
4 you.

5 So, Mr. Cooper, can you see  
6 both these images clearly?

7 A. Yes. The one on the  
8 right is a little bit crowded because it moved  
9 over all the people, so --

10 Q. Okay. But you have three  
11 windows now. The first image on the left, the  
12 middle image on the right and then the tiles on  
13 the far side?

14 A. Yes.

15 Q. Nothing is obscuring the  
16 second image?

17 A. Like I said, the strip of  
18 where the people are is a little bit, yes.

19 Q. Okay. So, if you can go  
20 to the top of the screen and go to side-by-side  
21 view, it should be reoriented so that our pictures  
22 are not overlapping that second image.

23 A. That's better, yes.

24 Q. Okay. Great. Okay. So,  
25 this is a document that the inquiry received

1 through the City's disclosure process and it's  
2 from 2010 and it's identified as the Mud SB-EB  
3 off-ramp on the first page. Do you see that?

4 A. Yes.

5 Q. Do you recall who  
6 prepared this presentation about this ramp of the  
7 Red Hill?

8 A. Yes. I believe it was  
9 Anthony Oskoletti [ph].

10 Q. Registrar, can you pull  
11 out the second image and the slide on that second  
12 image. Thank you.

13 Do you remember being present  
14 when this presentation was provided to staff?

15 A. Vaguely, yes.

16 Q. Okay. So, I understand  
17 that this presentation focused on the ramp that is  
18 covered in red in the top middle of this page.  
19 Right? The upsidedown view. Is that right?

20 A. Yes.

21 Q. Okay. Registrar, can you  
22 keep this image up and keep the call out up, but  
23 close down the other image and bring up OD 6,  
24 page 25, paragraph 53, and if you could call out  
25 the one you're calling out now and if you could

1 call out just the diagram at the second half of  
2 this page.

3 A. I'll confirm it's ramp 6,  
4 if that helps.

5 Q. Thank you. So, for when  
6 we get into the work that CIMA did, they  
7 identified that as ramp 6. That's right?

8 A. Yes.

9 Q. Okay. Great. You can  
10 close these both down, Registrar, although you  
11 should keep up the HAM document and you can close  
12 out the OD, and if you can bring up image 3 of  
13 this document, please. Thank you.

14 So, this one, as I interpret  
15 this, this particular -- I'm going to just call it  
16 ramp 6 for ease of identification. Ramp 6 ranked  
17 64 overall in the network screening summary. Is  
18 that a relatively high network ranking?

19 A. It's in the top 100.

20 Q. And it was the top 100 or  
21 so that your group looked at every year?

22 A. Depending on what we were  
23 doing that year, yes.

24 Q. Okay. And there's a  
25 reference here to -- well, the headline is "What's

1 the Problem?" It says there are 16 single motor  
2 vehicles out of 16 total collisions, so as I read  
3 that, every one was a single motor vehicle  
4 accident on this ramp. Is that right?

5 A. That's the way I read it,  
6 yes.

7 Q. And that total collisions  
8 from the RHVP opening to date were 23 of 25. Is  
9 that related to ramp 6 or is that just generally  
10 collisions on the parkway, if you recall?

11 A. I don't recall, but I  
12 would assume, given this is about ramp 6, that  
13 would be for ramp 6.

14 Q. Okay. You can close that  
15 out, Registrar, and if you could go to image 5,  
16 please.

17 Mr. Cooper, have you had a  
18 chance to look at this presentation recently, in  
19 preparation for today?

20 A. I may have.

21 Q. Okay. My question is:  
22 These presentations and this presentation in  
23 particular, and we'll go through this, it looks  
24 like there's a summary of things that have been  
25 done, safety improvements, that have already been

1 put on this ramp, but I want to clarify that.

2 So, here it says the ramp is  
3 slippery when wet and it has what appears to be a  
4 slippery when wet sign. Can you confirm at the  
5 time when this presentation was given whether  
6 there was a slippery when wet sign installed on  
7 ramp 6?

8 A. I think that's a bridge  
9 ices sign. I don't think that's a slippery when  
10 wet.

11 Q. Thank you. I'm not a  
12 sign expert. Okay. Then my question still  
13 stands. Do you recall whether there was a  
14 slippery when wet sign on ramp 6 at the time that  
15 this presentation was given?

16 A. I can't recall. I don't  
17 know.

18 Q. Okay. Registrar, can you  
19 close this down, please, and can you go to  
20 image 16.

21 So, I've jumped ahead in the  
22 presentation, but there's a number of pictures  
23 that show different chevrons and different  
24 signage, and this, as I read it, is a summary of  
25 those short-term solutions.

1                   So, you'll see it says  
2 chevrons were installed in January 2009 and then  
3 it has a reinstallment of chevrons and then it has  
4 two references to oversized signs and to rumble  
5 strips.

6                   Do you recall whether all of  
7 these short-term solutions had been installed,  
8 implemented, at the time of this presentation?

9                   A. I don't believe they  
10 were. I think this is a combination of what was  
11 done and what could be done.

12                  Q. Okay. And there's also  
13 the long-term recommendations, street lighting and  
14 jersey barrier wall?

15                  A. Yes.

16                  Q. Just by the word  
17 long-term recommendations, those had not yet been  
18 implemented?

19                  A. Not that I'm aware of.  
20 So, what we did at the countermeasure meetings is  
21 we presented what we felt would be recommendations  
22 that were appropriate to the location as a  
23 technologist or whoever it was who presented the  
24 location, and then we discussed it as a group,  
25 which was the best way to move forward, so it was

1 kind of a meeting of the minds, so to speak. All  
2 of traffic engineering was present. And then we  
3 would make a decision which way to move forward as  
4 a group and that was the way we would move  
5 forward.

6 Q. Okay. And do you recall  
7 what the decision, what the outcome, of this  
8 presentation was in terms of how to move forward  
9 on ramp 6?

10 A. I do not. I'm sorry.

11 Q. Did the collision  
12 countermeasure program continue after Hart  
13 Solomon's retirement?

14 A. No, not until 2018.

15 Q. Thank you. I'm going to  
16 jump ahead a little in time to 2013. And you can  
17 close this down, Registrar.

18 In 2013, you were a project  
19 manager on a CIMA project. Before we get there,  
20 between 2010 and 2013, did you receive expressions  
21 of concern from the public about the safety of the  
22 Red Hill?

23 A. We received a lot of  
24 complaints about the entire City. We dealt with  
25 800 a year. I can't say definitively if we did or

1 we did not. I know one thing that comes to mind  
2 is we wanted someone who called in to request a no  
3 Jake brake trucks for the sign, don't use your air  
4 brake. I know there was concerns with speed, but  
5 I can't recall specifically as a safety concern  
6 directed to us.

7 Q. Okay. What about  
8 concerns about the visibility of the Red Hill?

9 A. I'm not sure what you  
10 mean, visibility.

11 Q. The visibility of the  
12 Parkway in nighttime conditions. Was there any  
13 concerns raised with you about a concern about  
14 visibility?

15 A. I can't say for certain  
16 if there was before 2013. Again, we dealt with  
17 hundreds of complaints, so it's tough to nail down  
18 specifically what they were and where they were.

19 Q. Okay. So, just so I  
20 understand that, how you dealt with complaints, is  
21 it fair to say you got complaints from  
22 councillors?

23 A. Yes.

24 Q. And what about directly  
25 from members of the public?

1 A. Yes.

2 Q. Do you have some sort of  
3 hotline that they could call?

4 A. There's been numerous  
5 methods over the years. They could e-mail. At  
6 one point we had a front desk. There was a  
7 general line that you could call in. So, you  
8 know, you could go through your councillor.  
9 There's a number of ways that we could be -- we  
10 could receive requests.

11 Q. Okay. And were those  
12 complaints, I'll call them complaints or  
13 expressions of concern, were those logged in any  
14 way?

15 A. They were, yeah.

16 Q. And did they play into  
17 what community traffic would look at in terms of  
18 the network or the collision countermeasure  
19 program?

20 A. No. The concerns were  
21 never included in any analysis. We dealt with  
22 facts, not with people's complaints. Everyone saw  
23 things a little bit differently, so we always  
24 dealt with facts.

25 Q. Sure. I actually meant

1 in terms of deciding what aspect of collisions you  
2 were going to look at in a particular year, you  
3 said earlier that one year you looked at  
4 vulnerable persons. Did the public complaints go  
5 into determining what the focus would be for the  
6 collision countermeasure program in any given  
7 year?

8 A. I can't say for sure. It  
9 was not my realm of responsibility to determine  
10 what the collision countermeasure program looked  
11 like in any given year.

12 Q. Okay. Moving forward to  
13 2013 now, Registrar, can you bring up  
14 OD chapter 6, page 8, paragraph 11, please. Thank  
15 you.

16 So, do you recall in January  
17 of 2013 that councillors, particularly Councillor  
18 Collins, brought forward a motion to investigate  
19 upgrading lighting and better reflective signage  
20 and lane markings and other initiatives in respect  
21 of the vicinity of the Mud/Stone Church Road  
22 interchanges?

23 A. Yes.

24 Q. And did you understand  
25 that one of the options that the Public Works

1 Committee wished staff to investigate was the  
2 feasibility and the cost of installing lighting on  
3 the Red Hill?

4 A. Sorry, can you repeat  
5 that, please?

6 Q. Sure. Did you understand  
7 that one of the options that Public Works wanted  
8 staff to consider was whether or was the cost and  
9 the feasibility of installing lighting on the Red  
10 Hill?

11 A. Well, it says they wanted  
12 us to upgrade the lighting, so they wanted us to  
13 look at the upgrade to the lighting on the Red  
14 Hill in the vicinity of Mud and Stone Church.

15 Q. At this point, was there  
16 any lighting on the vicinity of Mud/Stone Church  
17 Road interchanges?

18 A. I believe there was some  
19 on the ramps.

20 Q. Okay. Did you understand  
21 that some councillors were interested in exploring  
22 increasing the illumination on this section of the  
23 Red Hill?

24 A. Based on this motion,  
25 yeah. I would say that's correct.

1 Q. Okay. Registrar, can you  
2 go to the next image, please, and if you can call  
3 out paragraph 13.

4 So, we've heard evidence that  
5 lighting falls under engineering services and  
6 reflective signage or other initiatives involving  
7 traffic countermeasures would fall under the -- I  
8 know there's been a lot different names -- the  
9 traffic engineering group. Is that fair to say?

10 A. Sorry, can you say that  
11 again? I was reading. My apologies.

12 Q. No problem. We've heard  
13 evidence that lighting fell under engineering  
14 services, whereas reflective signage or pavement  
15 markings, those sorts of things, would fall under  
16 traffic engineering?

17 A. Yes, that's correct.

18 Q. And so, in this  
19 paragraph, this is a discussion between Mike  
20 Field, who was then a project manager of street  
21 lighting and electrical engineering, and  
22 Mr. Gallo, Ron Gallo, copying Mr. McGuire and Gary  
23 Kirchknopf, and Mr. Field says:

24 "It is our opinion that  
25 the safety issue should

1 be reviewed holistically,  
2 that the consultant's  
3 scope should encompass  
4 street lighting review  
5 and what countermeasure  
6 benefits would be  
7 attributed to adding  
8 street lighting."

9 Did you understand very early  
10 in assessing the scope of this project for CIMA  
11 that this was going to be a broad safety review  
12 that included traffic and engineering potential  
13 countermeasures?

14 A. Yes, but I'm not sure  
15 it's a safety review. I mean, there was no safety  
16 identified in the motion. It was to provide  
17 guidance for drivers. That's the motion I -- the  
18 motion I read is to provide better guidance for  
19 drivers.

20 Q. Okay.

21 A. Providing lighting,  
22 signage and markings provides better enhancement  
23 for the drivers, not to deal with a safety issue.

24 Q. Okay. Is safety review a  
25 particular term of art that we can use to describe

1 a report that's dealing with potential  
2 countermeasures, or is that not a phrase that you  
3 would use?

4 A. Well, I'm not quite sure  
5 how it morphed into that. But, again, the motion  
6 speaks to providing guidance for drivers.

7 Q. Okay. Registrar, can you  
8 close this down and bring up CIM9208, image 3,  
9 please. Actually, can you bring up image 3 and 4,  
10 please.

11 So, this is an e-mail where  
12 the City, you in particular, is reaching out to  
13 CIMA to retain them.

14 Registrar, can you call out  
15 the top of image 1.

16 So, this is an e-mail from you  
17 to CIMA, to Mr. Applebee, and it says in the third  
18 full paragraph:

19 "This will be a larger  
20 safety review requiring  
21 review of geometrics,  
22 signing, lighting,  
23 pavement markings,  
24 alignment, human factor  
25 assessment in

1 collisions."

2 So, I think you just said  
3 you're not sure how it morphed into a larger  
4 safety review?

5 A. Yeah.

6 Q. Does this refresh your  
7 memory about how it morphed into a larger safety  
8 review?

9 A. That was a direction to  
10 me to reach out to CIMA.

11 Q. From who?

12 A. I would assume Dave or  
13 Martin. Actually, probably Martin. I don't think  
14 Dave was here yet.

15 Q. He was not, so from  
16 Martin to do a larger safety review?

17 A. Yes.

18 Q. And to your recollection,  
19 Mr. Field also agreed with the idea of doing a  
20 larger safety review?

21 A. I assume so. I can't  
22 speak for him, but yeah.

23 Q. Okay. Well, do you  
24 recall him objecting to doing a larger safety  
25 review?

1                                   A.    I don't recall, no.  I  
2    don't think so.

3                                   Q.    Okay.  You can close this  
4    down, Registrar.

5                                   Do you recall how the City  
6    came to retain CIMA as the consultant to do a  
7    safety review?

8                                   A.    We went through the  
9    roster, I believe.

10                                  Q.    Okay.  Had you had  
11   previous dealings with, you personally, CIMA as a  
12   consultant?

13                                  A.    I can't say for sure.  I  
14   don't think so.  I think this is my first  
15   assignment with them, but I don't recall.

16                                  Q.    Okay.  And did you know  
17   Mr. Malone or Mr. Applebee from any other -- did  
18   you know them in any other way?

19                                  A.    Mr. Applebee used to work  
20   for the City of Hamilton and Mr. Malone, I  
21   believe, I met at different functions.  It could  
22   have been even in the traffic office back in the  
23   day.  So, I was aware of who he was.

24                                  Q.    Okay.  And did  
25   Mr. Applebee work in your department as well?

1                           A.    He did.  I replaced  
2    Brian, I believe.

3                           Q.    Okay.  So, you didn't  
4    overlap with him?

5                           A.    Not as a full-time  
6    employee, I don't believe, no.

7                           Q.    Okay.  I recollect we  
8    jumped over this in your background, but you did a  
9    co-op placement with the City while you were at  
10   Mohawk.  Is that right?

11                          A.    I did.

12                          Q.    And was it during that  
13    period of time that you would have overlapped with  
14    Mr. Applebee?

15                          A.    Correct.

16                          Q.    Registrar, you can close  
17    this down and if you can bring up HAM426, please.  
18    Thank you.  And if you could call out the second  
19    half of this page under "Understanding the  
20    Assignment."

21                                 So, this is a request for  
22    quotation that CIMA puts together after you and  
23    Mr. Gallo have a call with Mr. Applebee to talk  
24    about the scope, that e-mail we were just looking  
25    at, and CIMA indicates in terms of their

1 understanding of the assignment that the key  
2 aspects that will be examined include but may not  
3 be limited to lighting, signs and markings and  
4 geometry.

5 So, going into setting the  
6 scope for CIMA, did you understand that  
7 illumination of the Red Hill was going to be part  
8 of CIMA's scope?

9 A. Yes.

10 Q. Did you understand  
11 illumination of the mainline in addition to the  
12 interchanges was going to be part of the scope?

13 A. I don't recall that being  
14 determined, like, at this stage. It was lighting  
15 in the vicinity of. I don't believe there was any  
16 separation between the mainline or the ramps.

17 Q. Okay. We'll come back to  
18 signs and markings, so I won't ask you about that  
19 now, but I do have a question about geometry.

20 What sort of geometry did you expect was going to  
21 be assessed by CIMA?

22 A. My understanding was the  
23 kink and I've heard it mentioned before. That is  
24 my understanding, was the geometry would look at  
25 the kink.

1 Q. Okay. And what about  
2 lengths of lanes or, you know, space to merge or  
3 to get off or to get on to the ramps, that sort of  
4 thing, does not fall under the rubric of that  
5 geometry?

6 A. Yeah, certainly. The  
7 merge length, lane lengths, would certainly come  
8 into play, I would think.

9 Q. Did you understand that  
10 CIMA was going to do any assessment about whether  
11 the road met the design, the design of the road,  
12 whether the as-built road met the design?

13 A. Sorry, what was the  
14 question?

15 Q. Did you understand that  
16 CIMA was going to do an assessment of whether the  
17 as-built road had been constructed in accordance  
18 with its design?

19 A. I think that would be  
20 part of the review.

21 Q. Okay. Registrar, you can  
22 close this out and go to the next image, please.  
23 In fact, if you can pull up image 2 and 3  
24 together.

25 So, you'll see under task 2 on

1 the bottom of image 1 and the top of image 2 it  
2 says data collection and there's a number of  
3 different kinds of data collection. Am I correct  
4 that one of your jobs on this project was to  
5 ensure that CIMA got the data that it needed?

6 A. Yes.

7 Q. Okay. And would that  
8 include -- Registrar, maybe if you can just pull  
9 out task 2 on image 1.

10 That would include providing  
11 them with collision data?

12 A. Yes.

13 Q. And vehicle speed data?

14 A. Yes.

15 Q. And that vehicle speed  
16 data, that was done through Pyramid. Is that  
17 right?

18 A. It could have been. We  
19 also had our own in-house program, which was  
20 finicky. Whether it was working at the time,  
21 honestly, I can't recall. But whatever data we  
22 had on hand would have been provided to CIMA.

23 Q. Okay. Do you know what  
24 lane utilization information is?

25 A. How the lanes are being

1 utilized by vehicles. I'm not quite sure  
2 specifically what that means, but I would assume,  
3 you know, everybody sitting in the right lane as  
4 opposed to nobody passing in the left lane, that  
5 sort of thing. Or, you know, when you get on to  
6 the highway, did you jump right out into the  
7 traffic lane or did you use the full acceleration  
8 lane, that sort of thing. So, it would be more of  
9 an observational assessment.

10 Q. Okay. Did you understand  
11 that the City had that kind of information?

12 A. We did not.

13 Q. Registrar, can you close  
14 the call out and pull out the rest of the bullet  
15 points. Yeah, exactly. Thank you.

16 "The design drawings for the  
17 mainline and each ramp in CAD format," do you  
18 recall if you were able to locate design drawings?

19 A. I can't remember  
20 specifically. I'm sorry.

21 Q. That's okay. Would that  
22 have been under your responsibility, to find those  
23 design drawings and provide them to CIMA?

24 A. I guess I could have or I  
25 could have referred to someone else in the City

1 for those, but I would probably reach out myself  
2 and try and get them and then provide that  
3 information somehow to CIMA.

4 Q. Okay. And do you  
5 remember if you tried to reach out to anybody --

6 A. Yeah, I --

7 Q. -- to get those design  
8 drawings?

9 A. I'm sure I did. I just  
10 don't recall -- I don't recall doing it  
11 specifically for this.

12 Q. Okay. And who would you  
13 have reached out to to --

14 A. Marco Oddi.

15 Q. Okay. The lighting  
16 illumination standards, would that have been under  
17 your responsibility to provide to CIMA or is that  
18 Mr. Field's responsibility?

19 A. That would have been with  
20 Mr. Field.

21 Q. Okay. And is that  
22 because Mr. Field at the time was the project  
23 manager in street lighting?

24 A. Yeah. They were the  
25 street lighting group, so they provided all the

1 comments or standards, et cetera, based on their  
2 knowledge of lighting.

3 Q. Okay. In terms of the  
4 history of past changes, signage, marking  
5 initiatives, did you have some sort of document  
6 that you could provide to CIMA that had that  
7 history?

8 A. Not in one place. It  
9 would have been searching through our records to  
10 find out what we've done and when we did it.  
11 Fortunately, the Red Hill wasn't open very long,  
12 so it was a fairly simple exercise.

13 Q. And do you recall doing  
14 that?

15 A. I don't remember  
16 specifically doing that, no.

17 Q. Okay.

18 A. I could have had my staff  
19 do it as well, so I'm not sure.

20 Q. Right. And then a  
21 document, "Complaints and Known Issues." Do you  
22 recall either doing that yourself or directing  
23 your staff to prepare that for CIMA?

24 A. I don't recall, no.

25 Q. Okay. You can close that

1 down. And, if you can close this document down  
2 and go back into OD 6, page 14, paragraph 25,  
3 please. Thank you.

4 So, this is back to the back  
5 and forth about setting the scope with  
6 Mr. Applebee, and Mr. Applebee says:

7 "What's the reason that  
8 you're asking for the  
9 safety review?"

10 And you respond:

11 "It's due to a motion."

12 Then in the second paragraph,  
13 you say:

14 "We're not aware of a  
15 significant collision  
16 issue on the mainline,  
17 but the ramp leading from  
18 the Mud/Stone Church to  
19 the Red Hill westbound,  
20 southbound, has many  
21 runoff types."

22 Again, that's ramp 6. Right?

23 A. I believe so, yes.

24 Q. And it says:

25 "We've attempted to

1 address using signing  
2 improvements. It's too  
3 early to tell if they've  
4 made an improvement."

5 So, we're in spring of 2013.

6 Can you recall by that time what improvements had  
7 been made on ramp 6?

8 A. I would be guessing. I  
9 have a pretty good idea, but I'm just not sure  
10 when those changes took place, but I believe we  
11 added left hand signs, curb warning signs. We  
12 went with diamond grade sheeting and we increased  
13 the size of the signs, I believe. I'm just not  
14 sure of the timing of that. There would be work  
15 orders associated with it that would indicate the  
16 timing, though.

17 Q. Okay. And when you say  
18 you're not sure of the timing, are you not sure if  
19 it was before the 2013 CIMA project or after or  
20 are you not sure when before 2013 it happened?

21 A. So, obviously we made  
22 some improvements prior to this. I'm just not  
23 sure what those improvements were.

24 Q. Okay. And do you recall  
25 if a slippery when wet sign was one of the

1 improvements that had been made before the CIMA  
2 2013 project?

3 A. Sorry, no, I don't  
4 recall.

5 Q. Okay. I'm going to close  
6 this out.

7 We've talked a little bit  
8 about the people who were involved just from  
9 looking at these e-mails. So, am I correct that  
10 you were the designated project manager for this  
11 project?

12 A. Yes.

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

15 And we already spoke about  
16 Mr. Field. Was it your understanding that he was  
17 the person with street lighting expertise?

18 A. Yes.

19 Q. And Mr. Kirchknopf, he  
20 had been in your division at some point. Did he  
21 have traffic safety expertise?

22 A. Yes. He was my senior  
23 project manager before Hart left.

24 Q. Okay. And now he was in  
25 the engineering services. Is that right?

1                   A.    Yes.  In the re-org, he  
2   held dual roles with us.  He was the senior  
3   project manager of community traffic services and  
4   traffic planning, and when we got reorganized, his  
5   group, traffic planning, went to engineering  
6   services, to which he went as well.

7                   Q.    Okay.  And did you  
8   understand that he had a distinct role from  
9   Mr. Field for this project?

10                  A.    I don't know what his  
11   thoughts were.

12                  Q.    Okay.  Maybe I'll ask the  
13   question differently.  Was he Mr. Field's  
14   superior?

15                  A.    Yes.

16                  Q.    Okay.  And so, did you  
17   understand that he was kept in the loop because he  
18   was Mr. Field's superior or for some other reason?

19                  A.    I don't know.

20                  Q.    Okay.  From your  
21   perspective, who on the team of individuals from  
22   the City on this project had any experience in  
23   pavement structure?

24                  A.    No one.

25                  Q.    Okay.  And who was

1 representing asset management or the engineering  
2 services part that was not street lighting?

3 A. I guess those who worked  
4 under Gary.

5 Q. Okay. On this project  
6 team?

7 A. Well, I guess it would  
8 have been Gary and Mike Field reporting on the  
9 asset management stuff for Gary, if that was their  
10 direction. I don't know what their direction was.

11 Q. Okay. So, you said Gary  
12 reporting to Gary. Gary Kirchknopf reporting to  
13 Gary Moore?

14 A. Correct.

15 Q. From your perspective,  
16 was Mr. Moore part of the project team?

17 A. Not that I'm aware of.

18 Q. Okay. Registrar, can you  
19 go to page 22, please, and if you could pull up 22  
20 and 23, please.

21 So, this is the project  
22 initiation meeting in April of 2013.

23 And, Registrar, if you can  
24 call out paragraph 48, please.

25 So, this is after that

1 quotation that we were looking at. And under  
2 Safety Concerns, "City of Hamilton Needs,  
3 Expectations and Criteria for Success," there's a  
4 reference to the Mud Street westbound on-ramp,  
5 ramp 6, the kink, that we'll come back to, lack of  
6 lighting in most locations and driver inability to  
7 detect lanes under poor visibility.

8 Did that, for you, cover the  
9 waterfront of the issues that CIMA should be  
10 looking at?

11 A. For the most part, yes.

12 Q. Okay. Was there anything  
13 missing?

14 A. No, I don't think so.

15 Q. Okay. It says:

16 "Stephen C. will follow  
17 up Councillor Collins to  
18 ensure that his concerns  
19 will be addressed in the  
20 intended project."

21 Do you recall having any  
22 interactions with Councillor Collins about the  
23 scope of this project before CIMA really started  
24 to get going on it?

25 A. No, I do not. I don't

1 believe I did.

2 Q. Okay. Do you recall if  
3 you spoke to Councillor Collins at any point  
4 before CIMA had provided you a draft report?

5 A. I don't believe so.

6 Q. Okay. Can you close this  
7 out, Registrar, and go to page 24, please, and if  
8 you could call out paragraph 50.

9 So, this is the information  
10 that the inquiry was able to locate that was  
11 provided to CIMA, and the last sentence here is  
12 that Hamilton was able to provide CIMA with the  
13 electronic as-built drawings for the Red Hill.

14 I'm going to ask the registrar  
15 to actually go into the footnoted document there  
16 so you can see it. It's CIM8426.

17 And you'll see Mr. Applebee is  
18 asking about:

19 "Have you made any  
20 additional progress on  
21 the electronic drawings?"

22 And you said:

23 "Thanks, Brian. At this  
24 point, it is unlikely we  
25 will be able to provide

1 drawings."

2 Does that assist you in  
3 refreshing your memory about what steps you took  
4 to attempt to obtain electronic CAD-based design  
5 drawings?

6 A. It sounds like I reached  
7 out and couldn't get any.

8 Q. Okay. But you don't have  
9 a recollection either way?

10 A. Not specifically, no, but  
11 I know what I would have done and I would have  
12 reached out to Marco for those drawings, and it  
13 sounds like they weren't available.

14 Q. Okay. Thank you. Can  
15 you close this out and can you go back to OD 6,  
16 page 24, please. And if you can call out 51,  
17 please.

18 So, these are internal  
19 minutes. You're not involved or copied on these,  
20 but CIMA reports to themselves that Hamilton wants  
21 review to emphasize nighttime, dark lighting  
22 conditions during periods of rain. So, one of the  
23 things CIMA was going to do was a field review and  
24 they did that.

25 Do you recall specifically

1 asking CIMA to conduct a field review in dark and  
2 rainy conditions?

3 A. No, I do not.

4 Q. And is that to say, when  
5 I say do you recall, is that to say you don't  
6 recall either way or you did not?

7 A. I did not.

8 Q. Okay. Had you or your  
9 group identified nighttime or wet weather  
10 conditions as being a problem on any part of the  
11 Red Hill?

12 A. Not that I recall, not in  
13 2013.

14 Q. Okay. So, you can't  
15 assist us today with why CIMA did particularly or  
16 wanted reference here doing a nighttime rainy --  
17 to focus on nighttime rainy conditions?

18 A. No, but I would speculate  
19 that's when conditions are the worst, so if you're  
20 looking to provide guidance for drivers, that  
21 would probably be the time you would want to check  
22 it.

23 Q. Okay. Thank you.  
24 Registrar, you can close this down and can you  
25 bring up CIM8475, please. Sorry, 8475.0001.

1                   So, this is the first progress  
2 meeting for CIMA in June of 2016 and you are  
3 attending, along with Mr. Field and Mr. Gallo,  
4 Mr. Kirchknopf and some folks from CIMA. Do you  
5 recall attending this meeting?

6                   A. Vaguely.

7                   Q. All right. Registrar,  
8 can you bring up as a side by side CIM103.

9                   A. I'm not sure if I recall  
10 this meeting from preparing or from actually being  
11 there.

12                  Q. Fair enough. I'm calling  
13 up the presentation that had been identified by  
14 others as being given at this meeting, just to  
15 attempt to refresh your memory.

16                  Registrar, can you go to the  
17 next image on the presentation, please.

18                  I don't know if that helps.

19                  A. No, it doesn't help.

20                  Q. No? Okay. So, this is a  
21 meeting in which CIMA is presenting on its initial  
22 findings and its work to date and it goes through  
23 collisions, illumination, a number of signing  
24 issues and then next steps.

25                  Registrar, can you go to

1 image 5 of the CIMA document on the right-hand  
2 side. You don't have to call it out.

3 So, CIMA provides a number of  
4 graphic representations of the collision history  
5 that it's done, one on severity.

6 Registrar, if you can go to  
7 the next slide.

8 One on impact type and, in  
9 particular, noting single motor vehicle versus  
10 rear end versus side swipe.

11 Registrar, if you can go to  
12 the next one.

13 The next one on lighting  
14 conditions, non-daylight and daylight conditions.

15 And then, finally, if you can  
16 go to the next one, Registrar.

17 Road surface conditions, dry,  
18 snow, wet, ice. So, as a person with traffic  
19 experience and safety expertise, Mr. Cooper, why  
20 is data about collisions of non-daylight  
21 collisions useful to assessing potential  
22 countermeasures?

23 A. Could you ask that again,  
24 please?

25 Q. Sure. As a person, as

1 you, a person who has traffic experience, why is  
2 data about non-daylight collisions useful when  
3 assessing potential countermeasures?

4 A. Well, lighting is one of  
5 the many aspects that could possibly contribute to  
6 a collision. There's many factors and lighting  
7 could be one of them.

8 Q. Okay. And what about wet  
9 weather collisions? Why is having that data  
10 useful?

11 A. Same answer. It's one of  
12 the contributing factors, potentially.

13 Q. Okay. Registrar, can you  
14 go to the next slide, please. Actually, can you  
15 go to slide 23, please. Thank you.

16 So, this presentation also  
17 goes through different segments that CIMA was  
18 looking at and particularly in ramp 6.

19 Registrar, can you call this  
20 one out.

21 And CIMA suggests pavement  
22 marking configurations, signage and high-friction  
23 pavement surface treatment. Do you remember CIMA  
24 making this preliminary reference to high-friction  
25 pavement surface treatment?

1 A. Vaguely.

2 Q. Okay. Registrar, can you  
3 close out that call out and go to image 1 on the  
4 left-hand side and to the third paragraph from the  
5 bottom, "City okay with." Yes.

6 This is from the minutes of  
7 that meeting:

8 "City okay with CIMA  
9 examining high-friction  
10 pavement on ramps,  
11 however, mainline has  
12 different new  
13 pavement -- "

14 And this is a change in the  
15 minutes:

16 " -- that would/may not  
17 be recommended to be  
18 overlaid with high  
19 friction."

20 Do you recall discussions at  
21 this meeting about the potential use of a  
22 high-friction surface treatment?

23 A. I do not.

24 Q. Do you recall who made  
25 the comment about examining this for ramps but not

1 for the mainline?

2 A. I do not.

3 Q. Okay. Who amongst the  
4 attendees, you, Mr. Field, Mr. Gallo and  
5 Mr. Kirchknopf, would have had knowledge about the  
6 mainline pavement?

7 A. It could have been any of  
8 us. I mean, I think it was pretty common  
9 knowledge that the City used a better asphalt for  
10 the mainline to increase the longevity of it.  
11 And, to me, it was just a known fact or a known  
12 thought, I guess. So, I don't know who  
13 specifically knew it or didn't know it, but I  
14 thought it was fairly common. I heard it many  
15 times.

16 Q. In 2013, you recall  
17 having that --

18 A. No, prior to. I mean,  
19 you know, we were all there when it got built, so  
20 I remember hearing about it. I don't know. It  
21 could have been the media. I don't know how I  
22 heard about it, but we were aware that it had a  
23 different asphalt on the mainline.

24 Q. Okay. Well, looking  
25 back, can you recall who of the City attendees

1 would have had knowledge about whether that  
2 pavement could be recommended to be overlaid with  
3 high friction?

4 A. I do not know. I don't  
5 even remember this part of the meeting. I barely  
6 remember the meeting.

7 Q. Fair enough. Registrar,  
8 can you close this out and go to slide 17, please.

9 And so, at this meeting, CIMA  
10 provided its preliminary view that based on an MTO  
11 warrant, that partial illumination was suggested  
12 for the top part of that diagram and full  
13 illumination was suggested for the red part.

14 Do you recall the discussions  
15 around illumination from this meeting?

16 A. I do not.

17 Q. Registrar, can you go to  
18 image 2 of CIM8475, and if you can call out  
19 item 4. Thank you.

20 So, the minutes reflect the  
21 following comment:

22 "CIMA needs to be  
23 cautious with  
24 illumination.  
25 Benefit-cost is critical

1 for this assignment. Due  
2 to political and other  
3 design and other cost  
4 constraints, site  
5 specific locations are  
6 probably better than full  
7 illumination."

8 Do you recall this discussion  
9 at the meeting?

10 A. I do not.

11 Q. What were the political  
12 or other design constraints in respect of  
13 illumination?

14 A. I don't know about the  
15 political, but if I understand correctly, there  
16 was an EA or a study done during the design of it  
17 that my understanding was it was to not be lit.

18 Q. Okay. And was that --

19 A. There was environmental  
20 concerns, if I understand correctly.

21 Q. Was that your  
22 understanding at this meeting, in June 2013?

23 A. I don't remember this  
24 discussion.

25 Q. I can put it differently.

1 As you were starting to give CIMA instructions  
2 about the scope of this project, were you aware of  
3 the design constraints that you just mentioned?

4 A. I was always aware.

5 Q. Okay. Coming out of this  
6 meeting, did you understand that CIMA was going to  
7 do a full review of lighting on the ramps and the  
8 mainline as part of their report?

9 A. I don't recall.

10 Honestly, I didn't really pay much attention to  
11 the lighting stuff. Mike Field and Gary were  
12 there and that was their expertise on this  
13 project, so I didn't have a lot of input or  
14 discussion that I recall on lighting.

15 Q. Okay. Do you have any  
16 recollection of anybody at this meeting suggesting  
17 that CIMA should talk to Gary Moore?

18 A. I do not.

19 Q. And is that to say you  
20 just don't have a recollection either way or are  
21 you confident that that --

22 A. I do not remember this  
23 meeting.

24 Q. Okay. After this  
25 meeting, did you have any discussions with Mike

1 Field about the scope of the lighting review to be  
2 conducted by CIMA?

3 A. I don't think so.

4 Q. Okay. Registrar, you can  
5 close these out. Turning now to HAM51990, please.  
6 Thank you.

7 So, we're going ahead in time  
8 by about a month. This is July 3, 2013 and this  
9 is a presentation that was at the second progress  
10 meeting.

11 Registrar, can you go to  
12 image 8, please. Actually, sorry. Before we go  
13 there, can you go to image 4, please.

14 So, one of --

15 A. Sorry, was I at this  
16 meeting?

17 Q. I'm going to take you to  
18 the minutes in a minute.

19 A. Okay.

20 Q. Does this presentation  
21 look familiar to you?

22 A. No. I've seen maps  
23 similar to this hundreds of times, so no, I don't  
24 remember specifically.

25 Q. All right. So, why don't

1 we also bring up the minutes. It's HAM51991.

2 So, these are the minutes and  
3 you'll see it was at CIMA Burlington and you're  
4 listed there, as is Mike Field and as is Mr. Gallo  
5 and Mr. Kirchknopf.

6 A. Okay. Thank you.

7 Q. Registrar, can you  
8 actually, on the left-hand image, can you go to  
9 image 3. Thank you.

10 So, we were just looking at an  
11 image that had different segments of the mainline  
12 and the ramps and CIMA presented that they used an  
13 enhanced interchange safety analyst tool. Do you  
14 recall that part of the presentation?

15 A. I don't remember this  
16 presentation, no. I don't remember this part of  
17 it anyway.

18 Q. Okay. Were you familiar  
19 with this tool in 2013?

20 A. I was familiar with it,  
21 but I have no experience with it.

22 Q. Okay. Did you have any  
23 concerns about using it for this project?

24 A. No.

25 Q. Great. Thank you.

1 Registrar, can you now go to image 8.

2                   So, I've just jumped into one  
3 of the slides on one of the road segments to  
4 provide an example of the information that CIMA  
5 gave you and others at this meeting. So, you'll  
6 see there's a reference to the collision review  
7 and the findings for that particular segment, and  
8 then there's a reference to the geometry review  
9 that CIMA had done.

10                   And, Registrar, if you can go  
11 to the next image, please.

12                   Continued geometry review, so  
13 they're talking about lanes, they're talking about  
14 kink, and then potential countermeasures with a  
15 benefit calculation and a cost identifier, low,  
16 medium or high.

17                   Does that refresh your memory  
18 about whether you attended or about your  
19 recollection of this meeting?

20                   A. Again, I don't  
21 specifically remember this meeting, but all these  
22 items are familiar to me, so --

23                   Q. Okay. And going through,  
24 we won't go through each of the segments or the  
25 collision review, but by July 2013, were you

1 surprised that CIMA was identifying a collision  
2 history that had a high proportion of wet weather  
3 or single motor vehicle accidents?

4 A. I don't recall if I was  
5 surprised or not.

6 Q. Okay. Was it consistent  
7 with what the City staff's expectation was going  
8 in to the CIMA review?

9 A. I'm not sure we had an  
10 expectation at that time.

11 Q. Okay. Registrar, can you  
12 go to the next image, please.

13 So, this is for the Dartnall  
14 segments of the mainline and you'll see one of the  
15 potential countermeasures, and this is following  
16 from a list on the earlier page, was that pavement  
17 surface friction testing/improvement pavement  
18 friction through high-friction pavement, so that  
19 remains on CIMA's presentation at this point in  
20 this second progress meeting.

21 Who would be responsible for  
22 the implementation of a high-friction pavement  
23 application within the City?

24 A. That would fall under  
25 engineering services.

1 Q. Okay. And, Registrar, if  
2 you can call out the fifth paragraph in the  
3 meeting minutes, "Implementation of High  
4 Friction."

5 Do you recall who from the  
6 City gave this direction to CIMA?

7 A. No, I do not.

8 Q. Did you take any steps  
9 between the first progress meeting and this  
10 progress meeting to confirm if high-friction  
11 pavement application would be appropriate for the  
12 mainline?

13 A. I don't believe I did.

14 Q. You can close that out.  
15 CIMA also has this recommendation, so there's a  
16 slash in between. It says pavement surface  
17 friction testing. If that countermeasures made  
18 its way into the report, who would be responsible  
19 for implementing friction testing?

20 A. Our understanding was  
21 engineering services would do friction testing.

22 Q. Okay. Can you go to  
23 image 20, please, on the left-hand side.

24 So, for that ramp 6  
25 countermeasure, there's also install high-friction

1 pavement. And, again, that would be the  
2 responsibility of the engineering services, if it  
3 was to be implemented?

4 A. I believe so, yes.

5 Q. Okay. You can close out  
6 the presentation, Registrar, and into the minutes,  
7 if you can go to the last paragraph under item 4,  
8 "SC noted that." Sorry, the last paragraph above  
9 item 4, "SC noted that." Thank you.

10 So, I think SC is you and you  
11 say:

12 "Upgrades to signage on  
13 ramp 6 were completed  
14 last year."

15 So, that would have been 2012.  
16 We talked a little bit about this. Do you  
17 remember what upgrades those were in 2012?

18 A. Well, just what I said  
19 earlier. I don't remember specifically, but I  
20 think we added left-hand signs. We upgraded the  
21 sheeting and increased the size of them, but I  
22 can't say for certain. But there would be  
23 documentation associated with that change, so --

24 Q. Okay. But you think  
25 those were the upgrades that happened in 2012?

1 A. I believe so.

2 Q. Okay. And you note that  
3 the field investigation includes these changes,  
4 CIMA's field investigation, but the collision data  
5 doesn't because of the relatively short period of  
6 time before this report being started that these  
7 changes had been put in place. Is that right?

8 A. Correct.

9 Q. And so, at this point,  
10 were you under the impression that the collision  
11 data may not reflect the current circumstances of  
12 ramp 6?

13 A. Yes. It takes a while  
14 for collisions to experience the change, meaning  
15 when you change something, it takes, you know, at  
16 least three preferably five years, of data to see  
17 if you actually made a change that's positive or  
18 negative, you know. You know, short term is  
19 really tough. There could be anomalies.  
20 Short-term analysis of collisions is not  
21 necessarily accurate of what is occurring on the  
22 roadway.

23 Q. Okay. So, at this point,  
24 did you think it prudent for CIMA to suggest  
25 additional countermeasures over what the current

1 circumstances were?

2 A. No, I don't believe so.  
3 Speed was an underlying factor here. Actually,  
4 it's an underlying factor on the entire Red Hill  
5 in 2013. It's very clearly outlined in the CIMA  
6 report. I have driven this ramp many, many times  
7 and I've had no issue.

8 Q. Okay. But in terms of  
9 what CIMA was doing as a consultant, did you think  
10 it would be prudent for them to suggest additional  
11 countermeasures or were you directing them to do  
12 something different than the assessment of ramp 6?

13 A. I wasn't directing them  
14 at all. I was providing them with the information  
15 that I had in hand.

16 Q. Okay. So, you just  
17 wanted this timing issue noted?

18 A. Yes.

19 Q. But you also wanted CIMA  
20 to provide their best advice to you on additional  
21 countermeasures?

22 A. I provided CIMA with the  
23 information I had in hand.

24 Q. And you wanted them to  
25 provide their best advice to you?

1                   A.    Well, I mean, there  
2    wasn't a lot to go on.  If we just made changes  
3    less than a year earlier, there wouldn't have been  
4    much analysis to be done, and what would have been  
5    done probably wouldn't have been indicative of the  
6    condition because, again, you need time to see if  
7    the changes made an impact or not.

8                   Q.    Okay.  But despite that  
9    view, you were going to let them complete their  
10   assessment and provide potential countermeasures  
11   on ramp 6?

12                  A.    I don't remember telling  
13   them not to.

14                  Q.    Okay.  Registrar, can you  
15   close that down and can you pull out the sixth  
16   paragraph on image 1, "For geometric design  
17   aspects."  Thank you.

18                  So, I did ask you about this  
19   before.  And it says:

20                               "CIMA should include text  
21                               from the report about the  
22                               design choices,  
23                               challenges to constraints  
24                               and not specifically  
25                               examine design features

1 in this report."

2 Can you describe in a little  
3 bit more detail what direction that is to CIMA, to  
4 not specifically examine design features?

5 A. No, I can't.

6 Q. Okay. Can you close this  
7 out and, Registrar, can you call out the next  
8 paragraph:

9 "City will provide  
10 available background  
11 documentation from EAs,  
12 et cetera, as input into  
13 the report."

14 Was that your responsibility  
15 to provide that information?

16 A. I'm not sure whose  
17 responsibility it was. I did not provide any. It  
18 could have been any one of the four on the project  
19 team, so I don't believe I provided any  
20 information. I didn't know where it was, I've  
21 never seen it, so I don't believe I provided any.

22 Q. Okay. Do you recall  
23 being copied on -- any of your colleagues  
24 providing this information?

25 A. I don't remember.

1 Q. Okay. You can close that  
2 down, Registrar.

3 While CIMA was doing its work  
4 on this project and before they finalized their  
5 report, did anyone ever raise with you challenges  
6 on the topic of lighting?

7 A. I don't remember  
8 specifically, no.

9 Q. Okay. Did you ever speak  
10 directly with Mr. Moore about illumination on the  
11 Red Hill?

12 A. No.

13 Q. Did you have discussions  
14 with Mr. Field while CIMA was preparing its report  
15 about CIMA's work on illumination on the Red Hill?

16 A. I know I had a  
17 conversation with him, because, you know, that's  
18 documented, that Gary expressed concerns, but I  
19 don't remember what that conversation was  
20 unfortunately. I've been trying to recall that  
21 and I just can't.

22 Q. It's okay. We'll come  
23 back to that. In 2013, had you seen any documents  
24 that explained the limits, if any, of lighting on  
25 the Red Hill?

1 A. What do you mean limits?

2 Q. Like, constraints in  
3 environmental assessment or report or anything  
4 like that?

5 A. Have I ever seen any?

6 Q. In 2013, had you?

7 A. No. I still haven't.

8 Q. Okay. At this point in  
9 time, in dealing with this project, did anyone  
10 specifically tell you that the environmental  
11 assessment prohibited the City from installing  
12 lighting on the Red Hill?

13 A. So, I don't know if it  
14 was specifically for 2013, but I've heard of it  
15 over the years at my time in the City, that there  
16 was an EA that prevented it from being lit. I  
17 don't know where I heard that. It's just  
18 something I've heard over the years. Kind of  
19 similar to the quality of asphalt that was used on  
20 the mainline as well, it's just something that was  
21 known.

22 Q. Okay. But you can't  
23 identify the source?

24 A. No, I cannot.

25 Q. Okay. Registrar, can you

1 go to page 21 of OD 6, please, paragraph 44,  
2 please.

3 In April of 2013, the City  
4 retained Golder Associates to evaluate pavement  
5 conditions on the parkway five years after it  
6 opened. In 2013, did you know Golder Associates?

7 A. No.

8 Q. What about Dr. Uzarowski?

9 A. No.

10 Q. Had you worked on any  
11 projects with Golder?

12 A. No.

13 Q. Okay. Did anyone tell  
14 you about this retainer?

15 A. No.

16 Q. Registrar, you can close  
17 that down and go to page 35, paragraph 75, please.  
18 Actually, sorry, can you close that out and call  
19 out 75 and 76 together. Thank you.

20 So, we were just looking at  
21 that July 3 presentation. The next day,  
22 Mr. Applebee sent a copy of the presentation and  
23 the minutes to you and to others at the City, and  
24 Mr. Kirchknopf responded to Mr. Applebee regarding  
25 the mainline pavement treatment on the Red Hill.

1 You can just read that.

2 A. Okay.

3 Q. And you're copied on that  
4 e-mail. Did you know that the City had retained  
5 Golder to oversee all testing and monitoring of  
6 the specialized surface material?

7 A. I did not know. I'm  
8 copied on this e-mail?

9 Q. You are. We can go into  
10 the e-mail itself if you --

11 A. No. I believe you. I  
12 just don't remember it.

13 Q. Mr. Kirchknopf says to  
14 Mr. Applebee:

15 "Please contact Ludomir  
16 directly should you  
17 require any additional  
18 information regarding  
19 weight in motion or  
20 friction testing on the  
21 Red Hill mainline."

22 To the best of your knowledge,  
23 did anyone at CIMA contact Golder during their  
24 work on the 2013 report?

25 A. Not that I'm aware of.

1 Q. In 2013, did you have any  
2 discussions with any City staff about Golder doing  
3 friction testing?

4 A. No, I did not.

5 Q. Were there any policies  
6 in place in 2013 that required City staff to  
7 advise one another if they were retaining  
8 consultants on assets of shared responsibility?

9 A. Not that I'm aware of.

10 Q. And were there any  
11 policies in place that required City staff to  
12 share consultants' reports once they received them  
13 in respect of assets of shared responsibility?

14 A. Not that I'm aware of.

15 Q. Did you have easy access  
16 to reports or documents stored within engineering  
17 services in 2013?

18 A. Did I have easy access?  
19 I couldn't access them. I would have to contact  
20 somebody from there if there was something  
21 specific I was looking for.

22 Q. That was my question.  
23 Could you, on your own initiative, go to  
24 engineering services and look through their  
25 reports?

1                   A.    I've never done it, so I  
2    don't think so.  I wouldn't.  I would approach  
3    them.

4                   Q.    Okay.  So, even if  
5    technologically you could, you wouldn't have done  
6    that as matter of practice?

7                   A.    Again, I don't even know  
8    if I could have done that, so pretty big  
9    hypothetical there.  I would ask them.  I would  
10   reach out to them.

11                  Q.    Okay.  Registrar, can you  
12   go to page 45, please.  Sorry, just a moment.  
13   That's not it.  Page 37, please.  Sorry.  Sorry  
14   about that, Registrar.  Thank you.

15                  So, in late July, CIMA is  
16   working on the CIMA report.

17                  If you can go to the next  
18   image, Registrar.

19                  And at 85, you can call that  
20   out, on July 29, Mr. Applebee sent you a draft of  
21   the CIMA report and you forwarded the e-mail  
22   message and the attachment to Mr. Gallo and to  
23   Mr. Field for their comment.  Do you remember  
24   that?

25                  A.    I don't, but it sounds

1 like something I would do.

2 Q. Okay. Was it your  
3 practice to review reports when you received them?

4 A. Yes.

5 Q. Can you close that out,  
6 Registrar, and can you go to paragraph 98, which I  
7 think is page 43.

8 So, Mr. Field provides these  
9 comments. I'm going to come back to this in a  
10 moment. I wanted to direct you. So, this is  
11 August 2. Mr. Gallo also provides some very minor  
12 comments about format.

13 Did you have other additional  
14 comments that you can recall?

15 A. I believe I provided,  
16 like, some grammatical comments and typos and that  
17 sort of thing. I don't remember providing  
18 specific comments on the content of the report.

19 Q. Okay. Registrar, can you  
20 close this down. Actually, no. Can you bring  
21 that up, sorry. Can you call out paragraph 98  
22 again and can you bring that up side by side with  
23 CIM8118.0001. I'm only seeing a black page,  
24 Registrar.

25 THE REGISTRAR: Sorry,

1 counsel.

2 MS. LAWRENCE: If you're  
3 working on it, it's fine.

4 THE REGISTRAR: 8118.1?

5 MS. LAWRENCE: CIM8118.0001.

6 Thank you. And if you can just minimize the call  
7 out a bit. Thank you.

8 BY MS. LAWRENCE:

9 Q. So, this is the first  
10 draft that the City receives of the 2013 CIMA  
11 report, and I think you said your practice would  
12 be to review this when you received it. Does this  
13 refresh your memory about whether you reviewed it?

14 A. Well, I've seen this  
15 before.

16 Q. I'm sure you've seen a  
17 few drafts of it before?

18 A. Yeah.

19 Q. Registrar, can you bring  
20 up image 7, please. Thank you.

21 So, this is the introduction  
22 and background and the first four paragraphs, and  
23 you can certainly take time to review them, they  
24 speak about an environmental assessment, about the  
25 construction, about discussions with the

1 provincial government and about the Canadian  
2 Environmental Assessment Act.

3 A. Okay.

4 Q. Registrar, can you go to  
5 page 2.

6 There's also the Study Limits  
7 section, which talks about design choices. In the  
8 second paragraph:

9 "Design choices on the  
10 facility were intimately  
11 linked to approvals."

12 And then there's references to  
13 the Niagara Escarpment, to UNESCO and that the  
14 City identified several design refinements to the  
15 roadway, and there's a number of footnoted  
16 documents there.

17 That was a long path through  
18 this to ask this question: Who provided this, the  
19 information, that leads to this drafting on these  
20 two pages to CIMA?

21 A. I don't know.

22 Q. Okay. Amongst those on  
23 the project team, who would have access to this  
24 information?

25 A. You could probably Google

1 this information.

2 Q. Okay. Turning back to  
3 the image on the left, Mr. Field says in the third  
4 bullet down:

5 "The illumination of the  
6 mainline has been  
7 excluded (this is  
8 decision is based on  
9 information that we  
10 provided to CIMA)."

11 What information, to your  
12 knowledge, did the City provide to CIMA that led  
13 to that decision?

14 A. I do not know.

15 Q. Apart from that reference  
16 to this decision is based on information we  
17 provided to CIMA, do you have any other  
18 information about information that the City  
19 provided to CIMA that would speak to illumination?

20 A. No, I do not. Again, I  
21 didn't deal with the lighting aspect a lot, other  
22 than really high overview of it. It wasn't my  
23 expertise and there was lighting expertise on the  
24 group that did it, so I kind of left it with them.

25 Q. Okay. Just for clarity,

1 you don't know who gave -- this is not just about  
2 illumination in the Study Limitations section that  
3 we've just gone through. You don't know where  
4 CIMA got that information?

5 A. I do not.

6 Q. Okay. Registrar, you can  
7 close the left-hand image, please, and if you can  
8 go to image 19 and 20. Sorry, I think it's 18 and  
9 19 that I want up. There we go.

10 So, at the bottom of page 11,  
11 which is image 18, and then at the top of page 12,  
12 image 19, it says The Findings Summary:

13 "The following bullets  
14 summarize the most recent  
15 findings of the collision  
16 analysis."

17 Registrar, can you pull out  
18 the bullet points there.

19 I'll just give you a minute to  
20 review this, Mr. Cooper. And, as you do so, my  
21 question is: This summary that CIMA put together  
22 of its collision review, at this point in the  
23 process, was any of this new information to you?

24 A. I would say the majority  
25 of it is new information. I mean, while we had a

1 general idea, we didn't know specifics.

2 Q. Okay. Did this  
3 information lead you to conclude that  
4 countermeasures on the Red Hill mainline and the  
5 ramps would be a prudent course of action?

6 A. Potentially.

7 Q. What do you mean  
8 potentially?

9 A. Well, if I remember  
10 correctly, in 2013 speed was a major factor here,  
11 and so if you're driving according to conditions,  
12 according to the warning signs and the posted  
13 speed, a lot of these collisions would not occur.  
14 So, there are certainly room for countermeasures  
15 and improvements, but I'm not sure it's the  
16 end-all be-all.

17 Q. Okay. So, was your  
18 expectation that CIMA would provide its best  
19 advice on potential countermeasure recommendations  
20 and that your staff would then assess whether you  
21 actually wanted to implement them?

22 A. I'm sorry, what was the  
23 question?

24 Q. The question was I said  
25 would it be prudent to implement these and you

1 said potentially, and you just gave me your  
2 answer, and so I'm trying to understand did you  
3 expect that CIMA would give you their best advice  
4 about potential countermeasures, and then you, as  
5 staff, would assess whether to actually implement  
6 them?

7 A. Yes. I think we would --  
8 my understanding is we would get some options  
9 available based on what information they had and  
10 we could implement according to our needs, our  
11 budget, our analysis. I mean, CIMA was there to  
12 provide information and it was up to us what we  
13 did with that information.

14 Q. But you personally didn't  
15 necessarily or you thought it was only potentially  
16 a prudent course of action to adopt  
17 countermeasures?

18 A. It depends on what the  
19 issue was.

20 Q. Okay.

21 A. With every countermeasure  
22 there's a counter-countermeasure. Right? So, not  
23 everything is a positive. There's also some  
24 negatives associated with that as well, so we need  
25 to look at everything and determine the course of

1 action that we think is best suited.

2 Q. Okay. Could you go to  
3 image 32, please. So, we're in the Dartnall 5  
4 segment and there's -- if you can pull out,  
5 Registrar, "Alignment Discontinuity Through  
6 Mainline" all the way down past the picture, yes,  
7 the whole thing. Thank you.

8 So, this is:

9 "Mainline alignment  
10 discontinues through the  
11 horizontal curve just  
12 south of the Pritchard  
13 Road overpass."

14 Is that the kink?

15 A. I believe so, yes.

16 Q. Okay. And it's where  
17 that red arrow in the middle of the picture is?

18 A. Approximately, yes.

19 Q. Okay. Registrar, can you  
20 go to image 50, please, and if you can call out  
21 the section under "Correct Alignment Discontinuity  
22 in Southbound Direction." Thank you.

23 And there's, I believe,  
24 another view of the kink. Is that right?

25 A. Yes.

1 Q. And that's the  
2 left-hand -- if you take from the middle of the  
3 paragraph, the left side of this at the bottom is,  
4 rather than a curve, the line is much straighter.  
5 Is that the kink?

6 A. I'm sorry, I'm not sure  
7 what you're describing, but I can see the hash  
8 there where the number 1.6 and that's the kink.

9 Q. Okay. CIMA says:  
10 "We are unsure why the  
11 roadway was built this  
12 way as the design  
13 drawings do not show this  
14 occurring. It's  
15 difficult to attribute  
16 any collisions to this  
17 geometric aspect,  
18 however, it's clear that  
19 it catches drivers off  
20 guard and leads to  
21 wandering into lanes.  
22 The City could consider  
23 smoothing out the  
24 alignment through the use  
25 of pavement markings or

1                                   shifting the by area by  
2                                   approximately  
3                                   1.6 metres."

4                                   And then it says:

5                                   "Final recommendations  
6                                   for this countermeasure  
7                                   would require additional  
8                                   examination of the road  
9                                   design that is not  
10                                  possible with the data  
11                                  provided for this study."

12                                 So, just looking at the  
13                                 language that CIMA used, the City could consider  
14                                 smoothing out the alignment, did you understand  
15                                 that that was an option that the City could assess  
16                                 and determine if they wanted to implement it?

17                                 A.    Yes.  There was no  
18                                 collisions attributed to this, if I remember  
19                                 correctly, so there was no need to change it.  It  
20                                 was not a safety issue.

21                                 Q.    Okay.  Registrar, could  
22                                 you close this down and go to image 47, please,  
23                                 and if you can call out 6.1.3.

24                                 This is a reference to  
25                                 friction testing and you can certainly take the

1 time to read it. I'm going to direct you to the  
2 very last line. Just let me know when you're  
3 ready.

4 A. I'm ready.

5 Q. The very last line is:  
6 "Because of the high  
7 proportion of the wet  
8 surface condition and SMV  
9 collisions, the City  
10 could consider  
11 undertaking pavement  
12 friction testing on the  
13 asphalt to get a baseline  
14 friction coefficient for  
15 which to compare to  
16 design specifications."

17 Do you see that?

18 A. Yes.

19 Q. And I think we talked  
20 about this when we were looking at the  
21 presentation. This would be engineering  
22 services's responsibility to implement --

23 A. I believe so, yes.

24 Q. -- if they were accepted,  
25 in your view?

1 A. Yes.

2 Q. Can you close this down,  
3 Registrar, stay on this page and open up 6.1.4.  
4 Thank you.

5 So, this is a reference to  
6 slippery when wet signs and it says:

7 "Confident drivers are  
8 aware that the friction  
9 of the road surface is  
10 reduced in wet weather.  
11 Therefore, this sign is  
12 reserved for use when the  
13 skid resistance of a road  
14 is reduced to an  
15 expectantly low level.  
16 Given the high proportion  
17 of wet surface  
18 conditions, it may be  
19 determined through  
20 friction testing that the  
21 skid resistance of the  
22 roadway is lower than  
23 normally encountered in  
24 some areas if this is  
25 determined, so you could

1                   examine the installation  
2                   of the WC-105 sign for  
3                   the northbound and  
4                   southbound directions in  
5                   relation to any areas  
6                   identified through  
7                   friction testing."

8                   So, just stopping there, to  
9                   your knowledge, and we're in the draft from July  
10                  of 2013, were there any slippery when wet signs  
11                  installed on the Red Hill mainline?

12                  A.    I don't know.

13                  Q.    And what about any of the  
14                  ramps?

15                  A.    I don't know.

16                  Q.    Okay. Did you read this  
17                  particular comment from CIMA to be a suggestion to  
18                  install these signs if friction testing suggested  
19                  that signage would be appropriate?

20                  A.    It could be. I'm not  
21                  sure if it's an appropriate use of the sign, but  
22                  potentially it could be.

23                  Q.    Okay. Just jumping  
24                  forward, coming out of the CIMA 2013 report, do  
25                  you recall if slippery when wet signs were

1 actually installed in 2013 or 2014?

2 A. I don't know. I can't  
3 remember. There would be work orders if there  
4 was.

5 Q. Okay. Can you close this  
6 down, Registrar, and go to image 53, please. Can  
7 you bring up the next image as well. Thank you.

8 So, this section, section 6 of  
9 this report, it goes based on segment and then  
10 based on ramp. So, you'll see under 6.3.9 under  
11 image 1 ramp 6 starts there and then there's a  
12 number of different suggestions for ramp 6. Do  
13 you recall that the potential countermeasures for  
14 ramp 6 were quite extensive?

15 A. Vaguely, yes.

16 Q. And one of them at the  
17 bottom was install high-friction pavement on the  
18 approach to and through the curve?

19 A. Yes. So, again, this is  
20 the ramp that we just did improvements to less  
21 than a year prior. Correct?

22 Q. It's ramp 6. I think we  
23 have been identifying --

24 A. Right. So, that's the  
25 one that we just did stuff to less than a year

1 prior to. I'm just clarifying that.

2 Q. Yes. I think that's been  
3 your evidence.

4 A. Okay.

5 Q. So, CIMA says:  
6 "The City could consider  
7 installing a  
8 high-friction surface  
9 treatment on approach and  
10 through the curve at the  
11 end of the ramp."

12 And there's references early  
13 in that paragraph to wet road surfaces can reduce  
14 pavement friction and cause skidding or  
15 hydroplaning at the top.

16 And so, again, just jumping  
17 forward, to your knowledge, was a high-friction  
18 pavement application installed on ramp 6 on the  
19 approach to and through the curve at any point in  
20 2013, 2014, 2015 or 2016 or 2017?

21 A. Not that I'm aware of.

22 Q. Okay.

23 A. It could have made it  
24 worse.

25 Q. If that was your view in

1 2013, did you ask CIMA for --

2 A. No, but I'm telling you  
3 it could have made it worse. I mean, if people  
4 know they have more friction, then they would tend  
5 to drive a little quicker, so it could make the  
6 situation actually worse. So, again, there's a  
7 tradeoff. There's a benefit. There's a positive  
8 and negative to everything. So, it potentially  
9 could have made it worse. We could have had  
10 higher speeds and more damage and potentially  
11 personal injury collisions.

12 Q. Registrar, you can close  
13 this down. Can you go back into OD 6, page 38,  
14 please. Sorry, Registrar, I just think it's  
15 better to go into the actual document. If you can  
16 go to CIM8113, and if you could show image 1 and 2  
17 together, please, and if you could pull out Mike  
18 Field's comments at the beginning of image 1 and  
19 go on to the top of image 2. Yes, right there.  
20 Perfect. Thank you.

21 So, Mr. Cooper, we were just  
22 looking at this e-mail earlier. We were looking  
23 at the OD version of it. Now we're looking at the  
24 actual document, the actual e-mail. So, this is  
25 that e-mail from Mr. Field in which he says --

1 sorry, Registrar, can you bring up the call out.

2 Exactly, yes. Thanks.

3 So, this is the e-mail where  
4 Mr. Field said the illumination of the mainline  
5 has been excluded and I was asking you questions  
6 about that statement. Mr. Field also says in the  
7 first bullet point on image 2:

8 "There's no direct  
9 recommendations in this  
10 document, only summaries  
11 of findings. I cannot  
12 tell what action the City  
13 should be taking as a  
14 result of the study. I  
15 thought we discussed at a  
16 minimum a list of  
17 improvements which is  
18 prioritized based on  
19 CIMA's expert opinion."

20 So, is it your or was it your,  
21 in 2013, expectation that CIMA would provide a  
22 list of countermeasures based on a priority that  
23 they set?

24 A. They would give us a list  
25 of potential countermeasures. I don't remember a

1 priority. I don't remember a priority, other  
2 than, like, the short term, long term, but I don't  
3 remember -- that's all I remember on that.

4 Q. Okay. So, where  
5 Mr. Field says that "we discussed at a minimum a  
6 list of improvements which is priorities based on  
7 CIMA's expert opinion," do you recall having any  
8 discussions about asking CIMA to provide a list of  
9 improvements that is prioritized based on CIMA's  
10 expert opinion?

11 A. What was the question  
12 again? Sorry, do I remember?

13 Q. Having discussions with  
14 Mr. Field about that.

15 A. No, I don't remember  
16 talking to Mike about that. That could have been  
17 from one of our meetings that we had kicking off  
18 the project.

19 Q. Okay. And were you  
20 relying on CIMA to provide you with a  
21 prioritization of the countermeasures that they  
22 were recommending?

23 A. Yes, I would say that's  
24 fair.

25 Q. Was that prioritization

1 based on ease of implementation of the  
2 countermeasures?

3 A. It would have -- that  
4 would have been one of the factors. It could have  
5 included a number of factors: Cost, programming,  
6 ease of implementation, the effect. A number of  
7 factors would have contributed.

8 Q. Okay. So, you were  
9 looking to CIMA to take all those factors based on  
10 information from you and provide you with some  
11 sort of prioritized list of potential measures?

12 A. From the project team,  
13 the information, and provide us with, yes.

14 Q. Okay. Just going back to  
15 that reference to illumination of the mainline,  
16 the second bullet point, Mr. Field says:

17 "Considering that  
18 illumination of the  
19 mainline is the first  
20 request in the council  
21 motion to review, I think  
22 there should be far more  
23 explanation as to why it  
24 was excluded."

25 Was it your view at this point

1 that council was looking for a report that  
2 addressed illumination of the mainline?

3 A. They were looking -- the  
4 motion requested us to review lighting in the  
5 vicinity of. I do not recall anything about the  
6 mainline specifically.

7 Q. Okay. Did you have any  
8 impression that councillors on PWC would not be  
9 pleased if the report did not address illumination  
10 of the mainline in the study area?

11 A. I have no opinion on  
12 that. Council decides what they choose to decide,  
13 so I don't know what they would have been pleased  
14 or displeased with.

15 Q. Okay. But you are a  
16 staff member who reports to PWC, you have a sense  
17 of the councillors. I'm asking for your  
18 impression of whether you thought the councillors  
19 were going to be pleased if you came back with a  
20 report that didn't deal with illumination on the  
21 mainline.

22 A. So, again, I don't know  
23 what they would have been pleased or displeased  
24 with. I don't know what they were looking for  
25 here. They were looking -- my understanding of

1 the motion is they were looking to provide better  
2 guidance to drivers, which potentially included  
3 signs, markings, lighting. It was very open-ended  
4 and unclear as to specifically what they wanted  
5 lit or signed or markings.

6 Q. Okay. Registrar, can you  
7 take these call outs down, please, and can you  
8 call out Mr. Gallo's e-mail of August 6. Thank  
9 you.

10 So, this is just -- I  
11 mentioned this before. Mr. Gallo had some  
12 comments. These were his comments.

13 Registrar, can you can close  
14 this down and then open up the top e-mail in this  
15 chain.

16 And so, you say:

17 "Please see our comments  
18 below."

19 To Mr. Applebee:

20 "Can you address the  
21 suggestions and revise?"

22 So, does that assist you with  
23 your recollection about whether you personally  
24 provided additional comments?

25 A. Well, I provided their

1 comments.

2 Q. Yes, I know, but you  
3 personally provided other comments?

4 A. Well, there's none here,  
5 so I'm going to say no.

6 Q. Okay. Can you close that  
7 down. So, you are going on vacation at this point  
8 and this is about the same time that David  
9 Ferguson starts with the City in his new role.

10 Going forward, after  
11 Mr. Ferguson has started at the City, what did you  
12 understand your role to be in respect of the 2013  
13 CIMA report?

14 A. I didn't expect it to  
15 change.

16 Q. Okay. So, you still  
17 expected that you would have responsibility for  
18 getting the report finalized and a staff report to  
19 council?

20 A. Yes.

21 Q. Okay. Registrar, can you  
22 close this down and go to page 44 please. Sorry,  
23 page 44 of OD 6.

24 So, at the bottom, at 104,  
25 there was a traffic engineering services meeting

1 and there's a number of initials: DF, which I  
2 believe to be David Ferguson, RG, Ron Gallo, RA,  
3 I'm not sure who that is, and SC, I think that's  
4 you.

5 Do you remember attending a  
6 meeting with traffic engineering services right  
7 when Mr. Ferguson started?

8 A. Not specifically, no.

9 Q. Okay. Registrar, can you  
10 go to page 47, please. And call out 113.

11 On August 30, there's a  
12 meeting invitation circulated for September 4 for  
13 Mr. White, for Mr. Ferguson, for you, for  
14 Mr. Gallo, Mr. Field and Mr. Kirchknopf to discuss  
15 the Red Hill report. What do you remember about  
16 the September 4 meeting?

17 A. Nothing.

18 Q. Registrar, can you close  
19 this down and go to the next image and to 117.  
20 Actually, no. Just leave this up like this.

21 In early September 2013, just  
22 after that staff meeting, Mr. Ferguson shared a  
23 draft of the draft CIMA report with Councillor  
24 Collins and offered to meet, and then that got  
25 extended to Jackson and Clark as well and he

1 scheduled a meeting with councillors for  
2 September 12. Do you recall whether that plan to  
3 contact councillors was discussed at the  
4 September 4 meeting?

5 A. I don't know. I don't  
6 remember.

7 Q. Okay. Do you recall  
8 attending a meeting with councillors and  
9 Mr. Ferguson about the Red Hill report?

10 A. No, I don't. And this is  
11 when I tried to pull and I cannot remember this  
12 meeting.

13 Q. Was it common for you to  
14 connect with councillors in advance of providing  
15 staff reports to Public Works Committee?

16 A. I wouldn't say it was  
17 common, but it wasn't unusual.

18 Q. Okay. In the past, had  
19 you sent draft consultant reports to councillors?

20 A. No.

21 Q. At the time, did you have  
22 any concerns with sharing draft consultant reports  
23 with councillors?

24 A. Draft what reports?

25 Q. Consultant reports.

1 A. Staff reports?

2 Q. No, consultant reports.

3 A. I have never done it.

4 Did I have concerns with it?

5 Q. Yeah.

6 A. I'm not sure it was my  
7 call to make if I had concerns of it. It was a  
8 decision of my management, and so I'm not sure it  
9 really matters.

10 Q. It does matter. I'm  
11 asking for your view about whether you personally  
12 had any concerns with doing that.

13 A. I don't see anything  
14 wrong with it. I mean, it's still in draft.  
15 We're communicating with them to bring them up to  
16 speed as to what we're doing based on their  
17 motion.

18 Q. I think you said before  
19 it was not uncommon to meet with councillors. Had  
20 you met with a subset of councillors to discuss an  
21 item that was going to come to an upcoming Public  
22 Works Committee meeting in the past?

23 A. I had met with many  
24 councillors on many occasions. I can't say  
25 specifically if it's regarding a PW motion or not.

1 I met with them all the time, so --

2 Q. Okay. Did you have any  
3 concerns about providing a subset of councillors  
4 with different information than the whole of the  
5 Public Works Committee?

6 A. I'm not sure I've been  
7 involved with that.

8 Q. Okay. I can rephrase the  
9 question. Were councillors who were sitting on  
10 Public Works Committee -- did you have any  
11 concerns about providing detailed or more specific  
12 information to some of them in advance of a Public  
13 Works Committee meeting but not all of the Public  
14 Works Committee council members?

15 A. It would depend on what  
16 the issue is. I don't know. They had the  
17 particular interest in the motion, so I'm not  
18 sure. I'm not sure the question. It's pretty  
19 hypothetical, so I'm not sure.

20 Q. Did you have any concerns  
21 in this circumstance with providing information  
22 about the draft 2013 CIMA report to a subset of  
23 councillors and not all of the councillors at the  
24 same time?

25 A. I didn't give it much

1 thought, no.

2 Q. Okay. Registrar, can you  
3 go to page 51, paragraph 126. Pardon me, 126.

4 Thank you.

5 So, I think you referenced  
6 this earlier, Mr. Cooper. You wrote to  
7 Mr. Ferguson and Mr. White and you said:

8 "I was speaking to Mike  
9 Field this morning and he  
10 said that Gary Moore saw  
11 the report and was not  
12 pleased with the  
13 recommendations provided  
14 by CIMA. Have either of  
15 you spoken to him? Are  
16 you aware of anything in  
17 particular that he does  
18 not like or agree with?"

19 So, just for your reference,  
20 we're in September now and CIMA has provided  
21 another draft, what they call the final draft of  
22 the CIMA report, which has been provided to  
23 Mr. Field.

24 Did you receive any  
25 information about how Mr. Moore saw a copy of the

1 CIMA report?

2 A. No.

3 Q. Did you have any concerns  
4 with the fact that Mr. Moore saw a copy of the  
5 CIMA report?

6 A. No.

7 Q. And I think you said  
8 earlier you searched your mind and you can't  
9 remember this. Is there anything you can tell us  
10 about your discussion with Mike Field?

11 A. No.

12 Q. Why do you go to  
13 Mr. Ferguson and Mr. White rather than reaching  
14 out to Mr. Moore yourself?

15 A. Because they're my  
16 immediate supervisors. I didn't work for Gary.

17 Q. Was the fact that Gary  
18 was a director have anything to do with why you  
19 didn't go to him?

20 A. That along with I didn't  
21 work for him. I was doing the report for my  
22 group, not for Gary.

23 Q. Okay. Can you close this  
24 out, Registrar, and go to the next paragraph,  
25 please. Pull that --

1                   A.    Sorry to interrupt.  Will  
2  we be breaking soon?

3                   Q.    Yes, we will.  This is, I  
4  think, my last question before we break.

5                   A.    Great.  Thank you.

6                   Q.    You were not copied on  
7  this.  This is a forward of the e-mail we were  
8  just looking at and Mr. White forwards it to  
9  Mr. Lupton and Mr. Ferguson and says "in  
10 confidence," and then he says that he has some  
11 comments here.  The one I want to ask you about is  
12 Mr. White says:

13                               "Off the record, I think  
14                               he even spoke to CIMA."

15                   Were you aware if Mr. Moore  
16 spoke to anybody at CIMA at any point during the  
17 development of the 2013 CIMA report?

18                   A.    No.

19                   Q.    Would you have any  
20 concerns if you did learn that Mr. Moore had  
21 reached out to CIMA?

22                   A.    Well, his staff was on  
23 the team to create it, so no.

24                   Q.    Okay.  And would you have  
25 wanted to be looped in about any discussions that

1 Mr. Moore had with CIMA, if they occurred?

2 A. It would have been nice,  
3 yes.

4 Q. I'm going to close this  
5 down. Sorry, I do have one more question I want  
6 to get in before our break. No, it's fine. It's  
7 11:30 on the nose. I think we all deserve a  
8 break. I'll come back to it when we come back.

9 Mr. Commissioner, I think this  
10 is a good time to take 15 minutes.

11 JUSTICE WILTON-SIEGEL: That's  
12 fine. Let's adjourn for 15 minutes and come back  
13 at a quarter to 12:00.

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

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

16 BY MS. LAWRENCE:

17 Q. Registrar, can you go to  
18 OD 6, page 52, please, and can you call out 129.

19 So, this is part of the chain  
20 that we were looking at starts with your reference  
21 to Gary not being pleased. It goes to you get  
22 dropped from the chain and some of your superiors  
23 keep speaking. Mr. Lupton and Mr. Mater have the  
24 following exchange, recommending that they talk to  
25 Gary and bring CIMA in if needed to discuss

1 whatever Mr. Moore's concerns were.

2 Were you aware that there was  
3 a plan amongst Mr. Lupton and Mr. Mater to discuss  
4 with Gary and bring in CIMA if needed?

5 A. No.

6 Q. Did anyone update you  
7 about any approach to assess Mr. Moore's potential  
8 concerns about the recommendations in the CIMA  
9 report and address them?

10 A. No.

11 Q. Apart from the  
12 conversation with Mr. Field that's referenced in  
13 that e-mail -- and, Registrar, you can take this  
14 down -- did you have any other impression that  
15 Mr. Moore would not be supportive of making safety  
16 improvements on the Red Hill?

17 A. No.

18 Q. Had you heard anything  
19 that left you with the impression from anyone at  
20 any point between before September 2013 that  
21 Mr. Moore had any concerns about making safety  
22 improvements on the Red Hill?

23 A. I don't believe so, no.

24 Q. Thank you. Registrar,  
25 can you bring up the next image, image 53, along

1 with this image.

2 Mr. Cooper, you see at the  
3 bottom of the image 1 at paragraph 131 there's a  
4 reference to very heavy rainfall on September 21,  
5 2013 and there was some issues on the Red Hill as  
6 a result. Do you remember this incident, this  
7 rainstorm?

8 A. No.

9 Q. Initially there's a  
10 discussion between some roads and maintenance  
11 operations staff, those who actually are on the  
12 roads, which go up through their hierarchy to  
13 Bryan Shynal. You're not copied on these, but  
14 you'll see -- Registrar, if you can pull up 133 --  
15 Mr. McCleary, who is in roads operations, says --  
16 he writes to Mr. White and says:

17 "Can we please take the  
18 risk out of this by  
19 getting traffic to add  
20 slippery when wet signs  
21 on every ramp and along  
22 the route? We are  
23 getting several  
24 collisions every time it  
25 rains and police are

1 asking us to do  
2 something, like add  
3 sand."

4 I know I've asked you this a  
5 few times, but by this point, September 2013, do  
6 you know if there were slippery when wet signs  
7 anywhere on the mainline or any of the ramps?

8 A. I don't know.

9 Q. Okay. Can you close this  
10 down, Registrar, and go to the next image, and can  
11 you call out 134, please.

12 So, Mr. White forwards  
13 Mr. McCleary's e-mail to Mr. Ferguson and Kris  
14 Jacobson and says:

15 "In my opinion, this  
16 should be substantiated  
17 by collision history.  
18 Please do a collision  
19 history facility wide for  
20 a statistically  
21 significant time period  
22 and review for a  
23 percentage of collisions  
24 on wet pavement."

25 Did Mr. Ferguson instruct you

1 to complete a collision history facility wide?

2 A. I don't remember. It may  
3 not have come to me. It could have went to our  
4 collision analyst.

5 Q. And is that Linda?

6 A. Yes.

7 Q. I'm going to mangle her  
8 last name.

9 A. Juchniewicz.

10 Q. Juchniewicz, thank you.

11 Just so that I'm clear, Mr. Ferguson, at least the  
12 way you understand this to work, Mr. Ferguson  
13 might have gone directly to her to request her to  
14 pull the collision history?

15 A. He could have. I don't  
16 remember him coming to me. He might have done  
17 that as well. I really don't remember.

18 Q. Okay. But you don't  
19 recall doing any collision history facility wide  
20 on the Red Hill in 2013?

21 A. I don't recall. I did  
22 collision reviews on a lot of roads, so I couldn't  
23 tell you. This was quite a while ago.

24 Q. Okay. Registrar, can you  
25 go to 57, paragraph 145, please.

1                                   And, while that's coming up,  
2   do you attend the transportation coordination  
3   committee meetings?

4                                   A.    I do not.

5                                   Q.    If you see at the bottom  
6   of 145 and then up to the top at paragraph 146,  
7   these are minutes of the TCC meeting in September  
8   and Martin is noted as saying:

9   "Studies will be  
10   conducted on all  
11   on/off-ramps."

12                                   Did anyone instruct you to  
13   complete a collision review or any other study on  
14   the Red Hill on/off-ramps in September 2013?

15                                   A.    I don't believe so.  I  
16   don't remember, but I don't think so.  I don't  
17   remember doing it.

18                                   Q.    Okay.  Do you remember  
19   conducting any collision review history on the  
20   mainline or ramps in 2013 or 2014 or any time  
21   before the 2015 CIMA report?

22                                   A.    I don't recall.  
23   Collisions are what we did, though.  We were  
24   roadway safety or, at this time, community traffic  
25   services, and we reviewed collisions regularly.

1 So, to pull out a specific location or a specific  
2 road on a specific date is next to impossible to  
3 recall, quite frankly.

4 Q. Okay. Just so I  
5 understand what a collision history review  
6 actually looks like, is it a spreadsheet looking  
7 at the collisions that are in the City's database?

8 A. Well, it depends on --  
9 there's a number of factors. We could -- it  
10 depends on what we were looking for. A collision  
11 review would typically look at five years' worth  
12 of data and if we run it to get really in-depth,  
13 we would look at the actual police collision  
14 reports to see the cause of collisions.

15 Q. My question is more what  
16 the output is from a collision history review.  
17 You're looking at the data and then are you doing  
18 an e-mail? Is there a memo? Is there some sort  
19 of template? What is the outcome of a collision  
20 history review?

21 A. It depends on what it's  
22 for.

23 Q. Okay.

24 A. I mean, if someone asked  
25 me, I would send the results to them. It depends

1 on what it was for.

2 Q. Okay. Registrar, can you  
3 go to page 60, please, and can you call up 151.

4 So, after a fair bit of back  
5 and forth about the September rainstorms, you're  
6 not copied on any of it, Mr. Moore responds to  
7 John McCullen, Mr. Shynal, Mr. White, Mr. Mater  
8 and Mr. Lupton and says:

9 "As part of the ongoing  
10 pavement monitoring for  
11 asset management  
12 purposes, we will have a  
13 skid resistance test  
14 completed on both the  
15 LINC and the Red Hill.  
16 There is a standard by  
17 which we can report on  
18 the level of resistance  
19 and by which we can gauge  
20 the performance of each  
21 mix and road surface."

22 Were you ever advised by  
23 anyone of the fact that Mr. Moore had represented  
24 that he was going to have skid resistance testing  
25 completed on the LINC and the Red Hill?

1                   A.     Sorry, is the question  
2     was I aware he was going to do it?

3                   Q.     Were you advised that he  
4     represented to others in your group that he was  
5     going to do skid resistance testing?

6                   A.     No, I was not.  I don't  
7     believe so.

8                   Q.     Okay.  You can close this  
9     down and, Registrar, can you go to the next page,  
10    please.

11                   In paragraph -- this is really  
12    just to orient you to time -- 155, Mr. Applebee  
13    sent an updated version of the report to  
14    Mr. Cooper, to you, saying that he had made  
15    changes in the wording as well as the text in the  
16    body.

17                   Sitting here today, do you  
18    have any information about the context that led to  
19    Mr. Applebee's revision to this report -- this is  
20    the CIMA report -- on October 3?

21                   A.     No.  I would confuse it  
22    with what I've done to date to get here.  So, in  
23    2013, no, I can't say for certain.

24                   Q.     Okay.  Registrar, can you  
25    bring up RHV668, please.

1                   So, I'm going to ask you some  
2   questions about your role in drafting staff  
3   reports to Public Works. What I'm taking you to  
4   here -- Registrar, can you bring up the next  
5   image as well, please -- is the November 13, 2013  
6   staff report that went to the Public Works  
7   Committee.

8                   A.    Is this the final one?

9                   Q.    The final one. And then  
10   we'll work back to your draft, but I have some  
11   general questions first.

12                   This report is titled  
13   Information Report. Can you identify the  
14   differences between information reports and other  
15   kinds of reports that staff might provide to  
16   Public Works Committee?

17                   A.    So, my understanding is  
18   an info report is just to update council on  
19   actions items that we're doing or kind of an  
20   update in where we are in the process.

21                   A recommendation report is  
22   typically used to identify budget and to have  
23   things removed from the outstanding business list.  
24   And maybe information update is information  
25   report. I'm not sure.

1 Q. Okay.

2 A. It's not clear.

3 Q. Who decides which kind of  
4 report to provide?

5 A. Usually my -- well, it  
6 would be my management who decides, so it's not  
7 me. Manager, I guess.

8 Q. Okay. So, you'll see on  
9 image 1 it says "submitted by Gerry Davis," who is  
10 the general manager of Public Works, and prepared  
11 by you and David Ferguson.

12 What did you expect  
13 Mr. Davis's level of involvement to be in reports  
14 like this?

15 A. At this point, I don't  
16 think he is involved really, other than attends  
17 committee and submits it. I think at this point  
18 he generally would expect staff to finalize the  
19 report.

20 Q. Okay. So, he's not  
21 conducting any substantial review?

22 A. I don't believe so. I  
23 don't know for sure, but I don't think so.

24 Q. Okay. And it says it's  
25 prepared by you and David Ferguson and we'll go

1 back into how this report got prepared, but in the  
2 usual course, did you often take the first cut,  
3 the first draft, of a staff report going to a  
4 Public Works Committee?

5 A. If it was directed to me,  
6 then yes, I would, but sometimes it would be my  
7 staff as well. Depends.

8 Q. Okay. And once you  
9 completed your draft, it would go to Mr. Ferguson.  
10 Is that right?

11 A. In 2013?

12 Q. Yeah.

13 A. Yes.

14 Q. And then what did you  
15 know about Mr. White and Mr. Lupton's involvement  
16 in reviewing staff reports before they went to  
17 Mr. Davis, if anything?

18 A. So, my understanding is I  
19 would write the report, it would go to Dave and  
20 then it would go to Martin and then in turn to the  
21 director and so on.

22 Q. Other than the department  
23 that prepared the report, what other City staff  
24 might be given a draft of a report to review  
25 before it's submitted?

1                   A.    I think it would be a  
2    good idea to send it to who -- if there's other  
3    departments or sections involved in the report, I  
4    think it's a good idea to at least let them know  
5    that it's coming.

6                   Q.    Okay.  So, here,  
7    Mr. Field is providing -- he would be consulted in  
8    the drafting of the report?

9                   A.    I'm not sure he -- it may  
10   even be above him, to be quite honest.

11                  Q.    Okay.  So, Mr. Moore?

12                  A.    Possibly.

13                  Q.    Somewhere in between?

14                  A.    I would -- you know, it's  
15   the GM of Public Works who brings it forward, so I  
16   would think that the directors under the GM would  
17   be involved in the finalization of the report.

18                  Q.    Okay.  Would you agree  
19   that it's important for staff to summarize  
20   consultant reports accurately and completely in  
21   staff reports?

22                  A.    Not necessarily.  It  
23   depends.  Like, if you're responding to a motion,  
24   then they want staff's opinion on that motion.  
25   You don't necessarily summarize the entire report

1 because it's not really relevant to the motion.

2 Q. Okay. So, in your view,  
3 staff has a fair bit of discretion about what to  
4 include in staff reports?

5 A. Yes. Our job is to  
6 respond to the council motion or, in this case,  
7 PWC motion, I believe it was. I'm not sure where  
8 it came from.

9 Q. Okay. Was it your  
10 practice to append or attach the consultant  
11 reports to staff reports that dealt with a  
12 consultant report?

13 A. This was my first  
14 consultant report which resulted in a report to  
15 staff or to committee, so I'm not sure there was a  
16 standard at the time, for me anyway.

17 Q. You didn't have a  
18 practice?

19 A. No.

20 Q. Okay. We're going to go  
21 back in a moment to your drafting, but before we  
22 get there, while you were drafting the first draft  
23 of this report, did you expect that the  
24 consultant's report would be provided to the  
25 Public Works Committee?

1                   A.    I don't remember  
2    considering it.  I don't know.

3                   Q.    Okay.

4                   A.    I don't think it was  
5    necessary to respond to the motion.

6                   Q.    Okay.  Registrar, can you  
7    close this and open up overview document 6,  
8    page 62, paragraph 157, please.  Thank you.

9                   So, I'm just orienting you in  
10   time.  You send a ten-page draft staff report to  
11   Mr. Field, noting that the report was due that  
12   day, and that was on October 7, 2013, and then  
13   Mr. Field sends the report on.

14                  So, just stopping there for a  
15   moment, did you send this draft staff report that  
16   you had prepared to Mr. Field first, before  
17   running it by Mr. Ferguson and others in your  
18   group?

19                  A.    I would say yes.

20                  Q.    Okay.  We don't have any  
21   documents that suggest that you sent this to  
22   Mr. Ferguson first.  That's why I'm asking.

23                  A.    If I remember correctly,  
24   Mike and I were both running this project, so  
25   obviously the lighting piece, they had a vested

1 interest in, so that makes sense I would have sent  
2 it to Mike to review prior to sending it up the  
3 chain, because that way at least it had all the  
4 information that was needed prior to going up to  
5 my management team for edits or what have you,  
6 comments.

7 Q. Okay. And do you recall  
8 getting any feedback from Mr. Field?

9 A. I do not. Sorry.

10 Q. Okay. Let's go into  
11 the -- actually, before we go into the document,  
12 just in terms of timing, am I correct that staff  
13 reports need to be prepared weeks before the  
14 Public Works Committee at which they're going to  
15 be delivered?

16 A. It's about three months.

17 Q. Okay.

18 A. 12 weeks, I think.

19 Q. So, when you say noting  
20 the report was due today, is that due, like,  
21 internally to your next step in the chain, as you  
22 said? You're going to send it up?

23 A. I can't say for sure, but  
24 that would be my assumption based on this e-mail,  
25 yeah.

1 Q. Okay. My question really  
2 is this is not due to the clerks on that day?

3 A. I have separate due dates  
4 than everyone else, so that's just my due date.

5 Q. Okay. All right. Let's  
6 open up that document. It's HAM41767. And why  
7 don't you bring up the first two images.

8 So, Mr. Cooper, you draft this  
9 as a recommendation report and then it has  
10 recommendations at the beginning. Why did you  
11 characterize this or frame this as a  
12 recommendation report?

13 A. I'm going to say I was  
14 probably told to. I wouldn't have made the -- it  
15 probably would have been the first question I  
16 asked, is what kind of report is it, because that  
17 will determine which template I use to create the  
18 report.

19 Q. Okay. Who did you ask?

20 A. It would have been Martin  
21 or Dave. Probably Dave, I'm guessing.

22 Q. Okay. Turning to the top  
23 of image 2, there's a paragraph that says -- if  
24 you can pull that out, that would be great. Thank  
25 you. And about halfway down this paragraph it

1 says:

2 "In 2007, the RHVP was  
3 open to traffic."

4 And then you go on to  
5 reference that council has received residents's  
6 input primarily about illumination, visibility  
7 and, as a result, the Ward 5 council put a motion  
8 to investigate a section, which led to the  
9 commencement of this safety and operational study,  
10 and then you've set the study area and then  
11 there's a diagram underneath.

12 Did you view it important to  
13 provide the background residents's input that led  
14 to Councillor Collins's motion for context?

15 A. Sorry, did I what?

16 Q. Did you think it was  
17 important?

18 A. Well, if it's in the  
19 report, I put it in there.

20 Q. Yes.

21 A. So, I don't know if it's  
22 important, but it's in there. It was part of what  
23 I wrote.

24 Q. Okay. Can you go down,  
25 Registrar, to page 5, please. Actually, sorry.

1 Can you go to page 4 and 5.

2 So, up at the top of the

3 page 4 it says:

4 "Many of the  
5 recommendations in the  
6 report identified  
7 relatively minor changes  
8 to various signs in the  
9 study area. Most were  
10 identified sign issues  
11 were in the process of  
12 being addressed and the  
13 recommendations in the  
14 review provided a  
15 cost-benefit analysis in  
16 order to prioritize  
17 improvements."

18 And then you go through the  
19 analysis/rationale for recommendations at the  
20 bottom of image 1 and you list the countermeasures  
21 to apply to the entirety of the study area and I  
22 think that those are directly lifted from the CIMA  
23 report. Is that your recollection as well?

24 A. Probably, yeah.

25 Q. And then you go through

1 each of the segments of the road and then the  
2 ramps, just like the CIMA report does. Do you  
3 remember that?

4 A. Yes.

5 Q. Okay. So, on the bottom  
6 half of image 2, you're referencing Dartnall and  
7 the Mud Street off-ramp. Now, just so that I'm  
8 clear, is that ramp 6? I don't think that it is,  
9 but --

10 A. Sorry, where are we  
11 talking here?

12 Q. Between Dartnall and Mud  
13 Street off-ramp.

14 A. No, it's not ramp 6.

15 Q. This, to my  
16 understanding, is the road segment, not the  
17 off-ramp itself?

18 A. Correct.

19 Q. I'm just trying to  
20 understand if the Mud Street off-ramp reference  
21 there is ramp 6?

22 A. No.

23 Q. So, you here mention the  
24 work orders for the countermeasures that are just  
25 directly above and you say -- maybe you can

1 highlight this, Registrar. It's five lines down:

2 "Further, engineering  
3 staff will be conducting  
4 friction testing on the  
5 RHVP."

6 A. Okay.

7 Q. What steps did you do to  
8 confirm for yourself that engineering services  
9 staff would be conducting friction testing in  
10 order to put it in this draft report?

11 A. I just assumed they would  
12 be at this point. This is first draft.

13 Q. Okay. And did you assume  
14 that because it was one of the potential  
15 countermeasures in the CIMA report?

16 A. Yes.

17 Q. Okay. Can you close this  
18 down, Registrar, and go to page 7, and if you can  
19 call out the first paragraph, Mud Street  
20 Interchange. Actually, can you close that call  
21 out and call out all the way from Mud Street  
22 Interchange down to WB on-ramp. Thank you.

23 So, just so that I understand  
24 this, the eastbound off-ramp to Mud Street, it  
25 says:

1 "Ranked number 1 on the  
2 2012 network screening  
3 list."

4 When it's ranked number one,  
5 that means that it's by that algorithm, the math  
6 that you didn't want to explain before, and fair  
7 enough, number one means that it is a segment or  
8 it is a road that needs to be considered because  
9 of the nature of the collisions on it. Is that  
10 right?

11 A. Yes. It's experiencing a  
12 higher number of collisions than we expect.  
13 That's for sure.

14 Q. Okay.

15 A. I mean, and it's not the  
16 number of collisions. It's volume in there, too.  
17 So, if you have, you know, ten vehicles a day and  
18 you have two collisions, then you have a lot of --  
19 you have a big issue there. But if you have  
20 50,000 vehicles a day and ten collisions, that  
21 doesn't necessarily mean there's a lot of them, so  
22 it's relative.

23 Q. Okay. So, I don't think  
24 that this is ramp 6. I think it's --

25 A. It's not.

1 Q. -- the westbound on-ramp.

2 Is that right?

3 A. This?

4 Q. No. The westbound  
5 on-ramp at the very bottom of this call out,  
6 that's ramp 6. Is that right?

7 A. I don't know. You would  
8 have to go down further.

9 Q. We'll get to it.

10 A. I know the eastbound one  
11 is not ramp 6.

12 Q. Okay. So, it's ranked  
13 number one on the 2012 network screening list.  
14 So, just so that I'm clear, had there been any  
15 collision countermeasure program discussion about  
16 the eastbound off-ramp?

17 A. I don't believe there  
18 was.

19 Q. Had there been any  
20 countermeasures put in place by City staff in  
21 advance of the CIMA report?

22 A. I don't recall.

23 Q. Okay. Registrar, can you  
24 close this and open up the WB on-ramp and then the  
25 rest of the page. Yes.

1                   So, just based on what's here,  
2    the installation of high friction, install  
3    lighting on-ramp, the other countermeasures, it's  
4    my understanding that this is what we've been  
5    calling ramp 6. Is that right?

6                   A.    I believe so, yes.

7                   Q.    Okay. So, you'll recall  
8    when we looked at that 2010 report that ramp 6  
9    ranked 64 overall and now we're in 2010 and now  
10   we're at 13 overall in 2012. That's a trend you  
11   don't want to see, I presume?

12                  A.    It's definitely going up.

13                  Q.    But, again, 2012 is  
14   before, I think you've given evidence, that there  
15   were additional countermeasures put in place on  
16   ramp 6?

17                  A.    Correct.

18                  Q.    Okay.

19                  A.    So, I'm going to guess  
20   that's why, because we noticed this, and so we put  
21   some changes in there prior to hiring CIMA.

22                  Q.    So, in this draft that  
23   you prepare, you don't reference any outcomes of  
24   the collision history that CIMA had performed.  
25   Why was that?

1                   A.    I don't know.  It  
2  wasn't -- it didn't answer the motion.

3                   Q.    Okay.  And in this  
4  particular section, you don't reference that half  
5  the ramp collisions were on this particular ramp.  
6  Why was that?

7                   A.    I don't know.

8                   Q.    Okay.  You didn't think  
9  that that was information that PWC needed to be  
10 able to understand the report?

11                  A.    No, not to answer the  
12 motion.

13                  Q.    Okay.  And there's no  
14 reference to the high proportion of the wet  
15 surface conditions or single motor vehicle  
16 collisions?

17                  A.    Okay.

18                  Q.    You have the same answer  
19 about why that wasn't included?

20                  A.    Yeah.  I think speed was  
21 the underlying issue here, so no, I don't think it  
22 was -- I didn't put it in there, I guess.

23                  Q.    Okay.  So, is your  
24 evidence that because you thought speed was the  
25 underlying issue, you didn't think that the

1     councillors needed to have a collision history  
2     review set out for them in this report?

3                     A.     I don't think it would  
4     benefit the motion and it wasn't my opinion that  
5     speed was an issue. Speed was an issue and it's  
6     very well-documented in this report as well as  
7     prior to the report as well as after the report.  
8     So, speed isn't my opinion; it's a fact.

9                     Q.     Okay. Apologies if I'm  
10    repeating myself. I hope I'm not. But did you  
11    talk to Mr. Moore or anyone else in engineering  
12    services about conducting friction testing?

13                    A.     No.

14                    Q.     Okay. Registrar, can you  
15    go to image 10, please.

16                    And this is  
17    Appendices/Schedules, Appendix A to the report.  
18    Actually, Registrar, can you bring up the very  
19    first page of the report, so image 1 and image 10,  
20    please.

21                    So, there's a reference here  
22    to Appendix A and this is recommendation A to the  
23    report respecting the Red Hill improvements be  
24    approved. I'm just trying to understand what were  
25    you planning to put into Appendix A?

1 A. Could I see the appendix?

2 Q. There is no appendix.

3 A. Oh, okay. It would have  
4 been the charts, I believe, that were in the CIMA  
5 report that recommended the changes.

6 Q. Okay. So, putting in  
7 chart form the content that you have put into the  
8 report itself?

9 A. Yeah. I'm surprised it's  
10 not here.

11 Q. Eventually, appendices  
12 were prepared that did have those charts. I'm  
13 just looking at the version that you sent to  
14 Mr. Field and it says appendix but it doesn't have  
15 anything attached.

16 A. Okay.

17 Q. Do you remember if you  
18 drafted an appendix at the same time that you  
19 drafted this report?

20 A. I don't recall  
21 specifically, but it makes sense I would have sent  
22 the whole thing complete. Maybe I was still  
23 working on it. I'm not sure. But this was to  
24 Mike, not to Dave?

25 Q. To Mike, yes.

1                   A.    Yeah.  So, I would think  
2    I would have sent the complete one to Dave.

3                   Q.    Okay.  Registrar, can you  
4    take this down and open up HAM63995, and can you  
5    start with image 4, please.

6                   So, this is right around the  
7    same time that you're drafting this report.  It's  
8    October 3.  And you say to Alan Jazvac and Richard  
9    Andoga:

10                   "Do either of you know or  
11                   have heard about a date  
12                   for the resurface of the  
13                   RHVP, particularly  
14                   between Mud and Dartnall?  
15                   Even the year would be a  
16                   good starting place."

17                   Do you see that at the bottom?

18                   A.    Yes.

19                   Q.    And then Alan Jazvac  
20    responds:

21                   "The next surfacing of  
22                   the LINC will be  
23                   scheduled for 2025 to  
24                   2027, hopefully not  
25                   sooner, and the Red Hill



1 Q. Thinking ahead?

2 A. Yes.

3 Q. Okay. So, why was it  
4 that you were asking about the resurfacing, if  
5 there was any reason besides the coordination that  
6 we just talked about?

7 A. Well, it's exactly that,  
8 so we could coordinate the install. There's no  
9 point in putting them in and then the next year  
10 they go resurface and rip them out or even in a  
11 couple years. It's a pretty large expenditure and  
12 ideally they would be placed during resurfacing.  
13 That would give us the best performance of the  
14 devices as well as the pavement.

15 Q. Okay. But this is 2013  
16 and the suggestion here is it's not going to be  
17 resurfaced until 2021, so did you have a view  
18 about whether it would be prudent to wait until  
19 the next resurfacing as a result of this  
20 conversation?

21 A. It wasn't my call to  
22 make, so I have no opinion on that.

23 Q. Well, just because it  
24 wasn't your call doesn't mean you don't have an  
25 opinion.

1 A. Okay.

2 Q. Do you have an opinion?

3 A. No, I don't.

4 Q. Okay. You can close  
5 this. Sorry, I'm being told this needs to be  
6 marked as the next exhibit, which I think is  
7 Exhibit 68?

8 THE REGISTRAR: Noted,  
9 counsel. Thank you.

10 MS. LAWRENCE: Thank you.

11 EXHIBIT NO. 68: E-mail  
12 chain between Mr. Cooper,  
13 Mr. Jazvac and  
14 Mr. Andoga, HAM63995.

15 BY MS. LAWRENCE:

16 Q. Can you close this down  
17 and go back into OD 6, page 62, please. Actually,  
18 let's go to page 63, please, and if you can call  
19 out 160.

20 So, you're not copied on this,  
21 but Mr. White adds to an e-mail that he's  
22 exchanging with Mr. Lupton and Mr. Ferguson and it  
23 says:

24 "David, I don't want to  
25 send the CIMA report at

1 all, just our reports as  
2 highlights. We can say  
3 CIMA was contracted to do  
4 the safety, et cetera, et  
5 cetera."

6 So, again, just at this point,  
7 what was your expectation about whether the CIMA  
8 report was going to be appended or sent to the  
9 counsellors on the PWC?

10 A. I didn't give it much  
11 thought, to be honest with you. It was not my  
12 decision to make, so I didn't give it a lot of  
13 thought whether it would or wouldn't be, should or  
14 shouldn't be. I wouldn't have dealt with it  
15 directly, so it didn't cross my mind. There was  
16 so much going on at this point in traffic, I  
17 couldn't focus on this, whether the report was  
18 appended to the report to council or not.

19 Q. Okay. My question really  
20 is whether the way that you drafted your draft  
21 report that you gave to Mr. Ferguson was at all  
22 affected by what you understood the councillors  
23 would have in addition to your report?

24 A. Again, I didn't consider  
25 it, so I'm not sure what you're asking. I didn't

1 give it a lot of thought.

2 Q. Okay. Did you have any  
3 role in editing the various drafts between your  
4 draft and the draft that eventually goes to PWC  
5 that we looked at just after the break?

6 A. No, I did not.

7 Q. Just pulling that up  
8 again, RHV668, so this is now an information  
9 report. Did you, at the time, review this report  
10 after it was submitted by Gerry Davis to PWC?

11 A. I probably would have  
12 looked at it. I don't remember looking at it,  
13 but, I mean, I would think I would.

14 Q. Did you have any views  
15 about its conversion from a recommendation report  
16 to an information report?

17 A. Well, the change wasn't  
18 mine to call. Like, it wasn't my call to make the  
19 change from a recommendation to an info report, so  
20 what it was called, it didn't matter to me. My  
21 management team knew better how to report back to  
22 committee. I didn't like the fact that my name  
23 was still on it when I didn't write it. That's  
24 not what my experience was prior to 2013, so  
25 that's about it.

1 Q. Did you have any concerns  
2 about being able to implement the countermeasures  
3 proposed by CIMA and identified in this report if  
4 it was an information report compared to a  
5 recommendation report?

6 A. No. Either way, we were  
7 going to do the work, so it didn't matter.

8 Q. Registrar, can you go to  
9 page 70, please, of OD 6, and if you can call out  
10 178, please.

11 So, this is an e-mail from  
12 Mr. Ferguson to you and he says:

13 "Please set up a meeting  
14 with CIMA."

15 And, sorry, just to orient you  
16 a little bit, we're at the end of October. You've  
17 put in your ten-page draft staff report. You have  
18 a copy of the CIMA report that they have called as  
19 the final report and Mr. Ferguson comes to you and  
20 says:

21 "Please set up a meeting  
22 with CIMA to discuss the  
23 RHVP report."

24 And you say:

25 "Sure. When and why?"

1                                   And then he says:

2                                   "Look at my availability.  
3                                   Modification to the  
4                                   report to reflect council  
5                                   info report."

6                                   So, by this point, and this is  
7                                   October 25, had you seen a copy of the information  
8                                   report?

9                                   A.    I don't believe I did.

10                                  Q.    Okay.

11                                  A.    But I can't say for sure.

12                                  Q.    Okay.  Do you recall  
13                                  having a meeting with CIMA and Mr. Ferguson to  
14                                  talk about modification to the report to reflect  
15                                  the council information report?

16                                  A.    No, I don't.

17                                  Q.    Okay.  This was your  
18                                  first consultant report, so you might not be able  
19                                  to answer this, but did you have any views about  
20                                  whether the staff report should be reflected --  
21                                  pardon me -- the consultation report should be  
22                                  changed to reflect the council information report?  
23                                  Is that the right approach in terms of trying to  
24                                  have two reports be similar?

25                                  A.    Well, I think it's a

1 collaborative effort. I mean, from what I recall,  
2 I don't think anything changed that changed the  
3 consultant's report. I don't think we made any  
4 changes that weren't in the spirit of the report  
5 or anything that was wrong or misleading, I don't  
6 believe.

7 Q. Okay.

8 A. Yeah.

9 Q. Registrar, can you close  
10 this out and go to the next image, please. And at  
11 the bottom you'll see on November -- in fact, can  
12 you call out 181 -- November 7, Mr. Applebee  
13 e-mailed you with the 2013 CIMA report and he  
14 wrote:

15 "I have attached a Word  
16 document to this e-mail  
17 with our suggested  
18 wording additions."

19 I'll go to that in a moment.

20 Do you recall having a meeting on November 6 with  
21 Mr. Applebee?

22 A. No, I do not.

23 Q. And so, Mr. Applebee  
24 says:

25 "We have avoided using

1 too many actual dates as  
2 we feel this could  
3 potentially put the City  
4 in a liability position  
5 if someone were to look  
6 back in retrospect and  
7 the City had not  
8 completed the work by a  
9 specific date for  
10 whatever reason. We've  
11 tried to use ranges."

12 Did you suggest to  
13 Mr. Applebee that the consultant's report and the  
14 ranges in it should reflect a range rather than a  
15 specific date in order to avoid putting the City  
16 in a potential liability position?

17 A. I don't believe I did,  
18 but, I mean, they wouldn't know the dates that we  
19 could do X, Y or Z, so to put it in a date range  
20 makes sense, but I don't believe I directed them  
21 to do that.

22 Q. Okay. But you don't  
23 remember anything else about the meeting on  
24 November 6 and what you did direct them to do?

25 A. I do not remember meeting

1 them at all, no. Sorry.

2 Q. Registrar, can you close  
3 this out and go to page 72 and the next paragraph,  
4 182, and call that out.

5 A. Sorry, even if I did  
6 attend that meeting, it would have been Dave  
7 running the meeting, not me. I mean, he was the  
8 senior guy in there. But I don't remember the  
9 meeting at all, quite frankly.

10 Q. And you don't remember if  
11 Mr. Ferguson attended either way?

12 A. No. Well, I set it up  
13 for him and I apparently. So, no, I don't  
14 remember, because I wouldn't have communicated  
15 that direction to them. It would have come from  
16 him.

17 Q. Okay. So, this is an  
18 excerpt from the Word document that Mr. Applebee  
19 sent and it says at the top:

20 "The City has indicated  
21 that with respect to a  
22 select number of  
23 countermeasures, a staged  
24 approach to  
25 implementation will be

1 taken."

2 So, that's very clearly  
3 something that is City has communicated to CIMA.

4 Do you agree?

5 A. I don't know.

6 Q. Okay. It says the City  
7 has indicated?

8 A. Yeah.

9 Q. Do you remember  
10 indicating that --

11 A. No. I just said I don't  
12 remember the meeting, so I can't say for certain.  
13 I don't remember meeting with Dave and Brian  
14 unfortunately.

15 Q. Sure. So, not  
16 necessarily at the meeting, just generally, do you  
17 remember communicating to CIMA that the City  
18 wanted a staged approach to implementation?

19 A. No, I don't.

20 Q. Okay. And do you  
21 remember either in the meeting or at any other  
22 point providing CIMA with the ranges of dates that  
23 are set out here for signage and for the pavement  
24 markings and cat's eyes?

25 A. No, but those timelines

1    seem pretty logical to me.  I don't remember  
2    providing it specifically, but it seems like this  
3    is the natural progression of it.  This is the way  
4    it would work.

5                            Q.    Sure.  And CIMA is not  
6    going to have that information about when the City  
7    is going to be able to do things.  Right?

8                            A.    No, no.

9                            Q.    On illumination, it says:  
10                            "Prior to the review of  
11                            the new illumination, the  
12                            City will undertake the  
13                            implementation of other  
14                            countermeasures and  
15                            monitor their  
16                            effectiveness for a  
17                            period of at least one  
18                            year."

19                            What do you remember about any  
20    internal discussions about a staged approach that  
21    would push off the assessment of lighting for at  
22    least a year while implementing other  
23    countermeasures?

24                            A.    I don't remember anything  
25    at all, but quite frankly my opinion is one year

1 is not enough time. You need more time. You  
2 would need three years minimum to see if the  
3 others actually had an effect, but I don't  
4 remember the discussion.

5 Q. Okay. Registrar, can you  
6 bring up HAM3443.

7 THE REGISTRAR: Sorry,  
8 counsel. Do you mind just repeating the document  
9 ID for me?

10 MS. LAWRENCE: I think I  
11 probably misspoke. HAM4330.

12 THE REGISTRAR: Thank you.

13 BY MS. LAWRENCE:

14 Q. If you can go to image 2,  
15 please. So, this is just what we were looking at,  
16 Mr. Cooper. That was an excerpt of the  
17 highlighted part. And then you'll see that the  
18 cat's eyes, the PMPR, and the inverted profile  
19 markings, they both say MT. Before they were ST.  
20 Do you see that?

21 A. Okay.

22 Q. Does that assist with  
23 your recollection of providing that direction to  
24 CIMA?

25 A. No.

1 Q. Registrar, can you go to  
2 images 5 and 6.

3 A. The PRPMs and the  
4 inverted profile markings, they were new to the  
5 City. I wouldn't even be able to provide comment  
6 on the installation for that. It was new to me  
7 anyway. I knew what they were, but it was new to  
8 me and I certainly wouldn't have had the knowledge  
9 of the budget or the installation process or  
10 anything to that nature to provide those comments  
11 on this.

12 Q. Okay. If you look up  
13 into the highlighted section, it says under  
14 Pavement Markings and PMPR Recommendations:

15 "PMPRs will be installed  
16 with the next planned  
17 resurfacing on the Red  
18 Hill, likely in the  
19 medium term, five to ten  
20 years."

21 A. Okay.

22 Q. And then you'll recall  
23 that back and forth you had with Mr. Andoga about  
24 resurfacing?

25 A. Yeah.

1 Q. So, is it fair to say you  
2 did in fact have enough information to provide  
3 that information to CIMA?

4 A. I just don't remember  
5 doing it. I guess it's fair to say I could have,  
6 but I don't remember doing it. So, again, in that  
7 meeting, Dave would have been the senior guy in  
8 the room and would have ran that meeting.

9 Q. Okay. Registrar, can you  
10 go to image 5 and 6, please.

11 And then there is one other  
12 change again. I'm just doing this to try to  
13 refresh your memory. On image 5, image 1 on the  
14 left-hand side, it says "install lighting on ramp"  
15 and then there's a little star. The text was  
16 there before but the star is new and it relates to  
17 "subject to evaluation of the effectiveness of  
18 other countermeasures."

19 Do you remember giving that  
20 information to Mr. Applebee or frankly do you  
21 remember receiving this document back from  
22 Mr. Applebee?

23 A. No, I do not.

24 Q. Okay. In your view, it  
25 was not you who were directing CIMA to make these

1 changes?

2 A. I don't believe so, no.

3 Q. Okay. Registrar, you can  
4 close that down.

5 On November 18, 2013, the  
6 Public Works Committee met and received the report  
7 that we have just been looking at. Do you recall  
8 attending that meeting?

9 A. I don't, but I understand  
10 I was there.

11 Q. Okay. You understand you  
12 were identified by someone else as being there?

13 A. Yes. I believe I saw  
14 myself when you showed a picture of the gallery.  
15 I think I was there.

16 Q. Okay. Well, I'm not  
17 going to bring it up again. On that note,  
18 Commissioner, I was remiss when I did bring up a  
19 copy of that video in an earlier examination to  
20 mark it as an exhibit, and I'm hoping to do so now  
21 even though I'm not going to take Mr. Cooper to  
22 it. It's RHV961.

23 JUSTICE WILTON-SIEGEL: Okay.

24 MS. LAWRENCE: And I think  
25 this would be Exhibit 69.

1 JUSTICE WILTON-SIEGEL: Okay.

2 THE REGISTRAR: Noted,

3 counsel.

4 EXHIBIT NO. 69: Video of  
5 Public Works Committee  
6 meeting on November 18,  
7 2013, RHV961.

8 MS. LAWRENCE: Registrar, I've  
9 got that right, 69?

10 THE REGISTRAR: Yes,  
11 Exhibit 69.

12 MS. LAWRENCE: Thank you.

13 THE REGISTRAR: You're  
14 welcome.

15 BY MS. LAWRENCE:

16 Q. So, do you recall from  
17 that Public Works Committee meeting or  
18 documentation afterwards that council decided to  
19 keep the lighting aspect on the outstanding  
20 business list to be considered in a year, once  
21 other countermeasures had been put in place?

22 A. I don't remember from the  
23 meeting, but I remember from preparing for this.

24 Q. Okay. Registrar, can you  
25 bring up OD 6, page 80, please. Can you bring up

1 81 as well, please.

2 So, at the bottom of page 80,  
3 on December 9, so this is after Public Works met,  
4 you responded to Mr. Applebee's message of  
5 November 19, the one that had that document that  
6 we were looking at, and advised that he had  
7 received the go-ahead for the wording changes and  
8 instructed Mr. Applebee to proceed to make final  
9 copies.

10 Who gave you the go-ahead for  
11 the wording changes?

12 A. I'm assuming it would  
13 have been probably Dave, maybe Martin, but I'm  
14 pretty sure I just dealt directly with Dave.

15 Q. Okay. That's your  
16 assumption, but you don't have a distinct  
17 recollection?

18 A. No, I don't, but I'm  
19 pretty confident it would have been Dave.

20 Q. Okay. Registrar, can you  
21 call out the top paragraph of page 81.

22 So, Mr. Applebee e-mailed you  
23 and asked:

24 "Do you want the date  
25 changed on the report to

1 December? It currently  
2 says October, but I can't  
3 remember if we were going  
4 to keep the original date  
5 on the report or not. It  
6 doesn't matter to me  
7 either way."

8 And you responded:

9 "The original date is  
10 fine."

11 And so, just stopping there,  
12 you'll recall at the front page of this 2013 CIMA  
13 report it actually said October 2013. Do you  
14 remember that? I don't need to bring it up.

15 A. Yes.

16 Q. Why did you say that he  
17 didn't need to change the date to December?

18 A. If I remember correctly,  
19 the changes were minor and we already reported to  
20 committee with the relevance of the report and I  
21 didn't think it mattered. In hindsight, I  
22 certainly would have had them change it. But,  
23 again, my understanding was that they were minor  
24 changes and we already reported to committee that  
25 nothing in the December version affected what we

1 already reported to committee.

2 Q. Okay. So, you agree by  
3 not changing the date that appeared on the front,  
4 it appeared that the final CIMA report was  
5 finalized in October 13, 2013 rather than  
6 December 2013?

7 A. Yes. Like I said, in  
8 hindsight I certainly wouldn't have done it that  
9 way, but, you know, it is what it is. I did it.  
10 And, again, I didn't think it was relevant, I  
11 didn't think there was major changes to the report  
12 and that it didn't really matter, but that won't  
13 happen again.

14 Q. Did you make that  
15 decision on your own or did you discuss it with  
16 anybody in your group before you told  
17 Mr. Applebee --

18 A. No. I did it. I did it  
19 on my own. At this point, there was so many  
20 versions, so many back and forths, you know, with  
21 everything on this and, you know, quite frankly, I  
22 just wanted to be done with it and move on to the  
23 other 800 items I was dealing with at the time,  
24 so...

25 Q. Okay. Registrar, can you

1 bring up RHV668, please, image 2, and if you can  
2 call out the paragraph that starts, "The  
3 consultant's report."

4 So, you'll recall when we  
5 looked at your draft, your draft of the report in  
6 respect of the friction testing said engineering  
7 services will conduct friction testing and I think  
8 your evidence was you didn't speak to anybody in  
9 engineering services about that before you drafted  
10 it?

11 A. Correct.

12 Q. And you didn't speak to  
13 anyone in engineering services about friction  
14 testing after you drafted it?

15 A. No.

16 Q. Okay. The last line of  
17 this paragraph says:

18 "Staff will also review  
19 further countermeasures,  
20 such as friction testing,  
21 with construction  
22 engineering."

23 Do you agree that staff at the  
24 front end of that sentence there is traffic  
25 engineering staff?

1 A. Yes, I think so.

2 Q. Who specifically in  
3 traffic engineering was responsible for reviewing  
4 the countermeasures, such as friction testing,  
5 with construction engineering?

6 A. I do not know.

7 Q. Did you ever receive any  
8 instruction to be the staff person who was to  
9 review the friction testing countermeasures with  
10 construction engineering?

11 A. No, I did not.

12 Q. Do you have any idea who  
13 was?

14 A. We didn't have a  
15 materials expert on staff in traffic who would be  
16 versed enough to deal with that.

17 Q. Okay. I'm going to  
18 suggest that nobody in traffic engineering was  
19 appointed to be the person to review further  
20 countermeasures, such as friction testing, with  
21 construction engineering. Do you agree or  
22 disagree with that?

23 A. I don't know what my  
24 management team decided. It wasn't directed to me  
25 or my staff, so I don't know.

1 Q. When you say your staff,  
2 who do you mean by your staff?

3 A. I had technologists under  
4 me at the time and I don't believe either one of  
5 them was to follow up with this, either.

6 Q. Okay. Are you aware of  
7 anyone else within traffic engineering reviewed  
8 further countermeasures, such as friction testing,  
9 with construction engineering?

10 A. No.

11 Q. You're just not aware  
12 either way?

13 A. No, I'm not aware. It  
14 wasn't a decision at my level.

15 Q. I understand that, but in  
16 terms of information coming back to you about  
17 friction testing, did you become aware that some  
18 other staff member was responsible and had gone  
19 and done that review?

20 A. No.

21 Q. Did you become aware at  
22 any point before 2015 that Mr. Moore had any  
23 objection to CIMA's recommendation for friction  
24 testing?

25 A. Was I aware that he

1 objected to it?

2 Q. Yeah.

3 A. I don't believe. Didn't  
4 they start to do it in 2013, though?

5 Q. I'm just asking if you  
6 ever became aware that he had any objection. I'm  
7 not assuming that he did. I'm just asking if you  
8 had any awareness of that.

9 A. I don't believe so, but,  
10 again, he started it in 2013, so I'm not sure of  
11 the question. It's kind of confusing.

12 Q. Okay. Did anyone tell  
13 you in 2013 that he had initiated friction testing  
14 or is that from your review since --

15 A. No. You told me that  
16 earlier today.

17 Q. Okay. Did you become  
18 aware of Mr. Moore's views at all about friction  
19 testing on the Red Hill in 2013 or 2014?

20 A. I do not believe so, no.

21 Q. Okay. Who was  
22 responsible for -- you can actually close this  
23 down, Registrar, and can you go to the next  
24 image and maybe bring up the next image as well.

25 So, Mr. Cooper, these are the

1 charts that I think we were talking about before.

2 These are charts that look like the CIMA charts.

3 A. Yes.

4 Q. Apart from friction

5 testing on that first image that I know we've

6 already talked about, who was responsible for the

7 other countermeasures, to have them completed, on

8 image 1, besides friction testing?

9 A. It would be Hamilton

10 Police and traffic.

11 Q. Okay. So, the

12 enforcement of traffic at travel speeds, that's

13 Hamilton Police?

14 A. Yes.

15 Q. And then the rest is

16 traffic?

17 A. Yes.

18 Q. And within traffic, the

19 person who was responsible to ensure that work

20 orders are put in and this gets moved along, is

21 that you?

22 A. Yeah. I would have

23 issued the work orders for it, but then it would

24 become traffic operations to implement them.

25 Q. Okay. But it was on you

1 to initiate their implementation. I can put it  
2 that way?

3 A. Yes.

4 Q. Okay. And for the  
5 friction testing results, I think you've told me  
6 several times but just to confirm, your view was  
7 that engineering services was responsible to  
8 complete that short-term measure?

9 A. Yes.

10 Q. And did you ask at any  
11 point before the 2015 CIMA report for a copy of  
12 the results of that friction testing?

13 A. I don't know if I asked  
14 for a copy, but I asked if it was done. I  
15 wouldn't have known to do -- I wouldn't have known  
16 what the information meant, quite frankly. I'm  
17 not a pavement expert by any means. So, I'm not  
18 sure I asked for the results, but I asked if it  
19 was done.

20 Q. To whom did you ask if it  
21 was done?

22 A. David Ferguson, I  
23 believe.

24 Q. Okay. Did you ask anyone  
25 in engineering services?

1 A. No.

2 Q. And when did you ask  
3 David Ferguson if it was done?

4 A. I don't know. I couldn't  
5 tell you.

6 Q. Okay.

7 A. All these reports jumble  
8 into one, so I don't know for certain.

9 Q. That's fair. I'll ask  
10 you at other points to try to orient you and I'll  
11 ask you again.

12 Maybe I'll ask just on this  
13 point, in 2013, so November-December 2013, did you  
14 ask Mr. Ferguson if he had any confirmation that  
15 the friction testing was done?

16 A. Ms. Lawrence, honestly,  
17 I've tried to think through this whole process  
18 when I asked him. I cannot tell you. I have  
19 tried numerous things to jog my memory and  
20 unfortunately nothing is triggering it, so I do  
21 not know.

22 Q. Okay. I am going to come  
23 back to it, but I'll ask some questions now so I  
24 don't have to keep re-asking them.

25 Did you ever see a copy of the

1 Tradewind report?

2 A. No, I did not.

3 Q. Did you ever see a copy  
4 of the Golder report that appended the Tradewind  
5 report?

6 A. No, I have not.

7 Q. Okay. I'm not going to  
8 take you through the road segment countermeasures,  
9 but I do want to go to the ramp countermeasures.

10 If you can go over, Registrar,  
11 to the next image and if you could call out the  
12 Mud interchange to ramp 5, ramp 6.

13 Just so I'm clear, I think  
14 you've given this evidence, but again, just for  
15 clarity, installing lighting on ramp and  
16 installing high-friction pavement approaching and  
17 through the curve, would either of those be under  
18 the auspices of traffic to complete?

19 A. I don't believe so, no.

20 Q. Okay. Can you close that  
21 out, please, and if you can go back to two images  
22 before this one, so I think it's image 3.

23 The slippery when wet signs,  
24 it says N/A and it's \$5,000. We were looking at  
25 the report and it said if there is any areas of

1 low skid resistance identified, the City could  
2 install slippery when wet signs.

3 Do you recall if slippery when  
4 wet signs were installed anywhere on the LINC --  
5 pardon me. Anywhere on the mainline or the ramps  
6 after this report was accepted by PWC?

7 A. I don't recall.

8 Q. Okay. Registrar, can you  
9 go to HAM4529.

10 So, we've moved forward a fair  
11 bit in time. We're in October 2014.

12 Registrar, can you call out  
13 Mr. White's e-mail to Mr. Ferguson in the middle  
14 of the page. Actually, sorry, Registrar. Can you  
15 close that and can you call it out again, but  
16 copying in the e-mail below as well. Yeah.

17 Mr. Cooper, do you recall in  
18 2014 there was a double LINC fatality -- pardon  
19 me. A double fatality on the LINC?

20 A. No, I don't recall  
21 specifically.

22 Q. Okay. So, there's a  
23 reference in that first e-mail down there from  
24 Linda Juchniewicz?

25 A. Juchniewicz.

1 Q. Juchniewicz. And then  
2 Mr. White responds to Mr. Ferguson:

3 "I've seen the  
4 preliminary LINC  
5 collision data and we may  
6 have a legitimate  
7 problem."

8 Were you involved in the  
9 preparation of collision history that Mr. White is  
10 referring to here?

11 A. I don't believe so.

12 Q. Okay. And we understand  
13 that the City retained CIMA to do a LINC safety  
14 review in 2014. Were you involved in that safety  
15 review?

16 A. Yes.

17 Q. Were you the project  
18 manager for that safety review?

19 A. I don't believe so. My  
20 main role, I think, was just to provide the data  
21 and the background.

22 Q. Okay. Comparing and  
23 contrasting the 2013 CIMA project with the 2015,  
24 what becomes the 2015 LINC project, did  
25 Mr. Ferguson take on more of the responsibilities

1 for the LINC report than you did, like in terms of  
2 project management?

3 A. I can't remember, to be  
4 honest with you.

5 Q. Okay.

6 A. I can't remember starting  
7 this project.

8 Q. Okay. Registrar, you can  
9 close this down and if you can bring up OD  
10 page 136 and if you can call out 391. Sorry, can  
11 you close that out and call out 391 and 392  
12 together.

13 Sir, recall you asked about  
14 the pavement warrants for putting in the cat's  
15 eyes, so by January of 2015, traffic has moved to  
16 install cat's eyes even though there's not any  
17 resurfacing coming up. Do you recall that?

18 A. I remember they were  
19 going to do it in the winter, yes.

20 Q. And they weren't going to  
21 wait for the resurfacing, like the planned  
22 resurfacing?

23 A. I don't remember that  
24 decision, but I just remember they were doing it.  
25 I wasn't involved with this.

1 Q. Okay.

2 A. But I remember hearing  
3 about it.

4 Q. Okay. So, there's a back  
5 and forth here and you're not copied on this, but  
6 they're talking about the cuts that need to be  
7 made for the cat's eyes and I do recall you had  
8 that proactive concern or question about pavement  
9 warranty.

10 So, if you can close this  
11 down, Registrar, and if you can go to the next  
12 image and if you could bring up 396, please.

13 So, again, this is not --  
14 you're not copied on this, but Mr. White writes to  
15 Mr. Mater:

16 "Has anyone told him we  
17 are doing the LINC  
18 collision crossover study  
19 with CIMA? He's going to  
20 react when he finds out."

21 Just on that last point, in  
22 your role and in your experience, did you have any  
23 impression that Mr. Moore would have reacted badly  
24 if he heard that traffic was doing a LINC  
25 collision crossover study?

1 A. In my opinion what? I'm  
2 sorry.

3 Q. Did you have any  
4 impression at this stage, in 2015, that Mr. Moore  
5 would have reacted badly if he heard that traffic  
6 was doing a collision crossover study on the LINC?

7 A. I don't know. I didn't  
8 work with Mr. Moore, so, you know, I didn't have a  
9 lot of dealings with him either, so I'm not sure.  
10 I'm not sure I can answer this question, really.

11 Q. Okay.

12 A. I didn't report to him  
13 and I had very little dealings with him, so...

14 Q. Okay. And were you ever  
15 made aware by anyone in your department, in  
16 traffic, that they believed Mr. Moore would react  
17 badly about the LINC crossover study?

18 A. I can't say for sure. I  
19 don't know.

20 Q. Okay. You said you  
21 didn't work regularly with Mr. Moore. Had you  
22 personally had any negative experiences  
23 interacting with Mr. Moore?

24 MS. CONTRACTOR: Commissioner,  
25 I echo an objection made by my colleague

1 Ms. Roberts that the witness should be asked about  
2 his experience with respect to the Red Hill and  
3 Mr. Moore and not generally.

4 JUSTICE WILTON-SIEGEL: Yes.  
5 I think, Ms. Lawrence, that's the ground rule  
6 here.

7 MS. LAWRENCE: Sure. Let me  
8 reframe my question.

9 BY MS. LAWRENCE:

10 Q. Mr. Cooper, have you  
11 personally had any negative experiences  
12 interacting with Mr. Moore in respect of your work  
13 involving the Red Hill?

14 A. No.

15 Q. Did you have any concerns  
16 in getting information from engineering services?

17 A. I didn't get information  
18 from engineering services.

19 Q. You didn't have a need to  
20 get information from engineering services?

21 A. Well, I guess I needed to  
22 find the as-built drawings way early in the  
23 beginning of the 2013 report. There was no  
24 issues, I couldn't get them, but I don't think I  
25 had issues getting the information from them

1 personally, no.

2 Q. Okay. I just wanted to  
3 clarify because you said I didn't get the  
4 information from engineering services, but what  
5 I'm hearing you say, and if you could clarify, is  
6 you didn't have any problems when you did have to  
7 get or request information from engineering  
8 services. Is that right?

9 A. No. I worked  
10 collaboratively with that group, so no, I had no  
11 issues.

12 Q. Okay. Commissioner, it's  
13 1:00 and I suggest we break here for lunch.

14 JUSTICE WILTON-SIEGEL: That  
15 would be fine. Let's stand adjourned until 2:15.

16 --- Luncheon recess taken at 1:01 p.m.

17 --- Upon resuming at 2:15 p.m.

18 MS. LAWRENCE: Commissioner,  
19 may I proceed?

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

22 MS. LAWRENCE: Thank you.

23 BY MS. LAWRENCE:

24 Q. Mr. Cooper, I'm now going  
25 to take you back into the overview document.

1 Registrar, if you can go to  
2 OD 6, page 139, and if you can call out 403,  
3 please. Thank you.

4 So, this is February 2015 and  
5 Mr. Ferguson e-mails you, copying Mr. Worrton,  
6 Jason Worrton, regarding the Red Hill and asked for  
7 the preparation of an update report based on the  
8 action items that we, traffic, had identified, and  
9 the report was due March 2.

10 Do you recall why a report was  
11 due in March of 2015?

12 A. Sorry, why it was due?

13 Q. Yes.

14 A. I don't know.

15 Q. Okay. Registrar, if you  
16 can close this out and go to the next image and if  
17 you can pull out 407, please.

18 So, we're into the end of  
19 February and you attach a draft staff update and  
20 it is for the June 15, 2015 PWC meeting. I think  
21 you said earlier it's about three months before  
22 any meeting that the initial draft of the staff  
23 report is due. And I'll take you into the staff  
24 report and maybe that can assist, but is that why  
25 Mr. Ferguson is looking for a draft from you in

1 March, that far in advance?

2 A. I assume so. I really  
3 don't know.

4 Q. Okay. Registrar, can you  
5 close this out and go to HAM42623. Thank you.  
6 And if you can bring up the next image as well,  
7 please.

8 So, this one doesn't say who  
9 it's prepared by. It just says who it's submitted  
10 by. But this is the draft that you attach to that  
11 e-mail to Mr. Ferguson.

12 Looking at just the top of it,  
13 an information update, I think you said that was  
14 different than an information report, and can you  
15 just clarify how so?

16 A. I think it just updates  
17 council on our actions or where we are in a  
18 process.

19 Q. Okay.

20 A. Sorry. This one says  
21 it's about an OBL item as well, so that might have  
22 something to do with it.

23 Q. Okay. It does say that:  
24 "It's recommended that  
25 the Red Hill Parkway

1 improvement/lighting,  
2 item B, be removed from  
3 the outstanding business  
4 list."

5 And so, that item, I think,  
6 comes from the last PWC meeting to remove it from  
7 the outstanding business list. I thought you said  
8 earlier that you would use a recommendation report  
9 if you wanted to remove something from the  
10 outstanding business list?

11 A. Yeah. That was my  
12 understanding.

13 Q. Okay. So, you can put a  
14 recommendation into an information update?

15 A. I was not aware of that.

16 Q. Okay.

17 A. I've always used a  
18 recommendation report to provide a recommendation.  
19 That's my understanding.

20 Q. Okay. Registrar, can you  
21 call out the second paragraph on image 2, please.

22 So, this, and I'm sure I  
23 didn't give you enough time to read the full two  
24 pages, is an amount coming out of sort of where  
25 the short-term countermeasures are in terms of

1 implementation, and one of the things that's  
2 mentioned in this paragraph is the installation of  
3 raised permanent pavement markings, cat's eyes,  
4 and staff are supportive of this recommendation.

5 Just stopping there, that's  
6 engineering -- pardon me. That's traffic  
7 engineering staff are supportive of that  
8 recommendation?

9 A. Yes.

10 Q. Did you have confirmation  
11 at this point, so we're in February, or can you  
12 give me confirmation that the cat's eyes had been  
13 installed, at least in some locations, by the time  
14 you're drafting this report in February of 2015?

15 A. I believe they were  
16 installed. They were installed in the winter.  
17 I'm just not sure if it was 2014 or 2015.

18 Q. Okay. It also says:  
19 "Staff will also review  
20 further countermeasures,  
21 such as friction testing,  
22 with construction  
23 engineering section."

24 That's the same language in an  
25 earlier draft of yours that we looked at. That

1 language, to me, suggests that traffic engineering  
2 staff had not yet discussed friction testing with  
3 construction engineering section. Was that your  
4 understanding as of February 2015?

5 A. I don't believe anyone  
6 did, no.

7 Q. Okay. Did anyone tell  
8 you to add reference to friction testing into this  
9 information update?

10 A. I can't remember.

11 Q. Okay. Did you take any  
12 steps at this point, as you're drafting this draft  
13 information update, to confirm if engineering  
14 services had conducted friction testing?

15 A. So, at some point -- I'm  
16 not sure the dates again. It all kind of blends  
17 into one. But at some point I did ask if it was  
18 done and was told it was, so I took that at face  
19 value.

20 Q. Who did you ask?

21 A. I believe it was David  
22 Ferguson.

23 Q. Okay. And Mr. Ferguson  
24 told you it was done?

25 A. Yes.

1 Q. And did you enquire into  
2 the source of his information that it was done?

3 A. No.

4 Q. Okay. And you're not  
5 sure if that was here at this point in February of  
6 2015 when you're drafting this?

7 A. I don't remember when I  
8 asked him, but it was in preparation of some  
9 report. I just don't know when.

10 Q. Okay. I am going to take  
11 you through a number of reports to come, so I'm  
12 going to keep asking that question and if anything  
13 jogs your memory about when it happened, just let  
14 us know.

15 A. Yeah. This is another  
16 thing I've been trying to pull and I can't seem to  
17 pull when it was done. Again, there's so many  
18 dates and reports and discussions that were had, I  
19 just can't remember when I asked him, so...

20 Q. Okay. And, just so that  
21 I'm clear, you only asked him once and received  
22 that answer once, him being Mr. Ferguson?

23 A. Once that I can recall.  
24 I very well could have asked. We talked all the  
25 time, so I couldn't recount every conversation.

1 Q. Okay. Registrar, can you  
2 close this down and pull up HAM56634.

3 So, Mr. Worrton, who is now one  
4 of your colleagues, put together some tables.  
5 Were you at all involved in any steps to confirm  
6 the accuracy of the information that got put into  
7 these tables?

8 A. I may have created them.  
9 I can't say for certain.

10 Q. As between you and  
11 Mr. Worrton, was it your responsibility to provide  
12 or to go out and find information to be able to  
13 fill in the column labelled Status?

14 A. Was it mine or his  
15 responsibility?

16 Q. Yeah.

17 A. Yeah.

18 Q. Was it yours or was it  
19 his?

20 A. I'm going to -- he would  
21 have deferred to me, I'm sure. It probably would  
22 have been myself.

23 Q. Okay. Registrar, can you  
24 pull up RHV570, please.

25 A. Just so it's clear, I

1 completed these myself, just looking at them, so I  
2 knew they were done. I issued the work orders for  
3 that stuff.

4 Q. So, you actually have a  
5 memory of those particular charts?

6 A. If you could go back to  
7 it, I could confirm, but I believe so. Yes, I did  
8 them.

9 Q. Okay.

10 A. I completed the work  
11 orders to get that stuff done.

12 Q. Okay. So, you completed  
13 the work orders to get those items done?

14 A. Yes.

15 Q. But did you also prepare  
16 this chart where it says completed?

17 A. I can't say for sure if I  
18 completed this chart or not. I'm not even sure I  
19 made it. It's possible I could have.

20 Q. Okay. Registrar, can you  
21 go to RHV570, please. Thank you. And can you  
22 bring up the next image.

23 So, this is the report and now  
24 it says it's prepared by David Ferguson and  
25 submitted by Gerry Davis and it's dated May 21

1 instead of June 15, I think as a result of an  
2 upcoming Public Works meeting on May 21, and it  
3 has the chart for the road segment countermeasures  
4 on image 2 and it has the status.

5 And under, for example, the  
6 third line where there's status, it says:

7 "To be reviewed and  
8 completed during future  
9 repaving."

10 Do you see that?

11 A. Yes.

12 Q. I think that's dealing  
13 with the kink?

14 A. Yes.

15 Q. Registrar, can you go to  
16 the next two images, please. Thank you.

17 And, in the ramp  
18 countermeasures, there's a number of sections  
19 here, for example, install high-friction pavement  
20 approaching and through the curve, and it also  
21 says:

22 "To be reviewed and  
23 completed during future  
24 repaving."

25 Do you recall if you were

1 responsible to go out and discuss with engineering  
2 services whether it would be appropriate to hold  
3 off and complete during future repaving or whether  
4 it would be better to do now?

5 A. I was not part of those  
6 discussions.

7 Q. Do you know who was?

8 A. I do not.

9 Q. Thank you. You can close  
10 that down. So, that's the report that was being  
11 prepared for the upcoming May 21, 2015 PWC  
12 meeting, so that was a prescheduled meeting.

13 Earlier in May, there was a  
14 fatal crossover collision on the Red Hill  
15 involving -- that resulted in the deaths of two  
16 young women. Do you recall that accident?

17 A. I do.

18 Q. And do you recall that it  
19 prompted Councillor Connelly to request that a  
20 safety study be conducted on the entirety of the  
21 RHVP facility?

22 A. Vaguely, yes.

23 Q. Okay. Registrar, do you  
24 want to bring up OD 7, page 5.

25 And so, if you look at

1 paragraph 8, there's a reference to Councillor  
2 Connelly there receiving some complaints from  
3 members of the public.

4 And then if you go over,  
5 Registrar, to the next image. Sorry, the next  
6 image, please. Sorry, Registrar. Thank you for  
7 being patient. The next image, please. I'm  
8 looking for paragraph 19, 20, 21. There we go.

9 So, you'll see Councillor  
10 Connelly says to Mr. Ferguson:

11 "I would like to get a  
12 safety study done on the  
13 Red Hill, specifically  
14 having barriers that  
15 would stop a vehicle from  
16 going through a median  
17 and landing in the  
18 opposite lane."

19 And then that results in a  
20 motion that PWC puts forward. Does that refresh  
21 your memory?

22 A. I remember the incident.  
23 I just don't recall personally the chain or the  
24 events.

25 Q. Okay. Registrar, can you

1 go to page 17 of this document and can you call  
2 out paragraph 43, please.

3 So, this is May 22, it's the  
4 day after the Public Works Committee meeting,  
5 where that report that we were just looking at was  
6 submitted but also where the deaths of these two  
7 young women were discussed and the motion passed,  
8 a motion passed. And Mr. Ferguson e-mailed you  
9 and Mr. Worrone and copied Mr. Malone to do some  
10 assessment of a scope of a safety study for the  
11 LINC as a whole and sets out the following items  
12 to be reviewed and recommendations provided:  
13 Barrier, lighting, analysis of kind of collisions  
14 and what is causing them.

15 At this point, as the City is  
16 entering into retaining CIMA for this project, did  
17 you take any steps to confirm whether friction  
18 testing had been done on the Red Hill pursuant to  
19 the 2013 CIMA report?

20 A. No.

21 Q. What was your role on the  
22 day to day in connection the project that became  
23 the 2015 CIMA report?

24 A. For the most part, I  
25 believe I just provided the data, so the collision

1 data they needed and any speed data and anything  
2 that I could to assist with that.

3 Q. Okay. So, did you have  
4 the same project management role that you had for  
5 the 2013 project?

6 A. No.

7 Q. Who did you view as the  
8 project manager for this project --

9 A. Jason.

10 Q. Jason Worrton?

11 A. Yes.

12 Q. So, Jason Worrton was a  
13 relatively new colleague of yours by May of 2015.  
14 Is that right?

15 A. Yeah.

16 Q. And I understand his role  
17 was senior project manager?

18 A. Yeah.

19 Q. So, did you report to  
20 him?

21 A. I did, yes.

22 Q. And did you find that the  
23 roles and responsibilities as between you and  
24 Mr. Worrton and Mr. Ferguson were well-defined for  
25 you?

1                   A.    No.  In this instance,  
2    Jason came from the MTO, so it was my assumption  
3    that he had the expertise here, so that was what I  
4    was thinking.

5                   Q.    Okay.  But fair to say  
6    you had the institutional knowledge from the 2013  
7    report and just knowing the City and its systems  
8    fairly well.  Is that fair?

9                   A.    Yes.  That's what I mean.  
10   I provided the data and the background  
11   information, which I had or that I had, that I  
12   could assist.

13                  Q.    Registrar, can you go to  
14   page 24 of this document, please, and if you can  
15   pull out paragraph 66.

16                  So, it's in May that the  
17   project with CIMA is initiated after the death of  
18   those women and the motion.  By July, there have  
19   been some additional crossovers and some  
20   additional collisions.  And on July 8, there's a  
21   meeting set for Mr. White, for Mr. Ferguson, for  
22   Mr. Worrton and for you entitled RHVP Collisions,  
23   scheduled for July 13.

24                  Do you recall if you attended  
25   this meeting?

1                   A.    I do not recall.  Do you  
2 know where it was?

3                   Q.    I don't.

4                   A.    Typically I'm on vacation  
5 at that time, but I could have very well been  
6 there.  I have no recollection of it, though.

7                   Q.    Okay.  You can close that  
8 down, Registrar, and can you go to page 40 of this  
9 document, please.  Actually, pardon me.  Can you  
10 go to page 32 of this document.  And if you can  
11 call out 90 and 91, please.  Thank you.

12                   So, the inquiry has received  
13 documents that show that you are transmitting  
14 collision data to Mr. Applebee.  That's in  
15 paragraph 90.  And then on July 27, so we're still  
16 in that same period of time we were just talking  
17 about, you send Mr. White an update and you said:

18                                "We met and discussed all  
19                                the comments on the LINC  
20                                safety study and the Red  
21                                Hill.  All the required  
22                                data has been provided to  
23                                CIMA for analysis and  
24                                Linda is going to keep an  
25                                eye out for them and I'll

1 send them to CIMA once  
2 received."

3 At this stage, were you more  
4 involved from a project management perspective  
5 with the LINC CIMA report than with the Red Hill  
6 CIMA report?

7 A. They were all one report.  
8 I couldn't tell you. I have no idea. It's all  
9 one report in my head, so I couldn't tell you  
10 which one I was more involved with, to be honest  
11 with you.

12 Q. Okay. You can close this  
13 down and if you can go to page 40 now, please. If  
14 you can call out paragraph 122 and 123, please.

15 So, in September, CIMA sends a  
16 draft of the CIMA report, the one about the Red  
17 Hill, to you and to Mr. Ferguson and to  
18 Mr. Worrton --

19 A. To all three, okay.

20 Q. Pardon?

21 A. To all three of us,  
22 that's interesting.

23 Q. Had you worked with  
24 Mr. Bottesini on other CIMA retainers by this  
25 point?

1                   A.    I can't say for certain.  
2    If he was on the project team before, he could  
3    have been.  I'm not sure.

4                   Q.    Okay.  Mr. Ferguson  
5    responds a few days later with some comments.  At  
6    this point, did you review a copy of the Red Hill  
7    draft report?

8                   A.    I'm sure I did at a high  
9    level.  I'm not sure how detailed I would have  
10   looked at it, but I would have looked at it.

11                  Q.    Do you remember any  
12   discussions with Mr. Ferguson or Mr. Worrone about  
13   it?

14                  A.    I do not.

15                  Q.    Do you remember any  
16   further discussions with CIMA, anyone at CIMA,  
17   about it?

18                  A.    No, I do not.  Sorry.

19                  Q.    It's okay.

20                  A.    Again, I don't think I  
21   was as involved here, so I'm not sure I would have  
22   been the one communicating with CIMA.

23                  Q.    Certainly the inquiry has  
24   not received much e-mail communication with you on  
25   this project, so I'm really just trying to probe

1 your recollection of how involved you were.

2 A. Yeah. I think for the  
3 most part I was just kind of a data supply kind of  
4 resource person at this point. I don't think I  
5 was very involved with the report itself.

6 Q. Registrar, can you close  
7 this down and go to page 42, please, and if you  
8 can call up 129.

9 So, in September, Mr. Ferguson  
10 e-mailed Mr. White and copied you and Mr. Worrone  
11 and Ms. Aquila and he attaches a draft staff  
12 report summarizing both the CIMA report and the  
13 LINC report and he says:

14 "Please see the attached  
15 report that Stephen has  
16 completed and I've  
17 reviewed and made some  
18 changes."

19 So, again, I'm just trying to  
20 probe. And I know it's hard to recall which one,  
21 but it seems like you drafted the first cut of a  
22 draft staff report that dealt with both of these  
23 reports. Do you recall that?

24 A. Not specifically, but I  
25 probably would have.

1 Q. Okay. And did you take  
2 that on because you had fairly in-depth knowledge  
3 of the LINC?

4 A. No. I put it -- I was  
5 directed to.

6 Q. Okay. Did you review the  
7 draft CIMA report for the Red Hill to prepare this  
8 draft staff report?

9 A. I probably would have had  
10 to, so I don't recall but I would say it's very  
11 likely.

12 Q. Okay. The document that  
13 we have is the one that Mr. Ferguson says you  
14 completed and he reviewed and made changes, so I'm  
15 going to show you that document.

16 Registrar, can you bring up  
17 HAM43022, please. I misspoke. It is 43023. And  
18 if you can bring up the next image, please.

19 So, this is actually quite a  
20 lengthy report. It's another ten-page report and  
21 it deals with both the LINC and the Red Hill. The  
22 first thing I want to raise with you is the  
23 recommendation, the Recommendation section. It  
24 lists a number of different recommendations and  
25 it's based on the departments that will complete

1     them within Public Works.

2                             Was that your drafting style,  
3     to identify particular departments, or was that  
4     Mr. Ferguson's?

5                             A.    I believe it was probably  
6     mine, since when they would be the ones to carry  
7     out the work, it was my assumption in this draft  
8     that this is the way it should be worded.

9                             Q.    Okay.  And was your  
10    expectation that the identification of different  
11    departments would be in the final draft so that  
12    Public Works could understand which departments  
13    were doing what?

14                            A.    Yes, it could have been.  
15    But conversely and thinking about it now, I mean,  
16    it would be the GM of Public Works to direct them  
17    to do it, so it would probably change to reflect  
18    that he would direct them to do the work, if that  
19    makes any sense.  I mean --

20                            Q.    It does.

21                            A.    I'm not too sure about  
22    how that wording works, but this was my  
23    interpretation of it right here.

24                            Q.    So, was it common to have  
25    initial drafts of recommendation reports specify

1 who was doing what, but at the end of the day the  
2 recommendation report would have just that the  
3 general manager was directing things to happen?

4 A. I didn't do enough of  
5 them or see enough of them to tell you what was  
6 generally the way it done. That's why I worded it  
7 like this. This was the way I understood it.

8 Q. Okay. Did you take this  
9 approach to identify the particular departments  
10 because you wanted it to be very clear which  
11 departments were responsible for which  
12 recommendations?

13 A. I didn't give it that  
14 much thought. I just looked at what needed to be  
15 done and what groups I thought did the work and  
16 there you have it. I mean, forestry cuts trees,  
17 so obviously it would go to forestry. You know,  
18 we wouldn't install the high-tension steel cable.  
19 That would be engineering services. So, that was  
20 my approach.

21 Q. Okay. Did you have any  
22 discussions with David Ferguson about this  
23 approach?

24 A. I can't remember. I  
25 would think we would have to discuss it, who would

1 do what, but I don't remember speaking to him  
2 directly about it. It could have been him. It  
3 could have been Martin. It could have been Jason.

4 Q. Okay. Registrar, can you  
5 go to page 8, please.

6 This is a list of the  
7 countermeasures recommended by CIMA and put into  
8 this draft and you'll see that one of them is  
9 conduct pavement friction testing end to end,  
10 40,000, engineering. Do you see that?

11 A. Yes.

12 Q. Do you recall, sitting  
13 here today, that that was a recommendation that  
14 was in the 2015 CIMA report?

15 A. I don't recall if it was  
16 or not. I can't remember offhand.

17 Q. Okay. Would you have put  
18 in that kind of recommendation into a draft staff  
19 report if it was wasn't in the CIMA report?

20 A. I doubt it.

21 Q. Okay. And at this point,  
22 you understood that friction testing on the Red  
23 Hill was an engineering services function? It's  
24 listed there as engineering services. Is that  
25 fair?

1 A. Yes.

2 Q. And would Mr. Moore's  
3 group be responsible for finding funding to be  
4 able to fund the estimated cost of \$40,000 for  
5 that testing?

6 A. I don't know where the  
7 funding would come from.

8 Q. Okay. And so,  
9 recognizing I'm just going to keep asking this  
10 question to try to assist you with your memory,  
11 was it in the preparation of this report that  
12 Mr. Ferguson told you that friction testing had  
13 been completed?

14 A. I don't know.

15 Q. If he had told you that  
16 as you were preparing this, would you have  
17 referenced that in some way?

18 A. It's pretty hypothetical.  
19 I don't know.

20 Q. Okay. Given that this  
21 recommendation report includes a number of items  
22 that engineering services was to take  
23 responsibility for, did you become aware after you  
24 drafted this version that Mr. Moore took a  
25 different view about engineering services's scope

1 of work?

2 A. I became aware of it. I  
3 just don't know when. Again, it's kind of all  
4 jumbling in together, so it's difficult to nail  
5 down when I knew what.

6 Q. Okay. Registrar, can you  
7 bring up OD 7, page 45, please, and if you can  
8 pull up 134.

9 Take a minute to read this.

10 A. I've seen this.

11 Q. Did you see it at the  
12 time or have you seen it in preparation?

13 A. No, I've seen it in  
14 preparation.

15 Q. Okay. And did  
16 Mr. Ferguson or Mr. Mater convey to you the  
17 contents of this e-mail at the time?

18 A. I don't believe so, no.

19 Q. Okay. Registrar, can you  
20 go to page 47, please, and pull up 141. Thank  
21 you. Actually, can you close that down and pull  
22 up 141 with the excerpt. Yeah. Thank you.

23 So, on October 20, Mr. White  
24 forwarded a copy of the final draft of the CIMA  
25 Red Hill report to Mr. Mater, to Mr. Lupton and to

1 Mr. Moore. It had also been sent to Mr. Ferguson.  
2 Do you recall if you received a copy of this final  
3 draft and if you reviewed it?

4 A. This is different than  
5 the other one that was sent to all three of us?

6 Q. It's an updated draft.

7 A. I don't know.

8 Q. Okay. You can close that  
9 down and if you can go to page 50, please, and if  
10 you can pull up 153.

11 In October, Mr. Moore provided  
12 Mr. Ferguson with comments on the 2015 CIMA  
13 report. He also provided comments on the 2015  
14 LINC report. Do you recall receiving any PDF that  
15 had comments from Mr. Moore?

16 A. I do not.

17 Q. Are you confident sitting  
18 here today that you did not receive documents that  
19 had Mr. Moore's comments on either of those  
20 drafts?

21 A. I do not recall seeing  
22 comments from Mr. Moore.

23 Q. You can close that down,  
24 Registrar, and if you can go to page 56 and if you  
25 can pull up -- actually, if you can go to

1 paragraph 184, which I think is page 58. Thank  
2 you.

3 Mr. Ferguson and others worked  
4 to finalize the draft report, the first copy of  
5 which you did, and you'll see, as the registrar  
6 gets it organized for us, the staff report is  
7 converted into one that the general manager of  
8 Public Works be directed to implement the  
9 short-term safety options for consideration and  
10 there's an appendix, so this is putting into an  
11 appendix all of that list that had engineering  
12 services and forestry and the other ones.

13 Do you remember seeing a copy  
14 of the final December 7 report before it was  
15 final?

16 A. Not specifically.

17 Q. I'm happy to look at  
18 this.

19 A. I may have. Not  
20 specifically.

21 Q. Okay. At this point, was  
22 it part of your responsibilities to be reviewing  
23 and revising the revised versions of your initial  
24 staff report?

25 A. No.

1 Q. You can close this down,  
2 Registrar, and go to page 68, please, and if you  
3 can call out 212.

4 So, this is in November of  
5 2015 and Colleen Crawford, who was a senior law  
6 clerk at Shillingtons, e-mailed Mr. White under  
7 the subject line "Hamilton ats Hastings" and  
8 Ms. Crawford copied Kim Wyskiel and you on the  
9 e-mail and she said that Shillingtons have been  
10 retained on behalf of the City in respect of an  
11 accident on May 5, double fatality, and she asks  
12 for copies of a number of documents and she lists  
13 the documents.

14 So, just stopping there for a  
15 moment, had you had previous experience in  
16 collecting documents for litigation?

17 A. Yes.

18 Q. Had you acted as a City  
19 representative in litigation before this?

20 A. Yes.

21 Q. Had you had to review  
22 documents in an affidavit of documents to confirm  
23 that the City was providing all documents that  
24 were relevant?

25 A. Yes.

1 Q. And had you been examined  
2 for discovery?

3 A. Yes.

4 Q. And what about actually  
5 testifying at trial?

6 A. Yes.

7 Q. Can you close this down,  
8 Registrar, and bring up the next paragraph. I  
9 think you have to go over to the image.

10 And so, Mr. White then  
11 responded later that they day saying David  
12 Ferguson will be the traffics expert on this file.  
13 In the end, do you recall, was Mr. Ferguson the  
14 City representative on this file?

15 A. I can't say for sure, but  
16 it sounds like it.

17 Q. Okay. And, if you can  
18 close that out and, Registrar, if you can leave up  
19 page 68 and bring up the bottom of 69, which is  
20 217.

21 I don't know if it goes over,  
22 but I don't want to show too many things at once,  
23 Mr. Cooper, so here, we'll look at this first.  
24 So, you replied to Mr. Ferguson writing:

25 "As requested, the

1 required info is in the  
2 folder. In the link,  
3 there's quite a bit to  
4 sift through and it  
5 didn't fit in e-mail."

6 And then following over the  
7 page, it has a copy of a link, a share file.  
8 That's great. Thank you. Just going back -- you  
9 can close that out.

10 Just going back to 212, when  
11 you were compiling this information to put in that  
12 share file, did you follow up with anybody about  
13 whether friction testing had been completed on the  
14 Red Hill?

15 A. No.

16 Q. Did you have any  
17 discussions with Mr. Ferguson about whether you  
18 should do that?

19 A. I don't remember.

20 Q. What about with  
21 Ms. Crawford?

22 A. If I asked her about  
23 friction testing?

24 Q. If you asked her if you  
25 should go out and take further steps to try to

1 locate further information from engineering  
2 services?

3 A. No.

4 Q. You can close that down  
5 and if you can go to 73, page 73, please, and if  
6 you can go over to 74 as well.

7 You attended the December 2015  
8 Public Works Committee meeting in which the report  
9 that we were looking at, the one about the LINC  
10 and the Red Hill, was presented?

11 A. I don't remember being  
12 there, but I'm sure you know if I was or wasn't.

13 Q. I'm sure. In  
14 paragraph 131, the overview document says:

15 "Mr. Ferguson and  
16 Mr. Cooper presented the  
17 staff report."

18 And then it references some of  
19 the content of a video recording.

20 A. I don't remember  
21 presenting anything, but I could have been in  
22 attendance.

23 Q. Okay. Was Mr. Ferguson  
24 doing the speaking?

25 A. I don't remember the

1 meeting.

2 Q. Okay. Do you remember  
3 that Mr. Moore made some comments at that meeting  
4 at the request of the councillors?

5 A. I do not remember the  
6 meeting at all. I've never presented to council  
7 or Public Works Committee.

8 Q. Okay. You'll see -- I'm  
9 not going to bring up the video to show you.  
10 You'll see at paragraph 238 that Mr. Mater  
11 e-mailed you and Mr. Ferguson:

12 "Thanks so much for your  
13 efforts at committee this  
14 morning."

15 A. I don't see that here. I  
16 see 236.

17 Q. Pardon me. That's what I  
18 meant, 236.

19 A. Okay.

20 Q. But in any event, you  
21 don't remember either way your role at this  
22 meeting?

23 A. I didn't speak at the  
24 meeting.

25 Q. Okay.

1                   A.    I don't think I've ever  
2 spoke at council or committee.

3                   Q.    Okay. Registrar, can you  
4 go to page 77, please.

5                   So, after the PWC meeting that  
6 was the 7th, on the 9th there was an e-mail from  
7 the Lakewood Beach community council and this is  
8 in advance of council ratification of the Public  
9 Works Committee items. Are you familiar with the  
10 Lakewood Beach community council?

11                  A.    I am.

12                  Q.    Registrar, can you bring  
13 up the next image, too, please.

14                  You're not copied on this.  
15 This is from the Lakewood Beach to the mayor and  
16 council.

17                  And if you can call out the  
18 top of page 78, please.

19                  The community council suggests  
20 to the mayor and council that the pavement  
21 friction test, which is a medium-term measure in  
22 the report, be made a short-term measure. Were  
23 you aware of this request from the Lakewood Beach  
24 community council at the time?

25                  A.    I don't believe so, no.

1 Q. You can close that down,  
2 Registrar, and if you can go to page 112, please,  
3 and pull up 156, please.

4 So, this request to the mayor  
5 and council actually gets deferred back to Public  
6 Works for discussion and there's some back and  
7 forth as we're coming up to the next Public Works  
8 meeting. And Mr. Moore e-mails Mr. Ferguson,  
9 copying Mr. Lupton, and says:

10 "FYI, some roughness skid  
11 resistance friction  
12 testing has been done.  
13 However, I'm still trying  
14 to get the analysis for  
15 it and put it into  
16 context."

17 Did Mr. Lupton or Mr. Ferguson  
18 convey to you that they had received an e-mail  
19 from Mr. Moore that roughness, skid resistance,  
20 friction testing had been done?

21 A. No.

22 Q. So, this doesn't provide  
23 you a potential context for when Mr. Ferguson told  
24 you that friction testing had been done?

25 A. No. I think it was prior

1 to this, though.

2 Q. So you think that it was  
3 prior to the PWC meeting in December?

4 A. I think so, yeah.

5 Q. Okay. Mr. Moore made  
6 comments about friction testing at the PWC meeting  
7 itself, but you say you don't remember that  
8 meeting --

9 A. I have no --

10 Q. I just put that to you to  
11 refresh your memory.

12 A. I'm sorry. I don't  
13 remember being at the meeting.

14 Q. That's okay. Can you  
15 close this out and go to page 88.

16 So, this is January 2016, so  
17 it's about a month after the Public Works  
18 Committee meeting.

19 And, Registrar, can you bring  
20 up 89 as well.

21 So, January 5, back from the  
22 new year, you e-mailed Mr. Jacobson, attaching an  
23 annotated copy of Appendix A to the staff report  
24 on the short-term measures that had gone to Public  
25 Works and you have them in red and green. Is this

1 looking familiar to you?

2 A. Yes, it does.

3 Q. Okay. Why are you

4 e-mailing Mr. Jacobson?

5 A. Because he was the  
6 superintendant of traffic operations, so this was  
7 a heads up to him of stuff that we would do  
8 in-house and what we were unable to do because it  
9 was MTO.

10 Q. Okay. So, would his time  
11 be involved in doing the actual implementation?

12 A. Correct, yes.

13 Q. Okay. So, the slippery  
14 when wet signs, which are in red, red indicates  
15 they will be done in-house. Can you confirm at  
16 this point whether any slippery when wet signs had  
17 been installed anywhere on the mainline or the  
18 ramps?

19 A. I don't recall. I'm  
20 sorry. There would be work orders associated with  
21 it, though. I didn't do anything without a work  
22 order.

23 Q. Okay. And in terms of  
24 the items that are in black, so they're neither  
25 referenced as being done in-house, or green, which

1 is working with the MTO to complete, were any of  
2 those done by January of 2016?

3 A. Yeah, I believe so. I  
4 think the object marker on the guide rail end  
5 treatments right around the middle there was done.  
6 I believe the trim vegetation may have been done  
7 by then. Yeah, those are the two that come to  
8 mind.

9 Q. Okay. Conduct speed  
10 study and consider for variable speed limit  
11 system, that was something that you eventually  
12 took on as project. Right?

13 A. I believe so, yes. It  
14 sounds familiar. That was the next one.

15 Q. Okay. And were you also  
16 involved in the rain activated flashing beacons?

17 A. There was discussions  
18 about that one. It's not the most reliable  
19 technology that I can recall and it was something  
20 we've never done before, and so if I remember  
21 correctly we were just going to put that on hold  
22 while we did the other things. There wasn't a lot  
23 of talk about it, but I don't remember moving  
24 forward with any of that either.

25 Q. Okay. And the conduct

1 study to install QN warnings systems, can you  
2 explain what a QN warning system is?

3 A. It's like the compass  
4 cameras. The compass signs that you see on the  
5 400-series highways, it was something similar to  
6 that that we were looking into doing. It would  
7 essentially tell you stop traffic ahead or  
8 similarly when you get to the border, you're near  
9 the border and it will say stop traffic in two  
10 kilometres or that sort of thing.

11 Q. And did that eventually  
12 become a project that CIMA assisted the City with?

13 A. I believe so. It came  
14 into the ITS system.

15 Q. What does ITS stand for?

16 A. I'm sorry?

17 Q. What does ITS stand for?

18 A. Intelligent  
19 transportation system.

20 Q. Okay. So, that became  
21 one aspect of a broader --

22 A. Yes, I believe so. It  
23 was all encompassed into one, because they're all  
24 similar, so it made sense to put them all  
25 together.

1 Q. Okay. Registrar, can you  
2 close this down and open up 124, please.  
3 Actually, no. Can you go to 156, please. So,  
4 we're now into 2017 and, Registrar, if you can go  
5 one image back, please, so you have 155 and 156  
6 up. Thank you.

7 So, do you recall, Mr. Cooper,  
8 that in 2017 there was discussion about a scope  
9 for a repaving project on the Red Hill?

10 A. Vaguely.

11 Q. Okay. And, Registrar, if  
12 you can pull up 469.

13 And you're copied on this  
14 e-mail. It's from Mr. Ferguson to Mr. Andoga and  
15 others talking about the scope that traffic  
16 engineering would like to have added to the  
17 resurfacing. Does that refresh your memory a bit?

18 A. I have recollection of  
19 it, I think, yes.

20 Q. Okay. And Mr. Ferguson  
21 says here:

22 "We have conducted a  
23 five-year collision  
24 history review of both  
25 roadways and, based on

1                                   that, identified two  
2                                   places where barriers  
3                                   would be installed."

4                                   Do you remember the  
5                                   discussions in advance of this e-mail about the  
6                                   collision history and selecting the two areas that  
7                                   Mr. Ferguson references here?

8                                   A.    No.  I don't think I was  
9                                   involved in those discussions.

10                                  Q.    I'm going to close that  
11                                  out and, Registrar, can you go back to image 154  
12                                  and have 154 and 155 up.

13                                  So, just taking a step back to  
14                                  refresh your memory, Mr. Cooper, at the top of 154  
15                                  Mr. Worrton instructs you to have some information  
16                                  plotted.  It's at Mr. Ferguson's request.  I'm not  
17                                  going to go back another page to show that.  And  
18                                  then you respond and you put some reports into a  
19                                  file and then you create some map, a map, plotting  
20                                  collisions in wet weather and there are others  
21                                  that you create as well.

22                                  Is that refreshing your memory  
23                                  in terms of your involvement?

24                                  A.    I remember doing this,  
25                                  yeah.

1 Q. Okay, so you did this.  
2 Do you recall the discussions that came out of  
3 that in respect of the barriers?

4 A. I don't think I was part  
5 of those discussions. I just simply provided  
6 these maps.

7 Q. Okay. Registrar, can you  
8 go to page 172, please, and if you can pull up  
9 507, please.

10 So, in March of 2017, you  
11 e-mailed Mr. Ferguson under the subject line "Info  
12 Updates Report" and you attach two documents, one  
13 a LINC info report and one a Red Hill LINC  
14 barriers information report, and I'm going to  
15 bring those up in turn.

16 Registrar, can you bring up  
17 HAM44938.

18 So, this is an info report.  
19 I'm showing you first the e-mail where you say  
20 there's some content and items in red that need  
21 clarification.

22 Then, Registrar, can you bring  
23 up 44940, please.

24 So, you'll see this is your  
25 draft and there's some red.

1 Registrar, can you bring up  
2 the next image.

3 So, there's some reference to  
4 the last committee meeting. You'll see at the  
5 top:

6 "The ward and councillor  
7 requested an update on  
8 the short-term safety  
9 improvements considered  
10 to date."

11 And so, you attach some  
12 appendices. You also in red suggest that Martin  
13 wanted to have some traffic volumes.

14 And do you recall, just  
15 stopping here, that after the 2015, December 2015,  
16 meeting, there had been some discussion about  
17 traffic volumes and more particularly speed data  
18 coming out of the CIMA 2015 report? Is that  
19 ringing a bell?

20 A. I remember there was some  
21 controversy about the high speeds. Is that what  
22 you're referring to?

23 Q. Yeah.

24 A. Yeah, I remember that.

25 Q. And do you recall that it

1 eventually got dropped after some discussion with  
2 the councillor?

3 A. It got what, I'm sorry?

4 Q. Dropped or it got  
5 resolved?

6 A. I don't remember that,  
7 but yes.

8 Q. Okay. I do want your  
9 recollection. You don't remember either way?

10 A. I remember there being an  
11 issue with the data and they were concerned about  
12 the high speeds and I remember it was resolved. I  
13 just don't remember what it was, but I do have a  
14 vague recollection of it, yes.

15 Q. Okay. Registrar, could  
16 you bring up the next two images.

17 A. Did this update report,  
18 did this go to council, do you know, or committee?

19 Q. It did, yes.

20 A. Is this the final we're  
21 looking at here?

22 Q. No. This is your first  
23 draft to Mr. Ferguson.

24 A. Okay.

25 Q. So, there's two

1 appendices here and there's, on Appendix A, some  
2 things are completed, some things have references  
3 to times for completion, and you'll see conduct  
4 pavement friction testing and it says 40,000 and  
5 it says "completed," but I think it's supposed to  
6 say "completed." Do you see that?

7 A. Yes.

8 Q. So, what steps did you  
9 take in drafting this report to confirm if  
10 friction testing had been completed?

11 A. I used what I already  
12 knew or that I was told it was completed, so I  
13 just kept going with that.

14 Q. Okay. So, at this point,  
15 we're looking at the update from the 2015 CIMA  
16 report, which recommended friction testing.

17 A. Okay.

18 Q. Did you take any  
19 particular steps to confirm if friction testing  
20 had been completed after the 2015 report?

21 A. Other than asking David,  
22 no.

23 Q. Do you recall asking  
24 David as you're drafting this report?

25 A. So, I do not recall when

1 I asked David. I asked him if it was completed  
2 and I was told yes, and I went with that. I don't  
3 know which report it preceded.

4 Q. Okay. You can close this  
5 down, Registrar.

6 I'm about to move on to  
7 another section. It is 3:13, so I would suggest  
8 we take a very slightly early 15-minute break now.

9 JUSTICE WILTON-SIEGEL: That  
10 would be fine. Let's adjourn until 3:30.

11 --- Recess taken at 3:13 p.m.

12 --- Upon resuming at 3:30 p.m.

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

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

17 MS. LAWRENCE: Thank you.

18 BY MS. LAWRENCE:

19 Q. Registrar, could you call  
20 up HAM64134, please. Thank you. And could you  
21 call out the first paragraph of this -- actually,  
22 no. Let me start with the date.

23 This is an e-mail -- pardon  
24 me. This is a letter that is sent to you by  
25 courier on July 18, 2018. It's to your attention

1 from Shillingtons. Do you remember receiving this  
2 letter?

3 A. Not specifically, but I  
4 remember being involved with this case.

5 Q. Okay. Registrar, can you  
6 call out the first paragraph.

7 So, this is 2018 and it says:

8 "We confirm you'll be the  
9 City's witness in respect  
10 of litigation involving  
11 an accident which  
12 occurred on May 7, 2014  
13 on the LINC."

14 And then it references a short  
15 summary of the accident itself. And it says here  
16 you will be the City's witness. Did you  
17 understand you would be the City's representative  
18 in examinations for discovery?

19 A. Yes.

20 Q. Can you close that down,  
21 Registrar, and if you can pull up the last three  
22 paragraphs, please. Thank you.

23 So, this is sent by courier  
24 and it says:

25 "We would ask you to

1 review the enclosed  
2 Affidavit of Documents  
3 and Schedule A  
4 productions which we have  
5 prepared for the City of  
6 Hamilton. If you believe  
7 there are additional  
8 documents which have not  
9 been included but should  
10 be, please let us know."

11 And then it says:

12 "The examinations for  
13 discovery have not yet  
14 been scheduled and we  
15 will review the potential  
16 discovery dates for you  
17 once they have been  
18 narrowed down."

19 And then the letter says:

20 "If you have any  
21 questions or concerns  
22 with respect to the  
23 productions, please let  
24 us know."

25 I'm going to close that and if

1 you could go to the second image, please,  
2 Registrar.

3 And you'll see it's from  
4 Colleen Crawford and it has enclosures. So, do  
5 you recall receiving not only this letter but also  
6 the Affidavit of Documents and the Schedule A  
7 productions, being the underlying documents that  
8 were referenced in the affidavit?

9 A. I don't remember the  
10 letter, but I remember receiving the documents,  
11 yes.

12 Q. Okay. Registrar, can you  
13 bring up HAM64135, and can you bring up image 1  
14 and image 2, please. Thank you.

15 So, this is an unsworn  
16 Affidavit of Documents and this, we understand, is  
17 the affidavit that was attached to or enclosed  
18 with the letter that Ms. Crawford sent to you.  
19 And you'll see that it says that you are a project  
20 manager and then the second paragraph at the  
21 bottom of image 1 says:

22 "You've conducted a  
23 diligent search of the  
24 corporation's records and  
25 made enquiries and this

1 affidavit discloses, to  
2 the full extent of my  
3 knowledge and belief, all  
4 documents relevant to the  
5 matter at issue."

6 And the Schedule A are  
7 documents in the possession, control and power of  
8 the corporation that it does not object to  
9 producing for inspection. And then there are  
10 Schedule B and Schedule C that are documents that  
11 either are being objected to being produced or are  
12 not available.

13 Had you seen, before you  
14 received this Affidavit of Documents in draft,  
15 other affidavits of documents?

16 A. Yes.

17 Q. In other cases?

18 A. Yes.

19 Q. And so, you understood  
20 that you needed to review the Schedule A documents  
21 so that you could swear this affidavit?

22 A. Yeah.

23 Q. Okay. You can go,  
24 Registrar, to image 3 and image 4.

25 So, this is quite a number of

1 documents and we're not even all the way through  
2 it. It's many, many pages long. Do you remember  
3 the volume of documents, underlying documents,  
4 that you received with this Affidavit of  
5 Documents?

6 A. I did and I didn't review  
7 them.

8 Q. You didn't review them at  
9 the time?

10 A. I'm not even sure I've  
11 reviewed them entirely. I never had time at this  
12 time. It was, like, summer of 2018, I believe.  
13 Correct?

14 Q. That's right. July --

15 A. Yeah, yeah. That was the  
16 beginning of some significant challenges for me  
17 personally and I never got to review these  
18 documents. This case, actually.

19 Q. Okay. Did you have any  
20 discussions with the law clerk or the lawyers at  
21 Shillingtons about any of the underlying documents  
22 that they sent to you?

23 A. I don't recall. I don't  
24 recall.

25 Q. Okay. Registrar, can you

1 go to page 13 of this Affidavit of Documents,  
2 which I think is going to be image 17. No, I got  
3 that wrong. Let me see if I can find the right  
4 image. It's page 13. I think it might be  
5 image 13. Thank you. And if you can call out the  
6 listing under CIMA Reports and Friction Testing  
7 Report.

8 So, there's two LINC median  
9 safety study reports here from 2015 and then  
10 there's a friction testing report and it says:

11 "Tradewind Scientific  
12 Friction Testing Survey  
13 Summary Report, Lincoln  
14 Alexander & Red Hill  
15 Valley Parkway (Hamilton)  
16 dated November 20, 2013."

17 And so, sitting here today, is  
18 it your evidence that you did not review this  
19 document within the Schedule A productions  
20 provided to you?

21 A. That is correct.

22 Q. And did you take note in  
23 the index that this document existed?

24 A. No. I did not review  
25 this document.

1 Q. Okay.

2 A. Again, I had much  
3 other -- I had other things I needed to focus on.  
4 This would have taken a significant amount of time  
5 to go through this stuff.

6 Q. It would have. It looks  
7 like it's probably hundreds of thousands of pages.  
8 Is that your recollection?

9 A. Probably not far off.  
10 Yeah.

11 Q. Okay. But you of course  
12 knowledge that in order to swear an Affidavit of  
13 Documents, you have to review the underlying  
14 documents?

15 A. Probably should, yes.  
16 Did I swear on these documents?

17 Q. We'll get to it. In July  
18 of 2018, you were working still under  
19 Mr. Ferguson. Is that right?

20 A. Yes.

21 Q. And am I correct, without  
22 you needing to give me any details, that you had a  
23 period of time where you were not at work?

24 A. Yes.

25 Q. And what period of time

1 was that from?

2 A. December 2018 until I  
3 believe April 2019.

4 Q. Okay. Thank you. So,  
5 between July 2018 and December 2018, you didn't  
6 review this Affidavit of Documents at all?

7 A. I don't believe I did.

8 Q. Okay. Registrar, can you  
9 take this down and go to HAM64171, but before you  
10 do that, I understand that this is not yet an  
11 exhibit and I would ask that it be made the next  
12 exhibit, Exhibit 70, by my count.

13 THE REGISTRAR: Noted,  
14 counsel. Thank you.

15 EXHIBIT NO. 70: Unsworn  
16 Affidavit of Documents,  
17 HAM64135.

18 THE REGISTRAR: Sorry,  
19 counsel. Can I ask you to repeat the doc ID for  
20 me?

21 MS. LAWRENCE: Yes. It is  
22 64135. No, sorry, that's the document that I want  
23 marked. Is that what you mean, Registrar?

24 THE REGISTRAR: No, sorry.  
25 The next document.

1 MS. LAWRENCE: Sure. 64171,  
2 and if you could bring up both images, please.

3 BY MS. LAWRENCE:

4 Q. And you'll see at the  
5 bottom this is September of 2018. It's an e-mail  
6 from Ms. Crawford to you, bottom of the image,  
7 image 1, and up to image 2, and Ms. Crawford says:

8 "We understand the that  
9 the issue of whether the  
10 City is going to install  
11 median barriers went to  
12 council. Can you please  
13 send me a copy of the  
14 report that went to  
15 council including all  
16 attachments, including  
17 the CIMA report, meeting  
18 minutes, recommendations  
19 and report? We'll also  
20 need any records with  
21 respect to the  
22 recommendations that were  
23 made, recorded, et  
24 cetera."

25 And you respond in image 1 and

1 you say:

2 "Will do. Can we skip  
3 the work orders until  
4 they are needed? It's a  
5 lot of work."

6 And then she says:

7 "We can skip the work  
8 orders for now. I want  
9 to see the  
10 recommendations first."

11 By this point, September of  
12 2018, you had not reviewed any part of the index  
13 or the underlying Affidavit of Documents, Schedule  
14 A productions?

15 A. I don't believe so, no.

16 Q. Do you recall that you  
17 eventually did attend as the City representative  
18 in an examination in this matter?

19 A. Vaguely.

20 Q. It was 2021?

21 A. Same answer.

22 Q. Okay.

23 A. My memory is not quite  
24 what it used to be, so...

25 Q. Okay. And can you tell

1 us why there was such a delay between getting the  
2 Affidavit of Documents together in 2018 and the  
3 eventual examination for discovery in 2021?

4 A. No. You'll have to ask  
5 legal for that. I have no idea.

6 Q. Okay.

7 A. That's typical, though.  
8 Usually it's years down the road, is it not?

9 Q. Sure. That's been your  
10 experience?

11 A. Yeah. These things go on  
12 forever.

13 Q. Commissioner, just before  
14 I leave this topic, the City has claimed privilege  
15 over the transcript of the examination for  
16 discovery of Mr. Cooper. I may need to come back  
17 to ask further questions about that, but I'm just  
18 going to stop at that point. I just wanted to let  
19 you know.

20 JUSTICE WILTON-SIEGEL: Okay.

21 Thank you.

22 MS. LAWRENCE: Before we leave  
23 this, Registrar, can you make this the next  
24 exhibit, HAM64171?

25 THE REGISTRAR: Noted,

1 counsel. Exhibit 71.

2 EXHIBIT NO. 71: E-mail  
3 from Colleen Crawford to  
4 Stephen Cooper, HAM64171.

5 MS. LAWRENCE: Thank you. And  
6 I'm told that I forgot to make one of the earlier  
7 exhibits that I referred to an exhibit as well.  
8 It's HAM64134.

9 THE REGISTRAR: Thank you.  
10 So, HAM64134 will be Exhibit 72.

11 EXHIBIT NO. 72: Letter  
12 sent to Mr. Cooper by  
13 courier on July 18, 2018,  
14 HAM64134.

15 MS. LAWRENCE: Thank you.

16 BY MS. LAWRENCE:

17 Q. Okay. Mr. Cooper, I'm  
18 now going to ask you some questions about the  
19 speed study. HAM --

20 A. Sorry?

21 Q. The speed study.

22 A. Can you enlighten me?

23 I'm not sure what you're referring to.

24 Q. For sure. I'm going to  
25 bring up a document that I hope will help you,

1 HAM12308.

2 Do you recall through 2018 you  
3 worked with CIMA on the preparation of a study  
4 involving speed and, in particular, speed limits?

5 A. Vaguely, yes.

6 Q. Can you go to image 35,  
7 please. Sorry. It's page 35, image 41. And if  
8 you can pull out under Summary and Recommendation.

9 So, I'm not going to take you  
10 through this whole document, but it says here:

11 "The purpose of this  
12 assignment was to conduct  
13 a detailed review of the  
14 operating speed along the  
15 LINC and the Red Hill and  
16 to recommend a safe  
17 posted speed consistent  
18 with drivers'  
19 expectations, and to do  
20 so CIMA did a  
21 comprehensive literature  
22 review and to find an  
23 appropriate methodology  
24 to use to approach the  
25 setting of speed limits."

1                   Is that refreshing your memory  
2    about this project?

3                   A.    Yes.

4                   Q.    And CIMA used three  
5    methodologies and also did a 24-hour speed traffic  
6    data collection. Do you remember assisting them  
7    with that?

8                   A.    I don't remember  
9    assisting them, but it makes sense I would do  
10   that. I can see that here.

11                  Q.    Okay. And the  
12   observations that they come up with are, one, that  
13   the proposed speed limit from TAC, the road risk  
14   method, is 110 kilometres on both highways.

15                  Then if you want to close that  
16   down, Registrar, and go to the next image. Thank  
17   you.

18                  And with respect to the Red  
19   Hill, using, assessing, different types of  
20   methodology, the northwestern approach suggested  
21   zones of 90, 80 and 110, and using the U.S. limit,  
22   limits too, the recommended speed was in zones of  
23   90 and 100 kilometres an hour, and CIMA says:

24                               "The speed limit of 110  
25                               is not recommended along

1                                   these highways and, in  
2                                   addition, the variable  
3                                   speed limit zones will  
4                                   create enforcement,  
5                                   operational and safety  
6                                   issues along both the  
7                                   LINC and the Red Hill."

8                                   And so, it was proposed by  
9                                   CIMA that both approaches were close to the  
10                                  existing 90 kilometres an hour and that it was  
11                                  recommended to maintain the existing posted speed  
12                                  of 90 kilometres an hour along the entirety of the  
13                                  Red Hill.

14                                 Do you recall CIMA giving you  
15                                 those recommendations?

16                                 A.    Yes.

17                                 Q.    And did you think that  
18                                 the recommendation to maintain the existing speed  
19                                 limit was a prudent one?

20                                 A.    Yes.

21                                 Q.    Did you have any concerns  
22                                 about the potential of having speed limit zones,  
23                                 as suggested by the northwestern approach or the  
24                                 U.S. limit approach?

25                                 A.    I didn't give them a lot

1 of consideration, but yes, I would have concerns,  
2 which were outlined here. They would be my same  
3 concerns.

4 Q. That is, having variable  
5 speed can create enforcement, operational and  
6 safety issues?

7 A. Yes.

8 Q. And, just taking a step  
9 back from this, am I correct that engaging in the  
10 speed study was, in part, in response to a  
11 councillor's motion to ask about whether 90  
12 kilometres an hour was an appropriate speed?

13 A. I don't know what the  
14 impetus was, quite frankly. I can't recall.

15 Q. Did you have any views  
16 about whether it would be appropriate to lower the  
17 speed limit to 80 kilometres an hour on the Red  
18 Hill?

19 A. What is my view on it?

20 Q. Yeah.

21 A. At this time, I didn't  
22 suggest it. I didn't agree with it. My theory  
23 was it would create a -- without significant  
24 police enforcement, it has the potential to create  
25 a greater speed differential between those who are

1 driving the road comfortable and those who are  
2 abiding by the speed limit. We already saw that  
3 speeds were well above 90 and to lower it to 80  
4 would create a greater differential; therefore,  
5 creating a potential for another safety issue.

6 Q. Okay. And certainly the  
7 need for greater enforcement to try to maintain  
8 that speed limit. Is that also fair?

9 A. Yeah. I mean, they're  
10 hammering it every day, all day. That's the only  
11 way to get drivers to abide by the speed limit, so  
12 it seems.

13 Q. Okay. And did you  
14 prepare a draft report consistent with the CIMA  
15 recommendation to maintain the 90 kilometre speed  
16 limit on the Red Hill?

17 A. Honestly, Ms. Lawrence,  
18 from October through to probably a good eight  
19 months past that, I have very little recollection  
20 of anything. I was not invested in anything  
21 relating to work. I'm sorry.

22 Q. That's fair. Thank you.  
23 During the time when you were not at work, did you  
24 come to learn that city council had in fact  
25 reduced the speed limit to 80 kilometres an hour?

1 A. I did, yes.

2 Q. And did you learn that  
3 from media sources or some other source?

4 A. I believe it was through  
5 the media.

6 Q. Okay. And you weren't  
7 involved in any of the discussions or  
8 recommendations for that city council decision?

9 A. No, I was not.

10 Q. Thank you, Mr. Cooper. I  
11 know it's been a long day. Those are my questions  
12 for you and I understand that Ms. Contractor may  
13 have questions.

14 And, Commissioner, I  
15 understand that the other parties, at least at the  
16 last break, did not have any questions for  
17 Mr. Cooper.

18 JUSTICE WILTON-SIEGEL: Okay.  
19 Why don't we just review with the other parties  
20 first and then we'll give the podium to  
21 Ms. Contractor.

22 So, who appears on behalf of  
23 Golder?

24 MS. BASSONG: It's me. We do  
25 not have any questions.

1 JUSTICE WILTON-SIEGEL: Thank  
2 you. Do we have the MTO?

3 MR. BOURRIER: I don't have  
4 any questions, Mr. Commissioner.

5 JUSTICE WILTON-SIEGEL: Thank  
6 you. And on behalf of Dufferin?

7 MR. BUCK: Mr. Commissioner,  
8 there's something wrong with my video feed. I  
9 can't activate it.

10 JUSTICE WILTON-SIEGEL: No  
11 problem. There you go. Do I take it you have no  
12 questions?

13 MR. BUCK: I have no  
14 questions.

15 JUSTICE WILTON-SIEGEL: Thank  
16 you. Ms. Contractor, please proceed with your  
17 questions.

18 MS. CONTRACTOR: Thank you,  
19 Mr. Commissioner.

20 EXAMINATION BY MS. CONTRACTOR:

21 Q. Good afternoon,  
22 Mr. Cooper. I have a few questions for you, but I  
23 expect we'll finish by 4:30.

24 In your experience working  
25 with consultants, is there a difference in the use

1 of "could consider" and "should consider" in their  
2 reports?

3 A. Yes. Should is a little  
4 more firm and could is optional.

5 Q. And did you understand  
6 that to be the case in 2013?

7 A. Yes.

8 Q. What was your expectation  
9 regarding how consultants would assign timelines  
10 to a particular countermeasure?

11 A. I'm not sure what you  
12 mean, what my expectation was.

13 Q. Sure. Was it your  
14 expectation that a consultant would recommend a  
15 shorter timeline for more significant or urgent  
16 safety issues or investigations and a longer  
17 timeline for investigations or safety issues that  
18 were not as urgent?

19 A. Yes.

20 Q. And in your experience,  
21 is it common for City staff to provide feedback to  
22 consultants?

23 A. Yes, we would.

24 Q. I think you described it  
25 as a collaborative process?

1                   A.    Yes.  That's what I would  
2 think.

3                   Q.    And is it your  
4 expectation that any feedback provided to the  
5 consultant would be accepted by the consultant if  
6 they agreed and not accepted if they did not  
7 agree?

8                   A.    Yes.  I wouldn't expect  
9 any reputable consultant to change their  
10 recommendation.

11                  Q.    Did you view CIMA as a  
12 reputable consultant?

13                  A.    I do.

14                  Q.    Okay.  Mr. Registrar, if  
15 you could please go to CIM8082.0001 at image 4.

16                         So, in the 2013 CIMA report,  
17 CIMA provided some guidance to improve the Red  
18 Hill and included certain recommendations for the  
19 timeline of implementation.  And we see here that  
20 they had short-term, medium-term and long-term  
21 recommendations and short-term is defined as zero  
22 to five years.

23                             What did you understand that  
24 to mean?

25                   A.    That we could implement

1 whatever measures they're recommending in the  
2 short-term within zero to five years.

3 Q. And if we could, please,  
4 Mr. Registrar, go to image 50 and if we could  
5 please call out 6.1.1, including the cost-benefit  
6 ratio section, please.

7 Mr. Cooper, this is the  
8 section in the 2013 CIMA report in which CIMA  
9 provides guidance with respect to friction  
10 testing, and you'll see that the last sentence in  
11 the first paragraph:

12 "And because of the high  
13 proportion of wet surface  
14 conditions and SMV  
15 collisions, the City  
16 could consider  
17 undertaking pavement  
18 friction testing on the  
19 asphalt to get a baseline  
20 friction coefficient for  
21 which to compare to  
22 design specifications."

23 What did CIMA's use of "could  
24 consider" tell you about their recommendation  
25 regarding friction testing?

1                   A.     That it was an option we  
2     could choose to do or not.

3                   Q.     And we know that friction  
4     testing was a short-term recommendation.  What did  
5     that timeline tell you about CIMA's recommendation  
6     regarding friction testing?

7                   A.     Zero to five years, to  
8     me, isn't urgent.  It's not something that should  
9     be done immediately and we could do it within that  
10    timeline, if we so chose to.

11                  Q.     So, based on that, am I  
12    correct that you understood CIMA's recommendation  
13    regarding friction testing was for the City to  
14    consider conducting friction testing at some point  
15    in the next five years, after the report was  
16    finalized in 2013?

17                  A.     Yes.  Based on this, it  
18    says we could consider, so yes, exactly that.

19                  Q.     And if we could,  
20    Mr. Registrar, please, go to image 66.  Gosh,  
21    sorry.  I think I have the wrong reference.  Just  
22    give me one moment.

23                             If we could please go to  
24    page 46 of the report.  I apologize, I don't have  
25    the image reference, but 46 of the report.

1 Perfect. And if you could please call out that  
2 first section.

3 And this is the section in  
4 which CIMA provides its guidance with respect to  
5 high-friction pavement, installing high-friction  
6 pavement, for ramp 6 specifically. And you'll see  
7 that the last sentence, and CIMA states that the  
8 City could consider installing high-friction  
9 pavement treatment on approach to and through the  
10 curve at the end of the ramp.

11 So, similar to friction  
12 testing, what did CIMA's use of the could consider  
13 tell you about their recommendation regarding  
14 high-friction pavement?

15 A. Same thing. We could  
16 choose to do it or not within five years. I'm  
17 still not sure I agree with this recommendation.  
18 And, again, we just did some improvements not too  
19 long prior to this, so it's a little premature at  
20 this point.

21 Q. Right. And that's  
22 because every countermeasure can have a positive  
23 and negative impact, and so you would have to  
24 weigh the risks and benefits and, at this time,  
25 the City had just implemented some countermeasures

1 and it was worthwhile to see what the effect would  
2 be?

3 A. Correct.

4 Q. And so, based on just the  
5 wording of the report, was it your understanding  
6 at the time that what CIMA was recommending here  
7 was that the City could consider installing  
8 high-friction pavement on ramp 6 at some point in  
9 the next five years, once the report was finalized  
10 in 2013?

11 A. Yes.

12 Q. And if we could please,  
13 Mr. Registrar, go to HAM24142 at image 3.

14 And this is a report, it's a  
15 draft report that Mr. Ferguson sends to Mr. Moore  
16 and Mr. Field in March 2015. And you'll note that  
17 it states under the Mud Street or beside the Mud  
18 Street Interchange that installing high-friction  
19 pavement, the recommended countermeasure, and then  
20 beside that in the Status column it states:

21 "To be reviewed and  
22 completed during friction  
23 repaving."

24 Now, I appreciate that your  
25 evidence was that this is a countermeasure that

1 engineering services would have dealt with. Did  
2 you have any concerns with the City deferring this  
3 to any future repaving?

4 A. No, I did not.

5 Q. Why not?

6 A. Well, we still had those  
7 changes that we were looking at. There was a  
8 number of other things that we did to attempt to  
9 make it better. Financially or budget wise, it  
10 made sense to wait and, again, high-friction  
11 asphalt or a treatment on that could potentially  
12 make it worse. Drivers could realize that and go  
13 faster around the curve and, therefore, creating  
14 even more serious collisions.

15 So, I'm still not convinced  
16 that this is an approach that we should use. I  
17 think there's other treatments that we could do  
18 that would be more effective or just as effective.

19 Q. Thank you. So, you  
20 agreed with me that what CIMA was recommending  
21 ultimately in the 2015 report is that the City  
22 could consider implementing it at some point in  
23 the next five years. This draft is from  
24 March 2015 and it appears that the City had  
25 considered it and determined that it would be

1 reviewed and completed during a future repaving.

2 So, in your view, was that  
3 consistent with the recommendation in the 2015  
4 CIMA report?

5 A. To do it during repaving?

6 Q. To consider -- to decide  
7 to review and complete this countermeasure during  
8 a future repaving?

9 A. Yes.

10 Q. And commission counsel  
11 asked you about your direction to Mr. Applebee to  
12 keep the original date, the October date, on the  
13 CIMA report once you were able to confirm the  
14 changes that CIMA made after the committee  
15 meeting.

16 And your evidence was that  
17 there were no meaningful or material changes and  
18 that, in hindsight, you probably should have  
19 changed the date, but, you know, there was no  
20 material changes.

21 In making the decision to keep  
22 the October date, Mr. Cooper, did you intend to  
23 mislead anyone about when the report was  
24 finalized?

25 A. No, of course not. It

1 was a busy time. We were a busy group. We did a  
2 lot of work and it was -- maybe I should have took  
3 a little more time and thought about it. It was  
4 an off the cuff, okay, just get it done and then  
5 we're done with it.

6 Q. Thank you. Commission  
7 counsel also took you to your first draft of the  
8 2013 staff report that was the ten-page report and  
9 asked why you did not include the collision data  
10 that was referenced in the CIMA report in your  
11 draft report.

12 And, as I understand it, your  
13 evidence was that this was your first staff report  
14 for which a consultant was engaged?

15 A. In 2013?

16 Q. Yes.

17 A. Yes.

18 Q. And was it your  
19 expectation that your first draft of the staff  
20 report that you prepared in 2013 would be reviewed  
21 and revised as it went up the chain of command?

22 A. Yes, and I wanted to  
23 include what I thought needed to be included,  
24 realizing that there would be edits all the way  
25 up.

1 Q. You didn't intend that to  
2 be the final version?

3 A. No. It was highly  
4 unlikely that would be the final version.

5 Q. And, Mr. Registrar, if  
6 you could please pull up HAM43023 at image 4 and  
7 CIM10146.0001 at image 55.

8 Mr. Cooper, commission counsel  
9 asked you about your involvement in the 2015 CIMA  
10 report and I believe your evidence was that you  
11 were not that involved, other than perhaps  
12 providing some data and drafting the first draft  
13 of the staff report, which we see on the left-hand  
14 side of the screen.

15 And commission counsel asked  
16 you whether, sitting here today, friction testing  
17 was a recommendation that was in the 2015 report.  
18 You stated that you could not recall whether it  
19 was in the report offhand. Commission counsel  
20 asked if you would have put in that kind of  
21 recommendation into a draft staff report if it  
22 wasn't in the CIMA report, and you stated, "I  
23 doubt it."

24 Looking at the draft of the  
25 staff report on the left and the draft of the CIMA

1 report, which you would have it at the time, on  
2 the right-hand side, is it fair to say that you  
3 simply copied the table in the draft CIMA report  
4 into the draft staff report?

5 A. Yes.

6 Q. And, Mr. Registrar, if  
7 you could please go to OD 7, image 69,  
8 paragraph 212.

9 So, this was the e-mail from  
10 Shillingtons that commission counsel took you to  
11 and she took you to a subsequent e-mail from  
12 Mr. Ferguson in which he requested that you gather  
13 the documents responsive to this e-mail. And  
14 commission counsel asked if, in preparing these  
15 documents, whether you asked anyone if friction  
16 testing was completed.

17 Mr. Cooper, did you understand  
18 this e-mail to be asking you whether friction  
19 testing was completed?

20 A. No. I don't see any  
21 mention here of friction testing. This is just  
22 historical information that we had on file.

23 Q. And did you review the  
24 pleadings for this matter to assess what was  
25 relevant and what was not relevant?

1 A. I don't recall.

2 Q. Okay. And if we go to  
3 HAM64134, please, Mr. Registrar.

4 And so, commission counsel  
5 took you to this letter from Mr. Thompson with  
6 respect to or I think it was a covering letter  
7 providing a voluminous Affidavit of Documents.  
8 And you'll see in the third paragraph from the  
9 bottom and the fourth, sorry, the second and third  
10 paragraph from the bottom, thank you,  
11 Mr. Registrar, and you'll note it states:

12 "We would ask you to  
13 review the enclosed  
14 Affidavit of Documents  
15 and Schedule A  
16 productions which we have  
17 prepared for the City of  
18 Hamilton."

19 And then the bottom paragraph:

20 "The examinations for  
21 discovery have not yet  
22 been scheduled and we  
23 will review the potential  
24 discovery dates with you  
25 once they have been

1 narrowed down."

2 And, at this time when you  
3 received this letter, in July 2018, did you have  
4 an expectation as to whether the examinations  
5 would be scheduled in the near future?

6 A. No. History told me it's  
7 usually quite some time before examination for  
8 discovery takes place.

9 Q. And was it your intention  
10 to review the Affidavit of Documents or the  
11 documents closer to the examination before you  
12 swore the affidavit?

13 A. Yeah. Eventually I would  
14 have had to get to them.

15 Q. Thank you, Mr. Cooper.  
16 Those are my questions.

17 JUSTICE WILTON-SIEGEL:  
18 Ms. Lawrence.

19 MS. LAWRENCE: Thank you. I  
20 have no questions in re-exam.

21 JUSTICE WILTON-SIEGEL: Okay.  
22 Mr. Cooper, it's been a long day, I'm sure longer  
23 for you. Thank you very much for attending at the  
24 inquiry. You're excused.

25 THE WITNESS: Thank you.

1 JUSTICE WILTON-SIEGEL: If  
2 there's nothing further that we have to address  
3 this evening, then I think we stand adjourned  
4 until 9:30 tomorrow morning. Thank you, counsel.  
5 Have a good evening.

6 --- Whereupon the proceedings adjourned at  
7 4:11 p.m. until Tuesday, June 14, 2022,  
8 at 9:30 a.m.

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