

RED HILL VALLEY PARKWAY INQUIRY

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

VOLUME 20

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1 Arbitration Place Virtual

2 --- Upon resuming on Monday, May 30, 2022

3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: My name is
9 Emily Lawrence. I'm co-lead commission counsel.

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

24 Many counsel appearing on this
25 hearing today are in Toronto, which is on the

1 traditional land of the Huron-Wendat, the Seneca,
2 and most recently, the Mississaugas of the Credit
3 River. Today, this meeting place is still home to
4 many Indigenous people across Turtle Island, and
5 we are grateful to have the opportunity to work on
6 this land. Thank you.

7 Commissioner, we have our next
8 witness, who is Gerry Davis.

9 GERRY DAVIS; AFFIRMED

10 EXAMINATION BY MS. LAWRENCE:

11 1 Q. Good morning, Mr. Davis.

12 A. Good morning.

13 2 Q. I'm going to start with
14 some questions about your professional background.
15 From 1986 to 2001, you worked for the region of
16 Hamilton-Wentworth. Is that right?

17 A. That's correct.

18 3 Q. And from 2001 to 2016,
19 you worked for the City of Hamilton?

20 A. That's correct.

21 4 Q. In 2001 to 2005, you were
22 manager, asset management, capital planning and
23 implementation and Public Works. Is that right?

24 A. That's correct.

25 5 Q. And from 2005, you were

1 the director, capital planning and implementation
2 Public Works?

3 A. Correct.

4 6 Q. From 2009 to April 2016,
5 you were the general manager in Public Works?

6 A. Correct.

7 7 Q. I understand you were the
8 acting general manager in January of 2009?

9 A. That's correct, from
10 January until I was appointed by council in
11 May 2009.

12 8 Q. Right. And from that
13 point on, May 2009 to 2016, you were the general
14 manager?

15 A. Correct.

16 9 Q. As general manager, to
17 whom did you report?

18 A. Sorry, I didn't hear you.

19 10 Q. As general manager, to
20 whom did you report?

21 A. I reported to the city
22 manager and the city council.

23 11 Q. While in your role as
24 general manager, did you have any concerns about
25 the organizational structure of Public Works?

1 A. No, I did not.

2 12 Q. Did you have any concerns
3 about the flow of information or work within
4 groups that reported to you?

5 A. No.

6 13 Q. Any concerns about lack
7 of cooperation between the groups that reported to
8 you?

9 A. No.

10 14 Q. I understand after you
11 left the role of general manager, you were
12 strategic advisor to the city manager in the city
13 manager's office. Is that right?

14 A. That's correct.

15 15 Q. And how long did that
16 role last?

17 A. I believe it was from
18 April or May of 2016 until when I retired, on
19 December 31, 2016.

20 16 Q. What did that role
21 involve?

22 A. It was primarily working
23 directly with the city manager to assist. At the
24 time I went over, we were redoing the ten-year
25 strategic plan for the City of Hamilton and I

1 headed up that project, which was the main project
2 I did at the time over at the city manager's
3 office.

4 17 Q. Okay. And you said you
5 held that role until you retired. Since your
6 retirement, have you had any other paid work,
7 consultancy, anything like that?

8 A. I've done some consulting
9 and I also have my own tax practice.

10 18 Q. Okay. Have you done any
11 work for the City of Hamilton?

12 A. I was hired by a
13 consultant who was retained by the City of
14 Hamilton to work on a review of their asset
15 management program.

16 19 Q. Okay. I'm going to turn
17 now to some questions about the Red Hill Valley
18 Parkway, and I may call it the RHVP or the parkway
19 or the Red Hill. If you need any clarity about
20 what I'm talking about, please let me know.

21 Did you have any role in the
22 design or construction of the Red Hill?

23 A. No.

24 20 Q. Did you have any role in
25 overseeing the project team that was involved in

1 the design or construction?

2 A. No, I did not.

3 21 Q. I understand that Gary
4 Moore was in a shared position. When he was
5 working for the Red Hill Valley team, he was also
6 the manager of design. Do you recall that period
7 of time?

8 A. Yes.

9 22 Q. This would be in the late
10 2000s. Registrar, could you call up HAM58528.
11 Mr. Davis, we're going to be screen sharing a
12 number of documents today. If at any point it's
13 too small for you to see, just let me know and we
14 can open it up. Perfect, Mr. Registrar, that's
15 great. If you can call that out. How's that?

16 A. That's fine.

17 23 Q. Great. So, this is an
18 organizational chart from 2007 and you'll see it
19 has you there at the top, director of capital
20 planning implementation, and on the right-hand
21 side it has manager of design, Gary Moore, shared
22 position with Red Hill.

23 Did you oversee any of
24 Mr. Moore's work that he was doing in respect of
25 the Red Hill?

1 A. No, I did not.

2 24 Q. Thank you.

3 Mr. Registrar, you can take that down. Apologies.

4 Before I move on, I understand that's not yet an

5 exhibit, so if can we make as the next exhibit,

6 which I believe is Exhibit 56, HAM58528.

7 JUSTICE WILTON-SIEGEL: That's

8 fine.

9 EXHIBIT NO. 56:

10 Organizational chart

11 dated 2007, HAM58528.

12 BY MS. LAWRENCE:

13 25 Q. Thank you.

14 Mr. Registrar, could you bring up overview

15 document 3, page 37, paragraph 72, please.

16 While this is coming up,

17 Mr. Davis, I believe you've seen these overview

18 documents before, but these are overview documents

19 that commission counsel have prepared that append

20 a number of underlying documents. Again, if you

21 need anything to be bigger, we do have that option

22 to call out.

23 A. That's fine.

24 26 Q. Great. So, you'll see

25 here at paragraph 72, in April of 2007 Mr. Moore

1 e-mailed Mr. Murray, who I believe is Chris
2 Murray, and you and it's quite lengthy. So,
3 Registrar, can you first just call out -- perfect,
4 thank you -- the first paragraph.

5 So, this is an excerpt and
6 this is Mr. Moore providing information about
7 perpetual pavement design that we have adopted for
8 the north-south RHVP, and he notes it is
9 leading-edge pavement design.

10 Perpetual pavement design,
11 does that mean anything to you or did it in 2007?

12 A. No, it did not.

13 27 Q. Registrar, can you close
14 out that call out and if you could go on to
15 page 38, Registrar, and pull out the first full
16 paragraph.

17 Again, Mr. Davis, if you would
18 like to take a moment to read the entire thing,
19 I'm happy to do that. Mr. Moore is referencing
20 monitoring, which would consist of weight and
21 motion sensors under the lanes. Do you remember
22 that monitoring program?

23 A. No, I do not.

24 28 Q. Okay. Registrar, you can
25 close that call out and if you can call out the

1 third full paragraph starting with Golder.
2 Actually, no. Pardon me. If you can call out the
3 paragraph just before that, the costs and the next
4 paragraph together. Perfect. So, you'll see
5 Mr. Moore is setting out the costs associated with
6 this monitoring, and then he notes:

7 "Golder are interested,
8 as they are designers."

9 Did you know in 2007 that
10 Golder Associates was one of the consulting
11 engineers on the Red Hill project?

12 A. No, I did not.

13 29 Q. Why was Mr. Moore seeking
14 or providing you with this information about the
15 costs of this proposed monitoring program?

16 A. I believe because it may
17 have had a budget impact that we would have to
18 include. He was letting me know of a financial
19 impact on the budget once the monitoring of the
20 road would take place.

21 30 Q. Okay. So, monitoring
22 after the opening of the Red Hill, that would have
23 fallen under your portfolio as director, capital
24 planning and implementation?

25 A. No, it would not.

1 31 Q. Okay. So, why would he
2 be telling you this?

3 A. To ensure that -- I was
4 in charge of the preparing the capital budgets for
5 the department, so this would have a budget
6 impact. So, like all the other divisions within
7 the department, we put together the capital
8 budgets, so water waste, water waste management,
9 transit, so this is more of information that there
10 is a budget impact.

11 32 Q. Okay, so the budget
12 aspect of this would fall under your portfolio,
13 but the technical aspect would not. Is that
14 right?

15 A. That's correct.

16 33 Q. Registrar, you can close
17 out that call out. Thank you. And if you can go
18 to overview document 3, page 65, paragraph 133,
19 please. Thank you for calling that out.

20 So, you'll see in October of
21 2007, the MTO conducted friction testing on the
22 Red Hill. At the time, in 2007, did you know that
23 the MTO intended to conduct this friction testing?

24 A. No, I did not.

25 34 Q. Did anyone approach you

1 and ask to sign off on a request for the MTO to
2 conduct friction testing?

3 A. I don't recall, no.

4 35 Q. Is friction testing on a
5 large parkway, like the Red Hill, the kind of item
6 that you would have expected Mr. Moore would have
7 brought to your attention for approval?

8 A. No.

9 36 Q. When did you first learn,
10 if ever, that in 2007, MTO had conducted friction
11 testing on the Red Hill?

12 A. Can you ask that again,
13 please?

14 37 Q. Sure. When did you first
15 learn that MTO had conducted friction testing on
16 the Red Hill in 2007?

17 A. I don't recall ever
18 learning about the MTO.

19 38 Q. Prior to October 2007,
20 were you involved in any discussions with city
21 staff about the idea of friction testing on the
22 Red Hill?

23 A. No, I was not.

24 39 Q. After 2007, did the topic
25 of friction testing on the Red Hill ever come up

1 in any of your meetings about the Red Hill at any
2 time during your tenure at the city?

3 A. I don't recall any, no.

4 40 Q. You said friction testing
5 wasn't the kind of item that you would expect
6 Mr. Moore to bring up with you in 2007. When you
7 took the position of general manager in 2009,
8 would you expect that Mr. Moore would have raised
9 the issue of friction testing to you in that
10 capacity?

11 A. No, I would not.

12 41 Q. Did you ever see the MTO
13 friction test results?

14 A. No, I did not.

15 42 Q. Did you have periodic
16 meetings with the MTO to coordinate construction
17 and discuss the interchange between the Red Hill
18 and the QEW?

19 A. I did attend meetings
20 with the MTO. I don't recall being in meetings
21 with respect to that interchange.

22 43 Q. Okay. When you say you
23 were in meetings with the MTO, meetings about the
24 Red Hill with the MTO?

25 A. No. It was more of an

1 overall coordination process. When they were
2 doing projects in the City of Hamilton, we had
3 ongoing meetings. I started attending those when
4 I was the director of capital planning and then as
5 general manager.

6 44 Q. Do you remember attending
7 any meetings with the MTO about the Red Hill in
8 particular?

9 A. No.

10 45 Q. Okay. Thanks. I'm going
11 to take you now to, Mr. Registrar, HAM21276,
12 please. So, you'll see that this is an e-mail
13 from Scott Stewart. It's to a number of
14 recipients and you are the first one listed on the
15 CC line. Do you see that?

16 A. Yes.

17 46 Q. I'm just giving you a
18 moment to skim this e-mail. Do you recall seeing
19 this e-mail at the time it was sent, in 2007?

20 A. No, I do not.

21 47 Q. Mr. Registrar, can you
22 call out the second and third paragraph, please.
23 Thank you.

24 So, at the beginning of that
25 paragraph that's highlighted, there's another

1 reference to perpetual pavement and the last
2 sentence is:

3 "Perpetual pavement will
4 save more than
5 \$1.6 million in a 50-year
6 period."

7 Then the next paragraph says:

8 "The Public Works
9 Department was profiled
10 in a second article as
11 one of the most
12 progressive cities in the
13 province when it comes to
14 managing its roads."

15 Mr. Registrar, can you take
16 down that call out, please. And then it
17 references a number of bullets about projects that
18 Hamilton had used when using new technology to
19 improve their road network.

20 From your perspective and, in
21 particular, your perspective as general manager,
22 how important was it that the City of Hamilton was
23 perceived as innovative or a leader in this kind
24 of technical design?

25 A. So, I think the technical

1 design in the awards that came forward were
2 recognized by the different organizations of what
3 the City was doing. Making sure we could win an
4 award would, in my mind and my opinion, wouldn't
5 be the top priority. That came as a result of the
6 work we were doing at the City of Hamilton.

7 48 Q. From your perspective,
8 how important was it that the City of Hamilton not
9 simply be perceived, but actually be innovators in
10 technical design?

11 A. Are you talking about
12 with respect to winning an award?

13 49 Q. No. I think that relates
14 to perceptions by others, but simply within and
15 under your leadership, recognizing your leadership
16 starts in 2009, how important was it that Public
17 Works be an innovator in technical design as
18 compared to other municipalities?

19 A. So, it wasn't an issue
20 with respect to other municipalities. The
21 innovation was based on ensuring the funding that
22 was being provided was being implemented to
23 ensure, you know, with respect to, you know,
24 spending the right money on the right asset at the
25 right time would be the best how I would describe

1 it.

2 50 Q. Okay. You mentioned that
3 winning awards was, to paraphrase, a secondary
4 effect. How important was it to you that the work
5 of the City of Hamilton be recognized through
6 industry awards or other recognition?

7 A. It wasn't of primary
8 importance to me.

9 51 Q. Okay. Registrar, can you
10 take that down. Thank you.

11 I'm going to turn now to some
12 questions about staff reports and, in particular,
13 reports prepared by staff for the Public Works
14 committee, and I'm asking from your perspective as
15 the general manager of Public Works.

16 Which committees of council
17 usually receive reports prepared by Public Works
18 staff?

19 A. The primary committee
20 would have been the Public Works committee. The
21 second one would be the general information
22 committee. And then occasionally we could do a
23 joint report with the finance committee, but the
24 primary report submission and overview was the
25 Public Works committee of council.

1 52 Q. What was your role in a
2 typical staff report prepared in Public Works for
3 the Public Works committee?

4 A. So, my role, I was in
5 charge of policy and administration. My main
6 function on reports was signing them off to be
7 submitted to council as per city policy.

8 53 Q. That policy where you
9 were the signatory, did that change over time?

10 A. I believe it changed
11 because one of the discussion we had at senior
12 management team when I was on as GM was the
13 directors and their staff have all the technical
14 expertise when a report is prepared, so it was
15 moved that the director would be signing off. I
16 believe it was, I'm going to say, in 2015. I
17 don't recall exactly.

18 54 Q. Okay. So, I'm going to
19 ask you a number of questions to come and, to the
20 extent that any of those questions have different
21 answers depending on whether before that change in
22 policy or after, you just let me know. Okay?

23 A. Okay.

24 55 Q. When would a report have
25 hit your desk in advance of going to the Public

1 Works committee?

2 A. I would say it was
3 approximately one month before the actual
4 committee date, the reports would have been
5 completed by the respective divisions and signed
6 off by the director, come to the general manager's
7 office. I would then sign as the GM of Public
8 Works. They would then get forwarded to the
9 legislative assistant in the clerk's department
10 and then we would set up the agenda review
11 generally with the chair of the Public Works
12 committee and the vice chair. So, a month prior
13 to the committee, on average, I would say.

14 56 Q. Okay, so a fair bit of
15 lead time?

16 A. Yes.

17 57 Q. By the time you received
18 a report for your review, what steps would have
19 already happened?

20 A. So, the authors of the
21 report, whatever the topic was, would have done
22 their research and their technical expertise in
23 preparing it. It then would go to, if it was one
24 of the project managers authoring the report, it
25 would go to their manager for sign off, and then

1 it would go to the director for sign off. And
2 those key people have all the technical expertise
3 with respect to the report.

4 58 Q. Okay. As I understand
5 it, most reports for the Public Works committee
6 were either information reports or recommendation
7 reports. Is that correct?

8 A. That's correct.

9 59 Q. Can you explain the
10 differences between these two types of reports?

11 A. A recommendation report
12 has specific action to be approved by committee:
13 Work to be done, when it's to be done, how much
14 money. An information report is something to
15 follow up to keep the committee informed of what's
16 going on, and the information report could
17 generally, one of the most common forms, was if
18 council asked for information on something, it
19 goes on to an outstanding business list and
20 generally an information report is written for
21 that outstanding business list. And then once
22 council receives that report, signs off on it,
23 it's taken off the OBL. So, one is action, one is
24 information, just what it says.

25 60 Q. Okay. Are there

1 differences in the level of detail between a
2 typical information report and a typical
3 recommendation report?

4 A. It depends on the topic,
5 so...

6 61 Q. With respect to
7 recommendation reports, what was your practice
8 when a report was delivered to you?

9 A. So, for a recommendation
10 report, I would go through the recommendation to
11 understand exactly what was being -- you know,
12 what was the project, what was the timeline, what
13 was the funding with respect to it. There would
14 be generally an executive summary with the
15 recommendation report. I could read that. And
16 then I would sign off on that report.

17 62 Q. Okay. So, is that to say
18 you wouldn't necessarily read past the executive
19 summary to the body of the report?

20 A. Yeah. It would depend on
21 the report, but primarily I wouldn't read the
22 whole report.

23 63 Q. Okay. Did you edit
24 reports?

25 A. So, in that seven years,

1 did I edit reports? I can't say with certainty.
2 I would imagine I may have addressed in the
3 recommendation, if I didn't understand it, if it
4 wasn't specific for what's being spent, what it's
5 being spent on and the timeline, I would probably
6 edit there. I wouldn't edit, in all likelihood,
7 the body of the report, because I would have no
8 technical expertise to change what the experts
9 have written in the body of the report.

10 64 Q. Okay. Where a report, a
11 staff report, a recommendation report, addressed a
12 report prepared by a consultant to the City, would
13 you read the underlying consultant report?

14 A. No, I would not.

15 65 Q. Now turning to
16 information reports, what was your practice when
17 an information report hit your desk?

18 A. Generally, the
19 information report, I would scan the title, what
20 it was going for, the reason for the information
21 report and I would sign off on it.

22 66 Q. Okay. Turning now to the
23 2013 CIMA report, Registrar, can you pull up
24 overview document 6, page 8, paragraph 11, please.

25 Mr. Davis, this is also from

1 our overview document, so this is just a narrative
2 form, and it says:

3 "On January 16, 2013, the
4 Public Works committee
5 met -- "

6 It lists the councillors:
7 " -- and a report from
8 that meeting records that
9 the following motion was
10 passed."

11 Do you see that motion under,
12 it says, item 9?

13 A. Yes.

14 67 Q. Do you recall this
15 motion?

16 A. I do not.

17 68 Q. Okay. Prior to
18 January 2013, were you aware that City staff had
19 received complaints from citizens in the police
20 about slippery conditions on the Red Hill?

21 A. No, I was not.

22 69 Q. Had you personally heard
23 any anecdotal complaints about slippery conditions
24 on the Red Hill?

25 A. No.

1 70 Q. Did you have any concerns
2 about the safety of the Red Hill?

3 A. No, I did not.

4 71 Q. Did you drive the Red
5 Hill yourself?

6 A. Many times.

7 72 Q. So, you said you don't
8 recall this motion sitting here today, one that
9 was nine years ago. At the time, when you were
10 general manager, would you have informed yourself
11 of any motions that dealt with the Red Hill?

12 A. So, in reference to this,
13 you know, it's there where the committee is asking
14 for information on the Red Hill Parkway
15 improvements, so at the time, the legislative
16 assistant would have recorded what the members of
17 the committee asked for during this Public Works
18 committee, and this is an item that I'm pretty
19 sure would have went on to an outstanding business
20 list and then the technical staff had to follow up
21 to get the information that was requested to
22 report back to council.

23 73 Q. So, this motion requires
24 staff to be directed to investigate upgrading
25 lighting and investigate better reflective

1 signage, among other things, and that a full
2 costing of options and alternatives be presented.

3 Were you involved in
4 determining which staff members within Public
5 Works would take the lead in implementing the
6 investigation set out in the motion?

7 A. No, I would not. This
8 would go through, at the committee when it was
9 brought up, the director, you know, whose
10 portfolio falls under the Red Hill, issues on this
11 would be the lead and direct the staff to who
12 should write the report.

13 74 Q. Okay. Which director
14 would that be?

15 A. This is under Traffic
16 Management and Operations, Traffic Engineering, it
17 looks like, so I would think it would be under --
18 I think it was under John Mater's portfolio at the
19 time and then you would have had, I think, Geoff
20 Lupton was the director and then Martin White
21 would have been the manager of roads and then
22 whatever staff they assigned it to to do the
23 review. That's my best recollection.

24 75 Q. So, you would have viewed
25 this motion at the time when you received it from

1 the legislative office as falling under the
2 purview of traffic engineering?

3 A. Yes.

4 76 Q. Traffic services
5 engineering, I think it was called then?

6 A. Yeah. That was where the
7 directors, after the committee meets, they know
8 which portfolio needs to follow up on all the
9 motions passed by council.

10 77 Q. Registrar, can you skip
11 to paragraph 17 of the same overview document,
12 page 10.

13 Just to close this loop,
14 Ms. Cameron, who is the assistant to Gary Moore,
15 advised Mr. Field, Mr. McGuire and Mr. Murray that
16 John Mater and his group would be taking lead on
17 the motion. So, I think you're quite right,
18 Mr. Mater was the director of corporate assets and
19 strategic planning, under which the traffic and
20 safety engineering department fell.

21 Registrar, you can take out
22 that call out.

23 That motion in particular was,
24 in part, an investigation of lighting. In your
25 view, did that also fall under John Mater's group?

1 A. Yes.

2 78 Q. Who was responsible for
3 selecting a consultant to assist City staff where
4 appropriate?

5 A. So, you know, it depends,
6 but in this case I would say John Mater's
7 portfolio, his staff are going to do the report.
8 You know, the City had a list, a roster, of the
9 consultants for various functions. I forget the
10 number. There was probably like 30 to 40 roster
11 consultants, so the staff in John Mater's
12 division, looking at what is required, would
13 select a consultant from the roster that pertains
14 to the work that needs to be done.

15 79 Q. Okay. So, it would be
16 John Mater's group to decide whether a consultant
17 was needed and then to select that consultant, if
18 a consultant was needed?

19 A. I believe so, yes.

20 80 Q. The roster program, do
21 you have knowledge of how consultants got on to
22 the roster?

23 A. Yes, I do.

24 81 Q. Can you describe that for
25 the Commissioner, please?

1 A. So, the roster
2 consultant, the list of consultants on the roster,
3 so there's categories you would have: Traffic
4 management, environmental, water, environmental
5 waste water analysis, waste management, transit
6 functions, and I believe it's every two or three
7 years, I think it was two years when I was there,
8 we put out a call for consultants to bid on
9 different work that the City has to do. And,
10 again, the roster consultant isn't just for Public
11 Works, it's for the entire City as they need it.
12 And the technical expert of that portfolio or
13 discipline would then, let's say you got ten
14 roster -- ten reports submitted, they would go
15 through and I'm guessing, but generally let's say
16 five of the consultants would be selected to be on
17 the City's roster.

18 And the premise for the roster
19 process is to expedite work that the City needed
20 to do. So, you went through the detailed report
21 review of what the consultant could provide. They
22 would go on the roster and then when something
23 came up, for instance, as we're looking at here,
24 the technical expert who needs an assignment would
25 then go to the roster captain and say, I need a

1 transportation consultant, you know, whatever the
2 expertise is for this, and the roster captain then
3 assigns a consultant for the division that needs
4 the work done. Does that help?

5 82 Q. It does. Thank you. So,
6 the roster captain, every couple of years, would
7 receive applications to be on the roster and then
8 would they score their applications?

9 A. Yes. So, they would go
10 through the evaluation, score it, and then make a
11 recommendation to put the professional consultants
12 on the roster in whatever category it may be. So,
13 again, you would have ten submissions to get on to
14 the roster, but the roster captain would -- and
15 I'm speculating -- only maybe take five, so some
16 would get on and some would not, but it was a
17 scoring system and it was ranked and there was a
18 committee, I believe, of all the roster captains.
19 And then as general manager, I was required to
20 sign off on the rosters, again, as a policy and
21 administration process. I didn't review any of
22 the roster consultant submissions.

23 83 Q. The benefit of having a
24 handful of consultants on a roster in any
25 particular technical area is you can forego a more

1 formal tendering system on a contract-by-contract
2 basis or a project-by-project basis. Is that
3 right?

4 A. That's correct.

5 84 Q. You said the roster
6 captain would select a consultant at the request
7 of a staff member who asked for a consultant for a
8 particular project. Did the roster captain, was
9 it the formal or informal policy that the roster
10 captain would hand out or distribute the contracts
11 in some sort of equitable way or allocate them so
12 that each entity on the roster would get access to
13 a project or two or three?

14 A. Again, it depends, but I
15 think the significance of the roster program is
16 the consulting engineering firms or the different
17 professions on the roster would receive
18 assignments throughout the period of the roster.
19 So, there may be a case where, you know, one
20 person, consultant, has the expertise and maybe
21 they were used in the past. Again, I'm
22 speculating. But the beauty of the roster
23 assignment is that it's self -- you know, if
24 somebody wasn't getting work, we would definitely
25 hear about it, so I guess the best way is it

1 self-monitors. So, all the firms selected to be
2 on the roster did receive work if it became
3 available throughout the term of the roster
4 assignment.

5 85 Q. Okay. So, the roster
6 captain would look at the project and the
7 consultants, try to find a good fit, and also look
8 to some sort of fair distribution of work as
9 between those on the roster?

10 A. That's a fair
11 description, yes.

12 86 Q. Okay. So, I take it,
13 then, you were not involved in the selection of
14 CIMA as the consultant on this project?

15 A. No, I was not.

16 87 Q. Registrar, you can take
17 down the OD. Were you involved in the day-to-day
18 work on the project to respond to this motion?

19 A. No, I was not.

20 88 Q. What was your practice as
21 general manager regarding your level of
22 involvement of -- pardon me, of involvement on a
23 project like this?

24 A. My involvement, unless
25 there was a financial issue related to the budget,

1 I may be contacted. All the technical side, I
2 have no technical expertise and all the discipline
3 required for that report would be in whichever
4 division was assigned the report to write it, to
5 author it.

6 89 Q. Apart from those times
7 that you have just mentioned where you might be
8 involved, were you expected to be kept in the loop
9 or updated on progress of this kind of project?

10 A. No, I was not.

11 90 Q. Registrar, can you bring
12 up HAM4307, please. Then you can go first to
13 image 2. So, this is an e-mail. You are not
14 copied on this e-mail. It's an e-mail from
15 Stephen Cooper to Dave Ferguson and Martin White.
16 And Mr. Cooper says:

17 "Gentlemen, I was
18 speaking to Mike Field
19 this morning and he said
20 that Gary Moore saw the
21 report -- "

22 And this is in September of
23 2013. This is in respect of the 2013 CIMA report:

24 " -- and was not pleased
25 with the recommendation

1 provided by CIMA. Have
2 either of you spoken to
3 him about this? Are you
4 aware of anything in
5 particular that he does
6 not like or agree with?"

7 In September of 2013, did
8 Mr. Moore express any concern to you about the
9 content of the draft 2013 CIMA report?

10 A. No, he did not.

11 91 Q. Registrar, can you go up
12 to image 1, please. Actually, can you call out
13 the last e-mail in this chain, which is the next
14 e-mail in this chain. This is the same day and,
15 again, you are not copied on this, but now it is
16 including Geoff Lupton, so Mr. Cooper's been taken
17 off and Mr. Lupton has been added:

18 "IN CONFIDENCE. Geoff,
19 Gary has a vested
20 interest in this from the
21 beginning and has
22 influenced it somewhat
23 already. Off the record,
24 I think he even spoke to
25 CIMA. I'm asking if you

1 can schedule a meeting
2 with him for us to talk
3 as we cannot afford staff
4 issues as we report to
5 council. He was on the
6 original team that built
7 the roadway. There was
8 nothing wrong with the
9 review or recommendations
10 from the consultant. I
11 deem this extremely
12 sensitive, as I don't
13 need any nonsense
14 relating to our actions
15 on Councillor Collins'
16 motion. Your thoughts,
17 Geoff?"

18 Did anyone raise with you
19 Mr. Martin's comments in this e-mail and, in
20 particular, that Mr. Moore had a quote, unquote,
21 vested interest or had influenced the drafting of
22 the 2013 CIMA report in some way?

23 A. No.

24 92 Q. How would you describe
25 Mr. Moore's interest in the Red Hill?

1 A. His interest was related
2 to the design and construction of the Red Hill.

3 93 Q. Did you have any concerns
4 that Mr. Moore's interest in the Red Hill
5 interfered with the advice he provided to the City
6 or steps he took in his job as director?

7 A. No.

8 94 Q. Mr. Registrar, can you
9 close out that call out. Hopefully you can read
10 this, Mr. Davis, but the next one is from Geoff
11 Lupton which says:

12 "Agreed. Another example
13 of why we need to review
14 internally first."

15 And then there's a back and
16 forth between Mr. Mater and Mr. Lupton about:

17 "Let's talk to Gary and
18 bring in CIMA, if
19 needed."

20 Just to close out that
21 exchange. Looking at this exchange and, for the
22 moment, you can assume that there was a discussion
23 with Mr. Moore, how would you have expected these
24 concerns to be handled among staff underneath you?

25 A. Well, I think, you know,

1 John Mater's group and Geoff Lupton are the lead
2 on this report that will be going to council.
3 They have been talking to Gary. It sounds like
4 they're going to set up a meeting and collaborate
5 on it. But again, reading through this, the
6 report is going and it's under the purview of John
7 Mater's division.

8 95 Q. In this case, I'm going
9 to suggest to you that lighting falls under
10 Mr. Moore and Mr. Field. Is that correct?

11 A. I don't recall.

12 96 Q. Okay. And if that's the
13 case, in fact if there are aspects of this motion
14 that fall under different departments within
15 Public Works, would you expect cooperation to get
16 to the end result and a response to council?

17 A. Yes, I would expect that
18 there's collaboration. Again, you have the lead
19 division, which is John Mater's, and if other
20 divisions have to be involved, whether it was the
21 engineering services, roads operations, you know,
22 the -- they would coordinate, but John Mater would
23 be the lead, as he's taking the report to the
24 committee.

25 97 Q. Okay. So, if Mr. Mater

1 is, in his group, the lead, would you expect him
2 to proceed even over objections from another
3 department within Public Works?

4 A. Well, it depends. You
5 know, objections are another division's opinions.
6 At the end of the day, the author is going to sign
7 off on it, so the discussions that take place are
8 more, I would classify them more as collaboration.

9 98 Q. Okay. And if
10 collaboration wasn't successful, what would you
11 expect would happen? Actually, maybe I'll put
12 this differently.

13 Would you expect that that
14 would be escalated to you?

15 A. If there was a
16 significant problem between divisions and the
17 directors couldn't sort it out, it may come to me,
18 depending on the issue.

19 99 Q. Did that happen
20 frequently?

21 A. Pardon me?

22 100 Q. Did that happen
23 frequently --

24 A. No.

25 101 Q. -- that directors

1 disagreed? Would you say, in fact, not
2 frequently, in fact, quite rare?

3 A. So, when the directors
4 are drafting reports and when there's
5 cross-divisional requirements, for it to get to
6 me, very rare. I can't recall an instance when it
7 did happen, but I'm sure between the directors
8 there was -- you know, because that's where all
9 the technical expertise is for the different
10 disciplines, so getting to me, very rare.

11 102 Q. Okay. And you would
12 expect your directors to be able to handle it
13 between themselves?

14 A. Yeah. They're very
15 professional. You know, their expertise in their
16 field, they know the discipline that's required,
17 they know where council is requesting information,
18 so they would definitely be professional.

19 103 Q. Registrar, can you go to
20 OD 6, page 48, paragraph 114, please. Thank you.
21 So, you'll see here this is September 2013, so
22 it's still the same period we were just talking
23 about. Mr. Ferguson forwarded a copy of a revised
24 draft report from CIMA, the CIMA report, to
25 Councillor Collins.

1 Registrar, can you close that
2 out. Sorry, I didn't give you much of a chance to
3 read the underlying e-mail, but it's that staff
4 are working and we're providing this information
5 to you. Then you'll see in the next paragraph
6 that Councillor Collins advised that Councillor
7 Clark and Councillor Jackson had also expressed an
8 interest in taking Mr. Ferguson up on his offer to
9 set up a meeting.

10 In your view, is it
11 appropriate for staff to share a draft consultant
12 report with some, but not all, members of the a
13 committee or council?

14 A. So, to qualify, if these
15 councillors and the ones that are referenced in
16 here, their wards, you know, the Red Hill Valley
17 Parkway goes through it, so they've requested it.

18 If other councillors wanted to
19 see it, they would have full access, but dealing
20 directly with ward councillors on issues in their
21 ward, you don't have to go to every other
22 councillor to share that report. But saying that,
23 that report, if any other councillor wants to see
24 it, they would have full access.

25 104 Q. Do you see any dangers in

1 the practice of providing information to certain
2 councillors but not all councillors on a
3 committee?

4 A. What do you mean by
5 danger?

6 105 Q. Do you have any concerns
7 with providing unequal access to information, to
8 some councillors but not others?

9 A. Well, as I said, the
10 report would be available to all councillors. The
11 ones specifically impacted, because it's in their
12 ward, wanted to see it. The councillor in the
13 Waterdown area, Dundas, if they wanted to see it,
14 they would, but because the issue isn't impacting
15 in their wards is why they probably did not
16 receive it, but at no time would they be excluded
17 from seeing it.

18 106 Q. Okay. Assume that the
19 staff report that ultimately goes to the committee
20 didn't append the consultant report that was
21 provided to these councillors. Do you have any
22 concerns about staff having shared a draft
23 consultant report with some, but not all, members
24 of the committee when it was not then subsequently
25 appended to the staff report to provide a bit more

1 context?

2 A. No concerns, no.

3 107 Q. Is it important that all
4 members of the committee are operating from a
5 shared set of information received from staff?

6 A. Yes.

7 108 Q. If a consultant's report
8 is not appended to a staff report, the other
9 councillors wouldn't automatically get a copy of
10 that consultant report. They would have to ask.
11 Is that right?

12 A. That's correct.

13 109 Q. Registrar, can you bring
14 up HAM4306, please, and if you can pull up the
15 last full e-mail from David Ferguson. It's the
16 fourth e-mail down. This is just to round out
17 that Mr. Ferguson and Mr. Cooper did meet with
18 Councillors Collins and Jackson, who were very
19 supportive.

20 You can close that out,
21 Registrar, and go down to the earlier e-mail from
22 Mr. Lupton, the next image. So, this is the day
23 before. Thank you, Registrar.

24 So, Mr. Lupton says about the
25 report:

1 "It was an interesting
2 and a long one."

3 Then just skipping down:

4 "I generally don't like
5 sending councillors thick
6 technical reports,
7 especially in draft,
8 without our thoughts and
9 recommendations."

10 Do you see that?

11 A. Yes.

12 110 Q. What are your views on
13 providing consultant reports to councillors?

14 A. Well, it depends. So, in
15 this case, the councillors, you know, their wards
16 are impacted by the Red Hill Valley Parkway have a
17 vested interest in what's been requested of staff.
18 And, again, that probably stems from, you know,
19 the constituents in the ward, if they have
20 questions about the parkway going through those
21 wards, as Geoff indicates, I generally don't like
22 sending it, but he did because they wanted to
23 review it. And so, I think what they did in
24 meeting with them, with the draft report, is they
25 could answer specific questions, and so I think

1 councillors could ask to see a copy of the
2 consultant report if they wanted --

3 A. Correct.

4 114 Q. -- and could ask to table
5 a motion? If the councillors didn't ask and the
6 consultant report was not appended, that
7 consultant report does not become publicly
8 available to citizens. Is that right?

9 A. I'm not sure, to be
10 honest. You could get it through FOI.

11 115 Q. Absent FOI, just the
12 usual process of, for example, posting staff
13 reports on the City's website, it wouldn't follow
14 that process. Is that fair?

15 A. That's fair, yes.

16 116 Q. We're going to turn to
17 that 2013 staff report now. Registrar, it's
18 RHV668, please.

19 Mr. Davis, I'm just giving you
20 a moment to look at the first page. You'll see
21 it's submitted by you, prepared by Mr. Cooper and
22 Mr. Ferguson, and this is November of 2013. So,
23 this would have been before that process change
24 that you talked about where directors would submit
25 reports instead of you?

1 A. That's correct, yes.

2 117 Q. So, you'll see there's
3 the council direction, the one that we went
4 through, and then there's information. Registrar,
5 can you pull up image 1 and 2 at the same time.
6 I'm not sure if this makes it more readable for
7 you, Mr. Davis, or less, but this is the report.
8 And there are some charts after this, but this is
9 the drafting of the report.

10 I'll just show you in case
11 this might refresh your memory. Registrar, can
12 you also now turn to the next two pages and put
13 them up. They're Appendix A and then there should
14 be one more. Actually, I think there might be
15 more, but just in terms of being able to see the
16 visual style of this report, I don't know if
17 that's helpful, Mr. Davis, but I'm going to turn
18 now back to image 1 and 2, please, Mr. Registrar.
19 Thank you.

20 And just looking at these two
21 pages and also the format of the appendices, do
22 you remember reviewing this information report?

23 A. No, I do not.

24 118 Q. Do you recall your
25 process for signing off on it?

1 A. So, the report would have
2 come to me. It would have been prepared by the
3 experts in their divisions, signed off. There's a
4 sign-off sheet with all reports, so the directors
5 would have signed this off, forwarded it to the
6 general manager's office and then I would sign as
7 required by policy.

8 119 Q. And you said --

9 A. Sorry. Then it would go
10 to agenda review committee with the chair and vice
11 chair of the Public Works committee and
12 discussions would take place if there was any
13 questions there.

14 120 Q. You said you would
15 have -- the report would have come to me and it
16 would have been prepared and I would have signed
17 off. All those sound like that might be your
18 practice. Do you have a recollection of whether
19 you did that in this case?

20 A. I don't have a
21 recollection of signing this report, but if
22 it's --

23 121 Q. Is that your practice --

24 A. -- submitted by the GM, I
25 would presume I would sign it.

1 122 Q. Okay. It's an
2 information report. Do you recall if you read the
3 report in its entirety before signing off on it?

4 A. I don't recall reading
5 the entire report, no.

6 123 Q. Is that to say you think
7 you did not, given your practice about information
8 reports?

9 A. Yes. So, in this case
10 when I look at the subject and I see they're
11 reported to an outstanding business item list, you
12 know, I know that's something that was required
13 for the division's expertise, was prepared, and I
14 would sign off on it. There's no -- and I
15 wouldn't have gone through the entire report or
16 the appendices.

17 124 Q. And you wouldn't have
18 reviewed the underlying 2013 CIMA report that's
19 mentioned in it. Right?

20 A. No, I would not have.

21 125 Q. You expected that the
22 staff report would accurately summarize the CIMA
23 report and the recommendations that were made in
24 the CIMA report?

25 A. Yes, I would.

1 126 Q. And also explain why CIMA
2 had made those recommendations?

3 A. I think the technical
4 experts would have provided all the information
5 that council requested.

6 127 Q. Okay. Who were you
7 counting on to make sure that the staff report
8 accurately summarized all of that?

9 A. It would have been signed
10 off by the divisional director.

11 128 Q. So Mr. Mater?

12 A. Yes.

13 129 Q. So, as a result of
14 relying on Mr. Mater -- and I'll say Mr. Mater and
15 his staff underneath him. Is that fair?

16 A. Yes.

17 130 Q. You didn't personally
18 satisfy yourself that this report was an accurate
19 and complete summary of the findings,
20 recommendations or concerns expressed in the 2013
21 CIMA report. Right?

22 A. So, I don't have the
23 technical expertise to comment on that report, so
24 I submitted this based on John Mater and his staff
25 providing all the required technical expertise and

1 as requested by council.

2 131 Q. If the staff report is
3 found to not be an accurate and fair summary of
4 the underlying CIMA report, who within the City
5 would be accountable for that, in your view?

6 A. Well, it depends on what
7 you mean it's not accurate.

8 132 Q. I'm happy to rephrase.
9 The accuracy of a summary, I think you said,
10 was you relied on Mr. Mater to do that?

11 A. That's correct.

12 133 Q. And if he did not do
13 that, was it his responsibility or was it
14 ultimately your responsibility?

15 A. So, again, if it wasn't
16 done, do you have an example of where it wasn't
17 done in this case or are you just hypothetically
18 asking me the question?

19 134 Q. I'm trying to be as
20 hypothetical as possible, just to understand how
21 you viewed the respective responsibilities between
22 you and those underneath you.

23 A. Yes. So, in that
24 context, John Mater would be responsible for the
25 active CIMA as the divisional director.

1 Ultimately, it's the Public Works department, so I
2 can't be void of any accountability either, you
3 know, because it's my department, but I definitely
4 rely extremely heavily on all my divisional
5 directors who have the expertise in the different
6 portfolios to ensure accuracy in all the reports
7 that they deliver.

8 135 Q. Thank you. Did you
9 attend the meeting of the Public Works committee
10 where the committee received this report?

11 A. So, I would have been
12 there. As the general manager, I attended all the
13 committees. I wouldn't be there if I was on
14 vacation, or if I was sick, if I was in collective
15 bargaining, but, you know, I would attend all the
16 Public Works committee meetings if I was at work
17 that day that it was on.

18 136 Q. Okay. Registrar, can you
19 pull up the paragraph that is on image 1 and under
20 Information and then, "As a result of the motion."
21 Thank you. It says here:

22 "Staff retained CIMA
23 consulting to perform an
24 in-service safety
25 review."

1 And then just closing that,
2 Registrar, and then the next paragraph:
3 "The report included the
4 review."
5 So, there. So, it goes on and
6 I'm not going to take you through each instance,
7 but it references the report, that being the
8 report that CIMA completed. When you signed off
9 on the staff report, did you believe that the
10 consultant report had been finalized?

11 A. Yes, I would believe
12 that. Yes.

13 137 Q. Is it your expectation
14 that an information update summarizing a
15 consultant report would be based on a final
16 report?

17 A. Yes.

18 138 Q. Did anyone tell you that
19 it wasn't finalized?

20 A. I don't recall.

21 139 Q. Registrar, you can close
22 that call out. Did anyone tell you that staff
23 subsequently asked for changes to be made by CIMA
24 to the CIMA report?

25 A. I don't recall, no.

1 140 Q. Recognizing it's a
2 technical report and that you signed off on the
3 staff report, would you expect staff to advise you
4 if there were subsequent changes to the CIMA
5 report?

6 A. It would depend on, I
7 guess, the magnitude, but in general practice, no.

8 141 Q. If there were changes,
9 would you expect those changes to be brought to
10 the attention of the Public Works committee or,
11 again, would that depend on the magnitude of the
12 changes?

13 A. If there was changes
14 after this went and they were, again, a
15 significant change that the committee should be
16 informed about, there should be an additional
17 report to this report indicating that.

18 142 Q. Okay. If the changes
19 were significant?

20 A. Correct.

21 143 Q. And the significance,
22 would that be determined by staff?

23 A. That's correct.

24 144 Q. Registrar, can you turn
25 up OD, page 79, paragraph 200, please. Just while

1 this is coming up, you mentioned the outstanding
2 business list. Just to confirm, that's the list
3 where requests for followup from the -- pardon me,
4 Registrar. I'm sorry, I misspoke. I meant to say
5 OD 6, page 79, paragraph 200. Apologies. Thank
6 you.

7 The outstanding business list,
8 that's where follow-up items that are going come
9 back to a committee reside. Is that right?

10 A. That's correct.

11 145 Q. And so, here, you'll see
12 at paragraph 200 and 201, that the council
13 approved that staff report, like the one we were
14 looking at, about the CIMA report and staff were
15 directed to report back respecting the lighting
16 aspects. That's in the middle of paragraph 201?

17 A. Right.

18 146 Q. And in the usual
19 practice, the legislative clerk then sends that to
20 you and you distribute it out to members of Public
21 Works. Is that right?

22 A. Correct.

23 147 Q. Registrar, can you bring
24 up HAM4339, please. And, again, you can start at
25 image 2, please. Thank you.

1 So, you'll see at the bottom
2 of this page, Nancy Clark is saying:

3 "For your review and
4 follow up -- "

5 I'm not going to take you to
6 it. The document below is from the legislative
7 clerk with the outstanding business list. Nancy
8 Clark is your assistant. Is that right?

9 A. That's correct.

10 148 Q. So, that's that
11 distribution from legislative clerk to your office
12 and then into Public Works?

13 A. Correct.

14 149 Q. Okay. So, you'll see the
15 next one up in the middle of the page,
16 Ms. Cameron, Diana Cameron, who you'll see is an
17 administrative assistant to Gary Moore in her
18 signature line, she looks like she cut and paste
19 part of the outstanding business list, item 11.1,
20 and sent it to Mike Field, Peter Locs, Gord
21 McGuire and Gary Moore. Do you see that?

22 A. Yes.

23 150 Q. And this is exactly what
24 I just referenced in paragraph 201 reporting back
25 on lighting aspects?

1 A. Right.

2 151 Q. Registrar, can you call
3 out the e-mail from Gary Moore, which is at the
4 top of this page, this image. I'm going to give
5 you a moment to read this.

6 A. Okay.

7 152 Q. So, this is an e-mail
8 from Mr. Moore in December of 2013 to Geoff
9 Lupton, Martin White and John Mater. I think you
10 said earlier no one had raised with you that
11 Mr. Moore had concerns about the 2013 CIMA report.
12 Is that right?

13 A. That's correct.

14 153 Q. Did Mr. Moore express to
15 you any of the views or comments that he has put
16 in this e-mail to Mr. Lupton, Mr. White and
17 Mr. Mater?

18 A. No, I don't recall.

19 154 Q. Did anyone else tell you
20 that Mr. Moore held these views after the Public
21 Works committee meeting?

22 A. No.

23 155 Q. Do you have any concerns
24 with a director responding in this way to other
25 senior staff about a council direction?

1 A. I don't. I mean, he's
2 providing input from when he designed and built it
3 to the division that's going to ensure the report
4 goes back to the committee.

5 156 Q. The third line from the
6 bottom:

7 "This doesn't even begin
8 to address the fact we
9 shouldn't be talking
10 about potential
11 improvements that give
12 any claimants more
13 ammunition!"

14 What do you think of a
15 director saying, quote, "we shouldn't be talking
16 about potential improvements"?

17 A. I don't have any comment
18 on that.

19 157 Q. Okay. In your time as
20 general manager of Public Works, did you think
21 that making safety improvements might increase
22 ammunition for individuals who might make claims
23 against the City?

24 A. I don't recall, no.

25 158 Q. Did you have concerns

1 that Claimants could point to safety improvements
2 to argue that, before those improvements, whatever
3 was being improved had not been safe?

4 A. So, it depends on the
5 specifics of it, but no, I wouldn't have had any
6 concerns.

7 159 Q. How would you direct City
8 staff to consider the possibility of increasing
9 litigation claims when they're assessing whether
10 to move forward on safety improvements?

11 A. Can you ask that again,
12 please?

13 160 Q. Sure. What direction
14 would you give to City staff when they are
15 assessing whether to move forward on safety
16 improvements? What consideration should they give
17 to the possibility of increased claims against the
18 City?

19 A. Well, I think that the
20 divisions who had the expertise would follow up as
21 needed, whether it be between divisions or with
22 another department within the City. That's where
23 they would get their expertise to address
24 concerns, as you mentioned.

25 161 Q. Sure. So, the City staff

1 would have the expertise on the safety
2 improvements. To what extent should they consider
3 the possibility of increased litigation when
4 they're assessing whether to move forward with
5 those safety improvements?

6 A. I don't have an answer
7 for you. I don't recall ever having to do that.

8 162 Q. Okay. Going back to this
9 call out and recognizing that you're not copied on
10 this, Mr. Moore says:

11 "Did we get CIMA to
12 finalize their report to
13 our liking?"

14 As general manager, would you
15 have had concerns if this particular comment had
16 been raised with you about a director saying or
17 asking if a consultant had finalized a report to
18 our liking?

19 A. So, to put it into
20 context --

21 MR. LEDERMAN: Sorry, just a
22 moment. I'm having some difficulties that there's
23 been a question, that there's been a number of
24 questions put to this witness about statements
25 contained in an e-mail that he was neither the

1 author or recipient of, so I'm just having some
2 difficulty with understanding how the witness is
3 able to answer a question in the way in which it
4 has been framed in the last series of questions in
5 this way.

6 JUSTICE WILTON-SIEGEL: I'll
7 let Ms. Lawrence speak to that first.

8 MS. LAWRENCE: Thank you,
9 Commissioner. Recognizing, as I did, that
10 Mr. Davis has not been copied on this particular
11 e-mail, I'm asking in his role of general manager
12 if he had concerns about the particulars of what
13 Mr. Moore is expressing here. And, in this case,
14 this last question was about whether asking
15 someone, a consultant, to finalize a report to
16 our, quote, unquote, liking, I think it is
17 relevant and helpful to understand the views of
18 the leader of Public Works in respect of this kind
19 of commentary and presumably this kind of action.

20 JUSTICE WILTON-SIEGEL: All
21 right. Mr. Lederman, do you have anything further
22 to say?

23 MR. LEDERMAN: No, other than
24 I still don't appreciate how asking this witness a
25 question about the sufficiency or the

1 appropriateness of a question that was posed by
2 Mr. Moore in this e-mail to other individuals, how
3 that's something that this witness is able to
4 comment on.

5 JUSTICE WILTON-SIEGEL: Okay.
6 So, I think the question has to be put in terms of
7 a hypothetical situation, not specifically by way
8 of a comment on the present circumstances, but I
9 think the question can be put in those terms;
10 that's to say it can be put as: If there were a
11 situation of the nature described here, what would
12 his response be as the leader of the Public Works
13 department?

14 MS. LAWRENCE: Thank you,
15 Commissioner. I'm happy to rephrase to make that
16 a clear question for Mr. Davis.

17 JUSTICE WILTON-SIEGEL: Okay.

18 BY MS. LAWRENCE:

19 163 Q. Mr. Davis, if a director
20 who does not have the lead on a report asked
21 another director who did about whether a
22 consultant had finalized a report to -- I'm just
23 going to use the hypothetical -- the City's
24 liking, would you have had any concerns with that?

25 A. So, to put it into

1 context, you have a consultant who was given an
2 assignment by someone from the City. They provide
3 a report and that report gets vetted back with
4 staff and it gets vetted back and forth between
5 them.

6 But the underlying issue for
7 me would be they're both professionals in respect
8 of their disciplines and the consultant, they may
9 be questioned with respect to findings, but at the
10 end of the day they're very professional and
11 they're not going to sign a report that would
12 jeopardize their professional standing.

13 So, in the context here, this
14 is a to and fro, but at the end of the day, the
15 report that gets signed off by the consultant is
16 their professional opinion and I can't believe
17 that they would make an adjustment to appease the
18 City or any other client.

19 164 Q. Thank you. Would you
20 have concerns if a senior staff member asked a
21 consultant to revise their opinion?

22 A. No, not at all.

23 165 Q. Mr. Moore says in this
24 e-mail before they ask for a copy, assuming that
25 that means council, was it common in your

1 experience for members of Public Works or council
2 to ask for reports after an information report?

3 A. Do you mean like a
4 follow-up report?

5 166 Q. No. I mean after the
6 committee receives an information report, reviews
7 the information report, was it common for the
8 committee to then ask for the underlying documents
9 that are referenced in an information report?

10 A. I don't recall.

11 167 Q. Okay. Is that fair to
12 say it might depend on the circumstance? Hard to
13 say?

14 A. Well, everything depends
15 on circumstances, so, you know, I'm not sure which
16 report you're referring to.

17 168 Q. Okay. Mr. Registrar, can
18 you close out that call out and go up to image 1.
19 Can you call out the bottom.

20 And, again, you're not copied
21 on this e-mail. Mr. Lupton responds to Mr. Moore:

22 "Did you see our info
23 report? We did our best
24 to discourage it at
25 committee, but they want

1 us to come back in a
2 year's time."

3 As general manager, did you
4 have any concerns about staff taking steps to
5 discourage the Public Works committee from asking
6 for updates?

7 A. So, it depends on the
8 circumstances. You know, discourage because they
9 wanted it sooner? But this is normal practice for
10 a report that council, if they asked for more
11 information, it would go back and they've given a
12 date to report on it.

13 169 Q. Okay.

14 A. So I don't have any
15 concerns, no.

16 170 Q. Registrar, you can close
17 this out and if you can go to call out both
18 Mr. Moore's next e-mail and Mr. Lupton's next
19 e-mail together.

20 So, Mr. Moore says:

21 "They don't want you to
22 report in a year. They
23 just want another report
24 on lighting now."

25 So, again, just so that I

1 understand your evidence, what role did you
2 understand Mr. Moore played in lighting on the
3 RHVP post-construction?

4 A. I'm not sure what his
5 function was after post-construction.

6 171 Q. So, I mean in the context
7 of his role as director of engineering services,
8 what role, if any, did you understand he played in
9 lighting on the Red Hill?

10 A. So, in this case, I think
11 because he built it and it had lighting, the other
12 divisions want to collaborate with him with
13 respect to the lighting, but at the end of the day
14 the report is going to council as requested, and
15 so I believe the two departments are
16 collaborating. They want to know about the
17 lighting, when it was built, and they're moving
18 forward to provide council with the information
19 they're requesting.

20 172 Q. Okay. So, that's what
21 you understand Mr. Moore's involvement to be, is
22 that he was involved in the initial lighting
23 during the design phase. Is that right?

24 A. Yeah. During design and
25 construction, he was involved with it, yes.

1 173 Q. But not thereafter?

2 A. Not to my knowledge, no.

3 174 Q. Okay. So, you'll see
4 that Mr. Moore references a report on lighting
5 now. Did Mr. Moore ever give his view to you
6 about the sufficiency of lighting on the Red Hill?

7 A. No, he did not.

8 175 Q. Did anybody else convey
9 to you Mr. Moore's views on the sufficiency of
10 lighting on the Red Hill?

11 A. No.

12 176 Q. So, you'll see Mr. Lupton
13 says:

14 "You can lead a horse to
15 water. We tried."

16 Mr. Registrar, can you close
17 that out and call out the next two e-mails as one
18 call out. No, close that and call out, "Good
19 plan," and then the next e-mail down. There we
20 go. Thank you.

21 Mr. Moore says in response to
22 "you can lead a horse to water":

23 "I just shoot the horse."

24 And Mr. Lupton says, "Good
25 plan." Did anyone ever convey to you that there

1 had been an exchange in which Mr. Moore said, "I
2 just shoot the horse"?

3 A. No.

4 177 Q. If someone had brought
5 this message, this e-mail exchange, to your
6 attention at the time, would you have felt the
7 need to do anything about it?

8 A. So, this is an excerpt
9 from a conversation, so I have no comment on this.

10 178 Q. I understand right now
11 you might not have any comment, but when you were
12 in the position of general manager, would you have
13 felt the need to do anything about it, if it was
14 brought to your attention?

15 A. So, again, the overall
16 context of it is regarding a report that has to go
17 to committee. They're talking back and forth. At
18 the end of the day, the report has to go to
19 committee.

20 179 Q. Yes, so that's the
21 context. So, when you were in the position of
22 general manager, if this had been brought to your
23 attention, would you have felt the need to do
24 anything about it?

25 A. Again, it depends on who

1 brought it and what the overall issues were with
2 respect to it. You're dealing in isolation. I
3 really can't comment.

4 180 Q. I'm speaking in
5 isolation. If you just received this, would you
6 have felt the need to do anything about it?

7 A. I would have to go review
8 it to see what the background was for it.

9 181 Q. Thank you. I'm going to
10 turn now to the Tradewind report. You've heard
11 that term. Right?

12 A. Yes. Since this inquiry
13 started, I've heard that term.

14 182 Q. Okay. Registrar, you can
15 close out this document. Thank you.

16 In the fall of 2013, did you
17 have any concerns about the friction levels on the
18 Red Hill?

19 A. I did not.

20 183 Q. In the fall of 2013, were
21 you aware that Mr. Moore had requested that Golder
22 Associates conduct friction testing on the Red
23 Hill?

24 A. No.

25 184 Q. Is that something you

1 would have expected someone to tell you, as GM of
2 Public Works?

3 A. No.

4 185 Q. In 2014, did you see or
5 otherwise learn about the Tradewind report on
6 friction testing on the Red Hill?

7 A. No.

8 186 Q. Did you see or otherwise
9 learn about the Golder Associates report about the
10 Red Hill in 2014?

11 A. No.

12 187 Q. When did you learn about
13 the Tradewind report or the Golder report?

14 A. I didn't.

15 188 Q. Only in advance of
16 preparation for the inquiry process?

17 A. That's correct.

18 189 Q. Did Mr. Moore ever
19 discuss friction testing on the Red Hill with you?

20 A. No.

21 190 Q. Did he ever tell you that
22 he had any concerns about friction levels on the
23 Red Hill?

24 A. No.

25 191 Q. Did he ever tell you he

1 was doing any investigation into friction or
2 slipperiness or anything like that when it came to
3 the Red Hill?

4 A. No.

5 192 Q. Did Mr. Moore ever
6 discuss any friction test results with you?

7 A. No.

8 193 Q. Did he ever tell you,
9 that is Mr. Moore, that he received friction test
10 results but he wasn't sure how to interpret them?

11 A. Say it again, sorry.

12 194 Q. That he had received
13 friction test results but he was not sure how to
14 interpret them?

15 A. No, I never had that
16 conversation with him.

17 195 Q. Did anyone in the City
18 ever tell you that they were having trouble
19 obtaining friction test results from Mr. Moore?

20 A. No.

21 196 Q. Did anyone tell you that
22 Mr. Moore had refused to provide them with
23 friction test results?

24 A. No.

25 197 Q. If a consultant's report

1 recommended further investigation into an issue
2 that may relate to public safety, what do you
3 expect the Public Works staff member who receives
4 that report to do with it?

5 A. So, the respective
6 division and the experts in that division would
7 review it and recommend the necessary action, if
8 needed.

9 198 Q. If staff in other groups
10 within Public Works wanted a consultant report
11 that was being held by another group in Public
12 Works, how would you expect the holder of the
13 report to share that information?

14 A. Well, I feel there should
15 be collaboration between the divisions. You know,
16 I assume the asking division has a need or a
17 requirement for the report, so it should be
18 shared.

19 199 Q. And generally, did you
20 try to lead Public Works with a view that
21 collaborative transparency was helpful amongst
22 your staff?

23 A. That's correct.

24 200 Q. If a councillor asked a
25 staff member for a copy of a consultant's report,

1 what would you expect the staff member to do?

2 A. Provide the councillor
3 with the report.

4 201 Q. Thanks. I'm going to
5 turn now to 2014, where City staff conducted a
6 safety review on the LINC. Do you remember that?

7 A. I don't.

8 202 Q. Okay. Registrar, can you
9 go to HAM8779. Thanks. And can you call out the
10 bottom e-mail from John Mater.

11 So, you'll see this is
12 November 2014. It's an e-mail from John Mater to
13 you, copied to a number of people within John
14 Mater's group, and he says:

15 "As per our conversation,
16 staff have been reviewing
17 the collision history on
18 the Red Hill/LINC. While
19 I don't have a final
20 picture yet, there is
21 enough of a concern that
22 I believe we need to do a
23 more in-depth review."

24 Do you remember having a
25 conversation with Mr. Mater in which he expressed

1 that staff had been doing collision history?

2 A. I don't.

3 203 Q. Or a conversation in
4 which he advised you that there was enough of a
5 concern that there should be a more in-depth
6 review needed?

7 A. I don't recall a
8 conversation, no.

9 204 Q. Okay. If we just skip
10 down to the fourth line:

11 "I anticipate this being
12 a roster assignment using
13 RLC funding for the
14 review."

15 What's RLC funding?

16 A. It's the red light camera
17 reserve.

18 205 Q. And was that a reserve
19 that could be deployed for various traffic issues?

20 A. That's correct.

21 206 Q. It didn't have to just be
22 about stop signs, I presume?

23 A. No. It's road, traffic
24 lights, studies, you know. I don't know the
25 exact -- in order to set up a reserve fund,

1 there's specific criteria to utilize that funding,
2 and so when they did their review of what needs to
3 be done, I'm assuming that this met the
4 requirements and the red light camera reserve
5 being used, it's because this is an unbudgeted
6 item that John is proceeding with, so I would have
7 been -- anything unbudgeted, we definitely would
8 have had a conversation. I don't recall it, but
9 in order to go to that reserve, you know, it's
10 something he would have brought forward to me to
11 discuss.

12 207 Q. Okay. He says:
13 "As you know, Councillor
14 Jackson and others have
15 raised concerns regarding
16 this and are likely to
17 request a safety review.
18 I believe we should be
19 proactive."

20 It says there, "As you know,
21 Councillor Jackson and others," so by
22 November 2014, were you aware that Councillor
23 Jackson and other councillors had raised concerns
24 about the Red Hill or the LINC?

25 A. I don't recall it, no.

1 208 Q. So, Mr. Mater raising
2 this with you, it was on the budget side, not on
3 the substance side. Is that right?

4 A. Yes. I mean, they have
5 done the analysis, what needs to be done. I
6 imagine they've done a costing and they need a
7 source of funding, so on the financing of it,
8 utilizing the red light camera reserve was an
9 option and I would assume I approved, yeah, go
10 ahead and do it, put it in a report so finance
11 will understand we do have a source of funding for
12 an unbudgeted item.

13 209 Q. Okay. Moving now to the
14 2015 CIMA report, in May of 2015, there was an
15 accident on the Red Hill that killed two young
16 women. Do you recall that accident?

17 A. Yes.

18 210 Q. That was in May. That
19 led to a motion for an in-depth safety review,
20 much like the one that Mr. Mater was suggesting in
21 November of 2014 to be proactive. And
22 Mr. Ferguson prepared a draft staff report in
23 respect of that in September of 2015.

24 Registrar, can you bring up
25 overview document 7, page 45, paragraph 142.

1 Thank you. Perfect, thank you.

2 Just before I go to this, did
3 you have any involvement with the work of CIMA for
4 the 2015 safety review that CIMA completed?

5 A. No, I did not.

6 211 Q. Okay. Mr. Registrar, if
7 you can call out that area you were going to call
8 out. Thank you.

9 So, Mr. Ferguson in traffic
10 safety and engineering is putting together a staff
11 report and he e-mailed Mr. Moore and he says:

12 "As you're aware, I'm
13 finalizing the RHVP/LINC
14 report and I've included
15 the following
16 recommendations that
17 impact engineering
18 services."

19 And then he lists four
20 proposed recommendations to put in the staff
21 report, just to give you some context.

22 The four proposed
23 recommendations are that engineering services be
24 directed to investigate a high-tension steel cable
25 median barrier installation and shield rock cuts

1 and report back with implementation on a budget
2 plan. The second is that engineering services be
3 directed to identify a funding source to complete
4 pavement friction testing. The third is
5 identifying a funding source to complete shoulder
6 rumble strip installation on the LINC. And then
7 the last is that engineering be directed to
8 investigate the installation of illumination on
9 the Red Hill and to report back with a proposed
10 implementation and budget plan.

11 So, Mr. Ferguson has put that
12 in. This was amongst other recommendations which
13 Mr. Ferguson identified as being recommendations
14 that traffic safety and operations would do or
15 that roads maintenance would do, and these ones
16 were specific to engineering.

17 In your experience, was it
18 common to identify the specific departments who
19 would be completing the recommendations in a
20 recommendation report?

21 A. It would be. You know,
22 as Dave has said, you know, he's finalizing it, so
23 this is his proposal for how the work is to get
24 done. So, this looks like the recommendations
25 that would follow to council. But, again, you

1 know, it says finalizing, so I would have to see
2 what the final recommendations were with respect
3 to, you know, which division or department would
4 be taking the lead.

5 212 Q. Okay, so that's really my
6 question. So, I've just shown you some of them,
7 that engineering services be directed to
8 investigate the high-tension steel cable, for
9 example. And then I can give you some others.
10 Roads maintenance, they're directed to ensure that
11 the grass around the Red Hill is cut regularly.
12 Traffic safety and engineering, to put up some
13 appropriate signage.

14 So, my question is really: Is
15 it common to have the specific departments within
16 Public Works actually specifically identified?

17 A. Yes. In some reports,
18 yes. It definitely can be.

19 213 Q. And is that helpful to
20 ensure who owns the project, who owns the
21 responsibility of completing the information or
22 the task put into the recommendation?

23 A. Yes. So, it would be,
24 you know, as Dave was doing here, he thinks that
25 the engineering services under these different

1 recommendations should be the lead. But, again,
2 it says finalizing. I'm a little -- you know,
3 it's not the whole recommendation, but anyway,
4 it's not unusual, no.

5 214 Q. Okay. Registrar, you can
6 close that down and can you open or call out
7 paragraph 34, please. So, in response, Mr. Moore
8 writes to Mr. Ferguson copying Mr. Mater and
9 Jennifer DiDomenico and says:

10 "I wasn't aware. I need
11 to see it and it needs to
12 be discussed at DMT or at
13 least with John, Gerry
14 and myself before it
15 goes."

16 And then he provides some
17 comments. Just stopping there, what is DMT?

18 A. It's the departmental
19 management team, so generally it should have been
20 PW, Public Works, and then department management
21 team, so it consists of all the directors from the
22 various portfolios.

23 215 Q. Is it just directors?

24 A. Generally it's the
25 directors. Depending on an issue, then the

1 support staff may come to part of the meeting.

2 216 Q. Okay. And how often do
3 those meetings take place?

4 A. I believe they were every
5 two weeks.

6 217 Q. Just going back to this
7 e-mail in terms of the comments that Mr. Moore
8 provides, he says:

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

16 To the extent there's any
17 concern about which department within Public Works
18 should be responsible for a safety improvement
19 that's been recommended, is that the kind of thing
20 that would go to DMT?

21 A. Well, in this case, you
22 know, it definitely is something because, you
23 know, the two divisions, and there's probably more
24 divisions working on it, because you didn't show
25 me all the recommendations from Mr. Ferguson's

1 proposals, but this is something that, as they
2 said, it should come up to DMT so we could have an
3 overall discussion. And, at that point, you know,
4 we would look at which division should be doing
5 what.

6 218 Q. Okay. So, this would be
7 the kind of thing, there's some concern or some
8 issues in dispute?

9 A. Yeah.

10 219 Q. Okay. Jumping down to
11 the fourth of Mr. Moore's comments:

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

1 then the maintenance
2 cost."

3 Did anyone advise you of
4 Mr. Moore's view that staff -- pardon me.
5 Mr. Moore's view that illumination was never going
6 to happen, so stop asking?

7 A. No.

8 220 Q. Did anyone advise you of
9 Mr. Moore's view that approvals for the Red Hill
10 were based on no illumination for environmental
11 reasons?

12 A. No.

13 221 Q. Do you have a view, given
14 your role as general manager, about whether
15 engineering services would be responsible for
16 investigations for safety improvements on the Red
17 Hill?

18 A. Well, I think the road's
19 operation and traffic operations and traffic
20 engineering, whatever divisions they were in,
21 would be the leads on this.

22 222 Q. Okay. Registrar, can you
23 close that down and go to OD7, page 56,
24 paragraph 170, please. Just jump forward a month
25 in time and Mr. Mater responded, copying Mr. Moore

1 and copying, I believe, an administrative
2 assistant and said:

3 "This report -- "

4 So, I can tell you this is
5 about the staff report, the one that Mr. Ferguson
6 has been finalizing:

7 " -- and to Gerry for the
8 16th, showing us working
9 to arrange a meeting for
10 Gary and I with Gerry."

11 Do you recall a meeting with
12 Mr. Mater and Mr. Moore to discuss the 2015 CIMA
13 report or the staff report that was going to
14 summarize it?

15 A. No, I don't.

16 223 Q. Do you recall if this
17 issue about the CIMA report and the staff report
18 came up at DMT?

19 A. No.

20 224 Q. Do you recall discussing
21 the 2015 CIMA report, the consultant report or the
22 staff report, with anybody?

23 A. No, I don't.

24 225 Q. Did anyone give you a
25 draft version of either the consultant report or

1 the staff report?

2 A. A draft?

3 226 Q. Mm-hmm.

4 A. No.

5 227 Q. Do you recall if anyone
6 told you that Mr. Moore had concerns about the
7 2015 CIMA report?

8 A. No.

9 228 Q. And he didn't express any
10 concerns to you directly?

11 A. No.

12 229 Q. Registrar, can you go to
13 paragraph 153 of the same document. So, the day
14 before Mr. Mater sends that e-mail saying a call
15 with or a meeting with Gary and Gerry and John,
16 Mr. Moore responded to Mr. Ferguson and e-mailed
17 Mr. Ferguson, attaching comments on a 2015 report.
18 Those are comments that are built, embedded, into
19 the document.

20 Did anyone ever share a copy
21 of Mr. Moore's comments on the 2015 report with
22 you?

23 A. No.

24 230 Q. Would it be helpful for
25 me to go into that document so you can look at it

1 to refresh your memory, just to make sure?

2 A. If you want, yeah.

3 231 Q. If you are clear, if you
4 have a clear recollection that no one ever did,
5 that's fine.

6 A. But I don't recall it, so
7 no.

8 232 Q. Okay. Mr. Registrar, can
9 you bring up HAM689, please. So, you'll see this
10 is the e-mail where he says, "My comments." And
11 then, Registrar, the attachment to that is HAM690.

12 So, this is what CIMA's
13 reports, this is their general format. Is this
14 familiar to you?

15 A. The CIMA one, no.

16 233 Q. Just in general sort of
17 that CIMA uses this format for the front page of
18 many of their reports. This doesn't ring a bell
19 for you?

20 A. No, it doesn't.

21 234 Q. Can you go to image 4,
22 please. This is the table of contents. Again,
23 I'm just trying to see if this might assist you in
24 confirming if you ever received either a draft of
25 this or a draft that had Mr. Moore's comments on

1 it?

2 A. So, I don't ever recall
3 seeing this, no.

4 235 Q. Okay. I'm not going to
5 dig in and show you Mr. Moore's comments if you
6 don't recall seeing them.

7 Registrar, if you can go back
8 to OD7, page 50, paragraph 157. Thank you.

9 So, this is a screen capture
10 snip of one of the comments that Mr. Moore made
11 within that document that I just showed you, the
12 CIMA report, and you'll see he suggested deleting
13 a section of that report. And on the right-hand
14 side, you can see his comment. I'll read it out
15 in case you can't see it. I can see you getting
16 close to the screen:

17 "There was no basis,
18 nothing to compare to and
19 no other agency in
20 Ontario, including the
21 MTO, doing this! It
22 means absolutely nothing
23 except proving potential
24 exposure to legal actions
25 and confusion!"

1 Did anyone relay to you that
2 Mr. Moore had proposed to Mr. Ferguson to delete
3 the reference to perform friction testing in the
4 2015 report?

5 A. No.

6 236 Q. And did anyone convey to
7 you Mr. Moore's comments set out in that comment
8 that I just read out?

9 A. No.

10 237 Q. Recognizing you're not a
11 technical expert, do you have any concerns about
12 staff proposing to delete an entire recommendation
13 from a consultant report?

14 A. I would rely on the
15 staff's professional opinion and their discipline,
16 if they're going to do it.

17 238 Q. Part of Mr. Moore's
18 comment was:

19 "It means absolutely
20 nothing except proving
21 potential exposure to
22 legal actions and
23 confusion!"

24 From your perspective, is that
25 an appropriate consideration for staff when

1 considering whether to accept or reject a
2 consultant's recommendation?

3 A. So, again, it depends.

4 This is an excerpt of an entire report that's
5 being reviewed. Gary Moore is a professional
6 engineer and I would rely on his technical
7 expertise in making the comments.

8 239 Q. Okay. Registrar, can you
9 go to HAM24700, please.

10 THE REGISTRAR: Sorry,
11 counsel, do you mind repeating the doc ID?

12 MS. LAWRENCE: 24700.

13 THE REGISTRAR: Is this a
14 native file?

15 MS. LAWRENCE: I don't believe
16 so. It may not be in the OD in this particular --
17 with this particular doc ID.

18 THE REGISTRAR: I have 24771.

19 MS. LAWRENCE: That may be it.

20 But, Commissioner, I'm looking at the time. It's
21 always helpful when a technical issue happens ten
22 minutes before we're going to take our break in
23 any event, so might we take a break a little early
24 so I can make sure we have the right document
25 before the witness?

1 JUSTICE WILTON-SIEGEL: That
2 will be fine. Let's take our break now. We'll
3 return at 20 to 12:00.

4 --- Recess taken at 11:26 a.m.

5 --- Upon resuming at 11:42 a.m.

6 BY MS. LAWRENCE:

7 240 Q. Mr. Davis, I'm going to
8 take you now to the staff report prepared in
9 respect of the 2015 CIMA report.

10 Registrar, can you bring up
11 HAM24700. Great. Success.

12 Mr. Davis, this is the staff
13 report that was filed and you'll see that it was
14 submitted by John Mater and prepared by Stephen
15 Cooper, David Ferguson and Martin White. Do you
16 see that?

17 A. Yes.

18 241 Q. So, this would have been
19 after that time that that process change was done,
20 so that Mr. Mater would be the submitter. Is that
21 right?

22 A. Correct.

23 242 Q. Okay. Did you have any
24 input into this report?

25 A. I would have reviewed it,

1 because it's a recommendation report. Even though
2 it was signed off by John Mater, it still comes
3 through to the general manager's office and all
4 the reports are summarized by my executive
5 assistant and then they're forwarded to the
6 legislative assistant in the clerk's department.
7 So, being a recommendation report, I would have
8 read the recommendation.

9 243 Q. You said earlier your
10 practice was also to read the executive summary of
11 a recommendation report?

12 A. Yeah.

13 244 Q. Okay. So, Registrar, can
14 you bring up the next image side by side. Thanks.
15 I'm going to actually tell you this is a longish
16 report, so the executive summary is even a little
17 lengthy.

18 Just turning to the
19 recommendations on image 1, you'll see that
20 there's four recommendations and the first is that
21 general manager of Public Works be directed to
22 implement the short-term safety options identified
23 in report as Appendix A and that they will be
24 funded from the red light camera reserve and that
25 staff be directed to report back to Public Works

1 committee.

2 And then there is an Appendix
3 B, which is referenced in the second
4 recommendation report, that those medium and
5 long-term items be deferred pending the outcome of
6 the transportation master plan update. Then
7 there's a request being made to the chief of
8 police about speed and aggressive driving and that
9 a copy of this be provided to the joint
10 stewardship award of the Red Hill for information.

11 Registrar, can you bring up
12 HAM24702 and can you put that up side by side with
13 HAM24701. There we go.

14 So, these just have different
15 document IDs, so the Appendix A and B that I just
16 took you to the in the recommendation reports,
17 these are the appendices. So, you'll see there's
18 short-term options on the right-hand side and
19 there's medium-term options and long-term options
20 on the left-hand side.

21 And so, in short, I'm going to
22 suggest to you just for context that those
23 recommendations that we were looking at that
24 Mr. Ferguson had sent Mr. Moore, remember when it
25 was engineering services is going to do this and I

1 had said there was also one for road maintenance
2 and also ones for traffic safety, so by the final
3 report, the recommendation is that the general
4 manager of Public Works do what is on Appendix A,
5 and that is -- so, it's not -- it doesn't identify
6 the particular departments that are going to be
7 doing that work.

8 You had said before it was
9 actually common to identify the different
10 departments. Is this also a fairly common way to
11 proceed; that is, the general manager be directed
12 to do this work?

13 A. Yes.

14 245 Q. And you'll see on the
15 left-hand side under the medium-term options:

16 "Conduct pavement
17 friction testing, that's
18 an estimated cost of
19 \$40,000."

20 Do you see that at the top?

21 A. Yes.

22 246 Q. Did anyone ever discuss
23 with you that City staff intended to put pavement
24 friction testing as a medium-term option?

25 A. No.

1 247 Q. That's very much in the
2 details of this?

3 A. Right.

4 248 Q. Much more detailed than
5 you would have been involved in?

6 A. That's correct.

7 249 Q. Did anyone ever discuss
8 with you that CIMA's recommendations to conduct
9 pavement friction testing, that CIMA identified
10 this as a short-term option, not a medium-term
11 option?

12 A. No.

13 250 Q. Did anyone tell you that
14 City staff asked CIMA to change the timing of that
15 option from short term to medium term?

16 A. No.

17 251 Q. And that CIMA declined to
18 do that?

19 A. No.

20 252 Q. Did anyone tell you that?
21 Do you have any concerns with City staff asking a
22 consultant to make a change from something from
23 short term to medium term?

24 A. I don't, because of the,
25 you know, in this case, the technical expertise

1 that's required with the City staff and the
2 consultant, so I wouldn't have any concern.

3 253 Q. Okay. Registrar, can you
4 go to OD7, page 56, paragraph 171, please. Thank
5 you.

6 So, you'll see this is
7 October 30, which, just to orient you, is the same
8 time that Mr. Mater was looking for a call with
9 you and Mr. Moore, the same day, and at the top of
10 image 2:

11 "Dave has made those
12 minor recommendations to
13 read the actions are by
14 GM Public Works -- "

15 (As read)

16 I think I misspoke:

17 "Dave, make those minor
18 revisions to read that
19 the actions are made by
20 the GM Public Works and
21 send it to me."

22 Did you have any role in
23 converting the recommendations from being specific
24 to particular identified departments within Public
25 Works to being made by GM of Public Works?

1 A. No.

2 254 Q. Registrar, can you close
3 this call out just for a second. Thank you.

4 Just so that I can identify
5 for you the call out, this is Mr. White forwarding
6 an e-mail from Mr. Mater to Mr. Ferguson and
7 Mr. Lupton. All right.

8 Registrar, can you call out
9 that same e-mail again, the one at the top of
10 page 57.

11 Again, you're not copied on
12 this and this says:

13 "Geoff, we have a draft
14 written. It's in a
15 binder I gave John."

16 Just stepping down:

17 "It recommends the
18 guardrail and lighting
19 review and asphalt
20 testing, all the things
21 Gary argues against."

22 Did anyone advise you at any
23 time of Mr. White's views that Gary was arguing
24 against the guardrail, the lighting review and the
25 asphalt testing?

1 A. No.

2 255 Q. Mr. White goes on to say:

3 "Despite that, I believe
4 them to be prudent and
5 required that we do this
6 ethically and technically
7 responsibly."

8 Do you have any views about
9 Mr. White's comments about being prudent and
10 requiring them to do ethically and technically
11 responsibly?

12 A. No. Mr. White is the
13 manager of traffic. His experience and expertise
14 is in these items, so I have no concern with his
15 comments.

16 256 Q. Thank you. Registrar,
17 can you go to OD7, page 74, paragraph 33, please.
18 Thank you.

19 Do you recall whether or not
20 you attended the December 7, 2015 Public Works
21 committee meeting where staff presented the report
22 that we were just looking at?

23 A. I don't recall, but in
24 saying that, if it's a Public Works committee
25 meeting, I'm the general manager. I, in all

1 likelihood, was there.

2 257 Q. Okay. At that meeting,
3 Councillor Merulla asked Mr. Moore, who was in
4 attendance, to elaborate on the quality of the
5 asphalt used, asking whether the City used
6 low-grade asphalt in comparison to that used by
7 the MTO. Mr. Moore replied that the City had used
8 SMA, which is a defined term as stone mastic
9 asphalt, in the construction of the Red Hill,
10 which was the MTO's top mix for, quote, "high
11 speed freeway type," end quote, roadways.

12 Do you remember an exchange
13 between Councillor Merulla and Mr. Moore?

14 A. I do not.

15 258 Q. All right. Registrar,
16 can you call out the next paragraph, please.
17 Mr. Moore informed the committee that MTO had
18 performed initial friction testing and received
19 results at or above what the MTO typically
20 expected from high-grade friction mixes. He also
21 informed the committee that they had performed
22 subsequent testing five years later in
23 approximately 2012, 2013, finding the road was
24 holding up exceptionally well:

25 "We have no concerns

1 about the surface mix."

2 Do you remember that part of
3 the exchange between Councillor Merulla and
4 Mr. Moore?

5 A. No.

6 259 Q. Did you have any
7 discussion with anyone about the statements that
8 Mr. Moore made to the Public Works committee after
9 that committee meeting ended?

10 A. I don't recall, no.

11 260 Q. Is that to say you don't
12 recall either way or that you're pretty sure you
13 did not?

14 A. I'm pretty sure I did
15 not.

16 261 Q. Okay. Did anyone ask you
17 any follow-up questions to Mr. Moore's statement?

18 A. At the Public Works
19 committee?

20 262 Q. Or thereafter.

21 A. No.

22 263 Q. I'm thinking specifically
23 about councillors. They never came and asked you
24 for any further information?

25 A. No.

1 264 Q. Okay. Turning now to OD
2 2, page 13, paragraph 28. Thank you.

3 So, at the bottom of page 12,
4 you'll see in March of 2015, city council directed
5 the city manager to review the size and scope of
6 the Public Works department. Do you remember what
7 prompted the request from city council to do that
8 Public Works scope and size assessment?

9 A. Yes, I do.

10 265 Q. What was that?

11 A. So, the -- I don't know
12 on the date. I had had a call from a reporter
13 regarding it was the CVOR, so the commercial
14 vehicle operator's registration. The City had
15 two -- Public Works had two certificates, one for
16 our transit and one for our operating fleet. I
17 took a call from a reporter and we were chatting
18 and he started asking me specifics about the
19 registration, the specifics of our ratings, to
20 which I said, how do you expect me to understand
21 that? And he said, are you saying your department
22 is too big? And I said, the department is too big
23 for me to understand all those details.

24 That got reported in the
25 paper. We then went -- I went in to council, I

1 went in camera and explained to them what I had
2 said and why I said it, but at no time did I ever
3 tell my employer that my department was too big.
4 That was simply a one-off bad quote by me to the
5 press. I was in the job for seven years, never
6 did that, and I can't take those words back, but I
7 said it.

8 266 Q. Okay. So, the City staff
9 retained Core International to help senior
10 management with their review of the organizational
11 structure of Public Works and to help the City
12 manager answer the question: Is the Public Works
13 department too large? So, that was following on
14 the comments that you made?

15 A. That was part of it. I
16 believe also it was I was retiring, you know, at
17 the -- I was going into my retirement year and it
18 wasn't unusual to review departments of that size.
19 The public health and social services had gone
20 through similar reviews, planning, but, you know,
21 when I explained to council what happened, that's
22 the result of what came out of it. But doing a
23 review of the department is not an unusual thing.

24 267 Q. Okay. And what was the
25 answer to Core International's retainer, is the

1 Public Works department too large?

2 A. So, I helped draft a
3 report with the executive director of human
4 resources, and then, you know, the department
5 wasn't too large. It was just how to realign the
6 functions and duties of staff.

7 268 Q. To what extent were the
8 concerns within the City or identified by Core
9 about effective sharing of information between
10 work groups within Public Works?

11 A. What did they comment on?
12 Is that what you're asking?

13 269 Q. To what extent were there
14 concerns about that topic?

15 A. I don't recall that as
16 part of the report. It may be in there. I don't
17 recall it.

18 270 Q. Okay. And what about any
19 concerns about the sufficiency of cooperation
20 between work groups?

21 A. Well, when I was general
22 manager, we had cooperation and collaboration
23 between the divisions.

24 271 Q. So you didn't identify
25 any concerns about insufficient cooperation?

1 A. No.

2 272 Q. And Core did not either?

3 A. Core identified what the
4 function should be. I don't know if there was
5 specific deficiencies they identified.

6 273 Q. Okay. Registrar, can you
7 bring up HRB890, please. I think I misspoke. I
8 meant to say RHV, but thank you, Registrar, for
9 finding it in any event. I'm finding this a
10 little bit small. Is there any way we can blow up
11 the font?

12 Mr. Davis, are you finding
13 it -- perfect. Thank you. So, you won't be able
14 to read all of it at the same time now. An
15 anonymous letter was sent to the City auditor in
16 March 2019. This is that letter. Have you seen a
17 copy of this letter before?

18 A. I have.

19 274 Q. Did you see it in
20 preparation for the inquiry process or at some
21 earlier point?

22 A. For the preparation.

23 275 Q. Were you the author of
24 this letter?

25 A. No.

1 276 Q. Do you know who wrote it?

2 A. No.

3 277 Q. Registrar, can you show
4 the second half of image 1. Thank you. Is that
5 big enough for you to read?

6 MR. LEDERMAN: Sorry, just a
7 moment. Commissioner, we've looked at this letter
8 before in the context of another witness, and the
9 same concern that I had when another witness was
10 questioned about an anonymous letter remains with
11 respect to the effort to question other witnesses
12 about this letter.

13 JUSTICE WILTON-SIEGEL:
14 Mr. Lederman, I think this question is premature,
15 your objection is premature. We haven't even
16 heard the question.

17 MR. LEDERMAN: All right.
18 Very well. Then I'll wait for the question.

19 MS. LAWRENCE: Thank you.
20 Commissioner, may I proceed?

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

23 BY MS. LAWRENCE:

24 278 Q. Mr. Davis do you see
25 about halfway down this page in front of us your

1 name?

2 A. Yes.

3 279 Q. Do you see it says -- so,

4 this is 2019. It says:

5 "Former -- "

6 So, that's correct:

7 "Former PW general

8 manager was the general

9 manager at the time and

10 absolutely knew that

11 Mr. Moore had hired a

12 consultant to do

13 investigation on asphalt

14 quality."

15 So, just stopping there, I'm

16 going to ask you again, I know I've already asked

17 this question, did you know that Mr. Moore had

18 hired a consultant to do an investigation on

19 asphalt quality?

20 A. No.

21 280 Q. And the second part of

22 this is that -- this is an assertion about you,

23 that you left the matter to Mr. Moore to pursue

24 and resolve. To the extent that you can interpret

25 what that means, did you leave the matter to

1 Mr. Moore to review and resolve, presumably about
2 hiring a consultant?

3 A. So, I have no comment on
4 this letter.

5 281 Q. Okay. That's fair, but I
6 do -- just as a matter of fairness, I do want to
7 put any assertions against you to you so you can
8 provide a comment, but if you don't have a comment
9 on that particular sentence, is that your
10 response?

11 MR. LEDERMAN: So, just a
12 moment. Again, the first question relating to the
13 first sentence was put to the witness. The
14 witness said he didn't know, so I don't know how
15 the second component to that actually follows.
16 Again, this is precisely the kind of concern that
17 I have.

18 JUSTICE WILTON-SIEGEL: Well,
19 setting aside the editorial comment, Mr. Lederman,
20 I think it probably follows, Ms. Lawrence, that if
21 he did not know there was an investigation, it
22 can't be said that he left the matter of the
23 investigation to Mr. Moore.

24 MS. LAWRENCE: That's fair. I
25 felt obliged to provide the totality of the

1 comments in this letter directed to Mr. Davis to
2 Mr. Davis, but I believe we received his comment
3 that he has no comment.

4 JUSTICE WILTON-SIEGEL: I'm
5 taking that he has no comment with respect to that
6 sentence.

7 MS. LAWRENCE: Thank you.

8 JUSTICE WILTON-SIEGEL: With
9 respect to that phrase within the sentence. Okay?

10 MR. LEDERMAN: Thank you.

11 BY MS. LAWRENCE:

12 282 Q. Mr. Davis, did the fact
13 that Mr. Moore had hired a consultant to do
14 investigation of asphalt quality, was that an item
15 that was on the Public Works department management
16 team agenda?

17 A. Not to my knowledge, no.

18 283 Q. Registrar, can you go to
19 image 2, please, and can you call out the
20 italicized text that is in that bottom half of
21 this image and include just the paragraph before
22 the italicized text as well, please. Thank you.
23 Apologies. I want to ensure that Mr. Davis has
24 the right information in front of him. Can you
25 close out that call out. Include that call out

1 but also include the next line that comes after
2 the italicized text, please. Thank you.

3 Mr. Davis, can you review the
4 quotations that are italicized and answer the
5 following question: To the best of your
6 knowledge, did Mr. Moore ever speak in this
7 manner?

8 A. No.

9 284 Q. Thank you. You can close
10 that document, close that call out. Thank you.

11 Mr. Davis, you would supervise
12 Mr. Moore first in the director capital planning
13 role that you held and then as general manager?
14 Right?

15 A. That's correct.

16 285 Q. How would you describe
17 your working relationship with him?

18 A. Very professional.

19 286 Q. Did you have the
20 opportunity to observe his skills as an engineer?

21 A. I provided annual
22 performance appraisals that are on record in the
23 human resources department.

24 287 Q. And in those reviews, did
25 you have the opportunity to either observe or

1 elicit observations about his skills as an
2 engineer?

3 A. I'm an accountant by
4 trade, so, you know, he's probably the -- he's a
5 very good engineer. I had a number of directors
6 who were engineers. I didn't comment on their
7 ability to provide engineering services.

8 288 Q. Fair enough. Did you
9 have a chance to observe his interpersonal skills?

10 A. We commented on those,
11 yes, in his evaluations. They would all be part
12 of the record.

13 289 Q. Okay. Well, we don't
14 have them. What can you remember about those?

15 A. Well, he had a large
16 portfolio, he was in charge of design, surveys,
17 construction and asset management, so he worked
18 with all those divisions. The capital budget
19 process went through his division and then the
20 delivery of the design and then construction, so
21 he worked very well with all his managers.

22 290 Q. Did you obtain that
23 information for your performance reviews from his
24 direct reports?

25 A. Say again?

1 291 Q. Did you obtain that
2 information about his interpersonal skills from
3 his direct reports in order to provide that
4 performance review to him?

5 A. That would be part of it,
6 yes.

7 292 Q. Okay. And what about
8 you? Did you have a chance to observe his
9 interpersonal skills?

10 A. I did. I worked with him
11 and he was in our departmental management team
12 meetings, so yeah. I worked with him on an
13 ongoing basis. Our offices were two, three doors
14 apart.

15 293 Q. Did you ever see his
16 management skills or interpersonal skills
17 interfere with his effectiveness as the director
18 of engineering services?

19 A. No.

20 294 Q. Did you ever hear him,
21 either to you or in your earshot, engage in
22 swearing or cussing?

23 A. No.

24 295 Q. I took you to two e-mails
25 today, neither of which you were copied on: One

1 where he said "I shoot the horse," and the other
2 where he said "lighting is not going to happen, so
3 just stop asking." Would you characterize these
4 as Mr. Moore holding strong opinions?

5 A. Yes.

6 296 Q. And are those two
7 examples indicative of your experience in the way
8 he expressed his strong opinions to colleagues?

9 A. No.

10 MR. LEDERMAN: Sorry, I'm
11 having some trouble with the range of questions
12 that are being asked of this witness, which is
13 really straying upon asking this witness to
14 express a view about another individual's
15 character, and so I'm just raising it as an
16 (indiscernible) about this line of questioning.

17 JUSTICE WILTON-SIEGEL: I
18 accept, Mr. Lederman, that Mr. Moore's character
19 as such is not at issue. I expect that
20 Ms. Lawrence's questions will be in the context of
21 his fulfilling his responsibilities as director of
22 engineering services. I look on each question
23 from that perspective.

24 MR. LEDERMAN: And I
25 appreciate that, Commissioner. It's just that a

1 couple of these questions have now been asked a
2 couple times, once in the context of the language
3 that --

4 JUSTICE WILTON-SIEGEL: That's
5 a different question, but the witness has answered
6 that and we can move on. The answer is
7 consistent, so let's move on from that.

8 MR. LEDERMAN: Thank you.

9 MS. LAWRENCE: Thank you.

10 BY MS. LAWRENCE:

11 297 Q. Did you ever observe any
12 signs of Mr. Moore bullying co-workers to get his
13 preferred way?

14 A. No, I did not. Can we
15 take the page down? I find it very offensive.
16 Thanks.

17 298 Q. Yes, of course. We can
18 take it down. Thank you.

19 Were you aware of any
20 complaints that Mr. Moore had bullied his
21 co-workers?

22 A. No.

23 299 Q. Were you aware of any
24 concerns from others about Mr. Moore's level of
25 teamwork or cooperation with other employees in

1 Public Works?

2 A. No.

3 300 Q. Were you aware of any
4 concerns about his interactions with other
5 employees in Public Works?

6 A. No.

7 301 Q. Did any City employees
8 ever complain to you about Mr. Moore's treatment
9 of other staff?

10 A. No.

11 302 Q. Did you ever hear of such
12 complaints being made to others?

13 A. No.

14 303 Q. Sitting here today, if
15 you had been privy to all the information that we
16 have gone through today, plus your personal
17 experiences with Mr. Moore, would you have taken
18 any action to address the way he interacted with
19 other staff?

20 A. I'm not sure I understand
21 the question.

22 304 Q. Okay. I can repeat it.

23 Taking your personal experiences with Mr. Moore --

24 A. Yeah.

25 305 Q. -- and taking the

1 information that we've gone over today, some of
2 which we know that you have said you didn't know
3 at the time, sitting here today, if you had had
4 all that information, would you have taken action
5 to address the way Mr. Moore interacted with other
6 staff?

7 A. So, it would depend on
8 which situation. If you refer to the reports
9 where there was discussions back and forth, you
10 know, that is something that divisions do and both
11 of the directors are professional, so, you know,
12 that's just the management between those two. I
13 don't see any issue with it. I can't see -- yeah.
14 I wouldn't have any issues.

15 306 Q. Okay. I'm going to take
16 you back now in time, back to 2009. So, you had
17 become general manager of Public Works officially
18 in May 2009. Is that right?

19 A. Correct.

20 307 Q. And you were acting
21 manager for about six months before that?

22 A. Since January, yes.

23 308 Q. Okay. And think you told
24 me earlier that in 2007, you didn't know that
25 Golder Associates was a consulting engineer on the

1 Red Hill. Do you remember giving that answer?

2 A. Yes, I do. I know Golder
3 was a consultant. I didn't know they were on the
4 Red Hill --

5 309 Q. Okay.

6 A. -- until this process.

7 310 Q. Did you know that Golder
8 was a consulting engineer on the Red Hill? Did
9 you know this in 2009?

10 A. Were they on the
11 consultant roster? Is that what you're asking?

12 311 Q. No. I'm asking if you
13 knew in 2009 if Golder Associates had been a
14 consulting engineer on the Red Hill project?

15 A. I can't recall.

16 312 Q. Okay. Did you know that
17 throughout 2009, Golder was involved in preparing
18 a phase one of a pavement and materials technology
19 review for the City of Hamilton?

20 A. No.

21 313 Q. In 2009, did you know
22 that Golder Associates received the Ontario
23 Consulting Engineers Award from the consulting
24 engineers of Ontario for its work on perpetual
25 pavement on the Red Hill?

1 A. I did not know that in
2 2009.

3 314 Q. Okay. When did you learn
4 that?

5 A. Through this process.

6 315 Q. Okay. Registrar, can you
7 pull up OD 3, page 77, paragraph 162. I'm
8 starting at 162. It sets out -- you don't have to
9 call it out -- that the Red Hill received a number
10 of awards, and then in 63 the awards in
11 chronological order, and then you'll see number E
12 on page 77 is the award I was just speaking about,
13 2009.

14 So, this award was presented
15 to Golder Associates on June 2, 2009 in Ottawa.
16 Did you know on June 2, 2009 that Gary Moore
17 attended the ceremony on that day?

18 A. No.

19 316 Q. Did you know that Golder
20 Associates paid for Mr. Moore and his wife to fly
21 from Toronto to Ottawa and back for the ceremony?

22 A. No.

23 317 Q. Did you know that Golder
24 Associates paid for Mr. Moore and his wife to stay
25 two nights at the Chateau Laurier?

1 A. No.

2 318 Q. In 2009, did Mr. Moore
3 ever discuss with you the fact that Golder had
4 offered to pay for these flights and hotel or that
5 they had paid for his flights and hotel?

6 A. No. I don't recall that
7 conversation.

8 319 Q. Not before he left for
9 that ceremony, nor after he came back?

10 A. No. That's correct, yes.

11 320 Q. Did anyone raise this
12 issue with you while you were the general manager?

13 A. No.

14 321 Q. As a general manager of
15 Public Works, were you familiar with the code of
16 conduct policy?

17 A. Yes.

18 322 Q. And did you expect all
19 employees of Public Works to comply with it?

20 A. Yes.

21 323 Q. Knowing the information
22 that's set out in paragraph E of page 77, what
23 we're just looking at, do you have concerns about
24 Mr. Moore attending this trip?

25 A. No, I don't.

1 324 Q. Why not?

2 A. So, the award is very --
3 you know, it was a very important award for the
4 City of Hamilton. You know, it was a project that
5 was in the making for many, many years, received
6 the award, so this is something, you know, where I
7 would say as an exception to the rule in order to
8 receive that on behalf of the City of Hamilton.

9 325 Q. Okay. Registrar, can you
10 pull up HAM58896, please. So, this is the policy
11 that was in effect at the time. That looks
12 familiar to you?

13 A. Yes.

14 326 Q. Okay. And you'll see on
15 image 2 -- could you bring up image 1 and image 2
16 at the same time, please, and the second paragraph
17 of image 2, if you could call that out. So:

18 "Employees shall not
19 accept any gift, benefit,
20 money, discount, favours
21 or other assistance from
22 any business who has a
23 contract with the region
24 or supply goods or
25 services to, unless the

1 gift, benefit, money,
2 discounts, favour,
3 assistance, is one that,
4 due to the nature of the
5 business, is available to
6 all members of the
7 public."

8 You knew that part of the
9 policy. Right?

10 A. Yes.

11 327 Q. I think you can close
12 that, Registrar, and go to the next paragraph,
13 please. The next paragraph, please. The
14 paragraph after that:

15 "In accordance with
16 existing regional
17 policies -- "

18 So, here:

19 " -- this policy does not
20 prohibit employees from
21 receiving promotional
22 gifts or benefits of
23 nominal value."

24 You would agree with me that
25 flights and two nights' hotel accommodation are

1 not nominal value?

2 A. I agree.

3 328 Q. If you can go down to
4 image 4, please, the very last paragraph. One
5 more. Image 4. Thank you. And the very last
6 paragraph, if you can call that out. Thanks.

7 So:

8 "Employees who have
9 reason to believe that
10 this code of conduct has
11 been breached are
12 encouraged to bring that
13 concern to the
14 attention..."

15 Then it also says:

16 "Caution is always the
17 best guide to behaviour
18 in this area. Employees
19 are encouraged to discuss
20 any circumstance about
21 which they have the least
22 doubt with their
23 supervisor or department
24 head."

25 You were Mr. Moore's

1 supervisor at this time, May-June 2009?

2 A. That's correct.

3 329 Q. And he didn't raise it
4 with you?

5 A. I don't recall it, no.

6 330 Q. Okay. And if he had
7 raised it with you, what would your response be?

8 A. So, being the type of
9 award it is, you know, the paperwork would have
10 had to have been provided and I would have
11 approved him going, because it was such a
12 significant award for the City of Hamilton.

13 331 Q. Okay. And so, do you
14 have any concerns that you would have approved it
15 if he had asked, but he didn't ask? Do you have
16 concerns about that?

17 A. No.

18 332 Q. Okay. Just one moment,
19 Commissioner. I'm just checking my notes.

20 Registrar, you can take that
21 code of conduct down. Thank you.

22 Thank you, Mr. Davis. Those
23 are my questions.

24 I did convey to counsel that I
25 would be ending before the lunch break, but we

1 haven't discussed as counsel the timing.
2 Commissioner, I'm in your hands. Would it be
3 helpful to take just a very short break so that we
4 can discuss the order of examinations?

5 JUSTICE WILTON-SIEGEL: Well,
6 it's almost 12:30 now. Why don't we instead take
7 our break and counsel can go into a breakout room
8 right away and sort out how much time they
9 require?

10 So, in that case, if it's
11 12:25 now, an hour and 15 minutes will take us to
12 20 to 2:00, I guess. So, we'll stand adjourned
13 until then.

14 --- Luncheon recess taken at 12:25 p.m.

15 --- Upon resuming at 1:42 p.m.

16 MS. LAWRENCE: Good afternoon,
17 Mr. Commissioner. I had concluded my questions
18 before the lunch break. I understand that counsel
19 for the MTO and Golder and Dufferin do not have
20 questions for Mr. Davis, and so I'm going to turn
21 it over to counsel for the City of Hamilton.

22 MS. TALEBI: Thank you,
23 Ms. Lawrence. Mr. Commissioner, may I proceed,
24 please?

25 JUSTICE WILTON-SIEGEL: Yes,

1 additional insight or knowledge about certain
2 factors that need to be taken into consideration,
3 which consultants who do not work at the City
4 might not be fully aware of?

5 A. That's correct, yes.

6 336 Q. And what type of factors
7 might these be?

8 A. Well, the City staff,
9 when they put together the proposal or the request
10 to use the consultants, they know exactly what
11 council is asking for and they put that into a
12 format so that the consultant can bid on it, but
13 they would have all what is the budget side of it,
14 what has been done to date, what information is
15 available to give to the consultant that they
16 wouldn't know about, so they would have all the
17 history of the project to assist a consultant.

18 337 Q. And I think you mentioned
19 in your evidence earlier that in dealing
20 consultant reports, staff often apply their own
21 judgment based on their experience and expertise.

22 How would you expect City
23 staff and particularly staff in leadership
24 positions and some of the directors to use their
25 judgment in applying the advice that's contained

1 in a given consultant report?

2 A. So, they would take their
3 expertise and, you know, the disciplines they have
4 developed over the years in that portfolio and
5 then they would ensure that when the consultant is
6 providing the information, it's providing exactly
7 what is needed for the City of Hamilton, so
8 they're able to vet the information from the
9 consultant to ensure that is the City of
10 Hamilton's needs are being met.

11 338 Q. Okay. So, I think, and
12 correct me if I'm not summarizing that properly,
13 but really I guess distill the information in a
14 manner that's responsive to the question that
15 needs to be answered?

16 A. That's correct, yes.

17 339 Q. Okay. And so, further to
18 your discussion earlier with commission counsel
19 about consultant reports that are sometimes
20 prepared for the City of Hamilton, as we've been
21 talking about here today, in 2013 and 2015, to the
22 best of your knowledge, was there a policy about
23 City staff being required to provide a copy of any
24 consultant reports to City council?

25 A. No, there wasn't.

1 340 Q. Okay. And so, in the
2 absence of any such policy, how would staff
3 typically determine whether a copy of a given
4 report would need to be provided?

5 A. So, depending on the
6 discussion item, staff would have the consultant
7 report and if they were meeting with councillors,
8 they basically summarize that report. Council at
9 that time may ask to see the report and that's
10 fine. Again, that report is not for staff only.
11 It's a City document and if a councillor wants to
12 review it, by all means they can. Generally they
13 want the expertise of the member of staff to
14 provide them the summary of the report.

15 341 Q. Okay. So, staff would
16 likely use their discretion, then, in deciding
17 what needs to be -- whether a copy needs to be
18 included or not?

19 A. That's correct.

20 342 Q. Okay. And commission
21 counsel actually took you to an exchange a little
22 bit earlier between Mr. Lupton and Mr. Moore
23 regarding a November 18, 2013 council meeting
24 followup related to the RHVP lighting. You might
25 recall you were not copied on the correspondence,

1 but your evidence was that this does not cause you
2 any concern because you knew that Mr. Lupton and
3 Mr. Moore had to report on the matter in any event
4 and that your expectation was that Mr. Moore and
5 Mr. Lupton were aware of the fact that this was an
6 OBL item that needed to be dealt with
7 professionally. Do you recall that exchange with
8 commission counsel earlier?

9 A. That's correct, yes.

10 343 Q. And so, if I could ask,
11 Mr. Registrar, if you could please call up OD
12 number 6, page 86, paragraph 224.

13 And while that's coming up,
14 Mr. Davis, I would like to take you a related
15 e-mail that commission counsel did not take you to
16 earlier, but here Mr. Moore describes his
17 follow-up discussion with councillor Collins on
18 this topic. We'll go through the e-mail here
19 together and then I just wanted to ask you a
20 question about that.

21 So, as you can see here, it's
22 called up. Mr. Moore says in his e-mail:

23 "I talked to Councillor
24 Collins after PW on
25 Monday re: his

1 expectations regarding
2 the outstanding lighting
3 report for the Mud Street
4 interchange. He is not
5 expecting anything until
6 the improvement suggested
7 an approval in your last
8 report had been
9 implemented and have had
10 a reasonable time to be
11 able to comment on their
12 effectiveness or not. I
13 would say he's not
14 looking for anything in
15 2014 or maybe beyond.
16 Ms. Clark, this is an OBL
17 item that will have to go
18 beyond this term of
19 council and cannot at
20 this time be given date,
21 at least not in certainty
22 before 2/4/2015."

23 Do you see that?

24 A. Yes.

25 344 Q. Okay. And so, I just

1 want to clarify. Is this what you were referring
2 to earlier when you said it was your expectation
3 that illumination was placed on the OBL and that
4 it was going to be dealt with appropriately?

5 A. That's correct. The
6 item is definitely going to be dealt with and sent
7 to the committee and council.

8 345 Q. Okay. We can just bring
9 that down, Mr. Registrar. Thank you.

10 Commission counsel also asked
11 you about concerns with respect to Mr. Moore
12 recommending some changes to consultant reports
13 and you said that you didn't have a concern with
14 that, and I just wanted to clarify or ask you to
15 clarify your evidence in that regard.

16 Can you explain why that was
17 not concerning to you?

18 A. So, the suggestions by
19 Mr. Moore are just that. It's a report going with
20 another department that's collaboration between
21 them, so it's not one director has over the final
22 say overall, that they were working together. And
23 so, Mr. Moore provided his response and I would
24 just leave it at that.

25 346 Q. Okay. And in your

1 experience, have you ever experienced a situation
2 where a consultant would sign off on a report if
3 they disagreed with what was being proposed or
4 what is entailed in that report, like the
5 consultant report itself?

6 A. Sorry, would a consultant
7 sign off on it?

8 347 Q. Right. Would a
9 consultant ever sign off on a report that they
10 disagreed with what the report would have
11 contained?

12 A. No, they wouldn't.
13 They're professional as well and their, you know,
14 credibility is on the line with that report.

15 348 Q. And so, commission
16 counsel also took you to the information report
17 dated November 18, 2013 and asked you a number of
18 questions about that. And if I could just ask,
19 Mr. Registrar, could you please pull up document
20 number RHV668, please.

21 And so, while that's coming
22 up, Mr. Davis, you stated earlier that your
23 involvement with the staff reports, such as the
24 one that we have on the screen here, was minimal
25 in that you had a high-level policy and

1 administrative role. And I'm just summarizing
2 here, but you mentioned that the reports were
3 effectively prepared by the directors and the
4 staff who had the technical expertise and
5 experience. Do you recall that?

6 A. That's correct. They
7 were prepared by the experts in the department.

8 349 Q. And so, as you can see
9 here, it says that the report was prepared by
10 Mr. Cooper and Mr. Ferguson and that it was
11 submitted by you. Do you see that?

12 A. Yes.

13 350 Q. Can you tell me what the
14 distinction is here between prepared by and
15 submitted by?

16 A. The prepared by are the
17 authors of the expertise and the subject matter
18 and they write the report based on what was
19 requested from council and, in this case, what was
20 provided by the consultant's report and they
21 generate this report. They forward it to their,
22 in this case it would have went to Mr. Lupton and
23 then to Mr. Mater, who also had the expertise in
24 the subject matter. And it comes to the general
25 manager, which is me in this case, and I sign off

1 for the submission to the Public Works committee,
2 and mine's a policy and administration function
3 only.

4 351 Q. And so, who were some of
5 the people that were normally present at meetings
6 where these types of reports were being presented
7 or discussed?

8 A. So, at a Public Works
9 committee, there would be myself and all the
10 directors from each division because there would
11 be reports generally covering the overall
12 department. And then the subject matter experts,
13 such as Stephen Cooper and David Ferguson, may be
14 attending as well to answer any specific questions
15 regarding the technical issues.

16 So, the director of the
17 divisions are all -- it was mandatory. They had
18 to attend. And then the support staff that
19 assisted in reports would attend as well.

20 352 Q. Okay. And so, I think
21 you may have already answered that, but just so
22 that I'm clear, council could ask questions about
23 the substance of these reports in these types of
24 committee meeting minutes if they had any
25 questions?

1 A. Yes. That's exactly what
2 the committee is for. The reports go to members
3 of the committee, asked any questions that they
4 have, and then it either gets referred back to
5 staff or it gets approved and it moves on to the
6 council floor for approval.

7 353 Q. And I think you may have
8 mentioned this in your conversation with
9 commission counsel a little bit earlier. Was
10 there, at some point later, a change made to the
11 policy regarding the signoff on these types of
12 reports to council?

13 A. There was. What changed
14 is rather than the general manager of the
15 respective department signing off, the director
16 whose division was the lead on the report would
17 sign off on the report. So, when Public Works,
18 you know, we had -- at one point we had seven
19 different directors. Any one of them could have
20 signed off on a report that their staff authored.

21 354 Q. Thank you. If I could
22 just have one moment to review my notes here.

23 Okay, great. Thank you,
24 Mr. Davis. Those are all my questions for you
25 today.

1 A. Thank you.

2 355 Q. Thank you, Commissioner.

3 JUSTICE WILTON-SIEGEL:

4 Ms. Lawrence, any questions?

5 MS. LAWRENCE: No, thank you.

6 JUSTICE WILTON-SIEGEL: Okay.

7 Ms. Talebi, I just have one question about a
8 question that you put, and that may be that I had
9 misunderstood.

10 Could we go back to OD 6,
11 page 86, paragraph 224.

12 So, the question you put
13 related to the Mud Street interchange lighting and
14 I appreciate there must have been an outstanding
15 issue about that, but I thought that this morning
16 a number of the questions were directed towards
17 lighting across the entire parkway.

18 MS. TALEBI: That's right.

19 So, there were distinct issues. Some were across
20 the entire parkway and then one of the outstanding
21 OBL items was with respect to this particular
22 issue.

23 JUSTICE WILTON-SIEGEL: This
24 specific lighting issue, are you suggesting that
25 the this is exhaustive of the lighting issues?

1 MS. TALEBI: No. no. This was
2 with respect to this particular lighting issue. I
3 just wanted to provide Mr. Davis with an
4 opportunity to see the followup to some of the
5 correspondence that was taking place before with
6 respect to Mr. Moore following up with Councillor
7 Collins because of the comments that he had made
8 in his correspondence with Mr. Lupton about
9 lighting in general, but this is a specific. This
10 is with respect to a specific lighting.

11 JUSTICE WILTON-SIEGEL: Okay.
12 Mr. Registrar, you can take the document down in
13 order that I can look at Mr. Davis and thank him
14 for attending this morning and early afternoon at
15 the inquiry. You're excused.

16 THE WITNESS: Thank you,
17 Commissioner.

18 JUSTICE WILTON-SIEGEL: So,
19 the next witness is Mr. Malone, I take it?

20 MS. LAWRENCE: That's correct,
21 Commissioner, and Mr. Malone and his legal counsel
22 are in a breakout room and we can have them join
23 us momentarily.

24 Mr. Registrar, if you could
25 bring Mr. Malone and his counsel into the main

1 room, please.

2 THE REGISTRAR: I've moved
3 them now, counsel. Just a couple seconds and
4 they'll be with us.

5 MS. LAWRENCE: Commissioner,
6 CIMA is not a participant with standing in this
7 matter. Mr. Toban and Mr. Provost are here in
8 respect of their representation of CIMA and
9 Mr. Malone, and commission counsel has no concerns
10 with their attendance, including on screen during
11 my examination of Mr. Malone.

12 JUSTICE WILTON-SIEGEL: Thank
13 you.

14 MR. PROVOST: Good day,
15 Commissioner.

16 MR. TOBAN: Good day,
17 Commissioner.

18 JUSTICE WILTON-SIEGEL: So, I
19 think we should administer the oath to Mr. Malone.

20 BRIAN MALONE; AFFIRMED

21 MS. LAWRENCE: May I proceed?

22 JUSTICE WILTON-SIEGEL: Please
23 proceed.

24 MS. LAWRENCE: Thank you.

25 EXAMINATION BY MS. LAWRENCE:

1 356 Q. Good afternoon,
2 Mr. Malone.

3 A. Good afternoon.

4 357 Q. I'm going to start with
5 some questions about your professional background.
6 I'm going to start with turning up document
7 CIM22414. So, this is a profile of you from
8 CIMA's website. Do you recognize that?

9 A. I do, yes. It's my
10 résumé.

11 358 Q. Thank you. Commissioner,
12 this document is not yet an exhibit and I ask that
13 it be made the next exhibit, 57?

14 JUSTICE WILTON-SIEGEL: 57,
15 okay.

16 EXHIBIT NO. 57: Profile
17 of Brian Malone from CIMA
18 website, CIM22414.

19 BY MS. LAWRENCE:

20 359 Q. So, just turning to the
21 far left-hand side, it says Career, 2009 to
22 present. Are you still working at CIMA?

23 A. Yes. I'm still a casual
24 employee at CIMA.

25 360 Q. Prior to being a casual

1 employee, did you have another role at CIMA?

2 A. I did, yes.

3 361 Q. What was that?

4 A. I was vice president of
5 transportation.

6 362 Q. And did you retire from
7 that role as vice president of transportation
8 formally and then move to your current casual
9 employee designation?

10 A. Yes, yes. I divested my
11 shares in the company when I turned 60 and changed
12 my role and became a casual employee instead of a
13 partner and vice president.

14 363 Q. When did that happen?

15 A. February 1, 2019. 2020?
16 One or the other.

17 364 Q. So, fairly recently and I
18 think it was 2020. Do you want to take a moment
19 to go back in your mind?

20 A. Yes. The COVID fog is
21 there. 2020.

22 365 Q. Thank you. I would like
23 to take you through a few parts of your
24 background. I understand you're a licensed
25 professional engineer?

1 A. I am.

2 366 Q. When were you first
3 licensed in Ontario?

4 A. 1985.

5 367 Q. And you're certified by
6 the Transportation Professional Certification
7 Board as a professional and traffic operations
8 engineer and road safety professional?

9 A. That's correct, yes.

10 368 Q. Just going back to that
11 little box on the far left-hand side under Career,
12 it says City of Hamilton. You were employed at
13 City of Hamilton from 1995 to 2000?

14 A. That's correct, yes.

15 369 Q. What was your final title
16 at the City, the last one you held?

17 A. Senior traffic operations
18 engineer.

19 370 Q. Which department did you
20 work in?

21 A. Well, it started with the
22 Public Works department of the City of Hamilton
23 and then it transitioned to the Public
24 Works traffic department and then transitioned to
25 the Public Works department.

1 371 Q. Okay. So, was it at the
2 end the traffic department within the Public Works
3 department?

4 A. Traffic division of the
5 Public Works department.

6 372 Q. Thank you. And did you
7 work with Martin White while you were in that role
8 at the City?

9 A. Yes. I was his
10 supervisor.

11 373 Q. And what about Hart
12 Solomon?

13 A. He was my supervisor.

14 374 Q. Okay. And then it says
15 you worked at the Ministry of Transportation for a
16 year, from 2000 to 2001?

17 A. Correct.

18 375 Q. Can you describe your
19 role there?

20 A. My title was head of the
21 traffic office in the central region or not
22 central region but head office for the MTO, which
23 is located in St. Catharines.

24 376 Q. And you worked at AECOM
25 THS Synectics from 2001 to 2009?

1 A. Correct. I left MTO and
2 went to work for Synectics. Synectics was owned
3 by TSH at the time, and then in 2008, TSH was
4 purchased by AECOM.

5 377 Q. And what did you do
6 there?

7 A. Initially I was vice
8 president of transportation, vice president of
9 Synectics, and then became president of Synectics
10 at -- I forget the exact date, but some point
11 before I left.

12 378 Q. While you were at that
13 succession of companies, the Synectics companies,
14 did you do any consulting work for the City of
15 Hamilton?

16 A. Yes.

17 379 Q. What kind of consulting
18 work did you do for the City?

19 A. So, Synectics is a
20 consulting or was a consulting engineering firm
21 that specialized in traffic safety, and so the
22 work was all revolving around traffic engineering
23 and traffic safety work.

24 380 Q. Okay. So, you said that
25 you are licensed as a professional traffic

1 operations engineer and road safety professional?

2 A. That's not a licence.

3 It's a certification, so it's a --

4 381 Q. Pardon me, a

5 certification. And you consider yourself a road
6 safety professional?

7 A. I do.

8 382 Q. With reference to the
9 concept of nominal safety, could you explain the
10 role of a design engineer for road building, a
11 design engineer compared to other kinds of
12 engineers?

13 A. Well, a design engineer
14 would typically be someone who designs a road from
15 the perspective of geometric design. There's a
16 concept of nominal safety and substantive safety,
17 which is not directly connected with design but
18 indirectly connected, so I can elaborate if you
19 would like.

20 383 Q. Yes, please.

21 A. Part of the discussion in
22 the road safety industry is a recognition that
23 there can be a difference between nominal safety
24 and substantive safety. Nominal safety is
25 typically defined as relating to a recognition

1 that compliance with standards may achieve a
2 certain degree of safe operation. So, if the
3 design manual states a certain parameter for an
4 element of road design, ensuring you meet that
5 parameter is one way to ensure a, quote, unquote,
6 safe design.

7 Substantive safety is the
8 extension of that, I guess is a better word,
9 dealing with the actual outcomes of whether a road
10 facility is operating in a safe manner or not,
11 despite whatever design elements may have gone
12 into it.

13 So, from a road safety
14 perspective, you're typically concerned with both
15 nominal and substantive safety and try to be aware
16 of the potential differences between the two that
17 might exist in the circumstance that you're
18 assessing.

19 384 Q. Thank you. For
20 substantive safety, what kinds of data would you
21 want to collect to inform yourself about
22 substantive safety?

23 A. Traffic volumes, traffic
24 speed, motor vehicle collision information, driver
25 behaviour. Those would be, sort of, the

1 fundamental basic parameters that are present.
2 The geometric condition of the facility is also an
3 aspect that would be included in the assessment.

4 385 Q. Can one assess
5 substantive safety before construction or is it
6 strictly a post-construction concept?

7 A. Substantive safety is a
8 recognition of the real-world outcomes that can
9 exist. It is possible and encouraged to consider
10 substantive safety in the design process. It's
11 more challenging because you don't have the
12 experience, the ability, to observe users in the
13 road facility or the available data for the
14 elements I just described of volume, speed and
15 collisions. But I won't say it's exclusive to
16 post-construction. It can be considered initially
17 and things like road safety audits are intended to
18 try to address that, as well as in-service road
19 safety reviews, which are done post-construction.

20 386 Q. You said it wasn't
21 exclusively post-construction and then referenced
22 road safety audits and in-service safety reviews.

23 How might one work towards
24 substantive safety in a pre-construction phase?

25 A. By considering what

1 potential interactions, theoretical interactions,
2 a motorist might have with the proposed facility.
3 So, you know, on the most basic level, if a
4 roadway is a long, straight alignment and a single
5 sharp curve is introduced in the middle of that
6 long, straight section, from a substantive safety
7 perspective, there may be an elevated need for
8 attention to potential errors that drivers may
9 make because of their interaction with that
10 facility, even though it may be consistent with
11 design parameters from a nominal safety
12 perspective, so that's simplistic but an example
13 of what can be included.

14 387 Q. Okay. Thank you. So,
15 assuming a road is built to standard, that is, it
16 meets nominal safety, and yet has an unanticipated
17 rate of accidents or an unusual profile of
18 accidents once there are drivers actually on the
19 road, what factors do a substantive safety
20 approach focus on to try to assess what is
21 happening?

22 A. Well, the same factors
23 that I just talked about. So, we would pay
24 attention to traffic volumes, traffic speeds, the
25 driver behaviour, collision history and a variety

1 of other elements that may be indicative of
2 determination of, first of all, whether or not
3 there is an issue or problem and what possible
4 reasons might be the source of the outcome.

5 388 Q. Would driver behaviour or
6 driver error be one of those factors?

7 A. Yes. In the example of
8 driver behaviour, speed is a driver behaviour
9 because it's selected by the driver. It's
10 determined by the driver on the facility. They
11 control what speed they're going to travel at.
12 And so, in that example, measuring, using, looking
13 at speed data, would give you some insight into
14 driver behaviour, and so absolutely driver
15 behaviour would be something you would try to
16 determine. But I would put an asterisk on that
17 that there's potential limitations as to what you
18 can determine about driver behaviour from that
19 type of evidence and even from observations.

20 389 Q. Okay. And that would not
21 be the only thing you would look at? You gave a
22 laundry list of things that, from a substantive
23 safety approach, you would consider in addition to
24 driver behaviour. Is that fair?

25 A. Yes, for sure,

1 absolutely.

2 390 Q. Would one of those
3 factors that you would consider be the roadway
4 itself in terms of its geometry?

5 A. Yes. As I highlighted a
6 moment ago with the example of the single curve,
7 road geometry, because the driver interacts with
8 the road, is an element.

9 And maybe to sort of simplify
10 it, we're typically looking at three elements, the
11 driver, the road and the vehicle itself, as three
12 components that you wish to assess the best you
13 can in trying to determine and assess substantive
14 safety.

15 391 Q. Okay. So, focusing on
16 that second factor, the road, you would look at
17 geometry, you already talked about collision
18 review. What about the roadway materials?

19 A. Yes, that certainly could
20 come into play. If a road was a gravel road as
21 opposed to a paved road, there would be
22 potentially different operating conditions and
23 interactions between the driver and the road, and
24 the road surface also changes potentially
25 depending on environmental conditions, weather,

1 rain, snow, will impact the interaction between
2 the vehicle and the road surface, so certainly
3 road surface would be something to consider.

4 392 Q. Okay. So, I'm going to
5 ask you a number of questions about your work at
6 CIMA. Is it fair to say that you and others at
7 CIMA both considered the nominal safety, so design
8 standards, compliance approach, and also a
9 substantive safety approach when you were
10 providing consulting services to the City?

11 A. Partially, yes, but I
12 would clarify that when a road safety assessment,
13 in this case when a road safety review is being
14 done, one of the things we do not do is we're not
15 there to assess the design, so we're not going
16 back to the design standards and checking to see
17 if things were constructed in accordance with the
18 plan. That's not what a road safety audit does.
19 We're more focused on the substantive safety side
20 of the line.

21 There's some inevitable
22 blurring between the two, so understanding the
23 elements that would make up normative safety,
24 geometric design, are critically important to
25 understand. But I stress and clarify and stress

1 that a road safety assessment is not a design
2 review. It specifically is not intended to do
3 that. There are processes for that.

4 393 Q. Right. Thank you.

5 Turning now to CIMA, from Synectics you moved to
6 CIMA and you worked there from 2009, you already
7 told me. What office of CIMA did you work in?

8 A. You mean physically what
9 office?

10 394 Q. Yes, physically, the
11 geographic location of your office.

12 A. In Burlington, Ontario.

13 395 Q. How big was the
14 Burlington office in terms of number of staff?

15 A. Well, initially myself
16 and another partner opened the Burlington office,
17 so on day one there were two of us. And then, you
18 know, it since has built up to -- I don't know.
19 There's probably 65 people here in Burlington and
20 multiple others in other offices throughout
21 Ontario.

22 396 Q. And who was the partner
23 that you initially opened the Burlington office
24 with?

25 A. Ali Hadayeghi.

1 397 Q. How did you come to do
2 work for the City of Hamilton while you were a
3 partner at CIMA?

4 A. We would bid on
5 assignments that were publicly advertised and we
6 received a number of assignments through the
7 roster process and we also received assignments
8 through direct order.

9 398 Q. Within CIMA, who was the
10 primary contact for work for the City of Hamilton?

11 A. I won't say there was a
12 primary one. I certainly had a connection to the
13 City, having worked there, so I had some contacts
14 and knew some people, but Ali also was intimately
15 connected with the work, so I would probably say
16 it was more closely shared.

17 399 Q. Okay. And was that true
18 in terms of you had the close connection, but it
19 was shared from 2009 until your retirement? And,
20 sorry, I'm going to call it retirement, which is
21 when you moved from partner to casual employee, if
22 that's okay.

23 A. Yeah. I probably shifted
24 back and forth over time depending on what else
25 was going on and was doing what -- I would say

1 towards the end I was probably more in Hamilton
2 than Ali was, only because he had become involved
3 with other clients more deeply and less time
4 available.

5 400 Q. Okay. How significant a
6 client was the City of Hamilton to CIMA from 2009
7 to 2020?

8 A. Well, in 2009, you have
9 to recognize we were a start-up. We had zero
10 revenue and City of Hamilton was not a client
11 initially. There were other things that we
12 achieved.

13 And then gradually shifted
14 over time to 2020 or 2022, Hamilton is --
15 currently, Hamilton is a relatively small client
16 for CIMA, only because the book of business has
17 grown so much.

18 401 Q. What about in the 2013 to
19 2018 period? Was the City of Hamilton a
20 significant client in terms of CIMA's Burlington
21 office book of business?

22 A. You mean dollar wise?

23 402 Q. Sure. Yes, dollar wise.

24 A. Dollar wise, no, I
25 wouldn't say they were significant. Percentage

1 wise, perhaps 10, 15 percent of our revenue.

2 403 Q. What about in terms of
3 not dollar wise but in terms of the quantum of
4 work that you were doing for them?

5 A. Relatively similar.
6 Might have been a little higher quantity of work,
7 but there were certainly, you know, a large number
8 of clients. We worked for clients all over
9 Ontario, Canada, and even into the U.S., and the
10 Ministry of Transportation became a much larger
11 client for us.

12 404 Q. During your time at CIMA,
13 ending in 2020, did CIMA do consulting work for
14 the MTO?

15 A. Yes.

16 405 Q. What about for other
17 municipalities?

18 A. Yes.

19 406 Q. And apart from
20 municipalities or government, did you have private
21 clients as well?

22 A. A few. Not very many,
23 but several, yes.

24 407 Q. Okay. So, how would you
25 compare the importance of the relationship between

1 the City of Hamilton and CIMA to your other
2 relationships with other municipalities?

3 A. Similar, the same. All
4 public sector clients are pretty similar in their
5 operation. Each one has a slightly different, you
6 know, approach to things, but the overall
7 relationship was essentially the same.

8 408 Q. In terms of your business
9 development plans, let's say in 2013, did you view
10 Hamilton to be a client that you wanted to develop
11 business with and you thought you would develop
12 business with?

13 A. We hoped we would develop
14 business with and we're consulting engineers, so
15 our business comes from external clients and
16 Hamilton was certainly one of the ones that was on
17 our list. They are a relatively large
18 municipality, geographically close to us, makes
19 for efficient business and work, so yes, they were
20 on our list as client that we wished to have, but
21 so were many others.

22 409 Q. Which division of the
23 City of Hamilton typically retained CIMA to do
24 work, either on the roster or through tender?

25 A. Well, CIMA's specialty

1 was traffic safety and traffic engineering, and so
2 it was primarily what was the former traffic
3 department and now part of the Public Works
4 department that would be our primary client.

5 410 Q. Okay. Who did you
6 primarily deal with at the City of Hamilton for
7 the work that you did for them? This isn't a
8 memory test, but any particular names.

9 A. Well, one of the strong
10 contacts would have been Martin White.

11 411 Q. And Stephen Cooper?

12 A. Stephen Cooper, who
13 worked for Mr. White.

14 412 Q. And David Ferguson?

15 A. Again, he was subordinate
16 to Mr. White, so, you know, they were sort of in
17 the list in that order.

18 413 Q. Okay. And there anyone
19 else at the City of Hamilton that pops to mind in
20 terms of staff members that you and your team
21 dealt with regularly?

22 A. Yeah. We worked with Ron
23 Gallo. We worked with a Brian Hughes, who was in
24 the Public Works department. Those are just two
25 that come to mind. There were multiple people.

1 We weren't confined to any very small group, but
2 our expertise was relatively specialized, and so
3 the departments that dealt with that would reach
4 out to us.

5 414 Q. Okay. Who did you view
6 as your client when you had a contract with the
7 City of Hamilton? Individual staff people who
8 retained you? The City as whole? The traffic
9 department? Who did you consider your client?

10 A. Well, at the high level,
11 the client is the City of Hamilton. They bring
12 the purchase order from the purchasing department,
13 but our contact is an individual in whichever
14 department has retained us, and so from a
15 practical and reality perspective, we would work
16 for an individual who was the designated project
17 manager, project lead, on the client side, so
18 that's the same in Hamilton as it would have been
19 anywhere else.

20 415 Q. I've just dropped my pen.
21 I'll just be right back. Odd thing about Zoom.

22 You mentioned earlier that
23 sometimes you received contracts from the City of
24 Hamilton's roster. Do you remember that, that you
25 said that earlier?

1 A. Yes.

2 416 Q. You applied to be on the
3 City of Hamilton's roster of consultants?

4 A. We bid to be on the
5 roster of the consultants. It was a bidding
6 process that was carried out every couple of
7 years.

8 417 Q. Okay. And you were
9 successful in those bids?

10 A. I don't remember if we
11 were successful every time, but we certainly were
12 successful in 2013 and beyond, yes. We were on
13 the roster.

14 418 Q. How would you find out if
15 the City of Hamilton was considering assigning a
16 project through the roster?

17 A. Through the roster
18 specifically, availability of assignments would be
19 communicated to us directly from a person, an
20 individual, at the City who I understood was going
21 to be or was the project manager for the
22 assignment.

23 419 Q. Okay, so that you would
24 receive notice of the assignment after the City
25 had determined that you were going to be given a

1 roster assignment. There was no RFP process,
2 there was no additional process, to be selected
3 for an assignment. Is that right?

4 A. No, I wouldn't word it
5 that way. The roster process was an RFP process.
6 Certain elements had to be submitted and were
7 approved or perhaps pre-approved is the better
8 terminology. That included a definition of
9 individuals that would be available from CIMA and
10 rates for their hourly rates and description of
11 expertise that we were capable of. The roster
12 indicated defined categories of areas of expertise
13 from which consultants could be called. So, that
14 was stage one, so you were essentially
15 pre-approved in a roster process.

16 And then when an assignment
17 came, the normal process was either an e-mail with
18 an attachment in the form of an RFP or request for
19 quote document that would ask us to provide
20 further details. It might also, however, come in
21 the form of an e-mail or even a phone call
22 indicating, hey, we have an assignment, you know,
23 we're contemplating hiring CIMA for this task. We
24 would like you to respond to our proposals, if
25 definitions have been provided, so to give us a

1 proposal based on this conversation, discussion,
2 e-mail that would transpire. And then we would
3 submit that and await to see whether or not we
4 were accepted.

5 420 Q. Okay. Thank you for that
6 clarification. To your knowledge, once you were
7 on the roster, did that second process you just
8 described, was that competitive in that the City
9 would be sending out those same requests for
10 quotations to multiple entities on the roster, to
11 your knowledge?

12 A. I had no idea. We would
13 receive a request and we would make a submission,
14 but I did not know whether the City was seeking
15 other quotations, proposals, for the suggested
16 work, so I was never aware.

17 421 Q. Okay. I'm going to ask
18 you some questions about the way that CIMA
19 maintains its version control on its reports. Is
20 there a standard method for denoting a final
21 version of a report that City uses?

22 A. Not per se. The
23 numbering process that we use gives an indication
24 of documents that are being worked on internally
25 and with separate notation, different notation,

1 when documents are sent out of the company to a
2 client, so we know internal versus external
3 distribution. But there was no, you know,
4 specific marker that said this is the final. An
5 externally sent document could be in whatever
6 stage of its life. It may not -- just because
7 it's gone out doesn't mean it is the final
8 document, although when we send something out to a
9 client, our intent was that it's a product meeting
10 a requirement that the client has requested.

11 422 Q. Okay. Even if you didn't
12 use some sort of coding for denoting that
13 something was final, would you include something
14 that said the word "final" when you were sending
15 out a version you viewed to be final?

16 A. Some individuals would.
17 We tried not to. We had an internal numbering
18 system, but it certainly got adapted on the fly.

19 423 Q. Okay. My question was
20 more about the use of the word "final." Just so
21 that I'm clear, was it the standard practice when
22 CIMA viewed a report to be final that they would
23 call it using the word "final" on the draft of the
24 report?

25 A. No, I would not say

1 CIMA's standard practice was to do that. It may
2 certainly have been done and I would anticipate
3 that if the word "final" was attached to it, it
4 was potentially with the understanding that we
5 were complete. But if the client identified an
6 error in a report, then, you know, the correction
7 would be made. So, you know, just because it said
8 final on it, we didn't cross our hands and say no.

9 424 Q. Okay. Once CIMA had
10 issued a final report, does it typically have an
11 ongoing role with a project?

12 A. With the client?

13 425 Q. Yeah, with the client in
14 respect of the content of that report.

15 A. Typically, no.

16 426 Q. Maybe put differently,
17 CIMA does consultation work. It doesn't do
18 implementation work. Is that right?

19 A. Correct. As a
20 consultant, we would provide consulting
21 engineering services to the client, and the client
22 then does with the report that we have provided
23 them what they wish, you know? Yeah. I'll leave
24 it there.

25 427 Q. Okay. Thank you. I'm

1 going to ask you some questions now about the 2013
2 CIMA report that I think is otherwise called the
3 Red Hill Valley Parkway Safety Review.

4 A. Yes.

5 428 Q. Do you remember that
6 project?

7 A. I understand the report
8 you're referring to, yes.

9 429 Q. Who was the lead at CIMA
10 assigned to that project?

11 A. Initially it was
12 Mr. Hadayeghi.

13 430 Q. What was your day-to-day
14 role on the project?

15 A. Initially, not very much.
16 I became involved as the report was being reviewed
17 and asked to assist in the review and ended up
18 becoming a cosignatory to the report.

19 And, sorry, just to back up
20 half a step, when you said who was responsible, I
21 was assuming you were meaning the responsible
22 partner.

23 431 Q. Yes. I said who was the
24 lead, but yes, who was the responsible partner?

25 A. Yeah. My answer remains

1 the same.

2 432 Q. Okay. You said initially
3 it was not you, but over time would you agree that
4 you became the primary responsible partner dealing
5 with this project?

6 A. Yes. I think the role
7 expanded and I became at least a co-lead, using
8 your term, on the assignment with Mr. Hadayeghi,
9 Dr. Hadayeghi.

10 433 Q. Did you conduct any of
11 the data analysis that went into the eventual
12 report?

13 A. The actual
14 number crunching?

15 434 Q. Yes, the actual
16 number crunching.

17 A. Not myself, no.

18 435 Q. Did you have a role in
19 drafting responsibility for the final report? I'm
20 not talking about editing, but the actual first
21 drafting of it.

22 A. Certainly a first
23 drafting of it. The first drafts were put
24 together by a team of staff. Typical for most of
25 our reports, there would be multiple individuals

1 involved, assigned various components of the
2 assessment and analysis, and on the internal
3 workings, they would contribute their component to
4 a preparation of the, you know, very first drafts
5 of putting the report together.

6 436 Q. Okay. What, then, was
7 your role as a co-responsible partner or
8 responsible partner?

9 A. Well, in the 2013 report,
10 I became involved as we were getting to the point
11 of issuing a report to the client, so I was
12 involved in that review prior to the version that
13 was going to be sent out the door to the client.

14 437 Q. Who was the primary point
15 of contact with the City from CIMA's perspective?
16 Who within CIMA was the primary point of contact?

17 A. Well, it started out as
18 Maurice Masliah and then that transitioned to
19 Brian Applebee. So, for all intents and purposes,
20 Brian Applebee was the primary contact and lead
21 from -- internal project manager, CIMA's project
22 manager.

23 438 Q. Why did Mr. Applebee fill
24 that role?

25 A. Sorry, why?

1 439 Q. Yes.

2 A. Because he had capability
3 of managing some of the technical issues. He was
4 knowledgeable in the subject matter. Mr. Applebee
5 had worked for Hamilton at one point in time, so
6 he had a bit of knowledge about the location, the
7 physical location of the study. I would say all
8 of those combined were part of the reason why he
9 was an appropriate choice.

10 440 Q. Thank you. Registrar,
11 could you turn up HAM426, please. Thank you.

12 So, this is a March 12, 2013
13 document. It's on CIMA letterhead. Registrar,
14 can you scroll down to the last image in this
15 document, please. It's not short. Sorry, pardon
16 me. Go back up one more. Thank you.

17 So, we'll go through the
18 content here, but just so that you can see, this
19 is a request for quotation and it's signed by you.
20 Why was it signed by you rather than another
21 partner? You had said Dr. Hadayeghi was, sort of,
22 started off but you're signing it. Is there
23 any --

24 A. I can't recall exactly
25 why I signed it. Frankly, it might have been

1 availability.

2 441 Q. Sure. Okay. Registrar,
3 can you go back up to image 1, please. Did you
4 draft this request for quotation yourself?

5 A. Not to my recollection,
6 no.

7 442 Q. Would you have reviewed
8 it before it was sent out?

9 A. Yes.

10 443 Q. So, you'll see that this
11 is March 12 and just in the very first paragraph
12 under the re:line, it's:

13 "In response to your
14 request for the above
15 noted, CIMA is pleased to
16 present this letter of
17 quotation that lends our
18 understanding of the
19 assignment, summarizes
20 our proposed work plan
21 and presents our proposed
22 schedule and project
23 fee."

24 And you'll see it is directed
25 to, just above that, Mr. Cooper and Mr. Gallo at

1 the City.

2 I'm going to turn you now to a
3 notebook. Registrar, can you call up CIM22409,
4 please. Just stopping here before we get to that
5 the content, is this your handwriting?

6 A. Yes. It's a page from my
7 notebook.

8 444 Q. Over the course of the
9 inquiry, you provided a number of excerpts of your
10 notebook. Is that right?

11 A. Yes, as requested.

12 445 Q. Thank you. And is it
13 fair to say that your practice was to take notes
14 in respect of events that happened in your
15 notebook on the day that is referenced? The day
16 that things happen, you make a note on that same
17 day. Is that right?

18 A. I would try to, yes.

19 446 Q. So, here, on the
20 left-hand side, it says, "Hamilton, Red Hill,
21 BP30."

22 That pink highlighting, was
23 that for identification for the inquiry, the
24 highlighting itself?

25 A. I don't think so. I

1 believe it's probably for marking to the
2 timesheet.

3 447 Q. Okay. So, you'll see up
4 in the left-hand corner this is March 11, so it's
5 a couple of days before the quotation we were just
6 looking at and you'll see on the left-hand side it
7 says "Red Hill, Hamilton, Red Hill," and it says
8 "Steve, Hamilton, Ron Gallo, Hamilton."

9 Am I correct that you had a
10 call with Steve and Ron Gallo in advance of
11 preparing the quotation?

12 A. Either a -- either it was
13 an e-mail initially or there was either a phone
14 call or a physical meeting. I don't remember
15 which. I don't know if this reflects the physical
16 meeting or a telephone call, conference.

17 448 Q. Okay. I have some
18 additional documents I'll take you to that might
19 assist with that, but it was some interaction with
20 Mr. Gallo and Mr. Cooper that led to these notes.
21 Is that fair?

22 A. Yes. Ron Gallo is listed
23 and Steve refers to Steve Cooper.

24 449 Q. Okay. You'll see that
25 the next bullet point under their names says,

1 "Motion from council wording." Did you understand
2 that the quotation you were going to provide was
3 in respect of a project requested through a motion
4 from council?

5 A. I'm not sure I fully
6 understood it. I scribbled the note, so there
7 must have been some reference to that.

8 450 Q. Okay. Are you saying
9 you're not sure you fully understood my question
10 because of the complicated way I asked that, or
11 you weren't fully sure if this request was
12 pursuant to a motion from council or not?

13 A. The latter.

14 451 Q. Okay. Did you see a copy
15 of a motion resolution from council or a committee
16 of council at any time before you completed the
17 project?

18 A. Before we completed the
19 project?

20 452 Q. Yeah.

21 A. Yes. I'm not sure we saw
22 the motion. We saw content that related to a
23 more -- provided more clarity, I guess I would
24 say, with respect to a motion.

25 453 Q. Okay. Going up to the

1 right-hand side in the box that is under the 7,
2 that's helpful. Registrar, I'm not sure if you
3 can actually highlight on this document, but if
4 you can, way up on the top on the right-hand side
5 where it says Broad Safety Audit, up there, I'm
6 just trying to orient you to where we are, you
7 don't have to pull that up, but thank you, so
8 that's where we're looking.

9 There's a box that says
10 "Lighting, parking, signing," and it has a square
11 around it. Did you understand this to be the
12 three things that Mr. Cooper and Mr. Gallo were
13 seeking CIMA's expertise on?

14 A. I was quoting their
15 words, so that's the -- I'm not sure who, but
16 somebody quoted that and I believe there's an
17 e-mail from Mr. Cooper at some place that mentions
18 the same three words, so that's why it's listed in
19 our proposal, as you can see from the previous
20 document.

21 454 Q. Registrar, can you go to
22 CIM9208, please, and if you can go down to
23 image 2, please.

24 Actually, I think it's
25 probably image 3. Pardon me. It's over two

1 pages, so you can't entirely see it, but at the
2 top of this page is an e-mail from Mr. Cooper to
3 Mr. Applebee and it's series of e-mails. Is this
4 e-mail you were just referring to that provided
5 some context to the scope of CIMA's work?

6 A. Yes. I've read it now
7 since preparing for this testimony.

8 455 Q. And, Registrar, if you
9 could pull out the fourth paragraph in the e-mail
10 on the top, it says:

11 "This will be a larger
12 safety review..."

13 So, did that give you an
14 overall general view of what kind of project this
15 was going to be?

16 A. Yeah. I think this is
17 assisting in defining what the intent of the
18 review was going to be and this is wording
19 provided by the representatives from the City to
20 some people at CIMA. I wasn't included in the
21 e-mail thread, but I have since read it.

22 456 Q. Okay. Within your
23 industry, a larger safety review or an in-service
24 safety review, does that have a particular scope?
25 The one we were talking about in terms of

1 substantive safety, you know, would you be looking
2 at all the factors that you were talking about
3 around substantive safety in a safety review?

4 A. No. I think the context
5 is more larger in terms of geographically the
6 amount of area that's being covered. This
7 location includes ramps and main line sections of
8 the highway and we would often get engaged for
9 safety reviews of very precise locations, an
10 individual intersection, for example, so this is
11 getting clarification that it's larger physically
12 than just one particular location, one particular
13 element.

14 457 Q. I see. I didn't ask my
15 question very well. My question I was trying to
16 ask was: When you're talking about the term
17 safety review, does that term mean that you're
18 looking at a whole bunch of factors that might go
19 into substantive safety?

20 A. A safety review would be
21 equivalent to a road safety audit or in-service
22 road safety review and, by definition, that would
23 include substantive safety elements, consideration
24 of nominal safety components, but it's a safety
25 review as opposed to a design review of the

1 highway.

2 458 Q. Okay. Thank you. You
3 can end that call out. Registrar, can you pull up
4 HAM426 again, please, and if you can call out
5 Understanding the Assignment down to figure 1.

6 So, here, this is
7 Understanding the Assignment and you have set out:

8 "The key aspects may
9 include but may not be
10 limited to lighting,
11 signs and markings and
12 geometry and that the
13 City is also going to
14 require a cost-benefit
15 assessment for each
16 recommendation for
17 improvement that results
18 from this review."

19 So, it was both an
20 investigation process and then a cost-benefit
21 assessment process. Is that right?

22 A. Correct.

23 459 Q. I know I asked you this,
24 but just to confirm, at this point, had you
25 seen -- by the point that you're delivering this

1 request for quotation, had you seen the motion by
2 city council that prompted this review?

3 A. I don't believe so, no.
4 The wording that's here is essentially parroting
5 back what the City had stated to us, so very
6 simplistic lighting, signs and markings, geometry,
7 virtually no additional detail because we didn't
8 have any additional detail provided to us.

9 460 Q. Fair enough. Registrar,
10 can you end that call out and go to image 2,
11 please.

12 So, this request for quotation
13 sets out a work plan that has a number of tasks
14 that seem to either follow one after another or be
15 conducted at the same overlapping times. Is it
16 standard for CIMA to put a work plan together that
17 details every aspect of its process to get to a
18 final report?

19 A. I'm not sure I would use
20 the descriptor of "every." We try to put a work
21 plan together. It assists both us in defining the
22 effort which will need to go into the assignment
23 so that we can provide a quotation to the client,
24 and it assists the client in getting some
25 understanding as to what tasks are going to be

1 conducted.

2 I would add that, in this
3 example, this project was a roster assignment, so
4 in the roster assignments, there tends to be, can
5 be, a little bit of iterative discussion between
6 the client and CIMA as to what the tasks will be.
7 Because there's not a long detailed request for
8 proposal that has been issued by the client, it's
9 done more casually with a verbal or a limited
10 interaction, so there's some necessity for
11 understanding and this assists in providing that
12 clarity.

13 461 Q. Great. So, the first
14 task is a startup meeting. Registrar, if you
15 could call that task 1 up. Is that part of that
16 process to finalize the project scope, the
17 schedule, the budget, the lines of communication,
18 things that might otherwise be in a requesting for
19 proposal, if you were doing a request for
20 proposal? Is that right?

21 A. Well, no. You would
22 typically have a startup meeting regardless of the
23 process that's used. It's a step in the project
24 to initiate communication with the client and try
25 to get the communication going back and forth,

1 particularly if data needs to be exchanged.

2 462 Q. Okay. And it's, in part,
3 a step to finalize the project scope?

4 A. It can be, yes. All I'm
5 saying is that it's not unique to roster
6 assignments. The project startup meeting is a
7 common step in any project that we would do for
8 any client.

9 463 Q. Okay. Registrar, can you
10 bring up CIM9115.001.

11 So, this is April 26 and this
12 is a project initiation meeting minutes for the
13 safety review of the Red Hill Parkway from
14 Dartnall Road to Greenhill Avenue. And just
15 stopping there, in that subject line, the safety
16 review in this case was only for a segment of the
17 parkway. Is that right?

18 A. Correct, as defined
19 starting at the Dartnall Road interchange and
20 going to the Greenhill Avenue interchange, limited
21 portion of the Red Hill Valley Parkway.

22 464 Q. So, for anybody who
23 doesn't know the Red Hill well, that's not the
24 entirety of the parkway?

25 A. No. It's less than half

1 of the overall distance, in my recollection.

2 465 Q. So, have you seen this
3 document before?

4 A. I have and I've reviewed
5 it more recently in preparation for this inquiry.

6 466 Q. Is this the meeting
7 that's described under task 1, the startup
8 meeting?

9 A. That's my understanding,
10 yes.

11 467 Q. You didn't attend this
12 meeting. Do you know why?

13 A. I think I was on
14 vacation.

15 468 Q. Okay. You'll see under
16 item number 2 it says:

17 "The City expects a
18 comprehensive in-service
19 road safety project to
20 cover all aspects of
21 design, operation,
22 markings, lighting, human
23 factors and
24 recommendations on
25 different safety

1 improvement options,
2 along with a cost-benefit
3 analysis. The project
4 came out of a request by
5 a City councillor to
6 review lighting.
7 Hamilton sees this as an
8 opportunity to do a
9 comprehensive review."

10 Was that information passed on
11 to you at some point after this meeting when you
12 returned from vacation?

13 A. I don't recall if it was
14 formally passed on to me. It would have been part
15 of the project record, so it would have been
16 available for review.

17 469 Q. Okay. Just one second.
18 Thank you. Sorry for that. Great.

19 Registrar, can we go back to
20 HAM426, please. So, this is back in the
21 quotation. If you can go to image 2.

22 And so, you'll see I'm going
23 to go through these very quickly, but you a number
24 of tasks. So, we have startup meeting. Task 2 is
25 data collection.

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

3 Data collection includes
4 finding standards and any changes, past signage.
5 It looks like it's a fairly historical to figure
6 out the current status of the roadway. Is that
7 fair?

8 A. That's the request, yes.
9 This is a wish list, a requested list of
10 information, yeah.

11 470 Q. Sure. Then you do a
12 review and identify any gaps. That's task 3.
13 Then you do collision coding and collision review.

14 Just stopping there, what is a
15 collision review?

16 A. It would be an
17 examination of the information provided in the
18 collision history that has been provided, so you
19 would dig into the details of the collision
20 history, looking for patterns and information
21 related to types of collisions, types of injuries
22 or property damage only, location of collisions,
23 so it's a comprehensive assessment of the data
24 that is able to be taken from the collision
25 history.

1 471 Q. And field review is
2 actually going on to the parkway and looking at
3 the segment of the parkway that was the subject
4 area. Is that right?

5 A. That's what it would
6 mean, yes.

7 472 Q. Okay. Registrar, can you
8 go to the next image, please. Then there's design
9 review. So, just stopping there, you said earlier
10 that this was not going back to assess whether the
11 roadway had complied with design standards, but
12 you are reviewing basic elements of the parkway
13 using CAD design drawings. Is that right?

14 A. Well, again, the request
15 is to use CAD drawings. The list is the elements
16 that we would pay attention to in the review,
17 because they can be relevant with respect to safe
18 operations of the facility. So, these are aspects
19 of the design which are important for
20 consideration.

21 473 Q. Okay. Can you go to the
22 next image, Registrar.

23 So, then you identify the
24 safety issues, identify potential solutions,
25 evaluate potential solutions, and then you take

1 all of that and you do an interim meeting with the
2 City. Is that right?

3 A. Correct.

4 474 Q. And the potential
5 solutions that are identified and recommended,
6 those are potential different kinds of
7 countermeasures that the City may want to
8 implement. Is that right?

9 A. That's the intent, is if
10 you identify issues, safety issues, based on the
11 various review elements that have been described,
12 contemplate possible solutions and then bring
13 forward, you know, an evaluation of solutions to
14 see whether or not they are reasonable and viable
15 for potential implementation.

16 475 Q. Okay. And then you have
17 an interim meeting with the City to review what's
18 been completed, and would it be fair to say to
19 provide your preliminary assessment of the
20 identification of safety issues?

21 A. Yes. It's a progress
22 meeting and intended to, sort of, bring the City
23 up to date with where we are, showing progress on
24 the assignment, and would likely include some
25 preliminary thoughts that, you know, may or may

1 not have been finalized yet, depending on
2 information that's been reviewed.

3 476 Q. Okay. Registrar, can you
4 go to the next image.

5 And then from that point, you
6 do the cost-benefit analysis of the potential
7 solutions that you have identified and discussed
8 with the City at the interim meeting. Is that
9 right?

10 A. Well, not necessarily
11 only at the interim meeting, but yes, the intent
12 would be to undertake a cost-benefit analysis of
13 potential countermeasures or actions that are
14 being recommended.

15 477 Q. Okay. And then it's
16 finalization, drafting reports and actually
17 getting the report out?

18 A. Correct.

19 478 Q. And this project followed
20 these tasks in this order?

21 A. It's not purely a serial
22 operation. There's a little bit of parallel
23 processing that goes on.

24 479 Q. Sure.

25 A. But generally, you know,

1 this is the approach that we take for the
2 assignment. It's a common approach for road
3 safety assessments and the intent and my
4 recollection is generally that's the direction we
5 followed.

6 480 Q. Okay. Registrar, can you
7 bring up CIM8423 and the next image, please.

8 THE REGISTRAR: Sorry,
9 counsel, I think there's only one page to this.

10 MS. LAWRENCE: Sorry, it's an
11 identification number. Can you bring up
12 CIM8423.001. There we go. Thank you.

13 BY MS. LAWRENCE:

14 481 Q. So, this is identified as
15 meeting minutes, meeting number 2, progress
16 meeting number 1, on June 6, 2013 and it doesn't
17 look like you attended this meeting. Pardon me,
18 it looks like you attended this meeting in June.
19 Is that right?

20 A. Yes.

21 482 Q. Do you recall attending
22 this meeting?

23 A. Not really, no.

24 483 Q. Okay. By this point,
25 were you actively involved in this project?

1 A. I was certainly aware of
2 it. Obviously I was at the meeting. I don't
3 think I was heavily involved in the analysis that
4 the underway at the time of the meeting, no.

5 484 Q. Okay. I was thinking as
6 between, you said, initially it was Dr. Hadayeghi
7 who was involved and then you start to play a
8 bigger role. Were you already playing a bigger
9 role at this point?

10 A. No. I wouldn't say a
11 bigger role. I think at this point we're pretty
12 much equal. I think Ali and I are both present at
13 the meeting.

14 485 Q. Is this interim meeting
15 or -- is this meeting the interim meeting that is
16 described in task 11 that we just went through?

17 A. I'm not sure precisely.
18 It is a progress meeting that had been defined.
19 I'm not sure there's a direct line drawn between
20 the two of them as, you know, precisely as you're
21 suggesting.

22 486 Q. Fair enough. Maybe I'll
23 put it --

24 A. The intent is the same.

25 487 Q. Sure. So, I'll put it

1 this way: By this meeting in June, had CIMA
2 completed the data collection, the data review,
3 the collision analysis, the field review,
4 identified the safety issues and started to think
5 through potential solutions?

6 A. No, not typically at this
7 stage in the progress of the project. The initial
8 meeting was just that, the kick off, which is
9 really a request for information to make sure
10 we're sharing back and forth. This is an update
11 as to where we are. But no, I would not assume
12 that this has concluded our findings yet. We're
13 still analyzing data. Here is our progress so
14 far, this is what we're seeing, and subject to
15 further review.

16 488 Q. Okay. Would it be fair,
17 then, to say that that laundry list that I just
18 went through, those had been started but not
19 necessarily completed?

20 A. Certainly there's
21 initiation work. As you can see from reading the
22 notes, there's action which has taken place in the
23 review of information and some preliminary
24 thoughts are begin to have been formed.

25 489 Q. Okay. Can we go to

1 CIM103, please. Can you scroll to the next image.
2 Is this PowerPoint presentation that you provided
3 at this June 6, 2013 meeting?

4 A. Based on my review of my
5 materials for this testimony, I believe it is,
6 yes.

7 490 Q. I would like to mark this
8 document as the next exhibit, Exhibit 58.

9 JUSTICE WILTON-SIEGEL: Done.

10 EXHIBIT NO. 58:
11 PowerPoint presentation
12 dated June 6, 2013,
13 CIM103.

14 MS. LAWRENCE: Thank you.

15 BY MS. LAWRENCE:

16 491 Q. And so, you'll see at
17 this image 2, which is the first full slide, it
18 says Analysis and Results and it goes through five
19 different subheadings: Collisions, Illumination,
20 Signing, Lane Departure, Roadside Design on Mud
21 Street On-Ramp, and Geometrics. Have you reviewed
22 this PowerPoint recently?

23 A. I have looked at it
24 recently, yes.

25 492 Q. Okay. Registrar, can you

1 turn up image 3.

2 So, I see that at the top of
3 this the collision data for a five-year period,
4 from October 2008 to October 2013. Is that the
5 collision data that CIMA used for this project?

6 A. That's my understanding,
7 yes.

8 493 Q. Can we go to the next
9 image, please. There's a reference to
10 segmentation. Why did segmenting or breaking the
11 study area into segments, why did that assist with
12 CIMA's analysis?

13 A. Well, we used a software
14 tool for part of the assessment of the collision
15 information, looking for patterns that may or may
16 not be problematic, and so to do that, the tool,
17 the software tool, required data to be segmented
18 into different portions of the highway, so ramps
19 were separated and numbered and named, and
20 sections of the highway were also appropriately
21 numbered and named. So, that's the reason for the
22 segmentation.

23 494 Q. Is that a usual process
24 that CIMA will use when doing a collision review,
25 or was it specifically because of the different

1 attributes at different parts in the parkway?

2 A. Well, two-part question.

3 It's not usual. This is a bit more intensive in
4 terms of the degree of analysis of the data, but
5 appropriate for that assignment because it's a
6 relatively large section, a complicated section,
7 of roadway and highway, so the tool was an
8 efficient way to do that work and to get good
9 analysis results.

10 So, I mean, it's not directly
11 connected because of the highway, the geometrics
12 or the layout of the highway. It's just that
13 because the highway has different components using
14 the tool, the software tool, and segmenting
15 appropriately is the best and most efficient way
16 to assess it.

17 495 Q. Okay. Registrar, can we
18 go to the next slide, please. I'm just going to
19 go through these quite quickly. It looks like you
20 have provided graphs in respect of severity of
21 collisions. Is that right?

22 A. Yeah. The collisions are
23 broken down into severity types.

24 496 Q. And then the next slide,
25 Registrar, impact type, so that single motor,

1 rear-end, side-swipe, to the extent that
2 information was available?

3 A. Or whatever other coding
4 had been provided on the collision reports, yes.

5 497 Q. Okay. And slide 7,
6 lighting conditions, so this is daylight
7 conditions versus non-daylight conditions for
8 collisions?

9 A. Yes, again, as recorded
10 on the motor vehicle accident reports.

11 498 Q. And the next image,
12 Registrar, is road surface conditions, so this is
13 the condition at the time of the collision, dry,
14 wet, snow, ice, anything else that was listed on
15 the collision document. Is that right?

16 A. Yes. It's the
17 environmental condition. The surface of the road,
18 because of environmental conditions.

19 499 Q. Registrar, can you go to
20 the next slide, please, and actually, can you put
21 up this slide and then the subsequent slide,
22 please. There's actually three slides in a row
23 that deal with collisions, but CIMA provides some
24 observations about the collision data in a
25 different form in these slides.

1 some assessment. And they can also be useful in
2 assisting in the assessment of potential reasons
3 for collisions having occurred, so it's a fairly
4 standard approach to list these types of elements.

5 503 Q. Okay. And in terms of
6 what you found, just going to the left-hand slide
7 that's up on the screen first, the similar
8 locations, being 400-series highways, or it looks
9 like they're less than 20 percent, the study area
10 looks like it's a little more than 40 percent, and
11 the ramp 6, Mud Street, looks like it is about
12 70 percent. I didn't go back and double check the
13 math here, but you're seeing those proportions?

14 A. It appears to be that,
15 yeah.

16 504 Q. Registrar, can you go
17 back to the two earlier slides. Thank you.

18 And the proportions are
19 different here, but the relationship between these
20 two is the same; that is, similar locations show a
21 smaller percentage, the study area is a larger
22 percentage and then the ramp is an even larger
23 percentage than that.

24 So, looking at these three
25 common attributes that you would consider, what

1 was your preliminary view about the study area of
2 the Red Hill that you were looking at?

3 A. I would caution the
4 reading of the first line on the graphics.
5 Similar locations, bracket, 400-series highways, I
6 believe that's been taken from the provincial
7 averages for all 400-series highways and not
8 necessarily highway locations that are similar to
9 this particular piece of the Red Hill Valley
10 Parkway, and you need to recognize that many
11 400-series highways in Ontario are long, straight,
12 flat sections of highway. So, it's reported here,
13 I recognize that, but I'm not sure it's directly
14 indicative that the middle line, study area, is
15 worse, other than if you're comparing them to
16 exactly those types of facilities.

17 The bottom line, of course,
18 shows the ramp number 6 at Mud Street, coming from
19 Mud Street, and it was unique in some of its
20 characteristics, which was why it was reported
21 separately.

22 505 Q. Okay. And so, leaving
23 aside the similar locations, what did you make of
24 the percentage of collisions in the study area
25 that either had non-daylight collisions, wet

1 weather conditions or single motor vehicle
2 accidents? In terms of at these levels, what
3 conclusions, if any, could you draw from that?

4 A. The single motor vehicle
5 collisions is not surprising at all. It's a
6 controlled access highway, so it would be fairly
7 common for single motor vehicle collisions to be
8 the primary type and the proportion to be that
9 high.

10 The day/night collisions,
11 daytime/non-daylight collisions is potentially
12 more useful because it may be indicative of trends
13 that are occurring during hours of darkness.

14 And the wet road surface
15 collisions is, again, also is potentially of
16 assistance, but you need to put it into the
17 context of the physical layout of the facility.
18 So, a roadway that has a linear or horizontal
19 alignment is more likely to have wet road
20 collisions than a roadway that has a straight
21 alignment. A roadway that has an inclined
22 alignment, a vertical curve, is also more likely
23 to have wet road collisions than a flat alignment.
24 The data is being laid out to begin that process
25 of trying to consider what might be going on, and

1 comparison to peers, in comparison to the
2 facility, are also part of that process.

3 506 Q. Did these initial
4 proportions of these kind of collisions cause you
5 concern in terms of either the nature or the
6 number of collisions on the Red Hill?

7 A. It would certainly be the
8 values on the ramp were quite high, and so I would
9 say that there was certainly -- I won't use the
10 word "concern," but there was some awareness of
11 that outcome. The geometric configuration of ramp
12 6 is quite severe, it's a 270-degree ramp, and so
13 there could be -- there's some expectation of a
14 greater number of collisions in that situation.

15 The study area compared to the
16 400-series highways, not automatically a red flag.
17 I think we had the desire to consider the facility
18 in relation to peer facilities, but that proved
19 quite challenging to actually obtain.

20 507 Q. Okay. Commissioner, it
21 is 3:13 and I'm about to move on to another topic.
22 I wonder if this might be a good time for our
23 afternoon break?

24 JUSTICE WILTON-SIEGEL: Good.

25 Let's take our break and return at 3:30.

1 --- Recess taken at 3:13 p.m.

2 --- Upon resuming at 3:30 p.m.

3 BY MS. LAWRENCE:

4 508 Q. Mr. Malone, I'm now going
5 to ask you some questions still in that same
6 document, which, Registrar, is CIM103. If we
7 could go to image 12.

8 This slide is about
9 illumination. It says:

10 "Ministry policy for
11 highway illumination used
12 to evaluate need for
13 illumination."

14 And that there are three types
15 of illumination considered by warrant:

16 "Continuous illumination
17 (freeway segments),
18 partial illumination (at
19 interchange), full
20 illumination (at
21 interchange)."

22 Ministry policy for highway
23 illumination, are you familiar with how that
24 system for that policy works?

25 A. I'm familiar with the

1 Ministry illumination warrant, yes.

2 509 Q. And when it's a warrant,
3 does that mean that the warrant is the process by
4 which something is determined, whether
5 illumination is justified?

6 A. I would not use that term
7 for a warrant. A warrant is an analysis tool, a
8 standardized approach to investigate the thing
9 that the warrant is for. There are warrants for a
10 whole variety of things: Traffic signals, stop
11 signs, so on and so forth. So, an illumination
12 warrant is in the similar category. It's a tool
13 that helps you undertake the analysis.

14 510 Q. Okay. So, the warrant is
15 the analysis tool, but the outcome is whether
16 illumination is warranted or not. Am I using
17 those terms correctly?

18 A. It's described as a
19 warrant, so the warrant typically would provide a
20 threshold value and you either do or don't meet
21 the threshold value and, therefore, by definition
22 you would be warranted or not warranted in
23 accordance with the warrant, but that doesn't mean
24 that lighting should go in. Virtually every
25 warrant that exists has included in it that

1 engineering judgment must be applied to make the
2 determination as to what to do with the results
3 from the analysis.

4 511 Q. Thank you for that. I
5 was talking about the term. So, the warrant will
6 result in whether something is warranted or not.
7 It's a bit confusing, but that's what the warrant
8 process is. Is that right?

9 A. I think your
10 interpretation and your wording is correct.
11 Semantics are important, but it is a warrant and
12 you meet the warrant or you don't meet the
13 warrant, yes.

14 512 Q. Okay. For just these
15 three kinds of illumination, continuous
16 illumination, freeway segments, can you describe
17 what continuous illumination is?

18 A. It would be lighting
19 spaced regularly along the section of highway
20 continuously for some distance.

21 513 Q. Okay. And partial
22 illumination at interchange?

23 A. Would mean only a portion
24 of the interchange would be illuminated. Perhaps
25 the intersection itself or something other than

1 the entire configuration of the interchange.

2 514 Q. Okay. And can you
3 contrast to full illumination at interchange?

4 A. Just that. If an
5 interchange consists of an intersection with a
6 crossing road and on and off-ramps to the highway,
7 then full illumination would potentially serve all
8 of the components, including the ramps and the
9 intersections and if there was a bridge over the
10 facility, for example.

11 515 Q. Thank you. Registrar,
12 can you go to image 17, please.

13 So, here, and this is the
14 first progress meeting, and this slide says:
15 "Illumination warrant
16 analysis based on MTO
17 warrant."

18 And then there's a legend for
19 full illumination and partial illumination. Am I
20 correct that by June 6, the date of this
21 PowerPoint, CIMA had already done some warrants
22 analysis based on the MTO warrant tool?

23 A. Correct, yes.

24 516 Q. And this slide represents
25 that full illumination was suggested in the red

1 areas on this slide and partial on the blue area
2 of the slide?

3 A. Yeah. To clarify,
4 though, the red areas are interchanges, and so
5 it's talking full illumination at interchanges and
6 partial illumination at interchanges; the blue to
7 the northeast being the Greenhill and the other
8 ones being the Mud and Dartnall interchanges.

9 517 Q. Okay. And, here, there
10 are certainly interchanges where the ramps are,
11 but there are also parts of the freeway that are
12 between the two sets of ramps. Were those subject
13 to continuous illumination in this slide where it
14 has the red?

15 A. No, not in this slide.
16 This slide is referring to full illumination and
17 partial illumination and reference to the slide
18 has shown those relate to interchanges.

19 518 Q. Okay. So, where you're
20 not in an interchange spot, what had CIMA
21 concluded at this preliminary time about
22 continuous illumination?

23 A. Continuous illumination
24 on the main line of the highway, you're asking?

25 519 Q. Yes.

1 A. Well, there's very
2 little, almost no, main line section of the
3 highway between the Dartnall and the Mud
4 interchange. Essentially, the on-ramps from one
5 portion go virtually up to the off-ramps of the
6 next portion, so there's essentially no area to
7 install continuous illumination, because you have
8 an overlap between the interchange and the main
9 line.

10 There's a small section to the
11 north on this drawing between the end of the ramps
12 from the Mud Street interchange and the beginning
13 of the ramps for the Greenhill interchange, but
14 it's relatively short. It's, you know, 400, 500
15 metres or so.

16 So, yes, potentially there
17 would be a warrant or an analysis done for the
18 portion of the highway that was the main line in
19 that area, and there would be a result from it. I
20 don't think this slide shows that, but it would
21 have been done or my understanding is analysis had
22 been done in that regard for lighting in those two
23 types of circumstances.

24 520 Q. Okay. And so, the
25 effect, just given the physical layout of the

1 study area, was that full illumination at
2 interchanges would basically illuminate the entire
3 part of the parkway that's in red. Is that right?

4 A. That's what potentially
5 happens if you're illuminating the interchange,
6 and so it does depend on the interchange
7 configuration, but you need to take that into
8 account so you don't overlap and waste your
9 lighting installation, if you're going to proceed
10 that way.

11 I would highlight that this is
12 the MTO warrant. I know at the end of the day the
13 City had requested that the TAC illumination
14 warrant be used instead of the MTO warrant, so
15 this was preliminary work that had been done at
16 the time of the meeting, but, you know, I don't
17 think it was the conclusion of the illumination
18 analysis that was carried out.

19 521 Q. Okay. Registrar, can you
20 go to image 26, please. Thank you. So, this is
21 "Summary of Issues and Potential Countermeasures,"
22 so these are three boxes that appear to lead into
23 each other. Collision analysis results, and we've
24 already gone through that high number of certain
25 kinds of collision conditions. And then the field

1 investigation findings, which I've jumped over but
2 are in this PowerPoint, and then that goes down to
3 the preliminary list of proposed countermeasures,
4 so validating illumination needs, sign layout,
5 design, repair and roadway protection, and more on
6 the following slide. Registrar, if you wouldn't
7 mind pulling that up as well.

8 THE REGISTRAR: The next one?

9 MS. LAWRENCE: The next slide,
10 please.

11 BY MS. LAWRENCE:

12 522 Q. So, the preliminary list
13 of proposed countermeasures, you then see it go
14 into next steps, and am I correct that CIMA had
15 already started coming up with a preliminary list
16 of proposed countermeasures set out in that bottom
17 box and the next steps were going to be the
18 identification of additional countermeasures?

19 A. I think by the time of
20 this meeting, if I've got my dates right, this is
21 June 6, we had been through some of the
22 preliminary analysis, there's presentation of some
23 of those findings as shown on the slide on the
24 left. I don't really like the layout of the graph
25 now that I look at it. Usually the collision

1 analysis results and the field investigation
2 findings are not necessarily sequential like that,
3 but regardless. Yes, there's some beginning of
4 potential countermeasures, opportunities for
5 improvement, that would be contemplated. So, yes,
6 that has certainly begun at this point in the
7 process.

8 523 Q. Thank you. Registrar,
9 can you go to image 23. Thank you. So, I've
10 skipped through a number of the slides in this
11 presentation. You do go through signage and other
12 things.

13 Just dealing with one issue on
14 the Mud Street on-ramp, ramp number 6, which is
15 that ramp that had the higher proportion of
16 collisions than the City area as a whole.

17 At the bottom before the
18 graphic, it says:

19 "High-friction pavement
20 surface treatment."

21 What is a high-friction
22 pavement surface treatment?

23 A. It would be a coating or
24 an addition of material on to the surface of the
25 existing pavement to improve friction, so

1 literally that, a high-friction surface treatment.
2 The existing road would remain in place and you
3 would add something on top of it.

4 524 Q. Why was CIMA, on a
5 preliminary basis, considering this kind of
6 high-friction pavement surface treatment for ramp
7 6?

8 A. There were a high number
9 of collisions occurring in wet road conditions,
10 and so under wet conditions, friction is reduced,
11 and with the very tight geometry for the ramp, you
12 can potentially improve operations and enhance --
13 reduce the number of collisions, if you can
14 improve the friction on the road surface. That's
15 the theory, anyway.

16 525 Q. Okay. Let's go to
17 CIM8423, please. Sorry, 823.001. Thank you.

18 Mr. Malone, can you read that
19 at this font size?

20 A. Yeah. It's okay. I have
21 a larger monitor, so I'm turning to read that, but
22 I hope that's okay.

23 526 Q. Registrar, could you pull
24 out the second half of this document. We'll just
25 talk about the -- yeah, exactly, the whole thing,

1 just to make it a little bigger for everyone.

2 Okay.

3 So, this is the minutes of the
4 June 6, 2003 progress meeting, the one where that
5 presentation we just looked at was provided. And
6 if you can call out or if you can highlight,
7 Registrar, the third last paragraph, "City okay
8 with CIMA," third last, third from the bottom.

9 That one, yes:

10 "CIMA okay with examining
11 high-friction pavements
12 on ramps, however, main
13 line has a different new
14 pavement that may not be
15 recommended to be
16 overlaid with high
17 friction."

18 Do you recall discussion on
19 this point at this meeting?

20 A. I don't recall precisely,
21 no.

22 527 Q. Did anyone explain to you
23 at this meeting about the main line paving and why
24 it was a different new pavement?

25 A. Not to my recollection,

1 no, but I'm also not sure we were recommending
2 high-friction pavements anywhere other than the
3 ramp, so I think there might have been some
4 confusion from the City as to what was being
5 recommended by CIMA.

6 528 Q. Okay. Do you remember if
7 anyone explained to you why the different new
8 pavement might not be suited to a high-friction
9 overlay?

10 A. I don't recall that, no.

11 529 Q. Just looking at the way
12 that the minutes are drafted, can you confirm,
13 looking at this, if it was the City who made the
14 comment, provided the information, about the new
15 different pavement?

16 A. The wording of the
17 paragraph would suggest so, yes.

18 530 Q. You didn't have any prior
19 information about the nature of the paving
20 materials on the main line before this meeting,
21 did you?

22 A. Not to my recollection,
23 no.

24 531 Q. Thank you. You can
25 remove that highlighting, Registrar, or you can

1 leave it. Okay, thank you. And if you can
2 highlight the fifth paragraph from the top, "CIMA
3 to use TAC illumination warrant," if you could
4 highlight that, Registrar.

5 So, you mentioned this before,
6 Mr. Malone, in your evidence, that there was -- I
7 don't want to paraphrase -- some reference to a
8 TAC warrant. What's the difference between a TAC
9 warrant and an MTO warrant?

10 A. Similar, but different.
11 The MTO warrant was designed and is used on MTO
12 highways. TAC, which is the Transportation
13 Association of Canada, is more commonly used on
14 roads owned and operated by municipalities.

15 532 Q. Do you recall whether
16 this reference in the minutes was CIMA suggesting
17 to use the TAC warrant or the City asking CIMA to
18 use the TAC warrant or something else?

19 A. My interpretation of it
20 is that it was the City reminding us they wanted
21 and their approach was to use the TAC warrants,
22 and we had shown them in the meeting the use of
23 the MTO warrants and I think this was a reflection
24 of the correction or direction to use the TAC
25 warrants.

1 533 Q. Okay. Registrar, can you
2 close that call out and bring up the next image,
3 please, image 2. And if you can call out item 4,
4 please. Thank you.

5 This says:

6 "CIMA needs to be
7 cautious with
8 illumination. BC is
9 critical for this
10 assignment --"

11 I'm just going to stop there.

12 In reading this, can you interpret what BC is?

13 A. My understanding is it's
14 benefit cost.

15 534 Q.
16 " -- is critical for this
17 assignment. Due to
18 political and other
19 designs and other cost
20 constraints, site
21 specific locations are
22 probably better than full
23 illumination. CIMA to
24 make sure that
25 illumination, if

1 recommended, would
2 actually assist in
3 reducing the types of
4 crashes on this facility
5 and/or improve
6 conditions, i.e.,
7 geometric. If other
8 treatments could
9 similarly result,
10 consider those before
11 illumination, if
12 possible."

13 Do you recall who said this,
14 these statements, in the meeting?

15 A. I don't recall precisely.
16 I know Mike Field was at the meeting and he was
17 the individual at the City who was responsible for
18 illumination and lighting, so I believe it would
19 have been him.

20 535 Q. Okay. As between these
21 comments coming from the City or coming from CIMA,
22 it's more likely than not that it came from the
23 City and not from CIMA. Is that fair?

24 A. Yeah, I believe so. I
25 mean, I think it's a reminder that illumination

1 was one of the elements that had been articulated
2 in the original discussion and I think the last
3 paragraph or the bottom paragraph is just common
4 sense reflection that -- and maybe it's a
5 clarification that just because a warrant has been
6 achieved doesn't automatically mean that the
7 illumination should be installed. A warrant
8 points you, assists in analysis, and engineering
9 judgment is required as to whether to do it.

10 And part of the problem with
11 the warrants, either TAC or MTO, is they don't --
12 they look at crashes at night and daytime, but
13 they don't look at quantities of crashes, and so
14 they don't really give you a good indication as to
15 whether the treatment, illumination, will actually
16 help you at the end of the day. Is it worthwhile?
17 And, therefore, the benefit cost becomes an
18 important analysis.

19 So, it's one thing to say,
20 well, there's nighttime crashes, but if there's
21 only one crash and it's at night, then 100 percent
22 of your crashes are nighttime crashes, but that
23 doesn't necessarily mean the location would
24 benefit in terms of benefit costs for the costs
25 installed to install light.

1 536 Q. Okay. So, is there work
2 that you can do in assessing your collision review
3 to provide some context to whether there should be
4 a recommendation for illumination?

5 A. Yes. There's a -- it's
6 more than just the warrant step. There's
7 additional analysis necessary in any circumstance
8 when you're considering lighting to ensure you
9 make a recommendation to install it.

10 537 Q. Do you recall if City
11 staff elaborated on what, quote, unquote,
12 political constraints affected the illumination
13 issue?

14 A. No, I don't recall any
15 further elaboration. Again, my belief would be
16 it's simply connected to the fact that
17 illumination was the request of the assignment, so
18 it was something -- it wasn't something that we
19 had casually identified. It was something that
20 was in the original request. I think that's the
21 easiest way to define it.

22 538 Q. When you say in the
23 original request, at this point, in June, did you
24 have a clear sense that the motion from the
25 councillors specifically identified lighting as

1 something you should consider?

2 A. I don't know precisely
3 when I became aware of the content of the council
4 motion or, sorry, the actual council motion
5 itself, I don't think I had received it or been
6 provided it. In fact, I don't think I saw it
7 until preparing for this process. But I think
8 there was more clear articulation of the extent of
9 the illumination request that had been included in
10 the original ask of us to do the work.

11 And so, the proposal that we
12 had provided, that we reviewed earlier, was quite
13 limited. It simply said illumination. But I
14 think that became clarified as we moved along,
15 including clarification that the illumination, the
16 request, was for the ramps, specifically the Mud
17 Street ramp interchange.

18 539 Q. Okay. But as of June 6
19 at this meeting, no one has given you direction
20 that you're only to look at ramps. Right?

21 A. No. We had looked at
22 other stuff because we were ploughing on doing our
23 assessment and reported, you know, where we were
24 in terms of finding on June 6. But in parallel
25 with that was continued input from other points

1 and I know the next step that happened as well
2 immediately following the June 6 meeting.

3 540 Q. Okay. Before we turn
4 there, just in terms of the political and design
5 and other cost constraints, were you typically
6 aware in your role as a consultant of the
7 political context that led to your retainer?

8 A. In general?

9 541 Q. Yeah.

10 A. Political with a capital
11 P, I guess, yes. You know, it was often the case
12 that assignments that we received had come out of
13 requests from council, councils, whatever they
14 might be, so the large P political component is,
15 you know, where some work generated. Other work
16 would generate from staff. And then, you know,
17 there's the larger or the smaller, small P
18 political, being, you know, more subtle, I guess I
19 could say.

20 542 Q. Sure. So, at this time,
21 in respect of illumination, am I correct that the
22 next steps were for CIMA to continue the warrant
23 analysis and then conduct benefit cost
24 calculations in respect of illumination?

25 A. I think the minutes

1 reflect that there was clarification to use the
2 TAC warrants for illumination. We had shown them
3 the MTO, and so that was one step. The next would
4 be to continue a more fulsome assessment of what
5 would be needed, and my recollection from the
6 meeting was that there was also a discussion that
7 is alluded to in the first paragraph of design
8 constraints that may relate to lighting, which we
9 were asked to take a closer look at or get some
10 more information on, I guess I would say.

11 543 Q. Was there a particular
12 direction about how you should get more
13 information?

14 A. Yeah. My recollection is
15 we were asked to speak to the design office for
16 the freeway, for the Red Hill Valley Parkway, and
17 specifically Gary Moore.

18 544 Q. And did you have an
19 opportunity to speak with Mr. Moore?

20 A. I did.

21 545 Q. Registrar, can you bring
22 up CIM22409, please. Thank you. And if you can
23 go to image 5, please. And can you blow up the
24 left-hand side, all the writing. Thank you.
25 Actually, sorry can you cancel that call out just

1 for a second.

2 So, you'll see this is in your
3 notebook, June 6, 2013.

4 Okay, Registrar, if you can
5 call that out again.

6 So, you'll see there are two
7 boxes with a squiggly line in between and the
8 first one says, "Red Hill/Hamilton MTG."

9 Can you identify were those
10 your notes relating to the progress meeting, the
11 minutes of which we just went through?

12 A. Yes.

13 546 Q. And then underneath the
14 line it says, "Gary Moore, 10:00 a.m." Was that
15 the discussion you had with Mr. Moore?

16 A. That's my recollection,
17 yes.

18 547 Q. And was that discussion
19 identified at 10:00 a.m. on June 6, the same day?

20 A. I have to assume so. I
21 don't recall precise time.

22 548 Q. If it wasn't on June 6,
23 was it within days of that meeting on June 6, the
24 progress meeting on June 6?

25 A. Oh, I'm sure it was on

1 June 6. I just don't recall whether it was 10:00.
2 It's in the June 6 page of the diary and I'm sure
3 it reflects that.

4 549 Q. Did you make these notes
5 before, during or after your call with Mr. Moore?

6 A. My practice was to
7 scribble the notes as the discussion would take
8 place.

9 550 Q. Were you able to identify
10 any other notes from this call?

11 A. No.

12 551 Q. Who among the attendees
13 at the June 6 meeting directed you to contact
14 Mr. Moore?

15 A. I don't recall precisely.
16 I think it might have been Mr. Cooper or
17 Mr. Field.

18 552 Q. Was Mr. Moore ever a
19 client representative or a project manager on
20 behalf of the City for any projects that CIMA was
21 involved in?

22 A. Not for me. He might
23 have been for others at CIMA.

24 553 Q. Did you know Mr. Moore
25 from your time working at the City?

1 A. Yeah, sure. I had met
2 him there when I worked there.

3 554 Q. Did you occasionally
4 interact with him in your work for CIMA?

5 A. Very occasionally. He
6 was in the road design side and we were on the
7 road safety side, so we tended to work more for
8 the operations people and not the design. So, I
9 don't think we ever did a project for him, if
10 that's what you're asking.

11 555 Q. Did you consider
12 Mr. Moore to be a knowledgeable person about the
13 history and origins of the Red Hill in 2013?

14 A. I did and I think, more
15 importantly, the people that (audio distortion) to
16 seek more information regarding the design
17 considerations for lighting did so as well.

18 556 Q. What in particular were
19 you hoping to obtain from Mr. Moore during this
20 call?

21 A. Clarification to the
22 question that had been raised in the minutes, as
23 noted.

24 557 Q. Which question in
25 particular? I can take you back there, but can

1 you be more specific?

2 A. I believe the wording in
3 the minutes was design constraints, and so in
4 terms of answering a question regarding design
5 constraints that may have been in place on the Red
6 Hill Valley Parkway, Gary Moore was the person who
7 would probably be best suited to be able to
8 answer.

9 558 Q. Design constraints in
10 respect of illumination in particular?

11 A. That's where it was
12 noted, yes.

13 559 Q. Your notes say:
14 "Status of Red Hill
15 review. Reassess why it
16 does not -- " (As read)
17 You may do this better than I,
18 Mr. Malone. I'll try to read out your writing:

19 "Reasons why design as is
20 - lighting X thru -- "

21 I'm not sure what that says:

22 "Enviro constraints."

23 I know you have your
24 transcripts, which you very helpfully provided,
25 but could you just read it for the record?

1 A. My interpretation of my
2 writing is that it says:

3 "Status of Red Hill
4 review."

5 A new line:

6 "Reasons why design as is
7 - lighting X thru
8 valley."

9 And a new line:

10 "Enviro constraints."

11 And my recollection of the
12 content, the interpretation of the note, is that X
13 refers to prohibited, prohibition or not permitted
14 through the valley, the Red Hill Valley, and that
15 the reason for that was environment, environmental
16 or environmental assessment constraints that had
17 been passed through when the facility was
18 originally designed and ultimately approved.

19 560 Q. Can you recall now
20 whether it was about environmental constraints or
21 environmental assessments?

22 A. Well, my recollection is
23 that it was constraints identified in the
24 environmental assessment and the approvals granted
25 through the environmental assessment processes,

1 there was a federal and a provincial environmental
2 assessment process that was carried through for
3 the facility, Gary was telling me that it had been
4 prohibited. Lighting had been prohibited in the
5 approvals that had been provided through the
6 environmental assessments.

7 561 Q. Did Mr. Moore provide you
8 with any documents that you could review to verify
9 his statements?

10 A. No, he did not.

11 562 Q. Did you rely on what
12 Mr. Moore told you?

13 A. Yes.

14 563 Q. The environmental
15 assessment approvals that you were just
16 mentioning, those would have been completed before
17 the construction of the Red Hill. Right?

18 A. That's certainly my
19 understanding, yes.

20 564 Q. And the environmental
21 assessment process would not have had the benefit
22 of any real-world post-construction data?

23 A. Obviously, yes, if it was
24 done before the highway was constructed, yes.

25 565 Q. Did you take any further

1 steps to verify what Mr. Moore told you about the
2 environmental assessment approval prohibition?

3 A. No, I did not. I took
4 this suggestion, direction, to speak to Mr. Moore
5 and the communication with him as clarification
6 regarding the amount of work or the investigation
7 to be done in regards to illumination. The
8 description in the proposal CIMA had provided was
9 very limited. It simply said illumination, one
10 word, and so it never went into any details.

11 And I note in the top part of
12 this diary entry that there was motion from
13 councillor and I believe that is where there was
14 some at least verbal communication that the motion
15 had talked about illumination at the Mud Street
16 ramps as opposed to illumination through the
17 entire study area. So, essentially we were
18 getting clarification as to what was included, to
19 be included, in our analysis and what was not.
20 That was my understanding of it.

21 566 Q. So, you believed you were
22 getting clarification via Mr. Moore about the
23 scope of CIMA's project in respect of
24 illumination?

25 A. Yes. We had been

1 directed to get further input from Mr. Moore at
2 the progress meeting and my recollection is,
3 because I knew Mr. Moore from having worked at the
4 City, I was the guy who made the phone call to
5 him. And the first line of the bottom part of the
6 note is I gave him an update as to what we were
7 doing on the project. I assume I mentioned
8 lighting as one of the things that was being
9 examined and he provided clarity that lighting
10 could not be installed, X, prohibited, through the
11 valley because of the environmental assessment
12 constraints that had been conducted or determined
13 previously.

14 567 Q. So, just so I understand,
15 you said he provided clarity that lighting could
16 not be installed, and so I'm trying to understand
17 what you took from that conversation in terms of
18 the scope of CIMA's project?

19 A. So, to break your
20 question into the two parts, yes, I understood it
21 was him providing the clarity as to what the scope
22 of the assessment was going to be in regards to
23 illumination. I had done so as suggested by the
24 project representatives at the project -- progress
25 meeting that had taken place earlier that day and

1 that assisted in providing the clarity of the --
2 what the scope was going to be for the assessment.

3 There were, you know, multiple
4 places where clarity was provided in our scope as
5 we proceeded through this. Part of the nature of
6 the roster assessments is the scope can be -- may
7 need clarification as you begin to move through
8 the process.

9 568 Q. Okay. So, when you say
10 provided clarity, are you saying that you took
11 from your conversation with Mr. Moore that CIMA
12 was, from this point forward, not to complete an
13 illumination review in respect of the main line?

14 A. Well, we had already
15 completed part of the review, so it wasn't a
16 matter of completing it or not. The input from
17 Mr. Moore was clarifying that lighting could not
18 be installed, and so effectively validating,
19 confirming, that the illumination through the
20 valley was prohibited in accordance with the
21 environmental assessment approvals for the
22 facility.

23 So, CIMA wouldn't have the
24 capability of altering that environmental
25 assessment requirement. There had been a long

1 history with the facility. It took many, many
2 years, decades, to ultimately become approved, and
3 so it wasn't a trivial matter that the
4 environmental assessment predicted lighting
5 through the valley, so that did effectively cut
6 off the parameters around what the scope of the
7 assessment would be in regards to lighting.

8 569 Q. Okay. So, Mr. Moore
9 provided clarity on some context, contextual
10 background, and from that, is your evidence that
11 CIMA concluded that its scope excluded an
12 assessment of illumination on the main line?

13 A. That was my
14 interpretation at the time. I'm not sure we had a
15 perfectly uniform understanding of that through
16 the entire team working on the project. Again,
17 the assignment is underway. It's fluid as various
18 people are working on it and, again, it became
19 clearer to us internally and that became
20 articulated before we issued the first report to
21 the City.

22 570 Q. Okay. So, that was your
23 interpretation coming out of the June 6 meeting
24 with Mr. Moore. You didn't convey that in an
25 express way to your team?

1 A. I don't recall where this
2 communication went with regards to the team. As I
3 say, we were underway with the assignment. There
4 were a series of next steps that had been
5 identified in the meeting minutes, including
6 clarity regarding the design constraints on the
7 freeway, on the Red Hill Valley Parkway. So, I
8 don't recall exactly how the articulation took
9 place.

10 571 Q. Okay. So, we're going to
11 go through some documents that suggest some of
12 your team members continued to work on this, so is
13 it fair to say that there was some perhaps
14 miscommunication on that point?

15 A. I wouldn't call it
16 miscommunication. I would call it lagging
17 communication. Absolutely, there was continued
18 work by others. One of the directions from the
19 meeting, for example, was to run the warrants
20 using the TAC illumination warrants, and so some
21 staff went and proceeded with that immediately
22 following the meeting and in the days and weeks
23 that followed. So...

24 And that could occur
25 separately from this clarity that had been

1 provided by Mr. Moore, so there's not a perfect
2 sequential operation or layout of information.
3 It's a bit of a parallel processing that's
4 occurring. So, yeah, I know staff went on and
5 continued to do or work. We have that data. It's
6 in our files.

7 572 Q. And you, coming out of
8 that meeting with Mr. Moore, didn't provide in
9 writing your interpretation of the now reduced
10 scope of CIMA's project back to City
11 representatives, did you?

12 A. Well, I spoke to the City
13 representative, which was Mr. Moore, so the
14 direction from the City individuals at the meeting
15 was to get clarification from Mr. Moore. I got
16 that clarification from Mr. Moore. No, I don't
17 believe I articulated, communicated back directly,
18 you know, here is the results of my communication
19 with Mr. Moore.

20 573 Q. Okay. So, you didn't
21 communicate back to Mr. Field or Mr. Cooper or
22 Mr. Gallo that your interpretation of the limited
23 scope as a result of your discussion with
24 Mr. Moore?

25 A. Not to my recollection in

1 a formal manner, no.

2 574 Q. And there's nothing from
3 any of those individuals that I just mentioned to
4 you confirming yes, we want a more limited scope
5 in terms of illumination?

6 A. Well, again, I think the
7 minutes reflect communication, issues with respect
8 to design constraints for illumination, speak to
9 Mr. Moore, and that's what I did. So, I received
10 that input, so I think there is a direct
11 connection, but not in the manner that you're
12 describing, no.

13 575 Q. I'm going to move forward
14 now to the next progress meeting. Registrar, can
15 you turn up HAM51991, please.

16 THE REGISTRAR: Sorry,
17 counsel, do you mind just repeating that?

18 MS. LAWRENCE: Sure.
19 HAM51991. Thanks. And if you could call out
20 under item 2, PowerPoint Presentation.

21 BY MS. LAWRENCE:

22 576 Q. Sorry, I moved too
23 quickly. I just have one question, I didn't need
24 you to call this out. Just at the top it says
25 PowerPoint Presentation. You put together a

1 PowerPoint presentation for this progress meeting
2 as well?

3 A. CIMA did. I didn't
4 prepare it myself.

5 577 Q. Fair enough. And you
6 attended this meeting. Right?

7 A. I would have to check the
8 minutes. I think I did, but I'm not sure.

9 578 Q. Sure. Can you call out
10 or can you cancel this call out, Registrar, and
11 you see your name is under Attendance?

12 A. Okay.

13 579 Q. Registrar, can you call
14 out HAM51990, please. So, this is or can you
15 confirm for me -- and we can scroll in -- that
16 this is the PowerPoint presentation that was
17 presented at this second progress meeting?

18 A. I believe it is, yes.

19 580 Q. Registrar, can you go to
20 image 2, please. So, again, you're setting out
21 the collision analysis results and the field
22 investigation findings. Had those changed since
23 the last meeting and the last PowerPoint
24 presentation?

25 A. I would have to compare

1 them, but I don't think so.

2 581 Q. Okay. Can you go to
3 image 3, please, Registrar. So, there's reference
4 here to the safety analysis tool using the
5 enhanced interchange safety analyst tool. Can you
6 elaborate why CIMA uses the ISATE?

7 A. At the time, it was the
8 only available tool that was -- piece of software
9 that existed to be able to do this analysis. As I
10 said, it's a relatively complex piece of roadway
11 with interchanges and main line sections, and so
12 it was a valuable tool for the collision
13 assessment. We decided to use it to get the best
14 results we could.

15 It also has the advantage of
16 being able to assist in identifying specific
17 pieces of roadway that are performing better or
18 worse than others, so it allows a comparative
19 performance of different parts of the highway.

20 582 Q. Okay. Can you go to
21 image 5, please. Is this chart, where it has
22 total observed, total predicted and total
23 expected, is that the results coming out of the
24 ISATE?

25 A. Yes, yes. I mean, it

1 applies the concept of safety performance
2 functions, so looking at what an expected
3 performance would be of a roadway in comparison to
4 what its actual performance it. When I say
5 performance, I mean numbers of collisions.

6 So, what's important in doing
7 collision analysis is looking for not just the
8 frequencies in terms of number, but the
9 performance, again, that you would expect to get
10 from a certain type of roadway. So, the aligned
11 ramp may have an expectation for a different
12 performance than a straight piece of highway, for
13 example.

14 583 Q. Okay. So, you want to
15 know what the expectation is going to be and then
16 you want to know what the prediction is. And
17 what's the difference between expected and
18 prediction or predicted?

19 A. Predicted is essentially
20 the outcome that the baseline data, being the
21 geometry and the volume, tells you the location
22 should be performing at, and then you can get a
23 better sense as to whether it's performing better
24 or worse than the expectation for that type of
25 facility. It's an improved statistical analysis

1 tool, better than just looking at numbers of
2 crashes. It can get complicated, but I'll leave
3 it there.

4 584 Q. I don't want you to get
5 too complicated, but just what does overall the
6 freeway segments tell you, and, again, just the
7 freeway segments, about how the Red Hill is
8 performing?

9 A. It tells us that some
10 sections, some pieces of the roadway, as you break
11 it into segments or ramps, are performing better
12 than would be expected for that type of facility
13 and some were performing worse. And, again, this
14 is a statistical analysis tool that can help flag,
15 identify, locations in comparison to their -- what
16 the expected performance would be.

17 Sorry, it can be dangerous to
18 simply look at numbers of collisions, so this is a
19 better tool than that because it takes into
20 account volume of traffic and the nature of the
21 facility itself, whether it's a curve, a linear
22 alignment, a ramp or a road section.

23 585 Q. Okay. And can you
24 identify what the blue shading is intended to
25 identify?

1 A. I don't recall, no.

2 586 Q. Okay. Are those the ones
3 that suggest that they need more assessment of
4 potential countermeasures or, put differently,
5 because they're performing worse than one would
6 hope?

7 A. I believe what the blue
8 shaded lines are identifying are locations that
9 have what we would call potential for operational
10 improvement. So, if a location is performing
11 worse than the expectation, then -- worse than
12 predicted, I should say, and it's above that line,
13 then you could potentially find that might be an
14 opportunity for improvement, is the simple way to
15 word it.

16 587 Q. Okay. But that, in and
17 of itself, doesn't mean there might not be
18 opportunity for potential improvements on some of
19 the other segments. Is that fair?

20 A. Agreed. It does not mean
21 that other locations are not able to be improved,
22 but what it helps you identify are locations that
23 are most likely to before the from improvements.

24 588 Q. Okay. I'm going to take
25 you to one of those segments, image 8, and you'll

1 see just before we go there it's Dartnall 3, 4 and
2 5. So, this, you have your collisions review, you
3 have a geometry review.

4 Then can you go to the next
5 image, please. And then you set out some
6 potential countermeasures. So even though there
7 was no shading on that chart that we were just
8 looking at for this particular segment, CIMA has
9 still come up with some potential countermeasures?

10 A. Yes. If you still have
11 high numbers of collisions, there may be
12 opportunities for improvement. The process that
13 we looked at in the previous slides is a
14 statistical tool to help find environments that
15 are more likely to benefit from improvements.

16 But the goal in a road safety
17 assessment is always to find ways for improvement
18 and to make the road more safe, if you're able to
19 do that. So, you wouldn't necessarily restrict
20 your analysis to the locations flagged in the
21 software analysis.

22 589 Q. Okay. Can you go on to
23 the next image, please. One of the potential
24 countermeasures -- and I didn't highlight the
25 others, but they were around signage and things

1 like that -- is at the top here on image 9,
2 pavement surface friction testing, improvement
3 pavement friction through high-friction pavement.

4 We talked earlier about the
5 potential countermeasure of a high-friction
6 pavement overlay. Why was CIMA considering
7 recommending pavement surface friction testing?

8 A. Sorry, at this specific
9 location?

10 590 Q. Yes.

11 A. Well, you would
12 recommend, potentially recommend, high-friction
13 pavement if you have a preponderance of collisions
14 that are occurring in an environment where
15 friction is poor.

16 I would highlight that the
17 bullet is not worded correctly. Pavement surface
18 friction testing is not a countermeasure. It's an
19 investigative tool. Improved pavement friction
20 through high-friction pavement is a
21 countermeasure. I think one of the issues with
22 this and it ended up being a recommendation in the
23 report is that there was an absence of friction
24 information.

25 591 Q. As an investigative tool,

1 what can a -- what was CIMA recommending the City
2 obtain through conducting pavement surface
3 friction testing?

4 A. I think what we were
5 seeking or recommending was that the City
6 undertake friction testing in order to get more
7 information about the friction performance of
8 their road surface. We did not have information
9 about that. We didn't -- data was not provided to
10 us. CIMA doesn't undertake that work. That is
11 typically provided by the client. We have not
12 done friction testing as part of an assignment for
13 the City or for others before this assignment came
14 along, and so in the absence of friction testing,
15 friction information was the motivator for
16 friction testing in order to gather more data for
17 a more detailed analysis.

18 592 Q. What does gathering that
19 data for a more detailed analysis, what
20 information does that provide if you do friction
21 testing?

22 A. Well, usually the
23 greatest value of friction testing information is
24 comparative. If you identify locations that have
25 different friction values than other parts of your

1 roadway network, that may be an indicator that you
2 have a friction problem on the site. As I know
3 has been identified in other evidence at the
4 inquiry, friction conditions can potentially be
5 identified visually, flushing of emulsion into the
6 pavement surface and such, but sometimes it's very
7 difficult to actually determine, so friction
8 testing, you know, gives you a baseline. That
9 would be the bottom line information. And if you
10 can gather some of that information, then you can
11 start to do some comparisons as to say, oh, this
12 location is better or worse in relation to
13 whatever friction parameters were trying to
14 achieve on our roadway.

15 593 Q. Thank you. Can you go to
16 image 29, please. One of the potential
17 countermeasures that CIMA put into this PowerPoint
18 presentation in July was full illumination on all
19 ramps and freeway segments warranted based on TAC
20 and MTO.

21 So, by this point, CIMA had
22 conducted the warrant analysis based on the TAC
23 warrant and the MTO warrant?

24 A. I believe so, yes.

25 594 Q. And both the TAC warrant

1 analysis tool and the MTO warrant analysis tool
2 concluded that full illumination on all ramps and
3 freeway segments was warranted?

4 A. Yes. There were some
5 variance in the warrant analysis. I'm more
6 familiar with the TAC analysis. But for the main
7 line segments, for example, the TAC analysis that
8 we did did not show that illumination was
9 warranted under normal circumstances. There was a
10 worst case scenario that was conducted which did
11 meet the warrant, so it wasn't a slam dunk, if you
12 like.

13 595 Q. Okay. But for both of
14 them, the warrant analysis tool came out that they
15 were warranted. Right?

16 A. That's what the slide
17 says, yes.

18 596 Q. And you'll see on the
19 right-hand side of the screen there's a benefit
20 amount of 48.5 in green, so that's a positive
21 benefit, and then the cost was listed as high.
22 So, CIMA had done some benefit cost analysis by
23 the time this presentation was prepared?

24 A. I think some preliminary
25 assessment had been done, yes.

1 597 Q. Registrar, can we pull up
2 HAM -- sorry, just before we go on. It says full
3 illumination on all ramps and freeway segments.
4 You'll recall we looked at that slide where it was
5 red through the whole thing. This notation in
6 this presentation, in effect, would be continuous
7 illumination through all ramps and the freeway
8 segments, as we discussed before. Is that right?

9 A. That's what it's stating.
10 I still believe that the previous slide from the
11 first progress meeting was only talking about the
12 ramp conditions based on the wording that was
13 there. It talked about full and partial, not the
14 continuous.

15 598 Q. I understand, but here is
16 also says freeway segments, and that would be the
17 freeway segment said in between the ramps and
18 interchanges?

19 A. I'm assuming that's what
20 the wording means. The reality of what length of
21 segments there are actually exist is another
22 question, but that's exactly what it says, yes.

23 599 Q. Okay. Registrar, can you
24 bring up 51991. So, this is back at the minutes
25 that we were looking at before, and if you can

1 pull up under Costs -- actually, can you have two
2 images side by side and pull up at the very bottom
3 Costs and, if you can, can you pull up the
4 Hamilton Costs Due to Lighting. There we go.
5 There we go.

6 I don't know if that is
7 helpful for you to see, Mr. Malone, but under this
8 it says:

9 "CIMA will include
10 illumination
11 recommendations in their
12 report."

13 Then it says MF, and I believe
14 that that's Mike Field. Does that sound right?

15 A. I believe so, yes.

16 600 Q.

17 "Indicated that CIMA
18 should use the MTO
19 costing information
20 rather than Hamilton
21 costs due to type of
22 lighting."

23 So, that's just in terms of
24 the costs of the kind of lighting that would be
25 installed if illumination was installed. Is that

1 right?

2 A. Yeah, I think so.

3 Hamilton didn't have a long history of freeway
4 style illumination; therefore, didn't have costing
5 information to provide.

6 601 Q. Okay. So, at this point,
7 the direction from the City staff who were
8 assigned to this project was that CIMA should
9 include illumination recommendations in the
10 report?

11 A. It is, which we did.

12 602 Q. Thank you. Commissioner,
13 I'm moving on to a different topic now and I see
14 it is 4:32. This might be an appropriate time to
15 break for the day.

16 JUSTICE WILTON-SIEGEL: That's
17 fine. Let's, then, stand adjourned until 9:30
18 tomorrow morning.

19 --- Whereupon the proceedings adjourned at
20 4:32 p.m. until Tuesday, May 31, 2022 at 9:30
21 a.m.

22

23

24

25