

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, July 13, 2022, at 9:01 a.m.

VOLUME 43

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1 Arbitration Place Virtual
2 --- Upon resuming on Wednesday, July 13, 2022,
3 at 9:01 a.m.

4 MS. HENDRIE: Good morning,
5 Commissioner. I would like to open the hearings
6 this week by acknowledging that the City of
7 Hamilton is situated on the traditional
8 territories of the Erie, Neutral, Huron-Wendat,
9 Haudenosaunee and Mississaugas. This land is
10 covered by the Dish With One Spoon Wampum Belt
11 Covenant, which was an agreement between the
12 Haudenosaunee and Anishinaabek to share and care
13 for the resources around the Great Lakes.

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

19 Many of the counsel appearing
20 at this hearing today are in Toronto, which is on
21 the traditional land of the Huron-Wendat, the
22 Seneca and most recently the Mississaugas of the
23 Credit River. Today this meeting place is still
24 home to many indigenous people from across Turtle
25 Island and I'm grateful to have the opportunity to

1 work on this land.

2 Commissioner, the first
3 witness before the inquiry today is Betty
4 Matthews-Malone.

5 BETTY MATTHEWS-MALONE; AFFIRMED

6 EXAMINATION BY MS. HENDRIE:

7 Q. Good morning,
8 Ms. Matthews-Malone.

9 A. Good morning.

10 Q. I'd like to begin today
11 with some questions about your educational and
12 professional background.

13 So, starting first with your
14 educational history, can you tell us what degrees,
15 diplomas or certifications you have?

16 A. I have a Bachelor of
17 engineering science with a mechanical major from
18 the University of Western Ontario. And I also
19 have a diploma in public administration.

20 Q. And when did you graduate
21 from Western?

22 A. In 1981.

23 Q. And am I correct that you
24 were or are a licensed professional engineer in
25 the Province of Ontario?

1 A. Yes.

2 Q. When did you first become
3 licensed?

4 A. I believe at the time it
5 was after two years of experience, and I started
6 work right after graduating from school.

7 Q. Okay, so sometime early
8 to mid-1980s?

9 A. I would say that would be
10 correct.

11 Q. And are you still a
12 licensed professional engineer?

13 A. I'm retired, so I have
14 different categorization of P. Eng. but I still
15 have it, yes.

16 Q. Thank you. And turning
17 now to your professional history, am I correct
18 that you were employed by the region of Hamilton
19 prior to amalgamation?

20 A. Yes, that's correct.

21 Q. When did you begin your
22 employment with the region?

23 A. August 1988.

24 Q. And I understand that you
25 worked for the City of Hamilton post amalgamation

1 and then you left the City, you worked elsewhere
2 and then you came back to the City. Is that
3 correct?

4 A. Yes.

5 Q. So, if we could just fill
6 in the time period, sort of, between when the City
7 amalgamated until you rejoined. Following
8 amalgamation in 2000, what was your position and
9 title?

10 A. I was the director of
11 infrastructure and environmental planning. I
12 believe that was the title.

13 Q. And when did you hold
14 that role until?

15 A. It was -- when did I
16 leave? Just bear with me. I left in August 2003.

17 Q. And in August 2003, what
18 was your position after you left the City?

19 A. I went and I became the
20 general manager of physical services for Haldimand
21 County.

22 Q. And what time period were
23 you in that role?

24 A. From August 2003 until
25 August 2007.

1 Q. Physical services, is
2 that similar in nature to the type of work and
3 services that Public Works in the City of Hamilton
4 offered?

5 A. Yes. That was what they
6 called Public Works. It was physical services.
7 The only difference was that it did not include
8 transit.

9 Q. Thank you. And from
10 Haldimand County, am I correct that you then
11 worked for the Region of Niagara?

12 A. That's correct.

13 Q. And what were your
14 positions in Niagara?

15 A. I was the director of
16 wastewater services for most of my time there, and
17 for a very short period of time I stepped in as
18 the commissioner.

19 Q. When did you leave the
20 Region of Niagara?

21 A. When I rejoined the City
22 of Hamilton, which was in November of 2014.

23 Q. And I understand that
24 when you came back to the City of Hamilton, your
25 role at that time was director of operations?

1 A. That's correct.

2 Q. And you were the director
3 of operations from when you said you started back
4 at the City in November 2014 until either late
5 December 2017 or early January 2018. Is that
6 right?

7 A. Yes. In 2018, there was
8 a reorganization.

9 Q. And what was your role
10 after the reorganization?

11 A. At that time, operations
12 and the traffic engineering group was added under
13 my portfolio.

14 Q. And was that when you
15 became the director of roads and traffic?

16 A. Yes, that's correct.

17 Q. And you said you left --
18 you're retired now. Was that the reason that you
19 left the City of Hamilton, you retired?

20 A. Yes.

21 Q. And when was that?

22 A. My last day at work, I
23 believe, was August 3 of 2018.

24 Q. And are you now fully
25 retired or do you have employment in any other

1 capacities?

2 A. I'm fully retired.

3 Q. Thank you. So, focusing
4 first on your role as director of operations at
5 the City, Registrar, if we could call up RHV679,
6 image 117.

7 So, Ms. Matthews-Malone, while
8 this is coming up, this will be a Public Works
9 organizational chart from December 2014, so
10 shortly after you rejoined the City.

11 A. Okay, great.

12 Q. And, just to situate you,
13 you'll see there's a column for operations, and as
14 I'm following the organizational chart, you
15 reported to the general manager of Public Works as
16 director of operations?

17 A. That's correct.

18 Q. And here it's Gerry
19 Davis, so you reported to Mr. Davis at the time
20 you started back at the City in 2014?

21 A. Yes.

22 Q. And I understand it
23 became Dan McKinnon at sometime in 2016. Is that
24 right?

25 A. Yes, that's correct.

1 Q. Thank you. And
2 Ms. Matthews-Malone, you are the first witness
3 that the inquiry is hearing from in the operations
4 division, so before we get into your specific
5 role, can you describe for us the scope of
6 operations portfolio and areas of responsibility?

7 A. Yes. So, I'll start with
8 the waste management side. We were responsible
9 for garbage collection, both the external
10 contractor and the internal staff. We were also
11 responsible for the landfill operations,
12 responsible for the MRF, the material recycling
13 facility, and for managing commodity, so sale of
14 recyclables. We also, on that side of the
15 equation, had ownership and responsibility for the
16 composting facility.

17 On the roadside of things, we
18 had manager of roads and maintenance, which is
19 Darrell Smith, and manager of winter control, as
20 well as a small support group, capital
21 rehabilitation and technical operations, so they
22 were responsible for maintaining the road network.

23 And last but not least, we
24 also had business programs and business programs
25 was mostly the customer service support to the

1 waste management group and the roads group.

2 Q. Thank you. So, when you
3 say maintaining the road network, what sort of
4 services or functions fell within maintaining the
5 road network?

6 A. It's quite a long list,
7 so I'll try to do my best and please ask me
8 questions for clarification.

9 The winter control, so winter
10 operations of applying materials, plowing, that
11 was a very large part of our operations. We were
12 responsible for maintaining the -- addressing
13 potholes on roads, shoulders on roads. We had
14 responsibility for maintaining retention,
15 detention, stormwater management ponds, we were
16 responsible for grass cutting, litter pick-up,
17 fences, repairs of fences, retaining walls,
18 escarpment faces, noise barriers. So, it's a very
19 long list and I'm sure I've missed quite a few,
20 but that's generally the types of things we were
21 doing.

22 Q. Okay. Thank you. That's
23 helpful. And in terms of the differences between
24 your portfolio on the roads side and what
25 engineering services had in their portfolio with

1 respect to roads and energy, fleet and traffic,
2 can you just, at a high level, sort of explain
3 what the differences were between what was in your
4 portfolio and what was in the portfolios of those
5 groups?

6 A. I'll describe it by the
7 different levels of interactions. And so, there's
8 maintenance and minor rehabilitation works, and
9 that would fall under the operations area.

10 When you got into major
11 rehabilitations or reconstructions, that would be
12 engineering.

13 Q. Okay. And what would be
14 classified as a minor rehabilitation?

15 A. We did small sections of
16 potentially laying down some asphalt, but we
17 didn't do intersection to intersection. I'm
18 trying to think what else potentially would fall
19 into it. On the front line, we obviously did
20 potholes. We did -- I'm trying to think of what
21 else you would say. Addressing cracks.

22 And then on the capital side
23 of where it was capital rehabilitation, they did a
24 little bit of road work, but they were more so in
25 maintenance of bridges, replacement of expansion

1 joints. We also had the drainage superintendant
2 there, so we looked after the retention and
3 detention stormwater management ponds there and
4 some of the storm related infrastructure that went
5 with roads.

6 Q. Thank you. And when you
7 talk about maintaining the road network, what were
8 the governing or applicable standards that applied
9 to roadway maintenance in the City?

10 A. So, we would be working
11 towards compliance with the minimum maintenance
12 standards Ontario publishes, and so there are
13 the -- the minimum maintenance standards contain a
14 number of aspects that would fall within
15 operations, not all, but how big can a pothole be,
16 how big can a -- sorry, this is a major one for
17 us. We took care of sidewalks, but how much of a
18 tripping hazard or surface discontinuity would be
19 allowed on a sidewalk.

20 What about shoulder drop-offs?
21 They had some specifications around that. They
22 had specifications around the size of a crack,
23 when the size of a crack would be deemed to be
24 requiring maintenance.

25 Q. And were your staff

1 responsible for all roads in the City?

2 A. Yes.

3 Q. And so, that included --

4 A. Maintaining, yes.

5 Q. And that included the Red
6 Hill Valley Parkway and the Lincoln Alexander
7 Parkway?

8 A. Yes.

9 Q. I understand there was
10 some outsourcing of operational or some
11 maintenance and operational work. Is that
12 correct?

13 A. Yes. Thank you for
14 bringing that up. We did have -- we had hired a
15 contractor to help us with Red Hill and the LINC
16 and a number of escarpment crossing. I'm sorry,
17 there was contracted services there.

18 Q. What was the division of
19 labour between what was handled internally and
20 what was outsourced?

21 A. So, from patrolling and
22 winter control, that was the responsibility of the
23 contractor. On the Red Hill and the LINC, the
24 internal staff took care of the roadside mowing
25 contracts. They did litter pick-up. They would

1 arrange repairs to guard rails that potentially
2 had been damaged along those roadways. And just
3 to be clear, that the maintenance on the guard
4 rails was contracted out to an outside firm.

5 Q. Thank you. And,
6 Registrar, if we could go to image 126 of this
7 document.

8 So, I have a few questions
9 specifically about the roads and maintenance
10 division and the organization of this group.

11 A. Yes.

12 Q. So, I see here there are
13 three superintendents listed for district north,
14 district west and district east. What was the
15 role of the district superintendents?

16 A. Yes. And I'll just
17 clarify that this is effective December 2014.
18 Later on we did add a fourth district. The
19 district superintendents were responsible for --
20 they had a number of supervisors that reported to
21 them, so they were responsible for their
22 applicable budget for their particular area,
23 coordinating works, looking at fleet requirements,
24 equipment requirements, training, hiring, the
25 management responsibilities around maintaining a

1 district.

2 Q. The fourth district that
3 you added, was that district south?

4 A. That's correct, yes.

5 Q. I've also seen references
6 to after-hours division in the documents. Can you
7 explain for us what the after-hours division is?

8 A. Yes. So, we ran day
9 operations, Monday to Friday, but we did have a
10 group of staff which we called after-hours.
11 District 7 sometimes was their name as well. They
12 were available after hours, when everyone else had
13 gone home, to deal with issues around the entire
14 City, so they were not limited by geographic
15 areas. They had the full 6,500 lane kilometres of
16 the City to watch over.

17 Q. Which of these divisions,
18 in addition to the after hours, would the Red Hill
19 Valley Parkway have fallen into?

20 A. So, Red Hill would have
21 been under district north.

22 Q. And what about the LINC?

23 A. LINC would have been
24 district east.

25 Q. Thank you. You mentioned

1 that there were supervisors that reported to the
2 superintendents. Was that road supervisors?

3 A. Yes, that's correct.

4 Q. What was their role?

5 A. Their role was assigning
6 staff their work through the day, managing our
7 work order control system, ensuring that work got
8 done, ensuring that staff had the proper equipment
9 and had the materials necessary to undertake their
10 activities.

11 Q. Thank you. Registrar, if
12 we could go to image 175 of this document.

13 So, now, Ms. Matthews-Malone,
14 jumping forward, this is the organizational chart
15 for January 2018?

16 A. Yes.

17 Q. And you'll see here
18 you're listed as the director of roads and traffic
19 and, as I understand from what you told us
20 earlier, that was as a result of a reorganization
21 in the Public Works department?

22 A. Yes, that's correct.

23 Q. What understanding, if
24 any, did you have about why there was a
25 reorganization done at that time that led to the

1 creation of the roads and traffic division?

2 A. We had had a consultant
3 in to look at Public Works operations as a whole.
4 We were very heavily invested in continuous
5 improvement during that era and it was alignment
6 of like activities, and so I actually thought that
7 it was a good alignment of like activities to
8 combine traffic operations and engineering in with
9 the other roads areas.

10 Q. And how did your roles
11 and your responsibilities in this role as roads
12 and traffic director compare to some of the roles
13 and responsibilities that you had as director of
14 operations?

15 A. So, sorry, it was: How
16 did my role change?

17 Q. Yeah. Sort of what you
18 had you been responsible for in operations, how
19 did that change when you became director of roads
20 and traffic?

21 A. So, from strictly looking
22 at the old operations division, there was no
23 change there, so that continued on.

24 The role change was the fact
25 that I had a new group, the traffic operations and

1 engineering group was then added to my portfolio,
2 so I had responsibility for a new group, trying to
3 get up to speed with what the group was involved
4 in, getting knowledgeable, getting to meet the
5 staff, getting knowledgeable on their locations.
6 There were various locations.

7 Q. When you say various
8 locations, what do you mean by that?

9 A. Some were located up at
10 the traffic operations centre, up at the
11 escarpment. Others were located at 330 Wentworth
12 Street.

13 Q. Okay. Thank you. And
14 so, was the addition of traffic operations and
15 engineering, that group, was that a significant
16 change to your mandate?

17 A. I would say yes.

18 Q. And I see here in this
19 chart it has, in addition to Dan McKinnon listed
20 as the general manager, there's also John Mater
21 listed as the associate general manager. So, in
22 this capacity, were you reporting both to
23 Mr. Mater and Mr. McKinnon?

24 A. No. I was only reporting
25 to Mr. McKinnon.

1 Q. Okay. And this chart
2 doesn't have the staff on the traffic operations
3 and engineering department listed, but as I
4 understand, it was Martin White who was the
5 manager that reported to you. Is that correct?

6 A. Yes, that's correct.

7 Q. And David Ferguson, who
8 is a superintendant, he reported to Mr. White?

9 A. Yes.

10 Q. And you told us before
11 that when you became the director of roads and
12 traffic, there was some getting up to speed on,
13 sort of, the role and the work being done by
14 traffic operations and engineering.

15 At that time, as of 2018, did
16 you have any experience or expertise in road
17 safety or traffic safety?

18 A. No, I did not have any
19 expertise in that field.

20 Q. And did you have any
21 experience managing staff who were responsible for
22 traffic engineering or traffic operations or was
23 this your first time doing that?

24 A. If I could clarify that
25 by saying primary focus was traffic and

1 engineering, no, I did not have experience with
2 that.

3 Q. Okay. And as a followup
4 to that clarification, what prior experience did
5 you have, perhaps not in a primary capacity, but
6 prior experience?

7 A. For Haldimand County, we
8 were responsible for signage and looking at some
9 of the aspects that potentially traffic operations
10 and engineering were looking at. I believe we
11 undertook a safety, my staff undertook, a safety
12 review at one point for one road.

13 Q. And did you have any
14 prior experience at the City of Hamilton?

15 A. No, with traffic
16 operations and engineering.

17 Q. Had you or your staff
18 otherwise worked with traffic staff in the City?

19 A. Yes, we did. The
20 operations group, we often worked with Martin
21 White's group to arrange detours and to arrange
22 signage, so there was a contact there. Martin
23 also at that point in time had gentlemen
24 responsible for bike lanes, and so they would
25 often consult with us on potential impacts to road

1 maintenance through the addition of bike lanes.

2 Q. Thank you, Registrar. We
3 can close out this document.

4 So, Ms. Matthews-Malone, I
5 have some general questions now about, sort of,
6 the culture of Public Works and your experience
7 working in the Public Works department. And so,
8 as we talked about, you reported first to Gerry
9 Davis as the general manager from 2014 to 2016 and
10 thereafter to Mr. McKinnon. In your experience,
11 how did the leadership or management styles of
12 respective general managers that you reported to
13 differ, if at all?

14 A. So, they both had
15 extremely diverse portfolios, and so they had lots
16 of management skills. You're asking me to
17 highlight differences?

18 Q. Sure, similarities or
19 differences.

20 A. So, similarities, I think
21 the fact that they had a lot of balls up in the
22 air and they were managing a very diverse
23 portfolio.

24 From differences, I would say
25 Gerry Davis was stronger on the financial side, so

1 he was extremely knowledgeable on budgeting and
2 capital budget, operating budget. Dan's focus
3 when Dan came in was very much tied to culture, to
4 looking at the culture of Public Works.

5 Q. What do you mean by
6 culture?

7 A. There was a focus
8 city-wide on culture. Just what did staff feel of
9 their jobs? Were they engaged? Did they feel
10 part of the City? How were staff interpreting
11 their relationship with the City?

12 Q. And I think you said for
13 both of them, one of the similarities was that
14 they both had diverse portfolios and a lot of
15 balls up in the air?

16 A. Yes.

17 Q. What level of involvement
18 or oversight did they have into the work that you
19 or your group did or, you know, reports submitted
20 be your group, that sort of thing?

21 A. It was hands-off to a
22 great extent. I mean, I was hired as the director
23 to manage my portfolio. I would elevate things if
24 I felt it was, you know, worthwhile, then knowing
25 that something was going on within the group so

1 that they could be aware of it.

2 Q. Were there any guidelines
3 or expectations, you know, either written or
4 unwritten, about when they expected to be updated?

5 A. I never saw anything
6 written down. I think it was general knowledge
7 that if you were aware of something that
8 potentially could be brought up at committee or
9 council, you made sure that they were aware of it
10 so that they would not be surprised.

11 Q. And between 2014 and 2018
12 when you were at the City, how would you describe
13 the collaboration between directors and groups
14 within the Public Works department?

15 A. So, within operations, I
16 had touch points with each of the other divisions,
17 so some more than others, but I dealt with each of
18 the other divisions and those responsible for
19 those divisions. I did not have a problem with my
20 interactions with the other divisions.

21 Q. So, in your experience,
22 there was good collaboration, people worked well
23 together?

24 A. Yes. When I asked for
25 help, I got help from the other divisions.

1 Q. And did you ever have any
2 concerns about, you know, information sharing or
3 siloing between the different departments within
4 Public Works or staff within Public Works?

5 A. No, I did not have issues
6 about or concerns about siloing.

7 Q. And were any concerns
8 ever raised with you by your staff about that?

9 A. No. I don't recall
10 anyone ever raising that.

11 Q. And we spoke before about
12 when you were the director of operations, that one
13 of the sections that was within your division was
14 the capital rehabilitation and technical
15 operations group?

16 A. Yes.

17 Q. And I understand from
18 some of the past City witnesses who have testified
19 that capital planning was something that
20 engineering services and specifically the asset
21 management section was responsible for. Is that
22 right?

23 A. That's correct.

24 Q. Can you tell us what the
25 relationship was between the capital

1 rehabilitation work that your division did or had
2 responsibility for and the capital planning work
3 that Mr. Moore's group in engineering services
4 did?

5 A. Yes. Sorry, can you just
6 repeat that again? You just tweaked my mind to
7 something that I forgot to mention in terms of our
8 responsibilities.

9 Q. Sure. So, if that's
10 something that you would like to share, why don't
11 you share that with us and then I can repeat my
12 question after that.

13 A. Yes. I'm sorry. I was
14 thinking of all the things that capital
15 rehabilitation and technical services did. So, we
16 also did culverts, and that was a big one.

17 But I think your question was
18 around how would we identify capital works?

19 Q. Sure. So, that, I think,
20 will be my next question. But really, sort of, a
21 broader question is what the relationship was
22 between the capital rehabilitation work that your
23 group did and the capital planning work that
24 Mr. Moore's group was responsible for.

25 A. So, you're talking

1 capital planning. So, we also did planning. We
2 did planning relative to our portfolio, so we
3 would identify works that we would like to see
4 done as part of the operations group, and then
5 that would go on forward to the planning group
6 within the engineering services group.

7 Q. Okay. And how did you
8 identify the capital works that your group would
9 want to see done?

10 A. Yeah. So, every year we
11 would sit down. Typically it would start very
12 early summer. We would sit down and start to put
13 pen to paper in terms of what activities we would
14 like to see fund that would be deemed capital.
15 So, we would identify we would like -- we put in a
16 capital detail sheet that would say, we would like
17 X amount of dollars for Y type of work. So, guide
18 rails, we had a certain amount of money that we
19 requested and then we had a detail sheet saying,
20 this is for the repairs of guide rails.

21 So, we would have activities
22 related to stormwater detention, retention ponds,
23 culverts, minor maintenance, fleet, facilities,
24 that type of thing. We would generate detail
25 sheets on those requests.

1 Q. I think you said you
2 would typically do that every summer? Right?

3 A. Yes. We would begin very
4 early in the summer to prepare those detail
5 sheets.

6 Q. And would the capital
7 detail sheets or the capital budget sheets that
8 you were preparing, would those be submitted to
9 asset management?

10 A. Yes.

11 Q. And they would allocate
12 the budget. Is that --

13 A. Yes. Ultimately they
14 would allocate the budget.

15 Q. Okay. In the context of
16 a road like the Red Hill Valley Parkway, what sort
17 of works fell within the scope of capital
18 rehabilitation that your group did or would have
19 requested?

20 A. The minor or, sorry, the
21 major -- the activities would be the stormwater
22 detention ponds and related drainage was a big
23 component of our budget. We also had guide rails
24 that would be affiliated with those roadways. I'm
25 trying to think. I can't really think of other

1 capital items. The other items would be in the
2 operating budget.

3 Q. And what would be in the
4 operating budget? What sort of activities or
5 functions would fall within that budget?

6 A. Things like litter
7 pick-up, grass cutting, shouldering.

8 Q. Okay. And you mentioned
9 guard rail or guide rail. Would the funding that
10 your group did and the work that your group had in
11 relation to the guide rail, would that be for the
12 maintenance and repair of guide rail?

13 A. Yes, that's correct.

14 Q. So, it wouldn't include
15 installation of new guide rails. Is that right?

16 A. No. For the Red Hill.

17 Q. Okay. And why is that?
18 It seems as if you've drawn a distinction. What's
19 the distinction there?

20 A. We may replace out guard
21 rail like for -- maybe not like-for-like because
22 we may have an old guide rail in a more rural area
23 that we would, rather than rehabilitate, we would
24 replace with a new standard.

25 Q. And that would be

1 something that your group would do?

2 A. Yes.

3 Q. The capital funding
4 process, was that the primary interaction that
5 your group had with engineering services staff or
6 asset management staff or was there other
7 involvement as between your group and Mr. Moore's?

8 A. Budget and the budgeting
9 was predominantly it was asset management. Every
10 once in a while we might have a touch point with
11 Susan Jacob in the design group. If we had
12 something that we felt was beyond our capabilities
13 of maintenance and required engineering, we would
14 discuss with Susan and then transition that
15 request over to engineering, but they were rare.

16 Q. Okay. And, more
17 generally, how would you describe sort of the
18 nature and level of your interactions with
19 Mr. Moore? Did you work together often?

20 A. So, I did interact with
21 Gary, not very much on day-to-day activities. We
22 predominantly dealt with Rick Andoga in asset
23 management and he was extremely helpful for our
24 group. Gary, I would say probably more
25 interaction at departmental team management

1 meetings.

2 Q. And the DMT meetings, how
3 often were those held?

4 A. They tried every two
5 weeks. Sometimes they were unable to continue on
6 that schedule due to vacations or holidays, but
7 usually every two weeks.

8 Q. And who attended those
9 meetings?

10 A. It was the directors
11 would attend. Every once in a while you may bring
12 some of your staff with you, some of the managers
13 if there was a particular item you wanted to talk
14 about, like, CVOR or a fleet. And every once in a
15 while there were visitors from other departments
16 throughout the City coming and talking about
17 potentially new policies or new procedures that
18 they were implementing.

19 Q. Thank you. To switch
20 topics, I understand, Ms. Matthews-Malone, that
21 you're married to Brian Malone, who is a former
22 vice president of transportation at CIMA. Is that
23 correct?

24 A. Yes, that's correct.

25 Q. Thank you. Registrar, if

1 we could call up HAM62855 and if we could call up
2 both images of that document.

3 Ms. Matthews-Malone, these
4 are, once they come up on the screen, you'll see
5 these are two conflict of interest memos that you
6 submitted first to Gerry Davis in 2015 and then to
7 Dan McKinnon in 2017.

8 And in these memos you
9 declared potential indirect conflict of interest
10 in relation to work that CIMA did for the City,
11 and in both memos you describe, just to summarize,
12 that you had made or would make arrangements to
13 remove yourself from negotiations about hiring
14 CIMA and that managers would do that work, if
15 necessary, for your division.

16 And so, that speaks to, sort
17 of, the hiring piece in relation to work that CIMA
18 did, but once CIMA was retained, how did you view
19 your responsibility in terms of the potential
20 conflict of interest and your ability to
21 participate in CIMA's work?

22 A. So, first of all, from an
23 operational perspective, we didn't hire
24 consultants an awful lot. We didn't have very
25 many consultant assignments. There was one that

1 CIMA was helping Brian Hughes' group with. We
2 were rebuilding our sidewalk inspection program.
3 So, from my perspective, I never attended staff
4 meetings or presentations meetings with staff
5 where the consultant would come in.

6 I would be aware -- my main
7 role was making sure that my staff got their work
8 done, so making sure that Brian in fact got the
9 inspection program going. So, I never was
10 involved with retaining them or being involved in
11 the project management of the consulting
12 assignment that they had. But, you know, I would
13 have sat in meetings or I would have seen staff
14 reports where their final product was done and
15 incorporated into a staff report or something
16 along that line.

17 Q. And when you say their
18 final product, was that, just for my benefit,
19 CIMA's final product?

20 A. Yes. Sorry. The
21 consultant's final product.

22 Q. And generally, as a
23 director, and perhaps I can put this as comparison
24 question, how did your level of involvement or
25 engagement with the consultant projects done for

1 your division, which I think you said there wasn't
2 very many, but how did that compare when CIMA was
3 the consultant versus when CIMA was not the
4 consultant?

5 A. So, again, I'm going to
6 reinforce that I'm only aware of three consulting
7 assignments during my time there for operations.
8 But it wouldn't vary. I did not get involved with
9 day-to-day project management of consulting
10 assignments, so it wouldn't vary.

11 Q. Okay. Thank you. And in
12 the 2017 memo to Dan McKinnon, which is the
13 document that's up on the left, there's a
14 reference in paragraph 4 there to some of the work
15 that CIMA's municipal group had done for the
16 capital rehabilitation and technical operations
17 section?

18 A. Yes.

19 Q. And I see there's a
20 reference to the sidewalk inspections that I think
21 you were talking about before?

22 A. Yes.

23 Q. And in the next paragraph
24 below, you wrote:

25 "With the recent creation

1 of the new roads and
2 traffic division, it's
3 quite likely that CIMA's
4 transportation group,
5 including my husband, may
6 be working with and/or
7 retained by the traffic
8 operations section of the
9 new division."

10 More generally, I'll take you
11 to some specific projects later on, but more
12 generally, was there more overlap with CIMA's
13 transportation group in your new role as director
14 of roads and traffic?

15 A. So, at this point in
16 time, I'm still getting to learn the traffic
17 group, but there was more of a chance for it
18 because my husband's area is traffic safety.

19 Q. Right. Okay. And the
20 traffic operations and engineering group had come
21 into your portfolio at that time?

22 A. That's correct, yes.

23 Q. And so, it was just the
24 nature of -- there was more opportunity for
25 overlap, as you said, and that was because of the

1 nature of the work that was done by your husband's
2 group and now this new group in your portfolio?

3 A. That's correct, yes.

4 Q. Registrar, if we could
5 mark this document as the next exhibit. I believe
6 it's Exhibit 126.

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

9 EXHIBIT NO. 126: 2017
10 conflict of interest
11 memos submitted to Gerry
12 Davis in 2015 and to
13 Dan McKinnon in 2017,
14 HAM62855.

15 MS. HENDRIE: Thank you.

16 JUSTICE WILTON-SIEGEL: I'm
17 sorry, which of the two is 126?

18 MS. HENDRIE: Commissioner,
19 they're both one document.

20 JUSTICE WILTON-SIEGEL: I see,
21 okay.

22 MS. HENDRIE: The 2015 is an
23 attachment to the 2017.

24 JUSTICE WILTON-SIEGEL: Thank
25 you very much.

1 BY MS. HENDRIE:

2 Q. Registrar, we can close
3 out this document and if we could call up overview
4 document 6, pages 125 and 126. Thank you.

5 So, Ms. Matthews-Malone, in
6 late October -- and just to orient you, the
7 paragraphs that I'm going to be asking you about
8 are paragraphs 353 and 357.

9 A. And you'll bring those up
10 larger, will you?

11 Q. We can.

12 A. Thank you.

13 Q. So, yes, if at any time
14 you need us to zoom in or zoom out, just let us
15 know and the registrar can help us with some of
16 that.

17 So, in late October 2014,
18 there was a fatal crossover collision on the LINC
19 and, as you'll see here in paragraph 353,
20 Councillor Jackson received an e-mail from a
21 member of the public requesting a median barrier
22 on the LINC.

23 And, Registrar, we can close
24 this call out and if we could call out
25 paragraphs 354 to 357.

1 So, the e-mail that Councillor
2 Jackson received got circulated internally within
3 Public Works. And you'll see in paragraph 357
4 that eventually, on October 30, 2014, Mr. Moore
5 sent an e-mail to Mr. Mater, Ms. Clark, Al Dore
6 and yourself and he provided his views own
7 installing the median barrier.

8 And so, you were copied on
9 Mr. Moore's response here and this was October 30,
10 2014. Am I right that at this time, you hadn't
11 officially started back at the City?

12 A. Yes, that's correct. Al
13 Dore, who is referenced as circulation, he's the
14 acting director.

15 Q. So, this e-mail, you
16 started in November. Would this e-mail have been
17 something that was in your inbox when you started?

18 A. Quite likely, yes.

19 Q. Do you recall if you read
20 it?

21 A. I do recall this one,
22 because I was pleasantly surprised that they made
23 reference to the fact that there would be a
24 requirement for maintenance funding.

25 Q. Okay. And so, would that

1 have been, to your knowledge, why Mr. Moore was
2 including you in your response -- sorry, including
3 you in his response, because the maintenance
4 funding would have been something that your new
5 group was responsible for?

6 A. I would say that was
7 probably the case, yeah.

8 Q. Okay. And we touched a
9 bit before about the guide rail, but in relation
10 to a median barrier, what would your -- in
11 addition to the maintenance funding, what role
12 would your group have had in relation to a median
13 barrier?

14 A. The assumption I had was
15 that we would again be responsible for repairs due
16 to damage or failure of the deterioration of the
17 asset.

18 Q. And would your group have
19 had any involvement in the design or installation
20 of a median barrier?

21 A. No. That wasn't our area
22 of expertise.

23 Q. So, your group's role
24 would have been really limited to the maintenance
25 and operation of the median barrier once installed

1 but not the actual installation?

2 A. I would say not the
3 operation, the maintenance of the barrier.

4 Q. Okay. Thank you. And
5 presumably your group also wouldn't have had any
6 involvement in the design of median barrier. Is
7 that right?

8 A. No, we would not.

9 Q. Thank you. And
10 Mr. Moore's, if you see in paragraph 357,
11 Mr. Moore's response outlines a number of
12 potential impediments or issues in relation to
13 installing a median barrier on the LINC.

14 Did you, when you read this
15 e-mail, have any views on the information that
16 Mr. Moore was providing?

17 A. So, no. I think what
18 he's saying is it's something that has to be
19 looked at quite thoroughly.

20 Q. But did you agree? Did
21 you disagree with any of the sort of the things
22 that he flags in this e-mail?

23 A. I really can't say I
24 agreed or disagreed. I don't know whether his
25 budget range was correct. I don't have a feel for

1 that, no.

2 Q. And so, this e-mail and
3 the e-mails that we've looked at relate only to
4 the LINC and the installation of a median barrier
5 on the LINC.

6 Do you recall or were you
7 aware of any discussion about median barriers
8 being installed on the Red Hill Valley Parkway
9 around this time, in late 2014?

10 A. No. No, I was not.

11 Q. And, Registrar, we can
12 close this call out.

13 And, you know, thinking, sort
14 of, more generally when you started at the City,
15 back at the City, in November 2014, were you aware
16 of any particular safety issues or safety concerns
17 on either the Red Hill Valley Parkway or the LINC?

18 A. No, I was not.

19 Q. And was that part of the
20 briefing process or I take it based on your answer
21 that wasn't part of the briefing process from
22 Mr. Davis when you started in your new role?

23 A. Yes, that's correct. I
24 don't recall him mentioning that.

25 Q. Was there anything that

1 your staff raised with you?

2 A. At starting?

3 Q. Yes.

4 A. No. No, it was not
5 raised at that point.

6 Q. Okay. Thank you. And
7 so, about a year before you rejoined the City,
8 CIMA did a safety review on just a portion of the
9 Red Hill Valley Parkway and at the inquiry we
10 refer to that as the 2013 CIMA report and there
11 was an accompanying staff report that was
12 presented at the Public Works Committee at a
13 meeting in November 2014.

14 When you started as director
15 of operation, were you aware that CIMA had
16 completed a safety review of the Red Hill Valley
17 Parkway in 2013?

18 A. No, I was not.

19 Q. Was that something that
20 was raised with you by Mr. Davis or any of your
21 staff when you started back at the City?

22 A. No. No one raised it.

23 Q. Have you ever or did you
24 ever review the 2013 CIMA report, either in 2014
25 or sometime thereafter?

1 A. No, I have not.

2 Q. And we also know that in
3 early 2014, Mr. Moore received a report prepared
4 by Golder Associates that was reviewing the Red
5 Hill Valley Parkway six years after construction,
6 and, as part of that report, there was a friction
7 report and friction testing results for testing
8 conducted by Tradewind Scientific.

9 Were you aware of that report
10 or of the friction testing done on the Red Hill
11 Valley Parkway and the LINC --

12 A. No, I was not. I was not
13 aware of that one either.

14 Q. Thank you. Registrar, we
15 can close these documents and if we could go to
16 overview document 7, images 10 and 11. Thank you.

17 So, Ms. Matthews-Malone,
18 moving forward in time to May 2015, in May 2015
19 there was a high-profile collision on the Red Hill
20 Valley Parkway and that collision resulted in the
21 deaths of two young women.

22 And you'll see -- Registrar,
23 if we could call out paragraph 29 -- following the
24 collision, the Public Works Committee passed a
25 motion, and you'll see the language there in the

1 bottom of this call out, that directed staff to
2 investigate additional safety measures,
3 guardrails, lighting, lane markings or other means
4 to help prevent further fatalities and serious
5 injuries and directed staff to report back to the
6 Public Works Committee with recommendations by
7 December 7, 2015.

8 So, on May 12, 2015, this
9 motion was e-mailed to Mr. Mater, you and
10 Mr. Moore, and eventually the motion was passed at
11 the May 21 meeting of the Public Works Committee.
12 Do you recall this motion being passed?

13 A. Yes.

14 Q. And what role did the
15 operations group have in responding to the motion?

16 A. If you scroll down to the
17 activities listing, we had none.

18 Q. Sorry, what do you mean
19 the activities listed?

20 A. The additional safety
21 measures, such as additional guide rails,
22 lighting, lane markings or other means to prevent
23 further activity.

24 Q. Okay.

25 A. Yes, that was not within

1 our portfolio in operations.

2 Q. So, none of those safety
3 measures were things that the operations group
4 would have been responsible for either
5 investigating or implementing?

6 A. That's correct.

7 Q. Okay. Which groups in
8 Public Works did you understand would have been
9 responsible for investigating or implementing
10 those measures?

11 A. So, it would fall between
12 Mr. Mater's group under the traffic safety and
13 Mr. Moore's group under engineering.

14 Q. And that would have been
15 on both the investigation and the implementation
16 side?

17 A. Yes. I would say yes.

18 Q. Since these things
19 weren't things that fell within your group's
20 portfolio, do you know why you were copied on this
21 e-mail from Ms. Clark? Is it just by virtue of
22 being a director or some other reason?

23 A. No. I don't know. I'm
24 just looking at this. She's probably including me
25 because we're roads as well, so that would be my

1 interpretation of why I'm on this list.

2 Q. And at this time, in
3 May 2015, did you have any views, notwithstanding
4 that they weren't in your portfolio, did you have
5 any views on the feasibility or utility of any of
6 the safety measures that counsel asked staff to
7 investigate?

8 A. I can't really comment
9 because it's not my area of expertise, so they
10 need to be investigated and reviewed thoroughly
11 and to look at what would be involved with
12 implementation.

13 Q. Okay. Thank you. And,
14 Registrar, if we could close this call out and if
15 we could call out paragraph 32.

16 So, Ms. Matthews-Malone, there
17 were some additional e-mails that were exchanged
18 between Mr. Moore and Mr. Mater, which you weren't
19 copied on, and this is Mr. Moore's response to
20 Mr. Mater and Mr. Ferguson. And his e-mail here
21 references, in the second sentence, that there
22 would need to be another \$200,000 per year for
23 maintenance in relation to a guide rail.

24 And, as I understand your
25 earlier evidence, the maintenance work that's

1 referred to here, was that work that your group
2 would have been responsible for?

3 A. Yes.

4 Q. And I appreciate that
5 this isn't your e-mail and you weren't copied, but
6 to your knowledge, is the \$200,000 figure that
7 Mr. Moore referred to accurate in terms of the
8 annual maintenance costs?

9 A. I think I would need a
10 lot more information to be able to say I was
11 comfortable with the \$200,000. I don't know what
12 it looks like, what it consists of. So, at this
13 point in time, I'm not 100 percent sure that I can
14 say I'm comfortable that it's only \$200,000.

15 Q. Okay. Fair enough. And
16 that \$200,000 or some other amount, that would
17 have been from your budget?

18 A. It would have been. I
19 would have had to include that in my capital
20 budget, yes.

21 Q. Okay. And why capital?
22 Just because it's a significant amount? Like, why
23 the capital versus the operating budget?

24 A. Yes, yes. And I already
25 had a line item in the capital budget for guide

1 rail repairs.

2 Q. Okay. And, Registrar, if
3 we can close this call out.

4 So, in paragraph 29, which we
5 had just looked at, there's the reference to the
6 additional guide rails, the lighting, the lane
7 markings. Would your staff have had any
8 involvement in the maintenance of those items or
9 any other safety measures implemented on the
10 parkway?

11 A. Can you call that up for
12 me?

13 Q. Sure, yes.

14 A. Thank you. Yes, so no,
15 we would not. The additional -- none of these
16 items. Lighting would be engineering. Lane
17 markings would be within John Mater's group. So,
18 no, with this recommendation, that would not fall
19 within our portfolio of operations.

20 Q. Okay. Thank you.
21 Registrar, we can close this out now.

22 Ms. Matthews-Malone, we know
23 that CIMA was ultimately retained to conduct the
24 safety review on the Red Hill Valley Parkway in
25 response to this May 21 motion and that that work

1 was overseen by staff in Mr. Mater's group in
2 traffic engineering and operations.

3 What, if any, involvement did
4 you and your staff have in the safety review that
5 CIMA did on the Red Hill Valley Parkway?

6 A. To the best of my
7 knowledge, none of my staff were involved with the
8 project team that worked with CIMA on that study.

9 Q. And what involvement, if
10 any, did you have?

11 A. Did I have? None.

12 Q. And at the same time that
13 the Red Hill Valley Parkway review was being
14 undertaken, there was also a review of the Lincoln
15 Alexander Parkway that CIMA was working on. To
16 your knowledge, was your involvement and the
17 involvement of your staff the same with respect to
18 the LINC review?

19 A. It would be the same
20 answer, yes.

21 Q. Thank you. And I take
22 it, based on your earlier evidence in relation to
23 conflict of interest memorandum that you
24 submitted, that generally you didn't have a lot of
25 involvement in consultant work that was done and

1 that there was only three total, but would your
2 role or involvement have been any different if you
3 didn't have the potential conflict in relation to
4 CIMA?

5 A. Based on the type of
6 assignments we had in operations, it would not
7 have been different. If I was in a situation
8 where the circumstances were different, I would
9 very much respect the potential perceived conflict
10 of interest.

11 Q. Okay. Thank you. And
12 even though you didn't have any direct involvement
13 in the work that CIMA was doing on the LINC and
14 the Red Hill reviews, were you otherwise aware
15 that CIMA had been conducted to do the safety
16 reviews?

17 A. Yes. My husband told me
18 that they had been retained.

19 Q. Okay. So, you learned of
20 the reviews through conversations with your
21 husband?

22 A. I think over dinner, yes.

23 Q. Okay. And were those,
24 sort of, higher level conversations about your
25 respective work days, what things you were working

1 on, or did you delve into any of the details of
2 the work that CIMA was doing?

3 A. No. They were extremely
4 high-level discussions. And this sounds rather
5 domestic, but, you know, potentially he would say
6 I'm going to be working from home for a while
7 because I'm going to Hamilton, I have a meeting
8 with someone. So, I would be aware at a very high
9 level he was meeting with other staff at the City.

10 Q. Okay. Understood.
11 That's helpful. Thank you. And, other than
12 conversations that you had with your husband, did
13 you have any discussions or conversations about
14 CIMA's work with your colleagues in Public Works,
15 your fellow directors or any of the staff in
16 Public Works?

17 A. So, I do not recall being
18 told by anyone else, any staff within the City,
19 that this was going on. I do not know if they had
20 reached out to any one of my staff, but I had not
21 been told specifically.

22 Q. And, Registrar, if we
23 could call up CIM10046 and if we could pull up
24 image 5 of that document. Perfect. Thank you.

25 So, Ms. Matthews-Malone,

1 you'll see in the bottom of this document, it's an
2 e-mail on July 10, 2015 that you sent to -- thank
3 you, Registrar -- to Mr. Capostagno and to
4 Mr. Malone. And you wrote:

5 "Sam, Brian is the
6 consultant that will be
7 undertaking the safety
8 review at the Red Hill
9 Valley Expressway and I
10 asked him to make sure he
11 touches base with you as
12 part of their review.
13 This company is being
14 retained by the traffic
15 gang to do the study and
16 your and your staff's
17 insight would be great
18 input into the review as
19 you are often the first
20 responders and almost
21 always at the scene of
22 incidents."

23 Who was Sam Capostagno?

24 A. Sam was a supervisor of
25 the after-hours group.

1 Q. And what was his role as
2 a supervisor in after hours?

3 A. Sam was responsible for
4 the staff and the calls that would come in after
5 hours. So, he would be responsible for the entire
6 City network, so for all 6,500 lane kilometres.
7 People had gone home, if there was, you know,
8 someone had dropped a load of something off their
9 car, he would go pick it up. They did some
10 sweeping occasionally, removing trees, removing
11 dead animals from the road, sort of a
12 jack-of-all-trades.

13 Q. And was Mr. Capostagno
14 like actually out on the roads driving or was that
15 his staff or was it a combination of both?

16 A. I would say it would be a
17 combination of both because Sam would be
18 responsible for maintaining our work order control
19 systems and work assignments and closures of the
20 work, closeout of work orders. But he would also
21 occasionally be out on the road.

22 Q. In relation to -- you say
23 that Mr. Capostagno and his staff are often the
24 first responders and are almost always at the
25 scene of incidents. What does that mean in terms

1 of the first responder piece and the incidents
2 that they attended?

3 A. Well, I certainly don't
4 mean that they're paramedics or police or fire.
5 They're not. At one point in time with the
6 after-hours group we were looking at trying to get
7 some additional staff for Sam's group. They
8 responded to two, three, accidents, incidents, a
9 night across the entire City, so they had --
10 perhaps I should also explain that during the day
11 you had different districts responsible for
12 different sections of the roadway, and within each
13 of those districts you had several supervisors, so
14 you didn't always have the same person looking at
15 activities on those particular roads.

16 This was a result of Brian
17 having told me at dinner that was he was
18 undertaking a review, so I said, you know, maybe
19 it would be worthwhile, why don't you talk to our
20 after-hours group, because they have got a good
21 feel for things that happen on the road network
22 and they would have a good feel for things that
23 happen on the Red Hill and the LINC.

24 Q. And just, sort of, when
25 Mr. Capostagno or his staff in after hours or

1 anybody in, I think it was district north,
2 attended accidents and incidents on the Red Hill,
3 what was their role when they attended? What sort
4 of work or functions were they performing?

5 A. So, they would not be
6 privy to the details of the accident. They would
7 not know the cause of the accident or the severity
8 of the accident, but they would be there as
9 support sometimes to do emergency closures or set
10 up arrow board signs to have traffic divert
11 around.

12 We also would be responsible
13 for if there were fluids on the roadway. We
14 worked with an outside environmental company to
15 address spills, so we would -- either the police
16 would contact those people or we would contact
17 those groups.

18 So, they were there more, sort
19 of, as support, if required.

20 Q. Would that be support for
21 the first responders sort of paramedics, police,
22 and also for whomever, like, if there was a
23 collision, for the driver, for example?

24 A. So, yes. They would be
25 there as support to the first two responders, the

1 fire, police and paramedics. There were
2 incidences where potentially someone's car broke
3 down. If it was the middle of winter, they would
4 take the person into the vehicle and make sure
5 that they were warm and comfortable and help them
6 make arrangement as to have vehicles, so they were
7 a jack-of-all-trades.

8 Q. Thank you. And so, I
9 think you said this e-mail came about as a result
10 of conversations that you and Mr. Malone had at
11 dinner where he told you about the retainer for
12 the review. Is that right?

13 A. Yes. I suggested, hey,
14 maybe it might be interesting to get a little bit
15 of a maintenance perspective.

16 Q. And why specifically did
17 you suggest that?

18 A. A study of that nature is
19 based on the data and the science and I thought,
20 you know, sometimes it's interesting to get some
21 feedback from the front-line maintainers. They
22 may have a good feel to say, oh, you know, that
23 sign is always knocked down or, you know, we have
24 problems with roadside in this particular area or,
25 hey, there's some scuff marks along the guide

1 rail. So, a safety study is very much based in
2 science, but maintenance has a bit more anecdotal
3 information about road networks.

4 Q. Okay. And I think you
5 mentioned that it was a safety review. Was that
6 something you understood from your conversations
7 with Mr. Malone?

8 A. Yes.

9 Q. In terms of the scope and
10 the nature of the retainer, what did you
11 understand?

12 A. Well, I had seen the
13 motion that was at the Public Works Committee and
14 council and then in talking to Brian at dinner,
15 just saying he was retained to do a safety review.

16 Q. Okay. Aside from this
17 e-mail, and I'll take you to some later e-mails in
18 the chain, but aside from this e-mail that you
19 sent, did you have any discussions with
20 Mr. Capostagno about the kind of information that
21 he should or could provide to CIMA? Like, had you
22 had any preceding conversations with him?

23 A. I do not recall talking
24 to Sam about what to say or what not to say or
25 anything along that nature. No, I don't recall a

1 conversation.

2 Q. Did you have any further
3 involvement with this once you sent the e-mail to
4 connect Mr. Malone and Mr. Capostagno?

5 A. No. It was hands-off
6 because it was venturing into potentially that
7 conflict area, so hands-off.

8 Q. Right. So, you made the
9 connection and then, as you say in the bottom, you
10 just put the two of them in touch and then you
11 were hands-off at that point?

12 A. Yes.

13 Q. Thank you. And,
14 Registrar, we can close this out and if we can
15 call up image, I suppose, 4 and 5, and then if we
16 could just, sort of, scroll through.

17 And, Ms. Matthews-Malone, if
18 you can just sort of skim through, you'll see that
19 the e-mail chain continued on between Mr. Malone
20 and Mr. Capostagno and you were copied initially
21 on Mr. Malone's first response and then you get
22 removed from the chain?

23 A. Mm-hmm.

24 Q. There's some discussion
25 between the two of them and some other CIMA staff

1 and there's also some discussion where
2 Mr. Capostagno references other City staff.

3 And so, my question is more
4 general. Were you aware of any of the subsequent
5 discussions between Mr. Capostagno and CIMA?

6 A. No, I was not.

7 Q. And I think -- I'm not
8 sure if it's up there. So, you'll see in the very
9 top e-mail on image 4 there's reference to a
10 ride-along in Mr. Malone's e-mail. Thanks,
11 Registrar.

12 A. Okay.

13 Q. I take it you weren't
14 aware of the ride-along either?

15 A. No, I was not.

16 Q. So, there's some
17 subsequent discussions, but you weren't involved
18 and, as you said, you were, sort of, hands-off at
19 that point. Is that right?

20 A. That's correct.

21 Q. So, you don't know what,
22 if any, conversations Mr. Malone or Mr. Capostagno
23 or any of the other CIMA staff had once you made
24 that connection?

25 A. That's correct.

1 Q. And are you aware of any
2 other contact or communications or information
3 that operations staff provided to CIMA in the
4 course of their review?

5 A. I was not made aware that
6 they had requested contact with any of the other
7 members of the operations group, no.

8 Q. Okay. Thank you.
9 Registrar, we can -- sorry, before I leave this
10 document, this document should be marked as an
11 exhibit as well, and I believe that's Exhibit 127.

12 THE REGISTRAR: Noted,
13 counsel. Thank you.

14 EXHIBIT NO. 127: E-mail
15 of July 10, 2015,
16 CIM10046.

17 BY MS. HENDRIE:

18 Q. Thank you. And we can
19 close this document out now, and if we could call
20 up HAM33446 and HAM4730, Registrar. Thank you.

21 So, Ms. Matthews-Malone, if
22 you need me to call up either of the documents?

23 A. Yes, please.

24 Q. Sure. Registrar, if we
25 could call up, in no particular order, just call

1 each one up. Thank you.

2 And I'll just let you review,

3 Ms. Matthews-Malone.

4 A. Okay. Yeah.

5 Q. So, we can close this out
6 and call out the other e-mail. Thank you.

7 A. Yes. I remember that.

8 Yes.

9 Q. So, Ms. Matthews-Malone,
10 these are two e-mails that you received from Terry
11 McCleary, who I understand he reported to you. He
12 was the superintendant in north district. And
13 both are in July 2015, notifying you about
14 accidents that occurred on the Red Hill.

15 So, in and around this time,
16 sort of, spring/summer 2015 and into the fall of
17 2015, what perception did you have about the
18 volume of accidents on the Red Hill and just, sort
19 of, using these two documents as an anchor for my
20 questions on this.

21 A. So, I'll answer your
22 question first but then I would like to just
23 explain a little bit about the two e-mails.

24 Q. Sure.

25 A. So, I didn't have an

1 enhanced alert that there were problems on the Red
2 Hill and the LINC. In this particular case, Terry
3 is our representative on the coordinating
4 committee for the Pan Am Games. At this point,
5 Hamilton is hosting a number of the games and we
6 were very heavily working on it from July 10 to
7 the 26, so Terry is highlighting these two items
8 from the perspective of I'm giving this
9 information to the Pan Am coordinating committee.

10 And I think what's also
11 interesting to note on the second one, it's
12 interesting, Terry has included the road condition
13 information as well at the bottom, BD, bare/dry.
14 So, that information is during Pan Am Games.
15 We're hypersensitive to increased tourism,
16 traffic, making sure we can get people to the
17 games properly.

18 Q. So, I see there are the
19 two references to Pan Am in both of those e-mails,
20 so that's why he's referencing that?

21 A. Yes, and he's our
22 representative.

23 Q. Right. And I think you
24 said at the very beginning of your answer you
25 didn't have an enhanced alert that there were

1 problems on the Red Hill and the LINC. Is that
2 right?

3 A. That's correct.

4 Q. So, did you have any
5 views more specifically about accidents on the Red
6 Hill occurring in any particular circumstances?

7 A. No. At this -- no, I did
8 not. We had a lot of balls up in the air, we had
9 a lot of things going on our with portfolio.

10 Q. Okay. And so, in these
11 two e-mails, Mr. McCleary is reporting the
12 accidents on the Red Hill to you and you mentioned
13 the Pan Am piece here, but more generally, did you
14 provide instructions or any guidance to your staff
15 about notifying you around accidents or road
16 closures or incidents on roads across the City or
17 more specifically the Red Hill Valley Parkway?

18 A. So, in terms of any
19 specific directions to my staff, no, I did not to
20 say you must forward it up. They were well-versed
21 in what was required, whether they had to speak to
22 traffic or they had to speak to communications.

23 In this case, I think, Terry
24 elevated it because we were hot and heavy into the
25 Pan Am Games. And what is a little bit unique

1 about this, the first one, as well is there was a
2 spill to the creek, so when there's a spill to the
3 creek that's somewhat unusual and requires
4 different interactions with different levels of
5 government as well.

6 Q. Okay. And when you say
7 staff were well-versed in what was required and if
8 they needed to speak to traffic or to
9 communications, sort of, what was that? What were
10 those requirements based on? Was it just in terms
11 of coordinating work between different divisions?
12 Was that a policy? Sort of, how is that required?

13 A. It would be coordination
14 of works.

15 Q. Right. Okay. And did
16 you have any expectations if there was, sort of, a
17 certain threshold? For example, if there was a
18 fatality or, as you said, a creek spill, were
19 those types of things that you expected your staff
20 would keep you updated on?

21 A. No, I never gave them
22 specific instructions as to when to elevate to me.

23 Q. And when staff did
24 elevate to you, what was your understanding of
25 why?

1 A. That they felt it would
2 be important that I was aware.

3 Q. Okay. Thank you.
4 Registrar, we can close these call outs.

5 And, Ms. Matthews-Malone, just
6 a more general question. I asked you before about
7 your perception of accidents or collisions on the
8 Red Hill Valley Parkway in and around this time.
9 One of the findings that CIMA reached in the 2015
10 CIMA report was that there was a significantly
11 high proportion of wet surface collisions on the
12 Red Hill. In and around this time, were you
13 involved in any discussions or aware of any
14 discussions about there being a higher proportion
15 of wet weather accidents on the Red Hill?

16 A. So, not targeted
17 discussions, no. You'll make reference to some
18 e-mails that were sent over. I was aware that in
19 the CIMA report they did say on the Red Hill
20 there's more accidents involved with wet weather.
21 I think you have to watch in terms of there's a
22 lot of other potential contributing factors to
23 that situation. Usually there are accidents with
24 inclement weather. Speed was a tremendous issue
25 on those roads, one which was very much observed.

1 So, there were, you know, as identified in 2016
2 report, there were a number of things to look at.

3 Q. And aside from, I think
4 you mentioned speed, what other things or factors
5 do you recall being discussed?

6 A. Speed was definitely
7 something that was discussed and something that we
8 lived and observed. There were e-mails that Sam
9 sent after I made the introduction to CIMA that he
10 raised, hey, we've got incidences on the Red Hill
11 Valley Parkway, it's wet again and we've got
12 accidents again. And, you know, this was during
13 the time that CIMA was undertaking their safety
14 review of those two roads.

15 Q. And you said that you
16 didn't participate in any targeted discussions, so
17 were the conversations -- did you participate in
18 less, sort of, targeted, more general, discussions
19 about these topics?

20 A. Well, I've been trying to
21 remember the -- you know, there was water cooler
22 talk. I was a very interactive director, trying
23 to get to know my staff in 2015, so I would be out
24 in the yards quite a bit. I would make efforts to
25 go after work and visit with the after hours

1 staff. So, I recall water cooler talk about the
2 speed and, you know, potentially the wet weather
3 and where is enforcement and, you know, but I
4 can't give you specifics. It's just we talked
5 about a lot of different things. We talked about
6 equipment, we talked about staffing levels. But I
7 can say that there was some water cooler talk.

8 Q. Right. Okay. So, you
9 talked about lots of things and one of those
10 things was, sort of, the trends and things that
11 your staff were seeing and experiencing on the Red
12 Hill?

13 A. I wouldn't say trends,
14 but I would say experiences that they would see.

15 Q. Okay. Thank you. And
16 the concerns that I think you said Mr. Capostagno
17 raised, I'll take you to some e-mails from later
18 in 2015 in a couple minutes.

19 But, sort of, aside from that,
20 was that what you were referencing when you said
21 there were concerns that Mr. Capostagno was
22 raising?

23 A. Yes. I think you'll take
24 me to the e-mails. Yes.

25 Q. Yes, I will, so we can

1 circle back to that when we get there.

2 Registrar, if we could call up
3 HAM659.

4 So, Ms. Matthews-Malone, we're
5 moving forward now to September 2015, and this is
6 when traffic staff were preparing a draft of the
7 staff report related to the 2015 CIMA report. And
8 that report, just to orient you, later became
9 report PW15091 and it was ultimately presented at
10 the December 7, 2015 Public Works Committee
11 meeting.

12 So, this document I'll have
13 up, Registrar, if we could call out the bottom
14 e-mail from Mr. Ferguson.

15 So, this is a September 22,
16 2015 e-mail from David Ferguson to you under the
17 subject line "RHVP/LINC Report." He asked you for
18 a recommendation in the staff report that he had
19 assigned to your group, and that recommendation
20 was that roads be directed to identify a funding
21 source to undertake the upgrade of guide rail end
22 treatments at identified locations in the
23 estimated amounts of \$70,000.

24 So, was it typical for a group
25 in Public Works to reach out about recommendations

1 that were included in a staff report that might
2 fall into a different division, so here where he's
3 assigned it to your group?

4 A. So, I just want to
5 clarify that it's unusual to have a recommendation
6 that would involve another division. Usually if
7 you're writing a staff report and you have a
8 series of recommendations, it's relevant to your
9 portfolio.

10 It is common practice,
11 however, to make sure that you have consulted with
12 other divisions that have been potentially
13 impacted. And a good example is bike lanes. So,
14 traffic may say we're going to install bike lanes
15 from A to B. They would have reached out to
16 operations and said, if we do this, what are the
17 impacts, potential things that we need to consider
18 throughout the operation? So, this was unusual in
19 the fact that I can't recall in my 30 years that
20 I've actually seen, you know, assignments that
21 roads do this, but again this is a safety review
22 that potentially could have a multitude of
23 activities recommended in them. So, they were
24 asking us to undertake the upgrade of the end
25 treatments. Okay, I'm fine with that, because

1 that would fall within our mandate.

2 Q. So, you said it was
3 unusual for a recommendation to be assigned to
4 another group. Was there anything unusual about
5 the fact that roads was being directed to identify
6 a funding source as compared to, say, for example,
7 the general manager?

8 A. No. I didn't see
9 anything wrong with this motion. I didn't have
10 \$70,000, so I think the response, if you scroll
11 up, you see I start to say, wait a second, I don't
12 have that amount of money in my budgets and here
13 are some options on things you could look at to
14 make sure that that money was made available to
15 undertake these works.

16 Q. Okay. And, Registrar,
17 perhaps we can close this out and we can call up
18 Ms. Matthews-Malone's response.

19 But by the time, so this is
20 towards the end of September 2015, had you read a
21 draft of the 2015 CIMA report or of the staff
22 report?

23 A. No, I had not.

24 Q. So, sort of, all you had
25 at the time that you got this recommendation from

1 Mr. Ferguson was just the recommendations that he
2 sent?

3 A. Yes.

4 Q. And here, this is your
5 response and, as you said, you talked about, sort
6 of, where the funding would come from.

7 And so, as I read your
8 response where you say:

9 "My preference for
10 wording would be that
11 roads be directed to
12 identify these works in a
13 future budget. I don't
14 want to be in a position
15 that we have to start
16 cutting back on other
17 operations to create
18 funding for this and they
19 typically don't dip into
20 reserves for my group
21 when there's a special
22 one-off."

23 So, as I read this, and feel
24 free to clarify my summary, you're not taking
25 issue with the recommendation itself, and I think

1 you said this, but more so it's the timing of
2 recommendation. Is that right?

3 A. The timing and the
4 funding, because the capital budget for the
5 following year was already in the can, so to
6 speak.

7 Q. Okay. And so, that was
8 why your preference was for the future budget as
9 opposed to the budget that would have been, as you
10 say, in the can at that point?

11 A. Yes, because it would be
12 highly unlikely -- I carried, I think it was
13 around \$400,000 a year, for guide rail repairs,
14 and that was spent. So, whether we had any money
15 left at that point in time and I had already made
16 my request for 2016 and that was already in the
17 can, so I would have spent that money. This would
18 have been additional works tacked on to that
19 already anticipated, perhaps is a different way to
20 say it.

21 Q. Okay. And \$70,000, which
22 it's not showing here, but that was what
23 Mr. Ferguson had referenced in his recommendation,
24 was that a significant expense for your division?

25 A. For operations per

1 capital, yes. I had a very small capital budget
2 in operations.

3 Q. Would that have been,
4 just to, sort of, circle back to what we talked
5 about before, would that have been funding that
6 came through that capital budget process that we
7 talked about that would have been submitted to
8 asset management?

9 A. Yes. In likelihood with
10 this, I would have, for the a future budget
11 submission, I probably would have added \$70,000 to
12 my -- let's say for sake it's \$400,000, so I would
13 probably now ask for \$470,000 for guide rail
14 replacements.

15 Q. Okay. Thank you.
16 Registrar, we can close this call out.

17 Apart from these e-mails that
18 we see here, did you have any other involvement in
19 the drafting or the preparation of the staff
20 report in relation to the 2015 CIMA report or was
21 this, sort of, it for you?

22 A. Yeah, this was it.

23 Q. Thank you. Registrar,
24 can we call up HAM24337 and if we could call up
25 both images. Thank you. So, this is, if we could

1 call out, sort of, the bottom e-mail from
2 Mr. Ferguson again, sorry, and the other image.
3 Thanks.

4 So, you'll see,
5 Ms. Matthews-Malone, this is a similar e-mail that
6 Mr. Ferguson sent to Mr. Moore running the
7 recommendations that had been assigned or impacted
8 to engineering services to Mr. Moore. And I'll
9 just give you a moment to review those.

10 A. That's good.

11 Q. Okay. Thank you,
12 Registrar. Can we close that out and can we call
13 out Mr. Moore's e-mail, which is at the bottom of
14 the image 1 and the top of image 2.

15 So, as I said, this is not an
16 e-mail that you were copied on, but were you
17 otherwise aware of any discussion between
18 Mr. Moore and Mr. Ferguson about the
19 recommendations that had been assigned to
20 engineering services in relation to the 2015 staff
21 report?

22 A. No.

23 Q. Sorry, Registrar. I
24 might have to bounce around a little bit. If we
25 could close this out and call back up

1 Mr. Ferguson's e-mail.

2 So, in items B and E here,
 3 engineering services had been assigned to
 4 investigate the installation of the high-tension
 5 steel cable median barrier and shield rock cuts
 6 and the installation of illumination.

7 And, sorry, to save the
 8 registrar a little bit of bouncing around,
 9 Mr. Moore, in response in his e-mail, wrote:

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

17 In your opinion and based on
 18 your experiences in Public Works, which division
 19 in Public Works do you think would have been the
 20 appropriate division to investigate the
 21 installation of a median barrier?

22 A. So, investigate, it could
 23 have been a tag team between traffic and
 24 engineering, because you do need engineering
 25 involved in it. Definitely design installation

1 would be engineering, for sure. So, that's B.

2 With E, the illumination,
3 illumination was within the engineering services
4 portfolio. There was a group headed by Mike
5 Field.

6 Q. Thank you. And now we
7 can close this out, Registrar, and if we could
8 call out point 4 in Mr. Moore's e-mail, which is
9 on image 2. Thank you.

10 So, in relation to the
11 illumination piece on the recommendation for
12 investigating illumination, Mr. Moore wrote:

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

1 barriers, guide rail and
2 then the maintenance
3 costs."

4 And, Ms. Matthews-Malone, I
5 appreciate that you weren't at the City when the
6 Red Hill was opened or at the end of construction,
7 but as I understand your evidence, you were
8 employed at the region, sort of, during the
9 initial stages at the project and then at the
10 City, sort of, in and around the early 2000s.

11 So, based on your employment
12 in those periods of time, what knowledge, if any,
13 did you have about the approval of the RHVP in
14 relation to illumination? Did you have any
15 knowledge of that?

16 A. No, I did not have any
17 knowledge of it. And unlikely I would have had
18 knowledge in 2004, because the freeway was a
19 standalone project group or a standalone staffing
20 group removed from mine, so I was not familiar
21 with the environmental assessment.

22 Q. And when you came back to
23 the City in 2014, did you have any knowledge or
24 awareness of an EA in relation to the Red Hill
25 Valley Parkway?

1 A. So, I would know that an
2 EA probably had been done, but I had no knowledge
3 of what was contained within that environmental
4 assessment.

5 Q. Okay. What knowledge did
6 you have about illumination on the Red Hill Valley
7 Parkway or any restrictions or constraints on
8 that.

9 A. I didn't have any
10 knowledge of any restrictions.

11 Q. Thank you. Registrar, we
12 can close that call out. This is the last call
13 out in this document. If we could call up the
14 first paragraph of Mr. Moore's e-mail, which is on
15 image 1. Thank you.

16 So, here, Mr. Moore references
17 DMT. He says:

18 "I need to see it and it
19 needs to be discussed at
20 DMT or at least with
21 John, Gerry and myself
22 before it goes."

23 And I understand it goes as it
24 either being the 2015 CIMA report or the staff
25 report and then he provided his comments. Do you

1 recall any discussions about the 2015 CIMA safety
2 reviews at DMT meetings?

3 A. No, I do not. And my
4 assumption would be that he was talking about
5 before the report goes.

6 Q. And that's the staff
7 report?

8 A. Yes.

9 Q. Thank you. So, do you
10 recall any discussion at DMT about how CIMA's
11 recommendations or the resulting staff
12 recommendations would be implemented at DMT?

13 A. I do not recall
14 discussion at departmental management team on
15 that, no.

16 Q. Is this the type of thing
17 that would be discussed at DMT, to, sort of, get a
18 sense of where this fits in to how those meetings
19 played out?

20 A. My impression would be
21 no, it wouldn't be discussed at DMT because it's
22 not involving the entire departmental management
23 team and it's not a policy or a common procedure
24 that we would all be looking at. It's very
25 targeted to two groups and the general manager.

1 Q. Okay. And, outside of
2 formal DMT meetings, do you recall any discussion
3 about the final CIMA reports or CIMA's
4 recommendations or the recommendations that staff
5 were putting forward to the Public Works
6 Committee?

7 A. I do not recall being
8 involved in any such discussions, no.

9 Q. Thank you. Registrar, we
10 can close this document now and if we could call
11 up overview document 7, images 48 and 49. So, if
12 we could call out paragraphs 146 and 147, and 147
13 continues on to the next page.

14 I think, Ms. Matthews-Malone,
15 these are the e-mails that you were referring to
16 earlier?

17 A. Yeah.

18 Q. So, in the e-mail at
19 paragraph 146, on October 3, Mr. Capostagno
20 e-mailed Terry McCleary under the subject line
21 "Red Hill" and the overview document doesn't
22 reference it, but I can advise that you were
23 copied and you'll see in 147 there is a reference
24 to your name there. And Mr. Capostagno described
25 a number of accidents on the expressway, which I

1 take to be the Red Hill Valley expressway, and he
2 describes black ice on the Queenston ramps and
3 talks about the road being, quote, "just wet and
4 slippery and there was no oil or anything." And
5 then says:

6 "This is an ongoing issue
7 in bad weather conditions
8 and the police are asking
9 for City supervisor's
10 name on occasion."

11 At the time that you received
12 these e-mails, did you note Mr. Capostagno's
13 comments about the road being wet and slippery?

14 A. So, first of all, with
15 this particular e-mail, during my interview, I did
16 tell Ms. Lawrence I could not remember this
17 particular e-mail and I don't have access to my
18 work diary or my notes, so I did go back in my
19 personal notes and I was out of the country on
20 October 3 through to October 17 and Sam, like
21 Mr. McCleary, would have received a bounce back
22 with if it's emergency, please contact, because I
23 would assign one of my managers as the acting
24 director.

25 I'm going to also add a little

1 notation here that in seeing this after the fact,
2 I don't really have a problem with the police
3 asking for the City supervisors. I think they
4 should be. They're doing investigation of the
5 accident, so they want to be aware of potentially
6 who is in the vicinity. And we often, as
7 operations are called for examination for
8 discovery on accidents, so I think it was
9 perfectly fine for the police to be asking that
10 question.

11 Q. And I think that seems to
12 be consistent with what Mr. McCleary responded
13 about police asking for the name of the attending
14 supervisors.

15 And so, just so I understand,
16 you were out of the country at the time that is
17 e-mail came through?

18 A. Yes, from October 3 until
19 October 17, 2015.

20 Q. I think you said you
21 don't recall this e-mail, so you don't recall if
22 you made note of it when you returned back into
23 the office?

24 A. I do not recall seeing
25 it. It would be -- I received hundreds of e-mails

1 a day and when I was away, I was often having
2 trouble trying to just keep up with day-to-day,
3 but to go back was very challenging.

4 Q. Thank you. That's
5 helpful.

6 Registrar, if we can close
7 this out and if we can call up the next two
8 paragraphs on page 48, 148 and 149. Thank you.

9 So, this is October 24, so I
10 take it you would have been back in the office now
11 for about a week --

12 A. I was back, yes.

13 Q. Okay. And so, here,
14 Mr. Capostagno e-mailed Mr. McCleary with a
15 heads-up about a number of accidents on the Red
16 Hill because of the road conditions and he said
17 that a number of them were pretty serious. And
18 Mr. Capostagno, in the last paragraph, he
19 attributes the cause to the road conditions and he
20 wrote:

21 "Not much we can do
22 except clean it up. They
23 have to do something.
24 This happens every time
25 it rains. The police and

1 everyone else responding
2 is getting really fed up
3 with this. It is a major
4 concern for police and
5 anyone that responds and
6 they are starting to
7 voice their frustrations
8 and they are starting to
9 blame the City and I am
10 getting blamed for it and
11 there is nothing I can
12 do."

13 And Mr. McCleary forwarded
14 that e-mail to you on October 26 and said:

15 "Once again, roads is
16 getting blamed by police
17 for RHVP heavy rain and
18 speed a factor."

19 And then talked about
20 reduction of the speed on the road and police
21 enforcement. And at the end there he again
22 references blaming road staff.

23 A. Yes.

24 Q. Do you recall receiving
25 these e-mails?

1 A. Yes.

2 Q. And what was your view on
3 what Mr. Capostagno and Mr. McCleary reported
4 about road staff apparently bearing the brunt or
5 getting blamed by police or public?

6 A. So, the October 24 date,
7 this is after the introduction is made to Sam that
8 there is a safety review going on. We, I think
9 it's -- you know, I certainly sympathize with the
10 after-hours crew, their frustrations. We had
11 anecdotal information. I know that the safety
12 review is looking at data, so we have snippets of
13 information, not necessarily even supported in
14 terms of what were the contributing factors to the
15 accident.

16 So, Sam, his impression is
17 that every time it rains, but, you know, rain and
18 accidents go together. Was there speeding? Was
19 the vehicle malfunctioning? Were people under the
20 influence? Were they texting? So, Sam had
21 snippets of information. I'm looking at this
22 going, okay, I know there's a safety review coming
23 before the end of the year that's going to have
24 the data, because we're not privy to accident
25 reports, we're not privy to discussions with the

1 police or the ambulance at the site to say, this
2 is -- you know, they were under the influence or,
3 you know, here is the skid marks or this is a
4 fatality. We don't know. We don't know that.

5 Q. What about the piece of
6 Sam or Mr. Capostagno reporting that he was
7 getting blamed for it and Mr. McCleary reporting
8 that road staff were being blamed? Did you have
9 any views on that?

10 A. I did. And it's, you
11 know, I really sympathize and my question is
12 they're getting blamed by the police and where is
13 enforcement? Again, you know, you can say that
14 the witnessing of speed can be anecdotal. I drove
15 that road for personal and professional purposes.
16 You could see speeding and here we are getting the
17 brunt of the frustration, but anecdotally we're
18 not seeing if there's enforcement going on. We're
19 witnessing speed, but is there enforcement? So, I
20 thought, you know, it's kind of unfair that Sam is
21 taking the brunt of this when there's potentially
22 so many other contributing things behind these
23 particular types of events.

24 Q. You mentioned enforcement
25 as well, but just, sort of, on the City side, did

1 you think that there were any other groups or
2 divisions, departments, that should have been or
3 could have been looped into conversations about,
4 sort of, the accidents that were occurring on the
5 Red Hill?

6 A. Oh, definitely. I think
7 the traffic department had a tracking system and
8 they also were privy to accidents reports, so they
9 would get information on the accidents and have
10 that information. We would not.

11 Q. And, Registrar, we can
12 close this out now and if we could go to image 64.
13 Thank you. And if we could call out
14 paragraphs 197 to 199.

15 So, Ms. Matthews-Malone, this
16 is now about a month later. It's towards the end
17 of November and it's a similar e-mail from
18 Mr. Capostagno and Mr. McCleary. And, in
19 paragraph 197, Mr. Capostagno reported that there
20 were four separate accidents on the Red Hill,
21 including a five-car pile-up, and similarly
22 reporting that police, fire and ambulance
23 expressed frustration and wanted to know when
24 something was going to be done about the road.
25 And then he wrote:

1 "Every time it rains even
2 just a little, the Red
3 Hill turns into a
4 demolition derby. I just
5 wanted to pass along
6 their comments and the
7 frustrations of me and my
8 crew, who worked very
9 hard last night to clear
10 up the mess."

11 And, in paragraph 198,
12 Mr. McCleary forwarded the e-mail to you noting
13 that he imagined speed as the major factor. At
14 the end, he wrote:

15 "Again, our staff takes
16 the brunt of police."

17 In paragraph 199, you
18 responded saying:

19 "There is a report going
20 to council the first week
21 of December. Should be
22 interesting."

23 So, we've looked at now three
24 different e-mails in a relatively short period of
25 time, two months, and I appreciate that you said

1 you were out of the country for the October 3
2 e-mail chain, but looking, sort of, at these two
3 most recent chains that I've pulled up, was the
4 amount of e-mails that you were receiving about
5 the Red Hill Valley Parkway and accidents on the
6 road higher than you typically received or is this
7 sort of normal volume of e-mails that you would
8 get about accidents?

9 A. So, I would receive
10 notifications of other accidents, some pretty
11 horrific. I would say I probably got a few more
12 on -- I would say maybe a few more here than
13 others.

14 But there's a couple things I
15 just wanted to, if I could take a step back on
16 your interpretation of the e-mails.

17 Q. Of course.

18 A. So, this is November 22.
19 We would be into winter control at that point and
20 Terry in his e-mails, you mentioned that he
21 mentioned speed, but he also mentions that it got
22 a bit slick due to temperature. And IMOS is the
23 winter control operator for the Red Hill and the
24 LINC, so in my reading this, I'm looking at this
25 going we may have had some icing conditions with

1 the dropping of the temperature, so that's what I
2 took from this -- the two series, the 197 and 198.

3 Q. Thank you. That's
4 helpful. At this time, did you have any concerns
5 about safety on the Red Hill Valley Parkway?

6 A. I did not have any
7 concerns. I was, you know, waiting to see what
8 the data was going to give. Again, I had
9 anecdotal information.

10 We had, as background, we had
11 problems with our CVOR and we had a very, very
12 aggressive accident review program. I never
13 received any notification of all the vehicles, the
14 City vehicles, within the City having accidents on
15 the Red Hill, so I didn't have other things to,
16 sort of, look at this. And, again, Sam had a
17 snapshot of this was the weather conditions, but
18 what were the other contributing factors? We
19 don't know. We don't have that information.

20 Q. CVOR, I think you
21 mentioned that before, what does that acronym
22 stand for?

23 A. It's a commercial vehicle
24 operator registration, so it's all our heavy
25 equipment operators. So, from my major concern in

1 2015 is with the garbage trucks and with the dump
2 plow trucks for roads. We were at risk of having
3 those trucks pulled off the road due to the number
4 of reportable accidents that they had historically
5 had with those vehicles.

6 Q. And the report that you
7 reference in paragraph 199, is that the staff
8 report that was being prepared by traffic?

9 A. Yes.

10 Q. At this time, so this is
11 November 22, so two months after Mr. Ferguson sent
12 you the draft recommendation, had you received or
13 reviewed a complete draft of the staff report?

14 A. I do not recall ever
15 receiving the final draft. So, I would have
16 received the staff report as part of the committee
17 package that would go to directors, but I do not
18 recall seeing the final draft, no.

19 Q. So, at this time, do you
20 think your insight into that report would have
21 just been, sort of, your background knowledge that
22 CIMA was doing the review and the recommendation
23 that you had seen?

24 A. Yes, and there was --
25 wasn't there something that they had to report

1 before the year end? So, I'm looking at, hey,
2 this is going to be interesting. Let's see what
3 recommendations are coming forward and we'll see
4 how things go on that front. What did the data
5 that the consultant gather and what did they look
6 at relative to the road? They came up with a
7 series of recommendations, so let's see what we've
8 got.

9 Q. So, those things that you
10 just listed there, that was what you meant when
11 you said should be interesting?

12 A. Yes. Because also in
13 2015, I think there were a few things that were
14 being or council was asking as well, so I think
15 they were looking at widening and you had the
16 barrier and then -- so, there were a few other
17 things that council had been asking about, so...

18 Q. Okay. Registrar, we can
19 close this out now.

20 And, Ms. Matthews-Malone, as
21 we sort of just referenced, the staff report,
22 report PW15091, that report was submitted to the
23 Public Works Committee at the end of
24 November 2015, so shortly after these e-mails.

25 A. Okay.

1 Q. And it was eventually
2 presented to the Public Works Committee at the
3 meeting on December 7, 2015.

4 And, Registrar, if we could
5 call up HAM24700.

6 This is the final version of
7 that report that council received. And as I
8 understand your evidence, this also would have
9 been distributed to you as part of the agenda
10 package. Is that right?

11 A. That's correct, yes.

12 Q. Do you recall if you
13 reviewed or read this report before the Public
14 Works Committee meeting on December 7?

15 A. My practice was to review
16 the agendas and then corresponding reports prior
17 to the committee, and the reason I did that was
18 because I often looked at it from the perspective
19 of will they potentially ask a questions of
20 operations.

21 Q. So, was your practice to
22 review all reports or did you, sort of, pick and
23 choose?

24 A. Because I had so many
25 touch points with the other divisions, I would say

1 my practice would be to review quite a few, but
2 potentially there would be the odd one that
3 perhaps, you know, concentrating on routing for
4 transit that I may not review, so...

5 And the other thing, it was my
6 practice to try to review these reports prior to.
7 Usually we got them in time. Sometimes,
8 worst-case scenario, we would get them, you know,
9 the day before the meeting, if there was a hiccup
10 with printing or someone was away and didn't get
11 it circulated, so...

12 Q. So, you made best efforts
13 to review but, you know, not 100 percent always
14 reviewed the report in advance?

15 A. I would say something
16 like this, I would read, yes, but I'm not saying I
17 would read everything single report on the agenda.

18 Q. Do you recall if you read
19 this report?

20 A. I would say I would have
21 read that report, yes.

22 Q. Registrar, if we could
23 call up HAM24701 and HAM24702.

24 So, Ms. Matthews-Malone, these
25 are the appendices to that report. There's an

1 Appendix A and Appendix B. And Appendix A lists
2 the short-term measures or the short-term safety
3 options and the estimated costing, and Appendix B,
4 the medium and long-term.

5 And, just for your reference,
6 both the -- so, these were included in the report
7 and that report was ultimately approved as drafted
8 by the Public Works Committee and council, so
9 these are the measures that were recommended.

10 Looking at Appendix A, which
11 of those items would operations have been
12 responsible for?

13 A. So, I would say we would
14 have been responsible for trimming vegetation, we
15 would be responsible for upgrading guide rail end
16 treatments, and potentially install, replace or
17 trim vegetation obstructing signs at the guide
18 rail end treatments.

19 And I'm going to put a little
20 bit of a caveat on the vegetation, the two
21 vegetation, that we could have also been working
22 with our forestry group.

23 Q. Thank you. That was
24 actually my next question, was if those items were
25 things that your group was solely responsible for

1 or if there was some overlap with the other groups
2 and those two potentially could have been done by
3 your group in coordination with forestry?

4 A. Yes, yes.

5 Q. And looking at Appendix
6 B, are there any items on that list that your
7 group would have been responsible for?

8 A. No.

9 Q. Conducting pavement
10 friction, that wasn't something that fell within
11 operation's mandate?

12 A. No.

13 Q. And the 2015 CIMA report
14 was also given to members of council on December 3
15 as part of the agenda package for the December 7
16 meeting. Do you recall if you ever saw or read
17 the 2015 CIMA report?

18 A. So, I'm glad you said it
19 was given to council because during my interview I
20 had been told I received it. So, no, it was
21 circulated to council. No, I did not get a copy
22 of it and I didn't look at it until 2018, when the
23 traffic group came under my portfolio.

24 Q. Okay. And we'll come to
25 2018 later, but while we're on that topic, why in

1 2018 did you review it?

2 A. Just because it was
3 within the portfolio and there were still a number
4 of items that needed to be done.

5 Q. Okay. So, just, sort of,
6 getting yourself up to speed with what was, sort
7 of, in your new mandate. Is that fair?

8 A. Yes, that definitely was
9 the case, trying to get up to speed.

10 Q. Sorry, Registrar, we can
11 probably close these documents out now.

12 We talked before, I asked you
13 before, about your practices and you told me about
14 your practices with respect to reviewing staff
15 reports. What were your practices with respect to
16 reviewing consultant reports?

17 A. So, consultant reports,
18 again, for operations, we had very few. I can
19 only recall reviewing one consultant report while
20 in operations, and that was relative to the
21 escarpment face maintenance that we needed to do.

22 But typically I would
23 definitely read the staff reports and the staff
24 reports were a summary of what was contained in
25 the consultant reports. And in operations, I

1 don't think we ever had a committee report that
2 involved a consultant report.

3 Q. Okay. So, that just
4 wasn't something that you really encountered in
5 your division?

6 A. In the operations
7 division, no, it wasn't things that we did.

8 Q. So, do you recall,
9 separate from reviewing the 2015 CIMA report, do
10 you recall if you discussed the report or the
11 findings in that report with any of the your
12 Public Works colleagues?

13 A. No, I don't recall
14 discussing it. No.

15 Q. Did you have any insight
16 into what CIMA's findings were with respect to the
17 Red Hill Valley Parkway and any, sort of, trends
18 that they had identified in the data?

19 A. Well, it was comforting
20 to see that the issues that had been raised by my
21 staff were actually identified in the report. So,
22 there was reference to the fact that speeding was
23 a significant concern on the roadway, and they
24 also confirmed that there was a higher incidence
25 of accidents during wet weather.

1 Q. And just to, sort of,
2 orient when you knew those things in time, was
3 that something that you appreciated from reading a
4 staff report? Was that something that you
5 appreciated from reading the report in 2018? When
6 did that knowledge of CIMA's findings come?

7 A. No, the staff report in
8 2015.

9 Q. And we talked before
10 about the water cooler, sort of, talk you recalled
11 about the Red Hill Valley Parkway. Do you recall
12 if there was any, sort of, water cooler talk about
13 the 2015 CIMA report or the staff report?

14 A. I don't recall any
15 discussion and I don't recall any e-mails coming
16 through either from staff after the 2015 report.

17 Q. And, as I said earlier,
18 the 2015 CIMA report and the staff report were
19 presented at the December 7, 2015 Public Works
20 Committee meeting. Do you recall if you attended
21 that meeting? And I can call up some --

22 A. Okay. So, it was my
23 practice to attend committee meetings and council
24 meetings when I was requested to go. That was my
25 practice. The only time I wouldn't go to meetings

1 was if I had -- I was away on vacation or I had a
2 personal commitment that I wasn't going to be at
3 work that day, so it was my practice.

4 Do I specifically recall that
5 meeting on the 15th? I don't. I figure I've
6 attended over 5,000 committee and council meetings
7 during my 30-year career in the municipal setting,
8 so I'm going to say it's extremely likely that I
9 was at that meeting on the 15th.

10 Q. It's extremely likely but
11 you don't have a specific recollection of that
12 meeting or what was discussed?

13 A. I think that's a fair --
14 nothing stood out that jumped out at me and said
15 it would be an overly memorable discussion.

16 Q. Okay. Thank you. And,
17 Commissioner, I see we're at 11:00, which is
18 earlier than our usual scheduled break, but we did
19 start at 9:00 this morning, so I'm wondering if
20 now would be a good time to take our break?

21 JUSTICE WILTON-SIEGEL: That
22 would be fine. We're at almost 11:05, so let's
23 return at 11:20. We stand adjourned until that
24 time.

25 --- Recess taken at 11:03 a.m.

1 --- Upon resuming at 11:22 a.m.

2 MS. HENDRIE: Thank you.

3 BY MS. HENDRIE:

4 Q. Ms. Matthews-Malone, I
5 just want to follow up on one piece of evidence
6 you gave prior to us taking our break. And so,
7 this was in the context of e-mails that we were
8 looking at from November 2015 with Mr. Capostagno
9 and Mr. McCleary. And I asked you about if you
10 had any concerns about safety on the Red Hill
11 Valley Parkway at that time and you told me that
12 you didn't have any concerns and that you were
13 waiting to see what the data was going to give and
14 at that time you had anecdotal information.

15 And then I'll just read from
16 the transcript that I have. You said:

17 "We had, as background,
18 we had problems with our
19 CVOR and we had a very,
20 very aggressive accident
21 review program."

22 The accident review program
23 that you mentioned there, can you just tell me
24 what you were referring to?

25 A. Yes. I'm sorry. That

1 was accidents relative that involved City
2 vehicles.

3 Q. Okay. So, that was
4 specific to the CVOR vehicles that we were talking
5 about?

6 A. Yes, only our vehicles.
7 Only the City of Hamilton vehicles.

8 Q. Okay. And so, that
9 accident review program, that was something that
10 your division did but only in relation to those
11 vehicles?

12 A. It was a joint
13 undertaking with some other divisions as well,
14 like John Mater's fleet group was involved and I
15 believe parks and forestry was involved as well.

16 Q. Okay. Were you aware of
17 any other accident review programs that the City
18 had at that time, besides the CVOR program?

19 A. Relative to City vehicles
20 or other vehicles?

21 Q. Just more generally.

22 A. More generally, I would
23 say there was the accident reporting system that
24 went to traffic, but that was as a whole, vehicles
25 both professional and individual.

1 Q. Okay. Thank you. So,
2 just to pick up on something else we had been
3 talking about prior to the break, one of the items
4 that the listed in the medium term countermeasures
5 in the December 2015 staff report was conducting
6 friction testing and I asked you some questions
7 about that when we had that Appendix B up on the
8 screen.

9 And, just as some background,
10 we know that friction testing was performed prior
11 to the 2015 staff report on the LINC and the Red
12 Hill Valley Parkway by Tradewind Scientific in
13 November 2013 as part of a review of the Red Hill
14 Valley Parkway that Mr. Moore had done.

15 And we also know from
16 documents that the inquiry has received that
17 shortly after the December 2015 Public Works
18 Committee meeting, there was some discussion
19 between City staff and members of a community
20 group, the Lakewood Beach Community Council, in
21 which staff communicated to the LBCC that friction
22 testing would be done in 2016, so I'm just giving
23 you, sort of, that background of what came before
24 and what was said to come after the 2015 report.

25 As of in and around, sort of,

1 early 2016, do you recall if you were aware of any
2 friction testing that had been conducted on the
3 Red Hill Valley Parkway in 2013?

4 A. No, I was not aware.

5 Q. Were you aware of Golder
6 or Tradewind's retainer in relation to friction
7 testing?

8 A. No, I was not.

9 Q. And the latter piece that
10 I talked about, the LBCC, were you aware of any
11 discussions about friction testing being completed
12 or contemplated on the Red Hill Valley Parkway in
13 and around early 2016?

14 A. I'm sorry, I'm going to
15 have you get you to repeat that question because I
16 got a little confused between the community group
17 and the --

18 Q. Sure. I guess more
19 generally, were you aware of or do you recall any
20 discussions about friction testing being completed
21 or contemplated on the Red Hill Valley Parkway in
22 early 2016?

23 A. No, I was not.

24 Q. And I think you told me
25 before friction testing wasn't something that was

1 in your group's mandate. Is that correct?

2 A. That's correct.

3 Q. Would you have had any
4 role or your staff have had any role in organizing
5 or sort of coordinating the work in relation to
6 friction testing?

7 A. I wouldn't think so. I
8 can't think of anything where it would be.

9 Q. So, the inquiry has heard
10 evidence from Geoff Lupton that he recalls a
11 meeting between yourself, him, Mr. Mater and
12 Mr. Moore, and he thought it was likely after a
13 DMT meeting, in which Mr. Moore shared with that
14 group some experiences dealing with what
15 Mr. Lupton described as the whole friction test
16 issue and in that conversation there was reference
17 to things like there being no industry standard,
18 difficulties trying to get information, evolving
19 technology and that friction testing wasn't
20 something that was done very frequently.

21 And Mr. Lupton wasn't sure of
22 the timing of this, of when this conversation took
23 place, but just, sort of, as a pinpoint in time
24 for my questions to you on this, he left the City
25 in February 2017, so it would have been sometime

1 before that that he recalls this conversation.

2 And my question to you is: Do
3 you recall attending a meeting with Mr. Lupton,
4 Mr. Mater and Mr. Moore in which Mr. Moore spoke
5 about friction testing or friction testing
6 results?

7 A. I don't recall ever
8 having the meeting with Geoff Lupton.

9 Q. Okay. You don't recall a
10 meeting with Geoff Lupton at any time?

11 A. At any time.

12 Q. Okay. And so, would your
13 evidence be that you don't think this conversation
14 occurred, and if it did occur, you don't think you
15 were present for it?

16 A. So, can I ask you, have
17 you got a timeframe? Can you give me that
18 timeframe again?

19 Q. So, Mr. Lupton left the
20 City in February 2017.

21 A. Okay.

22 Q. So, it would have been at
23 some time prior to that.

24 A. No. My answer still
25 stands. I can't recall ever having a meeting with

1 Mr. Lupton.

2 Q. Okay. And, sort of,
3 taking Mr. Lupton out of that equation, do you
4 recall having a meeting with anyone at any time in
5 which Mr. Moore provided information about
6 friction testing or friction testing results?

7 A. I don't recall a meeting
8 where he discussed that, no.

9 Q. Okay. Registrar, if we
10 could call up overview document 7, images 124 and
11 125.

12 So, this, Ms. Matthews-Malone,
13 we're into now May 2016, when the documents come
14 up. And you'll see in paragraph 395, if we could
15 call that out, Registrar.

16 A. Thank you.

17 Q. That on May 13, you
18 received an e-mail from Mr. White about a draft
19 information update report that had been prepared
20 and it set out the anticipated timing for the
21 short-term RHVP/LINC safety measures. And, sort
22 of, similar to what we had looked at before, the
23 e-mail from Mr. Ferguson, he was asking you and
24 Mr. Moore if you were comfortable with the wording
25 prior to your release and asking if there were any

1 changes you wished him to make.

2 And, Registrar, we can close
3 this out and I'll take Ms. Matthews-Malone to the
4 chart at paragraph 396 there.

5 And so, this is the timing of
6 the items that Mr. White identified in the report,
7 and the items that you identified as being within
8 operation's mandate, the trimming vegetation, the
9 updating guide rail end treatments and the
10 signage -- sorry. The install, replace or trim
11 vegetation obscuring signs at guide rail end
12 treatments, those had anticipated completion dates
13 in the summer months, sort of between June and
14 August 2016.

15 Between December 2015, when
16 the staff report was approved by council and the
17 recommendations were passed, and here now, in
18 May 2016, what steps had you or your staff taken
19 to implement your respective countermeasures?

20 A. The vegetation ones,
21 they're tied to our cutting season because they in
22 all likelihood would have been coordinated with
23 our roadside cutting. We've given the completion
24 date of June-July. Sometimes you're able to start
25 earlier, but it depended on what the weather

1 conditions were like. So, it was being --
2 obviously we don't have much vegetation during the
3 winter, so we're going to address that when we
4 start to get into the spring.

5 The guide rail end treatments,
6 guide rails was a contracted annual contract for
7 us and it's quite possible that that was what we
8 had said would be our anticipated contract time.

9 Q. Okay. So, possibly
10 before the guide rail end treatments, is that
11 possibly connected to, sort of, either putting
12 out --

13 A. Including.

14 Q. -- a tender or receiving
15 bids? Was there any connection to a tendering
16 process?

17 A. Yes.

18 Q. Thank you, Registrar. We
19 can close this out and if we could call up
20 paragraph 397.

21 So, on May 13, the same day,
22 Mr. Moore responded and it doesn't say here but
23 you were also copied on this e-mail. And
24 Mr. Moore wrote:

25 "The only comment I have

1 is that we are possibly
2 looking at pavement rehab
3 work on the Red Hill in
4 2017. I would not plan
5 on any pavement work this
6 year as it will likely be
7 overlaid next year."

8 So, prior to this e-mail, so
9 this is mid-May 2016, were you aware that
10 engineering services was considering
11 rehabilitation work on the Red Hill in 2017?

12 A. No, I was not.

13 Q. So, you think this was
14 the first time you learned about engineering
15 services' possible plan?

16 A. Yes, I believe this was
17 the first time.

18 Q. So, I take it based on
19 that you didn't have any other information at that
20 time about why engineering services was looking to
21 possibly rehabilitate the Red Hill in 2017?

22 A. That's correct.

23 Q. And so, you didn't have
24 any other information or any other understanding
25 about why? Sorry, that might have been my last

1 question.

2 A. No, just the reference
3 that they were potentially looking at it for 2017.

4 Q. Okay. Thank you. So,
5 Registrar, can we close this out and go to
6 images 151 and 152, and if we could first call out
7 paragraph 458.

8 So, this is a little over half
9 a year later, February 2017, and you received a
10 calendar invitation for a meeting called repaving,
11 titled Repaving RHVP, scheduled for February 6,
12 2017, and the attendees are listed here:

13 Mr. Moore, Mr. Sidawi, Mr. Ferguson, Mr. White,
14 Mr. Andoga, Ms. Jacob, Mr. Hughes and yourself.

15 Between this time, February 6,
16 2017, and the e-mails that we had just looked at,
17 in May 2016, do you recall if you had any other
18 discussion about either rehabilitation or repaving
19 on the Red Hill Valley Parkway?

20 A. I don't recall any
21 conversations between that prior date and this
22 e-mail.

23 Q. And you and Mr. Hughes,
24 from the list here, you and Mr. Hughes look to me
25 to be the only staff from your division. Is that

1 right?

2 A. That's correct, yes.

3 Q. And do you recall why the
4 two of you were invited and what your role at the
5 meeting was?

6 A. So, again, I can't
7 specifically recall the discussion of the meeting,
8 but I did -- you'll see from the subsequent, I
9 think you're going to show, that I gave a summary
10 of the meeting to our staff. So, they were
11 looking at were there things we wanted to
12 coordinate and they may also request some padding
13 with asphalt to be done by our group as, sort of,
14 a test, an interim test.

15 Q. Why don't we go to your
16 e-mail now.

17 So, Registrar, we can close
18 this out and call up the next paragraph, and it
19 goes on to page 152 as well.

20 So, there is a reference to
21 padding. It's in that third bullet there. Just
22 for our benefit, what is that?

23 A. They were stating that
24 they had some depressions in the roadway that
25 couldn't be explained because typically a

1 depression will occur under an underground culvert
2 or a water main or sewer system, so they had some
3 areas of settlement that they didn't understand
4 what was causing it.

5 So, what I took away from that
6 was if they wanted us to do padding, it would be
7 to see whether the road would continue to move, if
8 they continued to settle, that was my
9 understanding. I think from this also, they were
10 definitely looking for was there anything you
11 wanted to do in the area while we're there,
12 because I've sent it to roads, drainage and
13 Brian's group as well.

14 Q. Okay. And so, the title
15 of the calendar invitation that I just took you to
16 was Repaving RHVP and here in bullet 1 of your
17 e-mail you talk about that they are looking to
18 shave and pave the RHVP in 2018, 2019. We just
19 looked before at an e-mail where Mr. Moore was
20 talking about potential pavement rehabilitation in
21 2017. Do you recall any discussion about, sort
22 of, why the plan had shifted from possible
23 rehabilitation to now a repaving?

24 A. A shave and pave is a
25 rehabilitation technique.

1 Q. Okay. And that was the
2 plan that you understood as of February 2017, that
3 the plan was a shave and pave on the Red Hill
4 Valley Parkway?

5 A. No. Based on the earlier
6 e-mail, I didn't know what he was proposing. At
7 this meeting, we were told he was looking at
8 particular techniques.

9 Q. And we know that
10 eventually later in time the City and engineering
11 services did have -- there was, sort of, a lengthy
12 consideration of hot in-place recycling on the Red
13 Hill Valley Parkway. Do you recall if there was
14 any discussion about possible use of hot in-place
15 at this meeting?

16 A. At this meeting, I don't
17 recall that, that it was discussed, no.

18 Q. Were you given any more
19 information about why the shave and pave was being
20 considered at this time? We talked before
21 about -- you told me before that you weren't
22 really provided with any other information, aside
23 from what Mr. Moore reported in his e-mail, but
24 I'm wondering what, if any, other information you
25 received at this meeting?

1 A. The information that I
2 received is fair. I've transcribed it to be able
3 to share with my staff. I think I have my own
4 thoughts based on being asset management director
5 for a number of years of potentially why he's
6 doing it, if he's got some settlement, so...

7 Q. Okay. Can you tell us
8 what your thoughts are?

9 A. And, again, I'm sorry,
10 this is from my asset management time and knowing
11 for roads. So, typically what will happen is that
12 a road, when it starts to deteriorate, it
13 deteriorates very quickly, so when you look at
14 the, you know, sort of, the four categories of
15 types of intervention you can do, you try to rehab
16 it so that you're not getting into full
17 reconstruction. We had a lot of roads that had
18 gone beyond repair and needed full reconstruction.
19 Full reconstruction is exponentially more
20 expensive, and so that was my takeaway, is they're
21 doing rehab because they have something happening
22 to the road. That was my impression. That's my
23 interpretation, so...

24 Q. Okay. And beyond what
25 you report here -- sorry. I guess my question is:

1 What's reported here, was that your understanding
2 of, sort of, what was discussed at the meeting in
3 terms of what was going on on the road?

4 A. Yes, yeah.

5 Q. Do you recall if there
6 was any discussion about skid testing or pavement
7 friction at that meeting?

8 A. I would say I don't
9 recall. There would be no reason why I wouldn't
10 include it in the e-mail, so it makes me think it
11 wasn't.

12 Q. So, you think probably if
13 it had been raised and that was a topic that came
14 up, you probably would have reported that back to
15 your staff?

16 A. Yes.

17 Q. And when you say in
18 item 2:

19 "Some ideas being tossed
20 around but final plans to
21 be determined."

22 Who was determining those
23 final plans? Was that engineering services?

24 A. It would be engineering
25 services, yes.

1 Q. Did you have any sense
2 about what the anticipated timing would be for
3 when final plans would be decided?

4 A. At this point in time,
5 when are we? We're February. So, it would have
6 to be decided over the summer probably at the
7 latest.

8 Q. In order to get the work
9 done in 2018?

10 A. Yes.

11 Q. Thank you, Registrar. We
12 can close this out and if we could call up the
13 next two paragraphs, paragraph 460 and 461.

14 So, following from your
15 e-mail, Mr. McCleary sent an e-mail to what I
16 think are a number of his staff and he reported:

17 "They're looking at these
18 two roadways over the
19 next few years, starting
20 with RHVP shave and pave.
21 I've been asked to get
22 your takes on the worst
23 area of these roadways,
24 real trouble spots."

25 So, just stopping there, who

1 asked Mr. McCleary to get takes on the worst
2 areas?

3 A. Well, I asked Terry --
4 and go back to my e-mail if you would, please,
5 because I asked Terry to look at the potential
6 of -- yes, I'm sorry.

7 Q. Registrar, could we
8 perhaps just slide this over to one side and see
9 if we can have both up, if that's possible.

10 A. Okay. So, it says here
11 their share schematic with showing the areas of
12 interest, I would like to review it with our
13 staff, so I'm asking him are they seeing anything
14 on the road and will it jibe with what engineering
15 is saying they picked up particular target areas.
16 So, Terry is just turning around and he's asking
17 his staff.

18 Q. So, just a different --
19 sorry, he puts a different phrasing, different
20 spin, on what your request had been?

21 A. Yes.

22 Q. And then in the last line
23 of Mr. McCleary's e-mail there, he says:

24 "Your input is very
25 important for funding

1 these projects."

2 And you may have touched on
3 this before, but can you explain that for us? How
4 would staff's input affect the funding?

5 A. Sorry, I don't know what
6 I would mean there.

7 Q. I think that's
8 Mr. McCleary's e-mail.

9 A. Oh, sorry. Yeah. I'm
10 sorry. I read it as I wrote that. No, I don't
11 know what he would mean with that. I don't know.

12 Q. Okay. Fair enough. It's
13 not your e-mail, so --

14 Then if we could just look at
15 paragraph 461 there, this is Mr. McCleary's
16 response to your e-mail, so this is what he sent
17 back to you, and he said in the second paragraph
18 there:

19 "My thoughts are the RHVP
20 is the worst between the
21 two. I base this on
22 accidents and complaints
23 by police every time the
24 road surface is wet. As
25 soon as they identify

1 locations, I will send it
2 along."

3 So, did you agree with
4 Mr. McCleary's view that the RHVP was the worst of
5 the two, and I take that as being as between the
6 LINC and the Red Hill?

7 A. So, no, I didn't, because
8 some of the statistics I had seen at that point
9 said they're pretty comparable in terms of numbers
10 of accidents. Terry has misinterpreted the
11 request, and so he's concentrating based on their
12 anecdotal information. I'm asking for are you out
13 filling potholes? Are you -- do you see areas
14 that you're concerned with? And Terry, sort of,
15 put a different spin on his e-mail.

16 Q. But you didn't share his
17 view that even anecdotally that the Red Hill was
18 the worst of the two?

19 A. No, I did not share that
20 anecdotal information.

21 Q. Did you just, as a
22 clarifying on this -- he said his opinion was
23 based on accidents and complaints by police every
24 time the road surface is wet. Did you have any
25 views on that statement?

1 A. Well, at this point in
2 time there had been a report. The 2015 report
3 indicated there's speed, there's wet weather,
4 inclement weather accidents, so --

5 Q. Did you have any concerns
6 about those findings or that there were, sort of,
7 about collisions in wet weather or in inclement
8 weather?

9 A. No, because there's a
10 series of activities that are ongoing that were
11 recommended in the safety report to address the
12 facets of whatever was contributing to problems
13 out there.

14 Q. Okay. And Mr. McCleary's
15 e-mail that came in on the 7th, I believe, did you
16 raise his views about the RHVP being the worst of
17 the two or his basing that on accidents and
18 complaints by police? Did you share that with any
19 of the other attendees who were at that meeting?

20 A. No, I did not, because
21 that's not what we were asked for.

22 Q. Thank you. Registrar,
23 can we close this out and can we go to images 177
24 and 178. Thank you. I think actually we just
25 need to be on 178 for now. Thank you.

1 So, Ms. Matthews-Malone, this
2 is Mr. Mater circulated a calendar invitation for
3 a meeting that was titled LINC/RHVP Plan, and that
4 meeting was scheduled for May 1, 2017. And I can
5 pull up that calendar appointment if it would be
6 helpful for you, but I just wanted to orient you
7 with the agenda as well.

8 You were listed as one of the
9 attendees at this meeting. Do you recall this
10 meeting?

11 A. So, I don't recall the
12 discussions. I've been wracking my brain about
13 this. But I recall it was the only time I met
14 Jason Worrton, so that's why I'm leaning towards --
15 I would have no reason not to attend. Let's put
16 it that way.

17 Q. Okay. So, you remember
18 attending a meeting with Mr. Worrton at least?

19 A. Yes, and that would have
20 been the only time I would have met Jason Worrton.

21 Q. Do you recall what the
22 circumstances were that led to this meeting on
23 May 1?

24 A. No, I don't. I took at
25 face value what the agenda said or I would have.

1 Q. And that's the agenda
2 items excerpted there below. Looking at those,
3 sort of, agenda items and, as you said, you took
4 them face value, does that trigger any or help
5 refresh your memory about what was discussed at
6 the meeting?

7 A. No.

8 Q. When Mr. Worrton
9 testified, he described the tone of this meeting
10 as stressful and he described people not being
11 happy. Does that assist you in refreshing your
12 memory at all about the meeting?

13 A. No. I don't recall
14 anything of that nature, so it didn't stick out.

15 Q. Okay. In item 4 there of
16 the agenda, it says friction testing results. Do
17 you recall if there was any discussion about
18 friction testing or friction test results at the
19 meeting on May 1?

20 A. You know, I don't,
21 because I don't really recall the discussion, so
22 I'm sorry.

23 Q. Okay. So, you don't
24 recall if Mr. Moore was asked about friction
25 testing results at the meeting?

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

2 Q. And when you told us that
3 you reviewed the agenda or you would have taken it
4 at face value, what, if any, understanding would
5 you have had about what the item "friction testing
6 results" referred to?

7 A. Well, it's talking about
8 we're going to go over the recommendations from
9 previous reports and it's in there, isn't it? I
10 think it's included in those previous reports.

11 Q. Okay. So, you understood
12 it to be a followup from what had been included, I
13 think, in the 2015 staff report?

14 A. And I have to apologize
15 because it's tough when you're reading all the
16 documents, and so you, kind of, know that through
17 this process or did I -- but it went prior to 2015
18 as well, having looked at that presentation
19 material, so it went before that. So, it was kind
20 of the history. It was a bit of a history lesson,
21 I guess.

22 Q. So, that was your
23 understanding, it was a bit of a history lesson in
24 respect of the friction testing and friction
25 testing results?

1 A. No. The history was all
2 the discussions around the Red Hill and the LINC
3 and various things that council -- again, I'm
4 sorry, I'm looking at -- I feel like I'm, sort of,
5 adding in things, but I'm looking at the
6 presentation, so it's talking about various
7 recommendations, various staff reports, various
8 activities that staff have undertaken and that
9 included right back sometime prior to the 2015.

10 Q. Okay. And the
11 presentation, that's the slide presentation that
12 was presented at this meeting?

13 A. Yes. And I'm sorry, I've
14 looked that slide presentation in preparation of
15 this, so yes.

16 Q. Okay. Were you aware at
17 the time that you got this agenda that there had
18 been friction testing conducted or do you think
19 that would have been new information for you when
20 you received the agenda?

21 A. I think that would have
22 been new information for me.

23 Q. Okay. Registrar, if we
24 could go to the next image, if we could keep up
25 178 and also call up 179, and if we could just,

1 sort of, expand the slide presentation or the
2 slide there.

3 And this is an excerpt of that
4 slide presentation. It's just one of the slides
5 from that presentation. And you'll see there in
6 the second line at the top it says:

7 "Conduct pavement
8 friction testing at an
9 estimated cost of
10 \$40,000."

11 And the status is listed as
12 complete. Does seeing this refresh your memory at
13 all about any discussions of friction testing
14 results at that meeting?

15 A. No, it does not.

16 Q. If we can close this out
17 now, Registrar.

18 And I'll take you to now to
19 the slide show and to the last slide of it.

20 Registrar, if we could call up
21 HAM25976, image 31. Perhaps we can -- it's quite
22 small on the screen, so -- thank you.

23 So, Ms. Matthews-Malone, this
24 is the last slide of that slide presentation and,
25 as I understand it, it sets out a number of items

1 that were on the outstanding business list for
2 Public Works. Do you recall -- does looking at
3 this document assist your recollection at all in
4 terms of what, if any, discussion there was about
5 the OBL items at that meeting?

6 A. Again, I'm sorry, I can't
7 recall the exact discussion at the meeting. I
8 have seen this because I have reviewed it as part
9 of the preparation, so...

10 Q. Okay. And what, if any,
11 next steps do you recall there were either for you
12 or for your team in operations coming out of this
13 meeting?

14 A. And, again, I'm looking
15 at this document now, and so from the items that
16 were listed, at that particular time there's
17 nothing there for the operations group and I'm
18 still operations at this point in time. There are
19 a few things for traffic operations, so they would
20 have been within the mix come January 2018.

21 Q. And that was when you
22 became director of roads and traffic?

23 A. That's correct, yes.

24 Q. But at the time, nothing
25 for you and your staff --

1 A. No.

2 Q. -- as of May 2017?

3 A. That's correct.

4 Q. Thank you. Registrar,
5 can we close this out and if we could call up
6 HAM26488 at images 2 and 3.

7 So, you'll see,
8 Ms. Matthews-Malone, in the very bottom of the
9 document on the left and the top on the right, on
10 November 5, 2017, you received an e-mail from
11 Richard Boorsma advising that the RHVP and LINC
12 were closed as a result of 30-plus accidents on
13 the facilities. And you then, you'll see in your
14 e-mail on the left side, you forwarded that e-mail
15 to Mr. Mater and Mr. White saying:

16 "Don't know if this will
17 get some coverage, but
18 just a heads up."

19 Do you recall these e-mails?

20 A. Yes, I do. I do.

21 Q. And do you recall more
22 generally the incidents or the accidents, a day
23 where there was 30-plus accidents on the Red Hill
24 and the LINC?

25 A. So, this is extremely

1 unique, extremely unique. I've never in my
2 30 years had 30-plus accidents on a roadway. It's
3 happened over the weekend. I took a quick look.
4 I think there was a little bit of fog. But I took
5 a look at the -- I sent it over very first thing
6 on Monday morning over to John Mater in traffic
7 to, you know, say have a look and see, because
8 they would get the accident reports. But this is
9 unheard of, 30-plus accidents in one short period
10 of time. It's unique, unique.

11 Q. Did you have any
12 concerns, given the high volume of accidents, that
13 the Red Hill and LINC experienced at that time?
14 Did that cause you any concerns about safety?

15 A. So, no. What I'm doing
16 is I'm flipping it over to what happened with that
17 window on this -- I think it was a Sunday night,
18 wasn't it? It was a Sunday night, so what
19 happened out there? What were in the police
20 reports? Be aware.

21 Q. So, when you said you
22 were flipping it over, that's what you were doing
23 when you were sending it over to Mr. Mater and
24 Mr. White?

25 A. Yeah.

1 Q. Did you anticipate that
2 there would be media coverage on this?

3 A. I have to say I did. You
4 know, 30 accidents, I've never seen that on a
5 municipal road.

6 Q. Okay. Registrar, can we
7 close this document out and call up overview
8 document 8, images 12 and 13.

9 And so, Ms. Matthews-Malone,
10 in paragraphs 23 and 24, you'll see Mr. White
11 forwarded a draft staff report titled Lincoln
12 Alexander Parkway and Red Hill Valley Parkway
13 Transportation and Safety Update to you and
14 Mr. Moore and he asked for any comments that you
15 had and -- sorry. I don't know if you can see it,
16 if you would like me to call it up more, but --

17 A. I'm fine.

18 Q. Okay. So, Mr. White
19 asked for any comments that you and Mr. Moore had
20 and he advised that the reports was originally to
21 go to the Public Works Committee on December 4 but
22 they were a bit late so he thought it would have
23 to go in January.

24 And just to, sort of, situate
25 us in time, the end of 2017, Mr. White still

1 reported to Mr. Mater. Is that right?

2 A. That's correct.

3 Q. But if the report went in
4 January, which it did end up eventually going in
5 January, that was the time that you had become
6 director of roads and traffic. Is that right?

7 A. That's right.

8 Q. And why was he asking for
9 your review and comments on this?

10 A. Again, I think it was
11 courtesy. If you're going to be referring to
12 another division in one of your reports, that you
13 would share it with the other divisions to make
14 sure they were comfortable with the language or
15 the portrayal of the potential interaction with
16 your division.

17 Q. So, similar in nature and
18 purpose to what we had looked at before with some
19 of the e-mails where recommendations or draft
20 reports were sent to you and Mr. Moore?

21 A. Yes.

22 Q. And, Registrar, if we
23 could go to HAM26494 at images 1 and 2.

24 This is just to give you a
25 little bit of context. I won't take you through

1 the whole report because it's quite lengthy.
2 It's, I think, 14 pages. But just to summarize,
3 it dealt with a number of items on the outstanding
4 business list related to the Red Hill Valley
5 Parkway, including reporting back on the
6 implementation of short, medium and long-term
7 countermeasures that we had looked at previously.
8 And here, what I have up on the screen, are the
9 recommendations that were included in that draft?

10 A. Mm-hmm.

11 Q. I'll just let you review
12 and if you could just let me know when you have
13 finished.

14 A. Okay.

15 Q. So, Registrar, we can
16 close this out and go back to overview document 8,
17 paragraph 13, or, sorry, image 13.

18 And in paragraph 28 there at
19 the bottom, you responded to Mr. White saying:

20 "Only comment is to
21 change roads to
22 operations or operations
23 division. Tough one to
24 write, but an easy read.
25 I'll have to make sure

1 I'm on vacation the day
2 it goes as it will be a
3 long meeting. Thanks for
4 the opportunity to
5 review."

6 So, more generally, what were
7 your views on the report when you read it?

8 A. So, this is interesting.
9 I've got to learn how to use LOL or emojis
10 because, first of all, it was intended as a joke
11 that I was going to be on vacation. I thought it
12 contained a lot of information. Reports are very
13 difficult to write and to write them such that
14 they're easily understandable, and so I was
15 complimenting Mr. Ferguson on the one that --
16 there was a lot of information in that report and
17 I thought it was very well written and was going
18 to be easy to understand the report. And I do
19 apologize for making that statement, I'll have to
20 make sure I'm on vacation. It was intended as a
21 joke and my understanding it was received as a
22 joke.

23 Q. So, just to, sort of,
24 follow up on that, it was a joke. There wasn't
25 any reason that you didn't want to attend that

1 meeting. It was just --

2 A. I would be there. I was
3 the director at that point in time. I would be
4 there.

5 Q. Okay. Thank you.
6 Registrar, we can close that out.

7 And I'm going to take you now
8 to two documents because the chain breaks in
9 between an e-mail that you send and a response
10 that you get.

11 So, Registrar, if we could
12 call up HAM63873 and if we could also call up
13 HAM1086. Perhaps we can call out
14 Ms. Matthews-Malone's e-mail.

15 So, on January 2, 2018, so I
16 think you probably had just stepped into the role
17 as director of roads and traffic based on the
18 date, you e-mailed Mr. Moore asking when he was
19 putting out the RHVP/LINC contract, and I
20 understand that to be the contract for the
21 repaving or the shave and pave that we had looked
22 at before in that meeting.

23 And you said:

24 "Now that I have John's
25 group, I believe there

1 were a couple things they
2 wanted in the contract.
3 We just want to make sure
4 we are in the mix during
5 tender prep."

6 So, John's group, that would
7 be a reference to the traffic operations and
8 engineering group?

9 A. That's correct.

10 Q. So, we can close this
11 call out now and, Registrar, if we could go to, I
12 think, the last -- we'll try image 2 on 1086.
13 Perfect.

14 So, Mr. Moore responds to your
15 e-mail at the bottom there and says that:

16 "They were progressing
17 towards a February
18 tender, but there was a
19 possibility that the
20 repaving would be
21 postponed for use of hot
22 in-place recycling
23 instead of the shave and
24 pave."

25 So, I asked you before if you

1 recalled any discussion about hot in-place at the
2 meeting in, I think it was 2016. Between that
3 meeting and now, did you have any information
4 about the City's consideration of possible hot
5 in-place recycling on the Red Hill?

6 A. So, in the 2016, the one
7 that was associated with the notice and to
8 council, hot in-place wasn't mentioned. I would
9 have said that. I said it was shave and pave and
10 cold in-place. There was -- I was aware at this
11 point in time that Gary was looking at hot
12 in-place. He had seen the technology at a
13 technical conference that he was trying to run
14 aground a bit more from what I understood.

15 Q. I'm sorry, just to
16 correct myself, I said 2016, but I think it was
17 early February 2017, so it would have been just
18 about a year prior to this.

19 A. I'm sorry, I can't
20 remember. I don't think it would have been that
21 early. I think it would have been later in 2017.
22 But, I'm sorry, again, I'm speculating a little
23 bit there, which I shouldn't be doing. I don't
24 think it was that early, though.

25 Q. So, there's reference

1 here to Mr. Moore says they're progressing towards
2 a February tender, but that there's possibility
3 that it would be postponed if the City were to go
4 with hot in-place.

5 Did you have any concerns
6 about potential delay in repaving if hot in-place
7 was going to be used?

8 A. No, I did not. I was
9 surprised they were looking as early as February.
10 I was not because typically hot in-place goes a
11 lot faster than shave and pave.

12 Q. Right. But in terms of
13 the timeline of when that work happens, if they
14 were going to postpone the tender that year, did
15 you have any concerns about the tender being
16 postponed?

17 A. No, I did not.

18 Q. And do you recall if any
19 of your staff raised concerns about potential
20 delay?

21 A. No, none of the staff
22 did.

23 Q. Thank you. Registrar,
24 can we close this out and if we could go to
25 overview document 8, images 70 and 71.

1 In paragraph 196, Mr. McKinnon
2 forwarded an e-mail from Martin White about
3 resurfacing and installation of reflectors in the
4 pavement to Mayor Eisenberger, and Mayor
5 Eisenberger replied asking:

6 "When is the resurfacing
7 schedule for? If it is
8 years away, what do we do
9 with these reflectors in
10 the meantime? Is this
11 not a warranty issue.
12 Half or more are missing.
13 It is not acceptable now
14 or in the future."

15 And we can close that out and
16 if we could call up Mr. White's -- so, then in
17 paragraph 197, that e-mail got forwarded to
18 Mr. White and to yourself and he said:

19 "What say you? Don't
20 want to overreact to
21 this, but let's chat."

22 Then if we could call out
23 paragraph 198. Mr. White replied to Mr. McKinnon
24 and to you with some information about the
25 replacement of reflectors and the status of

1 resurfacing and identified that the decision not
2 to replace the reflectors was based upon
3 Mr. Moore's plan to resurface the RHVP as soon as
4 possible, but at that time his understanding was
5 that Mr. Moore hadn't committed to a process or a
6 timeframe, and so traffic staff were working on
7 the original schedule.

8 Looking at this e-mail, do you
9 recall if there were any discussions that you had
10 with your staff or management about any concerns
11 in relation to possible delay in resurfacing in
12 relation to the pavement reflectors?

13 A. So, I would meet with my
14 managers every two weeks to have a checkpoint
15 meeting. I recall having a discussion. Later on
16 in the year, they replaced the missing reflectors.
17 Having the discussion with Martin, it was really
18 maintenance. It wasn't -- I think there's, kind
19 of, two things being mentioned here. So, the
20 grooves in the road, the setting for the
21 reflectors, was already done and they were talking
22 about replacing the missing reflectors, which is
23 kind of maintenance. But new reflectors, that
24 would be a much larger grandiose operation.
25 That's my recollection.

1 Q. Thank you, Registrar.
2 Sorry, just one other question on this. So, this
3 is February. This is also in February 2018. And,
4 here, Mr. White references that as far as he knew,
5 Mr. Moore hadn't committed to a process or a
6 timeframe. Do you recall if you had any concerns
7 that resurfacing at this point wasn't going to
8 happen in 2018?

9 A. No, I didn't have any
10 concerns. We kind of had our hands full at that
11 time of year with other issues at that time, so...

12 Q. Okay. Thank you,
13 Registrar. We can close that out. I'm reminded
14 that I did not mark the last document, one of the
15 documents that I pulled up before, as an exhibit,
16 so HAM63873, which was the e-mail that
17 Ms. Matthews-Malone sent to Mr. Moore, that
18 document needs to be marked as an exhibit, and I
19 think that would be Exhibit 128.

20 THE REGISTRAR: Noted,
21 counsel. Thank you.

22 EXHIBIT NO. 128: E-mail
23 Ms. Matthews-Malone sent
24 to Mr. Moore, HAM63873.

25 BY MS. HENDRIE:

1 Q. So, now, Registrar, if we
2 could go to overview document 8, images 34 and 35.

3 And so, you'll see in the
4 bottom of image 34, paragraph 90, Mr. McKinnon
5 e-mailed Mr. Ferguson, Mr. White, Mr. Mater and
6 Ms. Wunderlich under the subject line "LINC/RHVP
7 Safety Report" and this is in December 2017 and
8 said:

9 "Gents, I'm going to ask
10 Laura to find 90 minutes
11 for us in the new year
12 for you to walk me
13 through this report."

14 And that was the staff report
15 that we had looked at. And in paragraph 91 on the
16 next page, it says:

17 "The meeting was
18 scheduled for January 8.
19 Mr. Mater, Mr. Ferguson,
20 Mr. White and
21 Ms. Matthews-Malone were
22 included as attendees."

23 So, by this time, so you're
24 not on the first e-mail chain but you do end up on
25 the meeting invitation. Was that because you --

1 A. As a CC.

2 Q. And so, do you think at
3 that time you were included on that meeting
4 because you had become the director of roads and
5 traffic?

6 A. That was my impression,
7 yes.

8 Q. Okay. And do you recall
9 this meeting?

10 A. I recall -- again, I
11 can't recall, like, the ins and outs of every
12 meeting, but we were going over -- Dan did ask
13 some questions at that meeting, so yes, I recall
14 the question about accidents, so...

15 Q. And the question about
16 accidents, what do you recall about that question?

17 A. Well, Dan was
18 preparing -- so, just to put it, sort of, in a
19 sequence, typically what you would do is Dan a
20 getting prepared to go to Public Works Committee,
21 and so he's basically -- and this was good
22 practice, best practice actually, to make sure
23 that you had -- you tried to guess what types of
24 questions you would get asked and what you could
25 relay on to council to supplement what was in the

1 report, if you had to. So, he had asked, you
2 know, are there more accidents on our roads than
3 other roads? I'm pretty sure it was this meeting.

4 Q. I think you're right and
5 I'll take you to some additional paragraph
6 references now and, sort of, the sequence of
7 events that follows from this meeting.

8 So, Registrar, if we could go
9 to images 42 and 43.

10 If I can direct your attention
11 to the text at the top of the image 43.

12 And, perhaps, Registrar, we
13 could call that out.

14 So, the day after -- sorry,
15 the other page. Thank you.

16 So, the day after that
17 meeting, on January 9, Mr. Ferguson e-mailed a
18 number of staff at CIMA, including Mr. Malone,
19 asking if they could assist with a comparison of
20 collision rates between the LINC and the Red Hill
21 and other similar facilities. And he references
22 in the top part of that e-mail that the topic had
23 come up during the management discussions
24 yesterday, which I understand to be the January 8
25 meeting. Is that, sort of, consistent -- I guess

1 I'll let you review the document and then you can
2 tell me if this is consistent with what you recall
3 of Mr. McKinnon's questions at that meeting?

4 A. Yeah. I think it's the
5 linkage to that meeting with Dan.

6 Q. So, his questions to CIMA
7 here are in relation to the questions that
8 Mr. McKinnon asked?

9 A. Yes, yes, because we
10 don't have a comparator road with that amount of
11 volume and that speed.

12 Q. You may have touched on
13 this earlier, but what was your understanding of
14 why Mr. McKinnon wanted that information?

15 A. I think he -- you know,
16 he was getting ready to, if he was asked that
17 question, how would he answer it.

18 Q. So, it was preparation
19 for --

20 A. For the upcoming Public
21 Works Committee and that report that was going
22 forward.

23 Q. Who directed Mr. Ferguson
24 to contact CIMA specifically? Do you recall?

25 A. I do not. I did not.

1 And there's a nice statement in the bottom there
2 that anything would be signed off by John Mater,
3 so I'm respecting the code of conduct policy.

4 Q. Right. And that's,
5 sorry, in relation to potential conflict of
6 interest?

7 A. That's right.

8 Q. And given that potential
9 conflict and, sort of, how you viewed your role in
10 relation to the code of conduct policy, how did
11 you, sort of, approach this assignment that your
12 staff were working on with CIMA?

13 A. I would say I left it to
14 Mr. Ferguson and Mr. White. They're the experts.
15 This is not my area of expertise or my forte, but
16 I felt comfortable in once the document was
17 submitted, that I could review the final document.

18 Q. So, you could review once
19 it had been submitted to you, but not involved in,
20 sort of, the discussions with CIMA that led to the
21 whatever document it was that was created?

22 A. Yes. You've said that
23 better than I did. Yes.

24 Q. Okay. So, now I'll, sort
25 of, take you to some of the paragraphs in the

1 overview document that set out what happened after
2 this e-mail and the ending of the resulting
3 document that did come out of this e-mail
4 exchange, and so just bear with me because I'll,
5 sort of, take you to various points in time and
6 I'll ask you some questions afterwards.

7 So, Registrar, if we could
8 close this out and call up images 44 and 45.

9 And, in paragraphs 119 and
10 120, you received a copy of the 2008 -- of some
11 collision information from CIMA, from Mr. White,
12 on January 12, 2018, and the draft that you
13 received on that day found that the LINC and the
14 Red Hill had lower collision rates than three
15 comparator provincial roads?

16 A. Yes.

17 Q. And then looking at
18 image 45, and if we could also call up 46,
19 Registrar, there was then some additional
20 information that CIMA provided, looking at the
21 paragraphs that are up on the screen now. CIMA
22 provided some additional information that showed
23 that half the LINC collisions and close to half of
24 the Red Hill collisions were fatal or injury
25 collisions, and that information was then provided

1 to you. And you'll see in paragraph 128 you
2 say -- you responded to Mr. White's e-mail writing
3 that he should notify Mr. McKinnon prior to the
4 Public Works Committee meeting later that day, and
5 I think that was the meeting you were talking
6 about?

7 A. The Public Works
8 Committee where the report would be going?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. And then jumping
12 forward to after that Public Works Committee
13 meeting, Registrar, if we could call up image 52.

14 And, in paragraph 145 there,
15 Mr. Ferguson followed up with -- perhaps we can
16 call that paragraph out. Thank you. So, on
17 February 1, Mr. Ferguson followed up with CIMA
18 about the increased proportion of severe
19 collisions and he mentioned a management meeting
20 yesterday, so presumably that was on January 31,
21 where the general manager asked the question of
22 why are motorists more likely to be injured
23 travelling on our roadways when involved in a
24 collision compared to the others and why is it
25 close to 50 percent of collisions and he provided

1 some additional information.

2 And the last part that I'll
3 take you to, so it was a few days later, on
4 February 5.

5 Registrar, if we could go to
6 images 53 and 54.

7 And in paragraph 148, there
8 was some additional information that CIMA provided
9 and then Mr. Ferguson replied thanks the CIMA
10 staff for the updated information and he again
11 mentioned the management meeting and he said:

12 "Our GM and director of
13 eng, Gary Moore,
14 questioned that one or
15 two collisions of the
16 facilities resulted in a
17 serious injury or
18 fatality. Not sure if
19 you've met Gary, but he
20 emphatically questioned
21 that. Our GM is pretty
22 supportive, but when Gary
23 went off in this meeting,
24 he raised the question.
25 Almost 50 percent does

1 seem high, but as I said,
2 I relate it to the
3 speeds."

4 What do you recall, sort of,
5 more generally, having taken you through a number
6 of paragraphs and a number of documents, what do
7 you recall about the discussion amongst leadership
8 about trying to understand the collision data that
9 CIMA provided?

10 A. So, I'll see if I can
11 restate what I -- through all of my summary of
12 what you've shown me. So, Dan had asked for the
13 information prior to the committee meeting. Staff
14 came back and said the numbers are quite
15 favourable. There's actually a higher number of
16 accidents on the other roadways than on our
17 roadways. And so, that was good information we
18 had, but the morning of or the night before we're
19 going to committee, there's this question raised
20 around this what is a serious injury, fatality is
21 fairly straightforward, so it was, hey, get it to
22 Dan right away to just put a stop on it. We have
23 to run this information to ground to find out
24 what's going on.

25 And so, what's happening here

1 is that people are questioning, well, what is a
2 serious injury? Like, 50 percent is being flagged
3 as -- we know the fatalities, but we don't have a
4 lot of information on injuries, so what is being
5 captured in serious injury. Then ultimately I
6 think it comes down if there was any type of
7 injury it's being captured as a serious injury for
8 the Red Hill and the LINC.

9 Q. Okay.

10 A. But it does have a lower
11 number of collisions.

12 Q. Okay. Thank you. And
13 so, in the last two documents that I took you to
14 or the paragraphs that I called up for you,
15 there's reference to a meeting on January 31,
16 2018. And was the purpose of that meeting to
17 clarify, sort of, the, sort of, what you had been
18 telling us about the collision trends and that
19 data? Was that the purpose of that meeting?

20 A. Dan had scheduled regular
21 meetings to talk about the Red Hill and the LINC
22 and, no, I got the impression it was where are we
23 with the outstanding business list and then any
24 other items that would have come up as a result of
25 it, and this was definitely one because we didn't

1 have a definitive answer yet.

2 Q. So, not specific to the
3 collision data, but that was a topic that came up?

4 A. No. It was general,
5 everything around Red Hill and LINC.

6 Q. And Mr. Ferguson here
7 makes some references to Mr. Moore and he says
8 that Mr. Moore emphatically questioned the
9 statistics and then says:

10 "Our GM is pretty
11 supportive, but when Gary
12 went off in this meeting,
13 he raised the question."

14 Do you recall Mr. Moore
15 emphatically disagreeing with the collision data
16 or Mr. Moore going off at the meeting?

17 A. No. Gary questioned.
18 You know, Gary was not hesitant to question you.
19 This one doesn't stand out that he was more
20 agitated or anything along that line, but he
21 questioned.

22 Q. Okay. Registrar, can we
23 close this paragraph out and call up the next
24 image, image 55, and if we could call out
25 paragraphs 152 and 153.

1 So, here, you received the
2 updated collision information from Mr. White on
3 February 7 and in your response in paragraph 153,
4 you wrote:

5 "Interesting stuff. The
6 first thing that came to
7 mind was the time slots,
8 that time slots could
9 potentially assist police
10 on whether to target
11 enforcement. Will be
12 interesting to hear what
13 comes of Dave's meeting
14 with police. Other
15 interest is what
16 condition summary.
17 Wondering when Gary is
18 going to have his core
19 samples back."

20 What wet condition summary are
21 you referring to here?

22 A. Conditions, so the one
23 thing about the analysis that Martin and Dave did
24 on comparing accidents to other roads, it didn't
25 have a wet weather lens on it, so the accidents

1 that are happening on the 406, you know, it was
2 just there are -- based on the analysis, there's X
3 number of accidents and on the Red Hill there's Y,
4 but there's no, you know, was there -- there was
5 no wet weather lens or speeding or geometrics or
6 anything like that. There were no lenses, you
7 know, just the final numbers.

8 Q. And specifically on the
9 wet condition, why was that something that you or
10 others were interested in?

11 A. Well, they mentioned
12 during the 2015 that there were accidents, you
13 know, more accidents, on the Red Hill during wet
14 weather conditions, so...

15 Q. So, sort of, following up
16 on that idea from the --

17 A. Yeah. There's no
18 seasonality to the reports that are coming back.
19 It's just a direct comparison of A versus B
20 number.

21 Q. And you mentioned the
22 2015 CIMA report. At this time did you have any
23 concerns about wet weather collisions on the Red
24 Hill or had any of your staff expressed concerns?

25 A. I still, at this point in

1 time, I'm not going to say that it was wet weather
2 because we didn't really know. We had so many
3 activities going on. Was signage going to help?
4 Was line painting? The guide rails? The
5 enforcement? You know, there was -- we didn't
6 have information and at that point in time, you
7 know, Dave is meeting with the police, so are we
8 going to get more information about causes of
9 accidents?

10 Q. And in that last sentence
11 you referenced Mr. Moore having core samples back.
12 Were you aware that testing was done on those core
13 samples?

14 A. Testing on the core
15 samples, no. I can't comment on what would have
16 been done as part of the testing. They take core
17 samples, they test them, but I don't know what
18 they were testing for.

19 Q. Okay. So, in relation to
20 your question there, what was your interest in
21 Mr. Moore receiving the core samples back?

22 A. Is he still going this
23 year? Is he still going in February? Because we
24 still, as the traffic operations group, still have
25 a number of activities to be done and several of

1 them are linked to the repaving --

2 Q. Right. So, if there was
3 a delay and he wasn't going in 2018 for the
4 resurfacing, there was potential for delay to the
5 countermeasures that traffic was responsible for?

6 A. Yes, that's right.

7 Q. Okay.

8 A. A lot had been done, but
9 there were still some outstanding items.

10 Q. Okay. I'll take you now
11 to the final document in relation to this
12 collision data.

13 So, Registrar, if we could
14 call up HAM1171 at images 1 and 2.

15 And so, you'll see here
16 eventually at the end of March 2018 the CIMA
17 collision data was eventually converted into a
18 memo that was addressed to yourself and to
19 Mr. McKinnon. And on the second page there on the
20 right, there's a header that says Current Status
21 of Outstanding Items As Per Report PW18008?

22 A. Mm-hmm.

23 Q. In addition to these, was
24 there any additional safety measures or
25 investigation contemplated as a result of the

1 collision memo or the collision information that
2 you received?

3 A. No. I think this is a
4 good summary of the outstanding items.

5 Q. And so, would the process
6 have been that you were waiting to either complete
7 this work or to monitor its implementation and
8 then assess the collision data in light of that?

9 A. That's a mouthful of
10 questions, so can you repeat that for me?

11 Q. Sure. So, I guess, I'll
12 try to simplify my questions.

13 A. Thank you.

14 Q. So, in relation to the
15 current status, what relation did these items or
16 the implementation and the monitoring of these
17 items have in relation to collision information?

18 A. Well, a couple of these
19 items, and these would not have been tied to
20 construction, the que end warning system, it was
21 identified that a lot of the accidents on LINC
22 were rear enders, so the speed differential, so
23 variable speed limits, these were items that were
24 still on the outstanding list that staff had to
25 complete their work on. And could there have been

1 impacts to accidents? Yes, there may very well
2 have been a reduction as a result of this.

3 Q. Okay. Thank you.

4 Registrar, can we call up HAM35991 at images 1
5 and 2.

6 And I think you mentioned this
7 earlier, Ms. Matthews-Malone, in relation to the
8 January 31 meeting about regular meetings that
9 Mr. McKinnon was holding in and around this time.
10 So, the inquiry has received a document that
11 contains, as you'll see here, a list of Red Hill
12 and LINC meetings from 2017 to 2019 and a number
13 of the meetings that I've asked you about and that
14 we've talked about, the May 1, 2017 meeting and
15 the January meetings on January 8 and 31, are
16 listed here.

17 And, just for clarity, these
18 meetings here, these are separate from DMT
19 meetings. Is that right?

20 A. That's correct.

21 Q. And did you perceive an
22 increase in the number of meetings that were held
23 at, sort of, the general manager, director,
24 manager level specifically focused on the Red Hill
25 and LINC as of 2017 and 2018 when you were at the

1 City?

2 A. This was the first time
3 that the group had been brought together to
4 specifically have targeted discussions, in my
5 mind. I wasn't privy to a lot of the previous,
6 but...

7 Q. And I think you said
8 before it was Mr. McKinnon that was organizing
9 these meetings?

10 A. That's correct, as the
11 general manager.

12 Q. What was your
13 understanding of why Mr. McKinnon was organizing
14 these meetings?

15 A. I can't really speak for
16 Dan. But my impression was that he was trying to
17 get more information about the report, more
18 information on the outstanding items that were
19 listed in the reports.

20 Q. Okay. Registrar, we can
21 close this document out.

22 And I understand,
23 Ms. Matthews-Malone, that Mr. Soldo took over your
24 position as director of roads and traffic when you
25 retired from the City in August 2018?

1 A. That's correct.

2 Q. Do you recall if there
3 was any overlap between yourself and Mr. Soldo
4 before, sort of, when you were still at the City
5 and when he started?

6 A. There was minimal
7 overlap. So, what I had done was I had met with
8 Edward prior to him coming over. I had met with
9 him and I gave him a summary of what I thought was
10 some of the things that he might be dealing with
11 within the first 100 days. And then Edward and I,
12 I believe we had one-week overlap when he actually
13 had come over.

14 Q. When you say a summary,
15 was that a conversation you had? Was it a
16 document you provided to him?

17 A. A bit of both. We met
18 halfway between his London job and the City of
19 Hamilton, but I had written something for him.

20 Q. And do you recall if
21 there was any items in your summary out of the
22 things that you discussed at that meeting or the
23 lunch and the document that you prepared in
24 relation to the Red Hill Valley Parkway or the
25 LINC and anything specifically about the 2018

1 collision information?

2 A. So, I've been trying to
3 rack my brain. Edward probably has a better feel
4 or memory or may even have a copy of the document.
5 I, in really trying to hard to think about this,
6 I'm pretty sure I put down what report. We kept
7 track of what reports were due to committee from
8 our division and the traffic accident report was
9 in there with the -- there was a couple reports
10 due from the traffic operations group as well as
11 roads.

12 Q. Okay. So, now, coming to
13 two more areas of questions that postdate your
14 time at the City. So, I've asked you about your
15 knowledge of the friction testing conducted on the
16 Red Hill a number of times this morning and I just
17 want to close off your evidence on this point.

18 And we know that in
19 February 2019, which is about six months after
20 your retirement, the fact that the Red Hill Valley
21 Parkway -- there was friction testing results in
22 relation to the Red Hill Valley Parkway. It was
23 made public through a press release issued by the
24 City. Do you recall either reading or learning
25 about this information at the time that it was

1 released publicly?

2 A. No. I was out of the
3 country at that time. I was out of the country
4 February 9 to the 23rd in 2018. Sorry, 2019. I
5 was out of the country during then. I'm sorry.

6 Q. Okay. And do you recall,
7 sort of, leaving aside that time period, do you
8 recall when you first became aware of the
9 existence of skid testing results or friction test
10 results on the Red Hill Valley Parkway?

11 A. I can't say I know
12 anything about the results. I became aware of
13 friction testing through preparing for this
14 process.

15 Q. So, it wasn't when you
16 were at the City. It was in the course of
17 preparation for the inquiry?

18 A. That's correct, yes.

19 Q. And I take it similarity,
20 based on that, were you aware of the City's
21 retainer of Golder or Tradewind to conduct
22 friction testing on the parkway prior to your
23 retirement at the City?

24 A. No, I was not.

25 Q. Thank you. So,

1 Registrar, last document. If we could call up
2 RHV890.

3 And so, Ms. Matthews-Malone,
4 this is an anonymous letter that was sent to the
5 City auditor and the mayor's office in March 2019,
6 so when you're retired, following the disclosure
7 of the Tradewind report. Have you seen this
8 letter before, aside from reviewing it in the
9 course of preparing for this inquiry?

10 A. Only in preparing for the
11 inquiry.

12 Q. Are you the author of the
13 letter?

14 A. No.

15 Q. Do you know who is?

16 A. No.

17 Q. And, Registrar, if we
18 could call up towards the bottom the third bullet
19 from -- thank you. Yes, that bullet.

20 So, Ms. Matthews-Malone, you
21 are referenced in the letter here, and I'll just
22 give you a chance to read this. And we've already
23 discussed your relationship with Mr. Malone and
24 the conflict of interest memos you submitted in
25 connection with CIMA's work as well as some of

1 your practices and how you approached CIMA's work
2 with the City.

3 So, looking at the first
4 sentence there where it says:

5 "Ms. Matthews-Malone,
6 former Public Works
7 director of roads,
8 absolutely knew that
9 Mr. Moore had hired a
10 consultant to do
11 investigation on asphalt
12 quality and left the
13 matter to Mr. Moore to
14 pursue and resolve."

15 Did you know that Mr. Moore
16 had hired a consultant to do investigation on
17 asphalt quality?

18 A. There was one e-mail
19 where he asked, I believe, Golder to contact
20 operations if -- he was taking core samples, so
21 Gary didn't want cold mix used to repair the core
22 samples, so he suggested to contact operations.
23 So, through that, I knew something was happening
24 in terms of some sort of investigation.

25 Q. And when it says there

1 you left the matter to Mr. Moore to pursue and
2 resolve, what, if any, information do you have to
3 say in response to that?

4 A. I don't have any
5 expertise on asphalt quality, so if I'm leaving
6 the matter to someone who does, I think that's due
7 diligence. It's appropriate.

8 Q. Thank you, Registrar. We
9 can close that call out. Just one moment.

10 Thank you, Commissioner.

11 Those are my questions for Ms. Matthews-Malone.

12 JUSTICE WILTON-SIEGEL: Okay.

13 MS. HENDRIE: And I understand
14 that some of the counsel for the participants have
15 reserved time, so I would ask first if counsel for
16 Golder has any questions.

17 MS. RAMASWAMY: Thank you.

18 Good afternoon, Commissioner. Good afternoon,
19 Ms. Matthews-Malone. Commissioner, may I proceed?

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

22 EXAMINATION BY MS. RAMASWAMY:

23 Q. Ms. Matthews-Malone, you
24 stated earlier that in your capacity as director
25 of operations and road and traffic, winter

1 maintenance was under your purview. Do I have
2 that right?

3 A. Yes, winter maintenance
4 was.

5 Q. Okay. Is the use of
6 liquid brine on roadways during winter weather,
7 including the RHVP, part of that winter
8 maintenance?

9 A. Yes, it is.

10 Q. Okay. And what are the
11 weather conditions or temperature threshold at
12 which liquid brine is applied on roadways?

13 A. For anti-icing, you're
14 looking at projected weather conditions, the
15 future weather conditions, and if the temperatures
16 and weather conditions are going to be such that
17 there might be a possibility that you could have
18 icing or snow, you'll apply liquid brine in
19 advance of that because then it helps with the
20 winter control operations of -- if required, it
21 could potentially deal with other issue just on
22 its own or it could make sure that it breaks the
23 bond so that you're not having ice and snow attach
24 itself to the road.

25 Q. Okay. And so, that

1 relates more to weather conditions, but in terms
2 of temperature, is there a threshold below which
3 you tend to apply liquid brine?

4 A. Yes. So, you're watching
5 for the potential drop in temperature because
6 it's -- I'm probably not the best to explain this,
7 but there's road temperature dew point and there's
8 a point at which moisture in the air will drop out
9 and form ice, even though it's not a snowstorm.
10 Or, I guess, one reference or an example would be
11 like black ice.

12 Q. Right. And so -- sorry,
13 I'm trying to get at a degree of temperature or a
14 threshold. So, when you say dew point, is that
15 below 5 degrees Celsius? Is that --

16 JUSTICE WILTON-SIEGEL: No.

17 BY MS. RAMASWAMY:

18 Q. Do you have a sense of
19 all the degrees of temperature?

20 A. Well, you're closer to
21 the freezing point and you're looking at what
22 point the road temperature drops below the dew
23 point, because that brings out the moisture.

24 Q. Okay. Those are all my
25 questions. Thank you, Ms. Matthews-Malone.

1 MS. HENDRIE: And,
2 Commissioner, I understand counsel for the MTO
3 reserved five minutes.

4 JUSTICE WILTON-SIEGEL: Okay.

5 MR. BOURRIER: Good afternoon,
6 Commissioner and Ms. Matthews-Malone. I confirm
7 MTO does not have any questions for this witness.

8 JUSTICE WILTON-SIEGEL: Thank
9 you, Mr. Bourrier.

10 MS. HENDRIE: And, similarly,
11 Commissioner, counsel for Dufferin also reserved
12 five minutes.

13 MR. BUCK: Good afternoon,
14 Ms. Matthews-Malone, good afternoon, Commissioner.
15 I confirm that Dufferin doesn't have any
16 questions.

17 JUSTICE WILTON-SIEGEL: Okay.
18 Thank you, Mr. Buck.

19 MS. HENDRIE: And I believe
20 counsel for the City has approximately 20 minutes
21 of questions.

22 MR. MISHRA: Good afternoon,
23 Mr. Commissioner. May I proceed?

24 JUSTICE WILTON-SIEGEL: Yes,
25 please proceed, Mr. Mishra.

1 EXAMINATION BY MR. MISHRA:

2 Q. Good afternoon,
3 Ms. Matthews-Malone. I have a couple questions to
4 ask you today in redirect. First I would like to
5 ask you some questions about the conflict of
6 interest policy.

7 You're aware that under the
8 City's code of conduct, the City has a requirement
9 for employees to disclose potential conflicts of
10 interest. Is that right?

11 A. That's correct, yes.

12 Q. Okay. And you understood
13 that that code of conduct required you to identify
14 potential conflicts of interest that could arise?

15 A. That was my
16 understanding, yes.

17 Q. You told commission
18 counsel earlier today that you're married to
19 Mr. Malone and that posed a potential conflict of
20 interest with CIMA under the City's Code of
21 Conduct. Correct?

22 A. Yes.

23 Q. And then you did raise
24 this potential conflict with Mr. Gerry Davis when
25 he was the GM. Correct?

1 A. That's correct, yes.

2 Q. And then you raised this
3 potential conflict with Mr. McKinnon when he was
4 the GM as well. Is that correct?

5 A. Yes, that's also correct.

6 Q. And you recused yourself
7 from working with CIMA in accordance with the
8 City's code of conduct. Is that right?

9 A. Yes, yes.

10 Q. Next I want to ask you
11 about that e-mail correspondence that we had
12 looked at earlier with Mr. Capostagno and
13 Mr. Malone.

14 Mr. Registrar, do you mind
15 pulling up HAM4710, please. Perfect. Thank you.
16 Can you call out that e-mail so it's easier to
17 read. Thank you, Mr. Registrar.

18 Now, I know we discussed this
19 earlier, but I just want to confirm. Why did you
20 suggest that Mr. Malone touch base with
21 Mr. Capostagno as opposed to a daytime supervisor
22 or someone else?

23 A. Well, sort of, it was to
24 expedite it because when Sam is on, he's on and
25 he's got both roadways, he's got the entire City.

1 If I tried to put him in touch with someone during
2 the day, I wouldn't really know who to do it
3 because there are a number of supervisors that are
4 working in each of the divisions and perhaps
5 they're familiar with, maybe they have responded
6 once to something on the Red Hill or maybe they've
7 never responded to anything on the Red Hill, so
8 Sam is, sort of -- he covers all areas, so it was
9 a go-to focus point, I guess I would call or say.

10 Q. And was there any safety
11 concern that you wanted Mr. Malone to be aware of
12 when you suggested that he touch base with
13 Mr. Capostagno?

14 A. No. I just thought it
15 would be nice to have, kind of, a maintenance lens
16 on, you know, the experience out there.

17 Q. Thank you. You can take
18 the call out and the document down, please,
19 Mr. Registrar. If you could now bring up HAM8847
20 and HAM4799, please.

21 You'll see that these are two
22 e-mails that Mr. McCleary sent to you concerning
23 accidents on the roadway in the fall of 2015.
24 You'll see that -- and let me know if you would
25 like me to call it out -- you responded to the

1 second e-mail by noting that there's a report
2 going to council the first week of December, and
3 you told commission counsel earlier today that you
4 were referencing the CIMA 2015 staff report.

5 Why did you advise
6 Mr. McCleary that the 2015 CIMA staff report was
7 going to council in response to his e-mail
8 concerning an accident on the Red Hill Valley
9 Parkway?

10 A. Sam or, sorry, this is
11 Terry. Terry is highlighting concerns and I know
12 the CIMA report is coming up shortly and it's
13 going to have the data to either substantiate or
14 negate our anecdotal information about what we've
15 seen on the road.

16 Q. And did you have any
17 concerns about the safety of the Red Hill Valley
18 Parkway at this time?

19 A. No, I did not.

20 Q. I just want to confirm
21 your evidence regarding the CVOR, which you told
22 commission counsel earlier involved monitoring
23 accidents involving City vehicles on Hamilton
24 roadways. Were there any accidents identified on
25 the Red Hill Valley Parkway from the CVOR

1 monitoring at this time?

2 A. I don't recall ever
3 having one brought to my attention, no.

4 Q. In both of these e-mails,
5 Mr. McCleary noted speed as a potential factor in
6 collisions. Did you share this view that there
7 was speeding on the Red Hill Valley Parkway?

8 A. Speed is interesting
9 because speed is an observation and, yes, I was
10 concerned with speeding. As I mentioned, I had
11 driven the road, I still continue to drive the
12 road for my profession and for personal use, and
13 it was sometimes like you're standing still when
14 people are going by you.

15 Q. Thank you. Now, I want
16 to ask you some questions about the 2015 staff
17 report pertaining to the 2015 CIMA report.

18 Mr. Registrar, can you bring
19 up HAM24700, please.

20 And I see that the 2015 staff
21 report is a recommendation report and I understand
22 that staff also sometimes prepare and present
23 information reports. When should a staff report
24 be brought as a recommendation report as opposed
25 to an information report?

1 A. A recommendation report
2 is when you're asking for committee and ultimately
3 council's permission to proceed with a particular
4 activity, and there's usually budgetary linkage to
5 that activity that you're seeking permission to
6 proceed.

7 An information report is
8 you're giving updates. You're not asking for
9 permission, you're just updating and providing,
10 kind of, status reports, I would say, is a good
11 example of an information report.

12 Q. And looking at these four
13 recommendations -- and, actually, Mr. Registrar,
14 if you don't mind calling them out so that they're
15 easier to read -- what is your understanding as to
16 why this report was a recommendation report?

17 A. There's a number of items
18 identified and they're going to be using money out
19 of the red light camera reserve, so this isn't
20 something that's already gone to council for
21 approval in terms of an operating or a capital
22 budget. This is outside of what council has
23 already approved for us.

24 Q. Okay. Mr. Registrar, you
25 can take down that call out. Thank you.

1 And now, more broadly, are
2 staff required to append consultant reports to
3 staff reports when they're presented to council?

4 A. So, I've worked in three
5 municipalities and I'll just say in my number of
6 years experience, there's never been any hard or
7 fast rule when to include a report. It was pretty
8 common that you would include excerpts from a
9 consultant report, so you may include a table or
10 something within the body of the report. I can't
11 remember -- as I say, we didn't do it in
12 operations because we had so few consultant
13 reports, but I don't really recall while at the
14 City seeing a report, a consultant report,
15 appended.

16 Q. When you say included
17 excerpts, does that mean excerpts from the
18 consultant report within the staff report or
19 something else?

20 A. I'm sorry, yes. That's
21 what's I mean. So, there would be, you know, cut
22 and paste from a consultant report.

23 Q. Understood. Thank you.
24 And if a staff report does not append a consultant
25 report, could councillors still obtain a copy of

1 the consultant report if they wished?

2 A. Yes.

3 Q. And how would they obtain
4 such a copy?

5 A. They would ask the author
6 and potentially even the director.

7 Q. So, thank you,
8 Mr. Registrar. You can take down that document,
9 please.

10 Now, I want ask you some
11 questions about friction testing on the Red Hill
12 Valley Parkway. Do you have any expertise in
13 pavement friction?

14 A. No, I do not.

15 Q. If you were presented
16 with friction testing results, would you be able
17 to interpret them or understand them?

18 A. No, I would not.

19 Q. And during your time at
20 the City, did you understand there was any urgency
21 regarding obtaining friction testing results on
22 the Red Hill Valley Parkway?

23 A. You've used the word
24 "urgency." So, there was indications that they
25 recommended friction testing be done, but I can't

1 really speak to the urgency.

2 Q. Understood. Did you have
3 any sense of urgency from your perspective or you
4 just can't speak to it?

5 A. No. No. I'm looking at
6 all facets of what they're recommending and what
7 parts I own.

8 Q. Understood. Thank you.
9 So, I now want to ask you about the winter roadway
10 maintenance. And I know was the discussed to some
11 degree in commission counsel's questions as well
12 as in the questions from counsel for Golder.

13 Broadly speaking, what winter
14 maintenance work does operations perform?

15 A. So, we will do
16 patrolling, we'll do -- I keep saying we. They
17 would do weather monitoring. They would
18 potentially do applications and pickled salt, they
19 would do plowing, they would be doing snow
20 removal. And they did, at the time I was there,
21 short sections of sidewalk, so plowing sidewalks
22 in certain areas.

23 Q. Okay. And counsel for
24 Golder had asked you about anti-icing and brining.
25 I just want to confirm, why does the City brine

1 the road?

2 A. It's a preventive
3 measure, anti-icing. There's also something
4 called de-icing, which is sort of after the fact,
5 but it's predominantly in Ontario anti-icing. So,
6 you're reading the weather forecasts and you're
7 trying to get out ahead of a problem.

8 Q. And who did the City
9 contract to perform anti-icing during your tenure
10 as director of operations?

11 A. So, we had some
12 capability of anti-icing within our own group, but
13 for the Red Hill and LINC and a number of the
14 escarpment crossings, we contracted that service
15 out to IMOS, which is part of, I think it's
16 Miller.

17 Q. Okay. Mr. Registrar, can
18 you pull up HAM64316, please.

19 THE REGISTRAR: Sorry,
20 counsel, can you repeat the doc ID?

21 MR. MISHRA: Of course. It's
22 HAM64316.

23 THE REGISTRAR: It may be
24 under a different doc ID. Sorry, I don't think I
25 have that one. 64316?

1 MR. MISHRA: Yes, that's
2 right.

3 THE REGISTRAR: Maybe 64136?
4 Sorry, I don't have 64 --

5 MR. MISHRA: Let me just check
6 to ensure I've got that number correct. Give me
7 one second, please.

8 I do believe it is 64316. I
9 know that this would have been uploaded to the
10 share site on Monday, I believe.

11 THE REGISTRAR: By
12 participants' counsel or by --

13 MR. MISHRA: It would be by
14 counsel for the City.

15 THE REGISTRAR: Okay. Sorry,
16 just give me one second and I'll get it up for
17 you.

18 MR. MISHRA: Thank you,
19 Mr. Registrar. And, Mr. Registrar, just for your
20 information, there's also a document 64314 and
21 64313 that I'm going to need shortly afterwards
22 and they're likely in the same spot, so that
23 assists in having them all ready for when I go to
24 those documents as the next sections.

25 THE REGISTRAR: Okay. Thank

1 you, counsel. Sorry, my apologies for the delay.

2 I was just about to open that for you.

3 MR. MISHRA: No problem and

4 thank you very much. Thank you.

5 BY MR. MISHRA:

6 Q. We understand that this
7 document is dated November 2013, which is prior to
8 your return to the City in 2014. However, we have
9 some general questions for you regarding this
10 document.

11 As you'll see on image 1,
12 which is the document up on the screen right now,
13 in the right-hand corner there's a reference to
14 the City of Hamilton winter control, winter
15 maintenance, plowing/spreading recording log. Am
16 I correct that this page is a winter maintenance
17 log for November 19 to 20 of 2013?

18 A. So, I wasn't there at
19 that point in time, but it looks like that's the
20 activities that were undertaken. It's the
21 operations record.

22 Q. And given your role as
23 director of operations in 2014 and onwards, do you
24 have an understanding of what this document is?

25 A. Generally I can speak to

1 it, but I'm not sure it's the same document we
2 would have used in 2014, but I can generally speak
3 to what it's showing.

4 Q. Understood. So, you'll
5 see in the top left corner there's a reference to
6 IMOS in that black diamond as well as Miller
7 Maintenance Ltd, Hamilton. You've told us that
8 the City contracted IMOS to perform anti-icing
9 during your time as director of operations. Is
10 that right?

11 A. That is correct. Yes.

12 Q. Is this maintenance log
13 specific to the Red Hill Valley Parkway, looking
14 at the locations in the body of this log?

15 A. No. It's including other
16 areas throughout the City as well. It appears to
17 include the Red Hill and I do not see a specific
18 reference to the LINC.

19 Q. Understood. And you'll
20 see in handwritten note it says in the middle of
21 the page, star, "started with full load of brine."
22 In general, in the context of winter maintenance,
23 what is a full load of brine?

24 A. So, this looks like on
25 November 19 at 5:30 they're starting to go out and

1 apply brine. The likelihood -- again, the
2 likelihood they're expecting cold weather
3 conditions or some sort of the weather conditions
4 that they want to get out in front of.

5 Q. You'll see at the bottom
6 of the page in the right-hand corner there's a
7 note that appears to say "used 3,000 litres." Do
8 you know what that note means?

9 A. That they used -- I would
10 interpret that as they've used 3,000 litres of
11 brine.

12 Q. What did the check boxes
13 indicate?

14 A. So, what I would say it's
15 the areas that they have applied brine.

16 Q. And do you have an
17 understanding of what the handwritten notes on the
18 right side indicate?

19 A. I don't. It says "Mohawk
20 to Upper Kenilworth" then back to Mohawk and it
21 has an L. Potentially I think you would ask the
22 operator or you would ask IMOS is that LINC? I
23 don't know, because that is a stretch on the LINC.
24 And then down below somebody has written in
25 Centennial Hill both sides done, so that's the

1 road adjacent to the Red Hill. That is a City
2 road, a main arterial.

3 Q. Thank you.

4 Mr. Registrar, can you mark this HAM64316 as the
5 next exhibit, please.

6 THE REGISTRAR: Noted,
7 counsel. Thank you. This is Exhibit 129.

8 EXHIBIT NO. 129: Page of
9 the winter maintenance
10 log for November 19-20 of
11 2013, HAM64316.

12 BY MR. MISHRA:

13 Q. Thank you, Mr. Registrar.
14 Can you take this document down and can you now
15 please turn to HAM64314 and turn to image 40,
16 please. Perfect. Thank you.

17 Again, we understand that this
18 document is dated November 20, 2013, which is also
19 before your return to the City in 2014, but again
20 we have some general questions about the document.

21 You'll see at the top -- and
22 perhaps, Mr. Registrar, if you can call out the
23 top half of the -- including the diamond, please.
24 Thank you.

25 You'll see at the top of the

1 table it states road patrol information, start
2 time, routes taken and turnaround times to be
3 documented. And above that it says Miller
4 Maintenance road patrol. Actually, Miller
5 Maintenance Ltd. Niagara. And the icon on the
6 left says the Miller Group.

7 Am I correct that this is the
8 Miller Maintenance road patrol log for November
9 20, 2013?

10 A. It appears to be, yes.

11 Q. Okay. And given your
12 role again as director of operations in 2014, do
13 you have an understanding of what this document
14 is?

15 A. Yeah. So, with your road
16 patrol, one of the things you're doing is you're
17 going around your road network and you are
18 checking air temperature, road temperature,
19 weather conditions, because the patrol will, if
20 they see a winter condition or they see something
21 that they want to raise for operations, they'll
22 forward information over so that activity is then
23 done. The patrol is just looking for things and
24 checking things, and operations is the doing of
25 the operations themselves, so the winter

1 operations.

2 Q. Understood.

3 Mr. Registrar, if you can remove that call out and
4 then call out the section from the middle of the
5 page where it says Weather and Road Information.
6 Perfect. Thank you.

7 You'll see in the middle of
8 the page there's a section entitled "Weather and
9 Road Information," and on the far left side it
10 indicates time checked, wind/temp, weather, road
11 info and then lastly operations.

12 Can you explain what these
13 five rows indicate?

14 A. Yeah. So, they're a
15 snapshot in time. Let's take the first column.
16 It's a snapshot in time at 6:30 in the morning.
17 They're saying winds are light, air temperature is
18 minus 3, weather is clear, so it's not snowing,
19 there's not clouds. Road information, it's bare
20 and dry and the road temperature is minus 5. And
21 then do you require to call in operations staff to
22 undertake winter control? No. And then they have
23 it for three other distinct or two other distinct
24 times during the day.

25 Q. Okay. If you can remove

1 that call out again, please, Mr. Registrar, and
2 then call out the top half of the page 1 more
3 time, please.

4 You'll see that in these rows
5 there's also a time, a location, two numbers, a
6 description, B/dry and then finally clear. Do you
7 understand what these rows are indicating across
8 the page here?

9 A. So, my interpretation is
10 the -- we'll do the 6:30 if that's okay. So, at
11 6:30 in the morning, they were at Highway 20 and 6
12 and they recorded air temperature as minus 3, the
13 road temperature as minus 5. The road conditions
14 themselves were bare and dry and it was a clear
15 day.

16 Q. So, if I understand that
17 correctly, then, on row 3, it's indicating that at
18 7:30 a.m. on Red Hill and Mud, the air temperature
19 and the ground temperature were both negative 2.
20 Is that what this row appears to say?

21 A. Yeah, that's what they're
22 saying. It's minus 2 air, minus 2 road, bare, dry
23 and clear weather conditions.

24 Q. Thank you.
25 Mr. Registrar, can you please remove the call out

1 and can you also include image 39 on the screen as
2 well, please. Perfect. Thank you.

3 You'll see in the bottom right
4 of the November 20 page there is two numbers and
5 there's no units on those numbers, but on page 39
6 there is a unit on the bottom number which appears
7 to say kilometres. Do you have an understanding
8 of what these bottom numbers indicate?

9 A. So, that would indicate
10 the amount of kilometres they drove as part of
11 their patrol.

12 Q. Thank you.
13 Mr. Registrar, can you mark this document,
14 HAM64314, as the next exhibit, please.

15 THE REGISTRAR: Noted,
16 counsel. Thank you. This is Exhibit 130.

17 EXHIBIT NO. 130: Miller
18 Maintenance report dated
19 November 20, 2013,
20 HAM64314.

21 BY MR. MISHRA:

22 Q. Perfect. Thank you,
23 Mr. Registrar. Now can you please turn up
24 HAM64313, please, and if you could show the first
25 two images, that would be appreciated. Thank you.

1 So, you'll see this document
2 is titled "City of Hamilton Monthly Climate
3 Summary, November 2013," and you'll see that it's
4 dated January 13, 2014 on the second page.

5 Again, this predates your
6 return to the City. I just have some general
7 questions about this document. Am I correct this
8 is a monthly climate summary in Hamilton?

9 A. Yes. And so, I'm
10 assuming, because during my time there we used
11 AMEC as our weather forecast, we would go to them
12 for weather forecasts and then they would give us
13 a summary of the month, so yeah, this is what this
14 appears to be.

15 Q. Okay. And you'll see in
16 the table of contents there's a note that there is
17 monthly climate data for Hamilton north, Hamilton
18 south and Hamilton east. Do you know where the
19 Red Hill Valley Parkway falls in these three
20 categories or if there's any overlap with the Red
21 Hill Valley Parkway and these three categories?

22 A. I would say probably the
23 best fit for Red Hill would be Hamilton south and
24 the best fit for -- you didn't ask LINC, but it
25 would be Hamilton east, would be my suggestion.

1 Q. Okay. So, if we can turn
2 to image 7, Mr. Registrar, please.

3 You'll see that this is the
4 table for Hamilton South for November 2013.

5 And if you could call out the
6 entire table, so 3.2, and just make it a little
7 bit bigger.

8 You'll see that for
9 November 20, 2013, the max temperature for that
10 day was 3.1 and the minimum temperature for the
11 day was negative 5.9. Is that correct? Is that
12 what this chart indicates?

13 A. Yes.

14 Q. Okay. And,
15 Mr. Registrar, can you please turn to image 9.
16 So, this is for Hamilton East. Again, if you
17 don't mind calling out the table again just to
18 make it a little bit easier to read.

19 You'll see that the max
20 temperature on November 20, 2013 was 3.7 and the
21 minimum temperature was negative 5.6. Is that
22 correct?

23 A. Yes.

24 Q. That's what the table
25 indicates?

1 A. Yes.

2 Q. Perfect. Thank you.

3 Mr. Registrar, you can take down that call out and
4 you can take down the document and if you can mark
5 this HAM64313 as the next exhibit, please, that
6 would be much appreciated.

7 THE REGISTRAR: Noted,
8 counsel. That's Exhibit 131.

9 EXHIBIT NO. 131: City of
10 Hamilton Monthly Climate
11 Summary, November 2013,
12 HAM64313.

13 BY MR. MISHRA:

14 Q. Perfect. Thank you. So,
15 next, I want to ask you some questions about the
16 planned repavement of the Red Hill Valley Parkway.

17 Mr. Registrar, can you pull up
18 HAM9201 and include both image 1 and image 2,
19 please. Thank you. Could you call out the e-mail
20 on page 2 starting from, "Guys, Brian and I," all
21 the way down to -- thanks. Sorry, it's on
22 image 2. Perfect. Thank you.

23 You'll see the e-mail that you
24 had sent where you indicate:

25 "Guys, Brian and I

1 attended a meeting with
2 asset management
3 yesterday and the
4 following is an overview
5 of that meeting."

6 What was the purpose of this
7 e-mail that you had sent?

8 A. I'm looking for feedback
9 from them. I'm telling them what we've been told
10 by asset management and engineering and that there
11 may be some follow-up work on our part and let's
12 see if we can concur that we share or if we see
13 the areas that they're talking about.

14 Q. Okay. Do you remember if
15 friction testing or friction concerns were
16 discussed at this meeting with asset management
17 that you had the day prior to this e-mail?

18 A. No, I don't. I don't.
19 And I would have included it if it was.

20 Q. You would have included
21 it where, sorry, if it was?

22 A. Yeah, to the staff. I
23 would have let them know.

24 Q. Understood. And do you
25 recall if anyone at the meeting advised there was

1 an urgency around the repaving of the Red Hill
2 Valley Parkway and the LINC?

3 A. No. The impression I got
4 is they're just trying to prevent it from
5 deteriorating further.

6 Q. Okay. And that was
7 discussed, if there was discussions about urgency,
8 would you have noted that in your overview of the
9 meeting that you had sent to your team?

10 A. I think I would have
11 because it probably would have been a date or
12 faster date. This was early 2017, I think.

13 Q. You can take out the call
14 out just to show the date, if that's of
15 assistance.

16 A. This is pretty early in
17 the new year. Right? Yes, yes. So, no, they had
18 dates they were looking at. They didn't know
19 whether they were going to do north-south
20 together, one direction at a time, weekend
21 closures. That was still up in the air.

22 Q. Okay. Do you know why
23 the repaving was being done at all?

24 A. The indications were that
25 the road was starting to show deterioration, and

1 so you jump on that with a rehabilitation strategy
2 so it doesn't further deteriorate. Again, I'm
3 going based on my asset management experience.

4 Q. Perfect. Thank you. And
5 just one last area of questions I want to ask you
6 about.

7 Mr. Registrar, can you pull up
8 HAM1094 and HAM1095.

9 Ms. Matthews-Malone, just to
10 orient you, this is with respect to the CIMA
11 collision report and some of the conversations
12 that were happening in 2018. What was your
13 understanding as to why the City requested this
14 information from CIMA and had commissioned this
15 report?

16 A. Dan had asked for that
17 information and he had asked for that information
18 prior to the Public Works Committee that was being
19 held later in the month.

20 Q. Okay. You'll see here
21 that in line 1 of the memo the first question is:
22 "How do the LINC and the
23 Red Hill Valley Parkway
24 compare with other
25 similar type roadways?"

1 E.g., Highway 406 through
2 the St. Catherine and
3 Highway 78 in Kitchener."

4 Do you have any understanding
5 of why this question was being considered?

6 A. We didn't have any
7 comparators internal to the City. We didn't have
8 road posted at that speed with that kind of volume
9 and those geometrics, so they were looking at are
10 there MTO roads or other roads and it turned out
11 that they were MTO roads that potentially have
12 somewhat similar speed profiles and potentially
13 some, you know, curves and such to them, so that's
14 how they came up with 406. There's a short
15 section through St. Catharines that is quite curvy
16 down by the water. And I'm not that familiar with
17 Highway 78 in Kitchener.

18 Q. Why was it important to
19 compare the Red Hill against these roadways or why
20 was it useful?

21 A. Well, the problem is
22 you're comparing apples to oranges when you're
23 comparing the Red Hill and the LINC to other City
24 roads, because there isn't a Red Hill, there isn't
25 a comparator for those roads. We have -- our

1 other roads, yes we have arterials, but we don't
2 have the speed profiles, we don't have the
3 volumes, they're different configurations, so he's
4 looking -- what Dan is saying is, okay, are there
5 comparators to Red Hill and LINC that potentially
6 we could look at.

7 Q. Okay. And how did the
8 collision rate on the Red Hill Valley Parkway and
9 the LINC compare to these MTO roadways?

10 A. Well, based on the
11 analysis that was completed, and there's quite a
12 convoluted equation, the Red Hill and the LINC had
13 lower collision rates than the other comparator
14 roads that were looked at.

15 Q. Mr. Commissioner, can I
16 just have a second to look at my notes? Perfect.

17 Thank you,
18 Ms. Matthews-Malone. Thank you, Commissioner.
19 Those are all of my questions.

20 JUSTICE WILTON-SIEGEL: Thank
21 you. Ms. Hendrie?

22 MS. HENDRIE: I do have a
23 couple brief questions in re-examination,
24 Commissioner.

25 JUSTICE WILTON-SIEGEL: Okay.

1 FURTHER EXAMINATION BY MS. HENDRIE:

2 Q. Registrar, if we could
3 first call up HAM64316.

4 So, Ms. Matthews-Malone, this
5 is the document that counsel for the City took you
6 to and you advised that this document appears to
7 show the areas where the brine was applied. I see
8 there are a number of boxes checked off and, as I
9 understand your evidence, that's the areas where
10 the brine was applied?

11 A. According to this record,
12 that's what it implies, yes.

13 Q. I see in the middle
14 column there, the second line from the bottom, it
15 says Red Hill straights?

16 A. Yes.

17 Q. And there's no check mark
18 there. The first part of my question is: What
19 are the Red Hill straights?

20 A. I'm sorry, I don't know,
21 because I'm not -- this was prior to and I'm not
22 managing the contract, so I can't really speak to
23 that.

24 Q. So, you're not able to
25 say if Red Hill straights refers to the mainline?

1 A. I guess I can't. The
2 impression is there. The bridge, the Red Hill
3 bridge, is part of the mainline.

4 Q. The Red Hill bridge deck
5 there?

6 A. Yeah, yeah, the last one.

7 Q. But based on the
8 description there, you're not able to tell which
9 parts of the Red Hill the brine was applied to?

10 A. Well, they look like they
11 have applied them to ramps, so yeah. You would
12 have to talk to the operator. Sorry.

13 Q. Okay. Okay. Thank you,
14 Registrar. We can close that document out and if
15 we can call up HAM64614.

16 And just while that document
17 is being pulled up, in the later forms when you
18 were at the City, was there a check box for the
19 mainline? Do you recall?

20 A. I'm sorry, I don't
21 recall. I think you should be asking the -- there
22 was a contract manager.

23 Q. Okay. Thank you. And,
24 Registrar, if we could call up images 41 and 42.
25 Thank you.

1 So, counsel for the City took
2 you to the document on the left-hand side.

3 If we could call up the top
4 part of that document. Sorry, it should be 40 and
5 41. My apologies. Thank you.

6 And you provided some
7 information about the Red Hill entry there. You
8 may have provided this explanation, but just for
9 our benefit, where it says 7:30, Red Hill and Mud,
10 minus 2, minus 2, B/dry, what does B/dry refer to?

11 A. Bare and dry road
12 surface.

13 Q. Okay. So, the road
14 surface was bare and dry? That's what that note
15 indicates?

16 A. Yes. I'm sorry.

17 Q. Thank you. Registrar, we
18 can close that call out and if we could go to the
19 last document that counsel for the City took you
20 to. That's HAM64313. If we could go to, I
21 believe, the next image.

22 So, I believe you told counsel
23 for the City that you thought that the RHVP was in
24 the south district. Is that correct?

25 A. Well, I was asked which

1 one I thought was most representative for those
2 roadways, so that's what I said, yes.

3 Q. Okay. And just to
4 clarify, when we were looking at the documents
5 earlier and specifically the organizational chart
6 for your division in roads and maintenance, I
7 believe you told me that you thought the Red Hill
8 Valley Parkway was in the north district?

9 A. Okay. So, they're
10 different nomenclature. For our yards, we had
11 northbound, south, east, west. This is
12 Environment Canada nomenclature for the site of
13 their weather equipment.

14 Q. Thank you. So, the
15 discrepancy there between the north and the south
16 is just sort of who is naming the division?

17 A. That's right. They're
18 not the same.

19 Q. And if we could call up
20 image 5 of this document. Thank you.

21 And counsel for the City took
22 you to the temperature information for November 20
23 on this -- sorry, this is the north. If we could
24 go to image 7. My apologies.

25 And so, as I said, counsel for

1 the City took you to the temperature information
2 for November 20 and I believe you confirmed that
3 the information that's recorded here shows a max
4 temperature of 3.1 and a minimum temperature of
5 5.9. Is that right?

6 A. That's correct, yeah.
7 Yes. Sorry.

8 Q. Thank you. And just for
9 our benefit, the document that we have up on the
10 screen, is this the forecast, of what the
11 temperatures were forecasted to be, or is this the
12 actual temperatures?

13 A. This is the actual.
14 There's another document that AMEC produces which
15 is the forecast.

16 Q. So, this is the
17 temperatures that AMEC recorded on these days?

18 A. That's correct, from the
19 Environment Canada sites.

20 Q. And just give me one
21 moment. Registrar, if we could keep this document
22 up on one side and if we could also call up
23 HAM64314 at image 40.

24 So, this is the maintenance
25 record that we had just looked at and I just want

1 to clarify here because there appears to be a
2 discrepancy in temperature as far as I read the
3 document. In the box there in the middle of the
4 document on the right, the temperatures appear to
5 me to be listed as negative 3, plus 4, negative 5,
6 plus 6?

7 A. Yeah. So, what you've
8 got going on here is you've got the air
9 temperature is the first number, the road
10 temperature is the second number, and this is the
11 routing, so this isn't all Red Hill and LINC.
12 You've got some Tapply Town, Highland, Golf Links
13 Road, Trinity Church, so there's -- you'd have to
14 look at the patrol route to see exactly where it
15 is. And it's not uncommon to see asphalt
16 temperature rise over the course of the day
17 because if it's bare and dry and there's sun, the
18 asphalt will warm up.

19 Q. Okay.

20 A. Yeah.

21 Q. Just one moment.

22 A. And you see the higher
23 temperatures. They're in the afternoon -- yeah.
24 So, they're quite cold at the beginning of the day
25 and then they start to increase over that day.

1 Q. Okay. And so, just
2 looking at the box, sort of, where it says weather
3 and road information and there's the plus four and
4 the plus six there, could you just -- is the plus
5 four the air temperature?

6 A. Yes.

7 Q. And that would be the air
8 temperature as recorded at 2:30 in the afternoon?

9 A. Yes.

10 Q. And that would be for the
11 area that's covered by this maintenance record.
12 Is that fair?

13 A. At that particular point
14 where they've taken the measurement, yes.

15 Q. Okay. Thank you,
16 Registrar. Can we close out that call out.

17 And just one last question on
18 the AMEC chart that we have up on the left side.
19 Am I right that the numbers in the AMEC report are
20 an average for the entire -- the south region of
21 the City as reflected in this chart?

22 A. They're not an average.
23 The mean temperature column is -- I know there's a
24 difference between mean and average, but that's
25 more along the averaging. So, this is the minimum

1 max temperature recorded at the Environment Canada
2 south site on those dates.

3 Q. Okay.

4 A. And if you need hourly
5 information, you can get further hourly
6 information as well if you need that.

7 Q. And would that come from
8 AMEC?

9 A. You could get that off
10 Environment Canada's website.

11 Q. Okay. Thank you very
12 much, Registrar. Those are my questions.

13 JUSTICE WILTON-SIEGEL: Okay.
14 Thank you. Well, first of all,
15 Ms. Matthews-Malone, thank you very much for
16 attending at the inquiry. You're excused.

17 It's time for our lunch break.
18 It's 1:30. I understand that we may be running a
19 little late this afternoon, so I'm going to
20 suggest we take a slightly shortened lunch hour of
21 an hour, a lunch break of an hour, and return at
22 2:30. So, we stand adjourned until that time.

23 --- Luncheon recess taken at 1:31 p.m.

24 --- Upon resuming at 2:32 p.m.

25 MS. BRUCKNER: Good afternoon.

1 Commissioner. I don't believe that Mr. Conley has
2 been sworn.

3 DOUG CONLEY; AFFIRMED

4 MS. BRUCKNER: May I proceed?

5 JUSTICE WILTON-SIEGEL: Yes,
6 please proceed.

7 EXAMINATION BY MS. BRUCKNER:

8 Q. Hello, Mr. Conley. My
9 name is Hailey Bruckner, I'm commission counsel
10 and I'm going to be asking you some questions
11 today. As you know, I will be sharing some
12 documents on the screen. To the extent that you
13 need any additional context for those documents as
14 you're not able to review them, please just let me
15 know.

16 A. Yes.

17 Q. So, we're going to start
18 off with your background a little bit. Can you
19 tell me a little bit about your professional
20 qualifications and educational history?

21 A. I started off my career
22 as an instrument technologist. I got my
23 apprenticeship through Mohawk and through Stelco,
24 and then I was there for 17 years. I left and
25 went to work on a nuclear power plant that was

1 being built. I worked there for a year. And I
2 taught Mohawk College for a year and I started in
3 the instrument division in the region of Halton
4 for about three, four years. And then I was vice
5 president of Marsh Instrumentation for three or
6 four years. And then I ended up at O'Hara
7 Technologies, which was a pharmaceutical
8 manufacturer. They made machines for the
9 pharmaceutical. And I started off as their
10 technical director and then I went into sales and
11 I was there director of sales and marketing and I
12 was there for about, I think, 23 years, something
13 like that.

14 Q. Okay. And you were a
15 councillor of Ward 9 for the City of Hamilton
16 from --

17 A. I was a councillor in
18 Stoney Creek for nine years --

19 Q. So, that would have been
20 prior to amalgamation?

21 A. 1991 to 2000 and then I
22 was a councillor in Hamilton from 2015 -- well,
23 2015 to 2018.

24 Q. I think it would have
25 been the very end of 2014 that you were elected

1 and then your term --

2 A. Oh, yeah, so that's March
3 of 2014.

4 Q. And I think between those
5 two terms as a city councillor, also did some work
6 as a school trustee. Is that right?

7 A. Before I was a city
8 councillor, I was a school trustee from 1985 to
9 1991.

10 Q. And you were a councillor
11 with Stoney Creek from 1991 to 2000. Is that
12 right?

13 A. Not for Stoney Creek.
14 For Wentworth County school board.

15 Q. Your term as a city
16 councillor for Stoney Creek --

17 A. Oh, yeah.

18 Q. You were a trustee, so
19 1991 to 2000, I think?

20 A. No. I was a city
21 councillor from 1991 to 2000.

22 Q. Yes, with Stoney Creek.
23 Right?

24 A. Yes.

25 Q. Okay. And so, stepping a

1 little bit forward in time from being a counsellor
2 for Stoney Creek to your term with the City of
3 Hamilton for Ward 9. Where is Ward 9 located?

4 A. The mountain of Stoney
5 Creek.

6 Q. And does Ward 9 include a
7 portion of the Red Hill Valley Parkway?

8 A. Just at the top of it,
9 it, kind of, ends at where my ward starts.

10 Q. Okay.

11 A. So, there was Chad
12 Collins had part of it, Sam Merulla had part of it
13 and right at the top of it was my ward.

14 Q. Okay. Did you take a
15 particular interest in the Red Hill Valley Parkway
16 as a result of it being in your ward?

17 A. Absolutely, yeah. Most
18 of my constituents usually on a daily basis or a
19 lot of them did, I guess. I have no idea how
20 many, but there was a lot.

21 Q. And I understand that
22 Brad Clark was councillor of Ward 9 before your
23 term. Is that correct?

24 A. Yes.

25 Q. Did counsellor Clark give

1 you any briefings before you took over the
2 position in 2014?

3 A. No.

4 Q. Did you have any
5 discussions with him about the Red Hill Valley
6 Parkway or its use by your constituents?

7 A. I didn't have anything
8 from Brad Clark. I never had any advice or any
9 discussions with him on the Red Hill Valley.

10 Q. So, was there any kind of
11 transition briefing when you stepped in as
12 counsellor for that ward?

13 A. From who?

14 Q. From Mr. Clark.

15 A. No, absolutely none.

16 Q. I understand that during
17 your time as a city councillor for Hamilton, you
18 were also on the Public Works Committee. Is that
19 correct?

20 A. Yes.

21 Q. Did you volunteer to join
22 that committee?

23 A. Well, when you are
24 elected, you have meetings and there's a whole
25 bunch of different committees that you can be on,

1 and I applied for the Public Works Committee and
2 got on it.

3 Q. Okay. What was your
4 interest in being on the Public Works Committee?

5 A. Public Works, you know.
6 It takes care of a lot of my area, you know.
7 There's a lot of stuff to do in Ward 9 and I
8 wanted to be a part of it.

9 Q. And were there specific
10 things that you had identified as needing to be
11 done by the Public Works Committee in Ward 9 when
12 you first joined that committee in 2014?

13 A. I don't know about
14 specific, but Red Hill Valley would be one of them
15 for sure, you know.

16 Q. Okay. What did you think
17 needed to be done with respect to the Red Hill
18 Valley Parkway in 2014?

19 A. As you probably know, one
20 of my first meetings there, I wanted to get three
21 lanes put in the Red Hill Valley because I was
22 told that there was supposed to be three lanes
23 built when they built the road, but some funding
24 from the government was removed and they couldn't
25 afford, the City couldn't afford, to do three

1 lanes each way, so I wanted to get that
2 reinstated.

3 Q. So, you had -- sorry, go
4 ahead. I didn't mean to cut you off.

5 A. No. That was my first
6 big concern that I can remember.

7 Q. So, your focus in 2014
8 was on potentially widening the Red Hill Valley
9 Parkway?

10 A. Well, it was one of them,
11 yeah.

12 Q. Were you aware before you
13 joined the Public Works Committee that council had
14 previously asked staff to do some safety
15 investigations on the Red Hill Valley Parkway?

16 A. No.

17 Q. Okay. Were you provided
18 with prior Public Works Committee reports or
19 reports prepared by consultants about the Red Hill
20 Valley Parkway when you --

21 A. No. No, I wasn't.

22 Q. Were you given a briefing
23 by anyone on the Public Works Committee about the
24 Red Hill Valley Parkway or safety issues?

25 A. No. The only time I got

1 answers from them was when I asked the question
2 about it.

3 Q. When you say them, is
4 that a reference to city staff?

5 A. Yes.

6 Q. And the question about
7 the Red Hill Valley Parkway you're referencing,
8 are those your later questions about -- actually,
9 what are you referencing when you say when you
10 asked the question?

11 A. Well, the big one was
12 widening of the road. I think that was the main
13 one at the time. I was a very new councillor and
14 I had constituents ask me about getting it wider
15 when I was running, so I brought it up. And I
16 actually presented a motion to that effect, but it
17 didn't get passed.

18 Q. Okay. So, I'm going to
19 step into May 2015. On May 5, 2015, there was a
20 crossover collision on the Red Hill Valley Parkway
21 that resulted in the deaths of two young women?

22 A. Yes.

23 Q. Do you recall that
24 collision on the Red Hill?

25 A. Yes.

1 Q. Registrar, can you please
2 call up HAM33385.

3 So, Mr. Conley, while the
4 registrar is pulling that up, I'm going to start
5 orienting you a bit to this document. So, this is
6 an e-mail that gets forwarded to you the day after
7 that collision, on May 6, 2015, by a member of the
8 public, and he forwards you an e-mail exchange
9 that he had had with Councillor Clark when he was
10 the counsellor of Ward 9 in June of 2014 in which
11 he raised concerns about collisions on the Red
12 Hill Valley Parkway with a particular focus on
13 median barriers, and he writes to you.

14 Registrar, can you call out
15 the June 5, 2014 e-mail there at the bottom. So,
16 it's the last full e-mail. I'm sorry, it's the
17 next one up. My apologies, Registrar. That's the
18 one to Councillor Clark. So, on May 6, 2014, he
19 forwards you that e-mail chain under the subject
20 line "Red Hill Valley and LINC" and he says:

21 "Doug, one year ago I
22 corresponded with your
23 predecessor about the Red
24 Hill and LINC. See
25 attached e-mails. Once

1 again I am shocked this
2 morning to hear about
3 another fatality on the
4 Red Hill due to a vehicle
5 crossing through the
6 median into oncoming
7 traffic. In this past
8 year, I have witnessed
9 many or vehicles sliding
10 into or through the
11 medians on my daily trips
12 up and down the Red Hill.
13 In this case problem is
14 exacerbated every time it
15 rains, snows or there is
16 frost on the road. What
17 are you and council doing
18 to resolve this issue?"

19 And, Registrar, you can take
20 down that call out.

21 Do you recall receiving this
22 e-mail from a member of the public about --

23 A. I received hundreds of
24 e-mails, but I vaguely remember somebody e-mailing
25 me with their concerns.

1 Q. Okay. Registrar, can you
2 call out Mr. Conley's response. So, the same day
3 that you received that e-mail that I just read
4 out, you respond to the member of the public and
5 you copy your assistant, Mr. Ribaric, on these
6 e-mails and you say:

7 "Thanks for your e-mail.
8 I will look into it. I
9 think this is a good and
10 necessary and will do my
11 best to get something
12 done."

13 A. This sounds like me.

14 Q. Do you recall what you
15 hoped to get done in response to the concerns that
16 had been raised by this particular member of the
17 public?

18 A. Well, getting median
19 barriers installed was a big concern of mine. The
20 other big concern, which he didn't really raise,
21 but there was speeding, you know. I didn't -- I
22 take that almost every day. I've never
23 experienced sliding or anything like that, but I
24 was very, very concerned about medians being put
25 in. Median barriers, I mean.

1 Q. Why were you particularly
2 concerned about installing median barriers on the
3 Red Hill?

4 A. Because two people were
5 killed on it.

6 Q. Okay.

7 A. That's why.

8 Q. This is a result of May 5
9 collision --

10 A. Well, yeah, for sure.
11 This should never have went through the median.
12 The girls might have been alive if that didn't
13 happen, so anyways, that was my thoughts at the
14 time.

15 Q. So, you mentioned
16 speeding and the median barriers. Aside from
17 that, as of May 2015, did you have any safety
18 concerns with respect to the Red Hill Valley
19 Parkway?

20 A. No major concerns. I
21 wanted lighting put in going up the hill. That's
22 one of my concerns.

23 Q. Why did you want --

24 A. So, you could see at
25 night. I don't know if you have ever taken it,

1 but at night you can't see anything. And if your
2 car stalls or gets a flat tire, it's pitch black
3 there, so I would definitely feel more
4 comfortable, especially for women that are alone
5 and it's very dark out there, it could be
6 dangerous.

7 Q. When you say going up the
8 hill, what hill are you referencing? Like, is
9 there a particular section of the roadway that you
10 were concerned about?

11 A. Yeah. There's only one
12 hill on it, so from -- I don't know. I guess it
13 starts around Greenhill up to the top of the
14 escarpment.

15 Q. Okay. Understood. Did
16 you raise the request for lighting with anyone on
17 city staff?

18 A. I did.

19 Q. And do you recall what
20 the response was to that?

21 A. They said it was very
22 expensive to do and they didn't say that but one
23 of the other councillors said to me that the
24 indigenous community didn't want lighting because
25 of concerns for animals and that kind of thing,

1 so --

2 Q. Okay. Which councillor
3 told you that?

4 A. I'm pretty sure it was
5 Chad Collins.

6 Q. And which city staff
7 member did you speak to about your concerns about
8 lighting on the Red Hill that told you it would be
9 very expensive?

10 A. That would be Gary Moore.

11 Q. And did you often speak
12 to Mr. Moore about the Red Hill?

13 A. I talked to him when
14 there was concerns, yes. You know, I talked to
15 him about anything in my ward that was under his
16 supervision, so we talked fairly regular. Not
17 every day, sometimes not even every week, but we
18 talked regularly.

19 Q. Okay. Did you view the
20 Red Hill Valley Parkway as being something that
21 was under Mr. Moore's supervision?

22 A. Yes.

23 Q. Why is that?

24 A. Because it was. I don't
25 know what to say to you. It was under his

1 supervision. He's responsible for the road,
2 anything that happens there, most anything that
3 happens there, so you go to the top guy.

4 Q. Understood. So, you --
5 we were talking about the e-mail that you received
6 from a member of the public on May 6, 2015. Prior
7 to receiving that e-mail, do you recall receiving
8 other complaints or concerns from your
9 constituents about the Red Hill?

10 A. A lot of them were on the
11 phone. I would get phone calls about it and what
12 are you going to do and what happened because of
13 the accident. And everybody had a different
14 opinion on why it happened and what we should do,
15 but, you know, just a normal day sort of
16 interaction with the public.

17 Q. And did your constituency
18 office handle complaints for you in the usual
19 course?

20 A. Rob answered most of the
21 routine ones. If there were serious concerns or
22 situations, I would handle them.

23 Q. And when you say a
24 serious concern or situation, can you give me an
25 example of what that might be?

1 A. Well, the accident for
2 one thing. That was a serious concern. Stop
3 signs, stop -- bump outs for the cars to slow them
4 down, things like that, you know. Rob didn't have
5 any authority to make a decision. He can only
6 check into it. If I needed a decision, I would
7 take care of that.

8 Q. And if it was a matter
9 that only needed to be checked into, did he report
10 on those items to you?

11 A. Yeah. We used to have a
12 quick meeting every morning, just a 10 or
13 15-minute one, and he would talk to me, tell me
14 about any concerns that arose and that had to be
15 dealt with. If it didn't have to be dealt with
16 with me, he would just deal with it.

17 Q. Okay. Understood.
18 Registrar, you can take down this call out and if
19 you can take us to RHV892 at image 1.

20 So, Mr. Conley, for your
21 reference, I'm jumping forward a bit in time, so
22 I've called up a Spectator article called "It's
23 Not the Parkway, It's the Drivers," which is from
24 January 17, 2018, and I just want to flag that in
25 the first couple of paragraphs -- Registrar, could

1 you call out the first 3 to 4 lines so they're a
2 little easier to see on the screen.

3 So, you're quoted in this
4 article, which is several years after the
5 collision in which the two young women were
6 killed, and you are quoted as saying that you get
7 lots and lots of calls from residents troubled
8 about the safety of the Red Hill Valley Parkway
9 and you go on to advocate for the installation of
10 median barriers on the Red Hill Valley Parkway?

11 A. Yes.

12 Q. So, I understood, when we
13 were talking about the complaints that you had
14 received in 2015, that you were referencing
15 complaints that arose as a result of the May 5
16 collision.

17 Did you receive lots and lots
18 of calls from residents concerned about the safety
19 of the Red Hill Valley Parkway throughout your
20 term as a city councillor?

21 A. I don't know what your
22 definition of lots and lots are, but I would have
23 calls regularly on it.

24 Q. Okay. When you say
25 regularly, is that a couple times a week? A

1 couple times a day?

2 A. Probably, if you average
3 it out, it would be two or three times a week.

4 Q. Okay. And throughout
5 your entire term?

6 A. It went on and off.
7 Sometimes I wouldn't get anything about the Red
8 Hill for a few months and then it would come up
9 again, you know.

10 Q. How did those complaints
11 generally come to you? I know you mentioned that
12 often there were phone calls. Did you receive
13 them by e-mail? In-person conversations?

14 A. Well, sometimes e-mails.
15 You just brought one up from an e-mail from a
16 constituent, so it's whatever they did, you know,
17 as far as getting in touch with me. So, maybe
18 e-mails or phone calls, but I think they're mostly
19 phone calls because they always like to talk to
20 you.

21 Q. Right. What were the
22 main sources of complaints or concerns with safety
23 on the Red Hill Valley Parkway that you received
24 from constituents?

25 A. Well, we just went

1 through this. Medians was one, speed was another,
2 lighting was another. Like, I think speed would
3 be number one if I had to put it in some order and
4 medians would be number two and lighting would be
5 number three.

6 Q. Did you receive
7 complaints from constituents about slippery
8 conditions on the roadway?

9 A. I can't recall any
10 specific ones, but I probably did, but I can't
11 recall specifically getting one on slipperiness,
12 because I've never experienced slipperiness on the
13 expressway, so I probably told them that I haven't
14 experienced it but it's something we should look
15 into.

16 Q. Okay. Did you ever
17 receive complaints or concerns from constituents
18 about the pavement of the Red Hill Valley Parkway
19 generally, so not specific to the slipperiness,
20 but just the pavement?

21 A. Probably did. I can't
22 remember any specific ones, but I would be
23 surprised if I didn't. Put it that way.

24 Q. Why would you surprised
25 if you didn't?

1 A. Because the public talks
2 about everything. You name it, I'll get a report
3 or I'll get a comment on it.

4 Q. What did you typically do
5 when you received a complaint from a member of the
6 public that was an action item for you?

7 A. Well, Gary Moore was the
8 first line of action.

9 Q. Okay. So, when you say
10 that, what did you do?

11 A. I phoned him.

12 Q. Okay. And raised the
13 concern with him?

14 A. Yes.

15 Q. How did he typically
16 respond to those phone calls?

17 A. How did he?

18 Q. Yes.

19 A. Well, he would say, we're
20 looking into it, or we haven't had any concerns
21 about it, or, you know, we're doing a study on it
22 maybe. There was a whole bunch of responses.

23 Q. Okay. And typically
24 after you spoke to Mr. Moore, what was your second
25 step, if he was your first?

1 A. I would phone back the
2 constituent and tell them what I did and keep them
3 involved if anything arises specifically on their
4 concern.

5 Q. Okay. Were there any
6 circumstance in which you didn't feel that
7 Mr. Moore's answer was sufficient to address the
8 concern or that something additional needed to be
9 done?

10 A. Well, we never agreed on
11 everything all the time. I don't think anybody
12 ever does that. But he was hesitant on doing the
13 barriers at the time, when I first talked to him.
14 He didn't think they were necessary. He said to
15 me that, well, if there's a barrier, the person
16 could hit the barrier and bounce back into the
17 lane and hit another car. So, that was his sort
18 of reasoning at that time. My point is if you go
19 across the median and hit another car going 80 or
20 90 klicks, there's death there, so we disagreed on
21 the medians.

22 Q. So, just before I close
23 out this Spectator article, there was a lot of Red
24 Hill Valley Parkway related media coverage in the
25 Spectator and other media over the years and

1 councillor occasionally quoted in the Spectator
2 and other articles addressing safety concerns
3 about the Red Hill Valley Parkway, as you are in
4 this article that we have up.

5 How often did you read the
6 Hamilton Spectator?

7 A. I would glance through
8 it. If there was something that concerned that I
9 was quoted on or an article about something that
10 was going on in the City, I read it. I probably
11 spent, like, ten minutes a day on the Spectator.
12 I didn't read it very thoroughly. I scanned it
13 and there was a report -- I can't even remember
14 his name now. Herschel [ph]? Anyways, he did
15 most of the city council -- he was one of the
16 journalists that covered the city council and he
17 would always ask -- not always. He would
18 sometimes often ask us questions out of what the
19 meeting was about. So, did you mean this, Doug,
20 or what was your feeling on this and what are you
21 going to do, stuff like that, just doing
22 journalist work.

23 Q. Registrar, can you close
24 out this call out for a second.

25 So, the name of the reporter

1 that does the "It's Not the Parkways, It's the
2 Drivers" article is Andrew Dreschel. Is that the
3 individual that you're referencing?

4 A. That's right.

5 Q. Aside from taking a look
6 at the Spectator yourself, did your staff brief
7 you on media coverage during your term as a
8 councillor?

9 A. No.

10 Q. How frequently did you
11 receive requests for comments or quotes from
12 reporters about the Red Hill Valley Parkway?

13 A. I don't think it was
14 regular communication with us and the journalists.
15 Lots of times I think Chad or Sammy would get a
16 question more, because more of the parkway or the
17 expressway was in their ward.

18 Q. Registrar, you can take
19 this down and if you can please take us to OD 7,
20 image 8, paragraph 19.

21 So, Councillor Conley, on
22 May 11, 2015, so that's a few days after the fatal
23 collision on the Red Hill Valley Parkway, you
24 e-mail David Ferguson, who is in traffic
25 engineering, and request a safety study on the Red

1 Hill Valley Parkway, so you write to him:

2 "Dave, I would like to
3 get a safety study done
4 on the Red Hill Valley
5 Expressway, specifically
6 having barriers that
7 would stop a vehicle from
8 going across the median
9 and landing in the
10 opposite lane. I want to
11 write a motion to that
12 effect but I need your
13 help."

14 Do you remember sending that
15 e-mail to Mr. Ferguson?

16 A. Yes, I do.

17 Q. And I think it would be
18 fair to say, based on your answers earlier, that
19 this request for median barriers was specifically
20 in relation to the May 6 collision? I'm sorry,
21 the May 5 collision?

22 A. That's what -- yeah.
23 When there's not any collisions, you kind of --
24 it's not on the top of your mind. But when there
25 is a collision, it goes to the top of your list

1 sort of thing.

2 Q. So, aside from the
3 collision, did you have any other specific reason
4 for bringing this particular motion?

5 A. Just if there's any
6 safety things -- see, he was more in the safety,
7 not in the construction or barriers, but him and
8 Gary Moore used to talk a lot, so I probably
9 couldn't get a hold of Gary that day. I'm just
10 speculating. And so, I called David. He was the
11 guy I would call a lot on safety issues. Even in
12 my ward, like, I talked about if there was a bump
13 that had to be put in or stop signs or, you know,
14 addressing the walkways, you know, repainting
15 them, all that stuff.

16 Q. Okay.

17 A. It's David Ferguson that
18 I would call.

19 Q. And I think you said that
20 you thought that you would have reached out to
21 Mr. Moore on this before reaching out to
22 Mr. Ferguson?

23 A. Well, if it was barriers,
24 Mr. Ferguson didn't have any authority to put
25 barriers in, but keeping him in the loop is

1 important.

2 Q. Okay. In your view, it
3 would have been Mr. Moore that had the authority
4 to put in barriers?

5 A. Yes.

6 Q. So, this is still
7 relatively early in your term as a city
8 councillor. Was it common for you to ask staff to
9 assist in drafting language for motions?

10 A. Yes. When I went in,
11 they did motions a lot different than I did
12 motions at Stoney Creek council and they had the
13 background that I didn't have, so I would say to
14 Gary or Fergie or other people, can you draft up a
15 motion for me?

16 Q. And when you say they had
17 the background, do you mean the background with
18 respect to the Red Hill Valley Parkway or with
19 respect to the way that the City of Hamilton
20 drafted its motions?

21 A. Well, it was both. They
22 had the experience, more experience than I had, in
23 different things, and I wanted to make sure it was
24 done right so I could put it on, put a motion on
25 the table at the time.

1 Q. Okay. How frequently
2 would you say that you interacted with city staff
3 in the various departments across the City?

4 A. Oh, I probably interacted
5 every day to somebody, engineering or planning or
6 Public Works or, you know, a lawyer. I would
7 say -- I can't say every day, but very often I
8 would be talking to the head of the department.

9 Q. Would you say that you
10 spoke to Public Works staff more frequently than
11 staff in other City departments?

12 A. No. No, I wouldn't say
13 that. I talked to engineering a lot because they
14 were doing local roads for me, local changes for
15 me and sidewalk repairs and all that stuff. I
16 talked to Tony Sergi probably -- I used to talk to
17 him face to face probably every week --

18 Q. And who is Tony?

19 A. Tony Sergi is the head of
20 engineering.

21 Q. I think that at this
22 point in time Mr. Moore was the director of
23 engineering?

24 A. No. He was the overall
25 director of everything, but Tony was specifically

1 the guy you would go to if you wanted something
2 done in engineering. His boss was probably Gary
3 Moore, but 99 percent of the time when I needed
4 stuff from Tony it was local stuff, you know.
5 Like, he put in the -- he was in charge of putting
6 in the bypass for the expressway, so him and I
7 talked about that a lot, when is it going to be
8 done? What are you doing? When is it starting?
9 Just general questions. And he helped me a lot
10 just understanding what the process was.

11 Q. And when you reached out
12 to -- I'm sorry, I didn't mean to cut you off.

13 A. No, that's all right. Go
14 ahead.

15 Q. When you spoke to city
16 staff, did you do that primarily by phone?

17 A. Yes. My first contact
18 would always be by phone, and then -- I know we're
19 talking about Tony a lot, but with him usually I
20 think it was Thursday afternoons about 3:30 or
21 4:00 I would walk into his office, and if he
22 didn't have anybody there, we would sit down for a
23 half hour or 45 minutes and talk about issues.

24 Q. Is that a process that
25 you followed specifically with him or did you do

1 that with other city staff?

2 A. Specifically with him on
3 a regular basis, but I would have meetings with
4 the head of planning because they were two doors
5 away from each other, I think, something like
6 that, so if one wasn't available, the other one --
7 I would see if the other one was. It was me
8 trying to get relationships going so they
9 understand where I was and I understand where they
10 were and get to know the processes better.

11 Q. And so, for this motion,
12 you specifically requested David Ferguson's
13 assistance and you mentioned that you thought he
14 was someone who had information about safety. Did
15 you view him as someone with knowledge about the
16 Red Hill Valley Parkway?

17 A. I'm sure he had knowledge
18 of the Red Hill expressway. I do not know if it
19 was specifically all his knowledge, but he
20 certainly had knowledge of the expressway, yes.

21 Q. Registrar, could do
22 please take this down and take us to OD 7,
23 image 10, paragraph 29.

24 So, for your reference,
25 Mr. Conley, the day after you sent that e-mail to

1 Mr. Ferguson asking for assistance with draft
2 language for a motion, Councillor Merulla actually
3 brings a motion to be heard at the May 21, 2015
4 Public Works Committee meeting and he wants to
5 direct staff to investigate additional safety
6 measures on the Red Hill Valley Parkway and LINC,
7 such as additional guide rails, lighting, lane
8 markings or other means to help prevent further
9 fatalities and serious injuries?

10 A. Yeah.

11 Q. Do you recall that motion
12 from Councillor Merulla?

13 A. Yeah.

14 Q. Okay. Did you support
15 that motion?

16 A. I did.

17 Q. Do you recall if you
18 brought the motion that you had asked Mr. Ferguson
19 for assistance with after Councillor Merulla
20 indicated that he was bringing this one?

21 A. No. I didn't know if he
22 was doing that motion, but when he presented it to
23 us, there's no need for me to do another one.

24 Q. Okay. And so, this
25 motion at the bottom, and I'll read it out for

1 you. It says:

2 "Therefore, be it
3 resolved that staff be
4 directed to investigate
5 additional safety
6 measures for the Red Hill
7 Valley Parkway and the
8 Lincoln Alexander
9 Parkway, such as
10 additional guide rails,
11 lighting, lane markings
12 and other means to help
13 prevent further
14 fatalities and serious
15 injuries and report to
16 the Public Works
17 Committee with
18 recommendations by
19 December 7, 2015."

20 A. Yeah.

21 Q. Did you have any
22 expectations about how staff would go about
23 responding to this motion and, in particular, if
24 they would retain an expert or consultant?

25 A. Well, he put the motion

1 forward. I think I seconded it but I'm not sure.
2 Then we would have a discussion and all that stuff
3 would come up in the discussion, you know. So, it
4 was kind of like we put the motion on. Now,
5 Public Works, tell me what your expectations are
6 and what are you going to do?

7 Q. So, once the motion was
8 brought, in your view it was down to staff to
9 determine how to appropriately respond to it?

10 A. Well, they would put
11 their ideas out or what they thought they would be
12 or what they intended to do and we would question
13 those and at the end there would be a vote.

14 Q. So, you expected that
15 staff would come back to the Public Works
16 Committee with recommendations to address this
17 motion?

18 A. Yes.

19 Q. So, we've seen from the
20 documents that Public Works staff employed
21 different kinds of reports and documents when they
22 were reporting to the Public Works Committee, so
23 there were information reports, recommendation
24 reports and information updates?

25 A. Yeah.

1 Q. Can you explain the
2 distinction between these categories of reports?

3 A. Well, information is just
4 information. We're doing this. Just general
5 stuff, not specifically. And if there's going to
6 be things done as a result of that, they would
7 tell us what's going on and we would have to
8 approve even the information. We had to approve
9 everything. When it came to Public Works and
10 council, we had to approve it or not approve it,
11 but had it come to us. I don't know what else to
12 say.

13 Q. What was your practice in
14 terms of reviewing staff reports?

15 A. Anything that was on the
16 agenda for that week, I read, so --

17 Q. Okay.

18 A. And most reports or all
19 of them, I don't know, would be on the agenda.

20 Q. And so, your practice,
21 then, didn't change based on the type of report
22 that was in front of you, so if it was an
23 information or recommendation or information
24 update?

25 A. No. You still had to

1 read them to see what they are.

2 Q. Okay.

3 A. If you had any concerns,
4 you could always ask them. Yeah.

5 Q. Registrar, you can take
6 this down, please, and if you can call up RHV570
7 at images 1 and 2.

8 So, for your reference,
9 Mr. Conley, I've jumped forward a little bit in
10 time to the May 21, 2015 meeting, so this is the
11 meeting where Councillor Merulla's motion is
12 discussed. At that meeting --

13 A. Is that the council
14 meeting you're talking about?

15 Q. It's the Public Works
16 Committee meeting.

17 A. Oh, Public Works, okay.

18 Q. And so, this is the
19 May 21, 2015 meeting --

20 A. Yeah.

21 Q. -- and there's an
22 information report presented at that meeting,
23 which is prepared by Mr. Ferguson and submitted by
24 Gerry Davis, and it's called under the subject
25 line "Red Hill Valley Parkway Improvements"?

1 A. Yeah.

2 Q. And this report is about
3 the status of recommendations from a report that
4 was prepared by CIMA in 2013, which we refer to as
5 the 2013 CIMA report, and it includes some charts
6 that give an update on the status of
7 implementation of certain recommendations.

8 Registrar, could you take down
9 image 1 and put up image 3 so that we have
10 images 2 and 3 up.

11 So, there's a big chart of
12 countermeasures and let me know if you're
13 struggling with the description as I give it, that
14 is segment by segment on the Red Hill Valley
15 Parkway, and then has a status column that lists
16 off whether something is completed or if there are
17 further steps that need to be taken before its
18 implemented.

19 Do you remember receiving that
20 information report?

21 A. I know I reviewed it, but
22 if you ask me can I actually remember doing it,
23 no.

24 Q. Okay. But it would have
25 been your practice at that time to review it?

1 A. Absolutely.

2 Q. So, there are a couple of
3 items listed in the charts here of November 18,
4 2013 recommendations or action items that are
5 listed as to be reviewed and completed during a
6 future repaving. And so, there is, under that
7 category in the Dartnall Road to Mud Street
8 location, a recommendation for modifying pavement
9 markings and rumble strips, which is listed as "to
10 be reviewed and completed during future repave."

11 And then, over on the next
12 page of the chart under the Mud Street interchange
13 location, there is a section that says, under
14 Recommendations, "install high-friction pavement
15 approaching and through the curve," and that's
16 also to be reviewed and completed during future
17 repaving.

18 A. Well, rumble strips were
19 never put in, so I don't -- it's still not put in.

20 Q. Thank you. That's
21 helpful.

22 Registrar, you can take this
23 down for us and if you could take us to OD 7,
24 image 13, paragraph 38.

25 So, at the Public Works

1 Committee meeting on May 21, 2015, you ask for a
2 timeline for future repaving of the Red Hill
3 Valley Parkway?

4 A. Yeah.

5 Q. And Mr. Moore tells you
6 and the rest of the Public Works Committee that
7 city staff expected the first wholesale
8 resurfacing of the Red Hill Valley Parkway would
9 occur in 2021 and Mr. Moore goes on to advise that
10 the wholesale resurfacing of the Red Hill Valley
11 Parkway was a significant project that was not
12 included in the capital budget at that time. Do
13 you remember that exchange with Mr. Moore in 2015?

14 A. Yes, I do.

15 Q. Why did you want to know
16 about the timeline for the Red Hill Valley Parkway
17 resurfacing?

18 A. At the time, 2021 was too
19 far away to have anything done. So, if you want
20 to do it, do it sooner than later. And, in fact,
21 they did do it sooner. So, you know, I'm a
22 councillor and I'm just trying to get the best
23 results for my buck, sort of thing, and timelines
24 are one thing that they might be comfortable with,
25 but I want timelines as early as I can get them.

1 I'm going from a councillor point of view, not an
2 engineering point of view or a Public Works point
3 of view.

4 Q. When you were asking
5 about the timing of the repaving, was that in
6 connection with the information update that listed
7 certain items as to be completed as part of that
8 future repaving?

9 A. Yeah, I would say yes.

10 Q. And so, it was your view
11 that a 2021 resurfacing wasn't soon enough.

12 A. Absolutely not.

13 Q. Why did the 2021 date, so
14 that's about six years out from the meeting that
15 you're having in 2015, concern you?

16 A. I'm sorry, what's the
17 question?

18 Q. Why did a 2021
19 resurfacing concern you in terms of the timeline?

20 A. Too long. Six years
21 away. I wanted it two years away. I didn't get
22 that neither, but that's what -- I wanted it as
23 soon as possible --

24 Q. Why did you want it as
25 soon as possible?

1 A. Because everything is a
2 safety issue and paving is one thing. If we found
3 it had to be paved in 2021, why couldn't they do
4 it earlier? You know. I can't remember how --
5 when it was done before that, but I think they
6 expected to have, I don't know the numbers now,
7 but say 12 years before they had to redo it.
8 Well, if it had to be done earlier, it should have
9 been done, it should be done. And they did do it
10 two years earlier, so --

11 Q. So, just to circle back
12 on your answer, you said everything is a safety
13 issue. What did you mean by that? Was there a
14 particular safety issue that you were concerned
15 with as of May 2015?

16 A. All the stuff we've
17 talked about. We've talked about speed, we've
18 talked about median barriers, we've talked about
19 lighting, we've talked about what happens in an
20 accident, you know, and why did it. The biggest
21 thing is why did the accident happen? Was it
22 speeding? Was it texting? Was it on the
23 telephone? Was alcohol involved? Was drugs
24 involved? There's a whole myriad of things, but
25 the more we could make that road as safe as we

1 possibly can, the better. That's all.

2 Q. So, in connection with
3 this question about resurfacing and your comments
4 about the main thing being trying to figure out
5 why an accident occurred, did you, as of this
6 period of time, have any concerns about the road
7 surface on the Red Hill Valley Parkway possibly
8 contributing to collisions?

9 A. I really didn't because I
10 use that road almost every single day and I have
11 never had a problem with the surface, but I
12 know -- I still think the biggest problem on that
13 road is speeding. You know, we've had people
14 going, what, 190 klicks on that road? That's
15 ridiculous. No matter what the surface is, if
16 something happens, you lose control for whatever
17 reason, you know, you're not concentrating on it,
18 it's too dark, or you didn't see this, you know,
19 you're texting, you're going to be dead most of
20 the time. Anyways.

21 Q. Commissioner, I see that
22 I've gone a little bit past our regularly
23 scheduled afternoon break and I'm about to move on
24 to a slightly different line of questioning.

25 JUSTICE WILTON-SIEGEL: That's

1 fine. Why don't we take a 15-minute break and
2 we'll return at 25 to 4:00.

3 --- Recess taken at 3:20 p.m.

4 --- Upon resuming at 3:38 p.m.

5 MS. BRUCKNER: Commissioner,
6 may I proceed?

7 JUSTICE WILTON-SIEGEL: Yes,
8 please do.

9 BY MS. BRUCKNER:

10 Q. Mr. Conley, before we
11 took our break we were talking about the May 21,
12 2015 Public Works Committee meeting. At that
13 meeting, Councillor Merulla's motion was passed
14 and staff ended up retaining a consultant, CIMA,
15 to complete the investigation into additional
16 safety measures, which we refer to as the 2015
17 CIMA report just for your reference.

18 Registrar, could you please
19 take us to OD 7, image 73, paragraph 231, please.

20 So, Mr. Conley, on December 7,
21 2015, as requested in Councillor Merulla's motion,
22 staff come back to the Public Works Committee to
23 report. Do you remember staff providing a report
24 following Councillor Merulla's motion in December
25 of 2015?

1 A. Do I remember the
2 meeting? No. But I know they brought back a
3 report.

4 Q. Okay. Do you remember
5 reviewing the staff report that they brought back?

6 A. Again, I don't
7 specifically remember it, but I know I would have.

8 Q. Okay. There was a
9 consultant report with that staff report, which is
10 referred to as the 2015 CIMA report. Do you
11 recall reviewing a report from the consultant CIMA
12 in 2015 about safety improvements on the Red Hill
13 Valley Parkway?

14 A. Again, I don't remember
15 the meeting, but I do know that I would have
16 reviewed it.

17 Q. Okay. Is it your general
18 practice to read consultant or technical reports
19 that are appended to staff reports?

20 A. Absolutely. Anything
21 that's on the agenda, I would read it.

22 Q. Okay. Did you rely on
23 the staff report to orient you to an underlying
24 consultant or technical report?

25 A. Well, I respected our

1 people, so I think they had -- listen, I'm sorry,
2 but can you repeat the question?

3 Q. Of course. Did you rely
4 on the staff report to orient you to an underlying
5 or appended consultant or technical report?

6 A. Yeah. I would put a lot
7 of faith on their report. Again, I'm a city
8 councillor and if I didn't like something, I would
9 say it, but yeah.

10 Q. And when you say you
11 would put a lot of faith on the report, you mean
12 the staff report?

13 A. Yes.

14 Q. Okay. In your
15 experience, were consultant reports usually
16 appended to the staff reports that covered them?

17 A. I don't know if they
18 always were, but I did read a lot of consultant
19 reports in my time there, so I would say yes.

20 Q. Registrar, you can take
21 this down and if you could please call up
22 HAM24700, images 1 and 2, please.

23 To orient you, Mr. Conley,
24 this is the staff report that is prepared with
25 respect to Councillor Merulla's motion, which goes

1 to the Public Works Committee on December 7, 2015,
2 and the subject is the LINC and Red Hill Safety
3 Review.

4 A. Yeah.

5 Q. And then it's submitted
6 by Stephen Cooper or, sorry, it's prepared by
7 Stephen Cooper, David Ferguson and Martin White,
8 who are in traffic engineering, and it's submitted
9 by John Mater?

10 A. Okay.

11 Q. And it's a fairly lengthy
12 report. I think with the appendices it's about
13 ten pages. Does that refresh your memory about
14 receiving or reviewing this report?

15 A. I know I read it. I
16 can't specifically tell you it was 10 pages or 25
17 pages, but --

18 Q. Okay.

19 A. -- I would have read the
20 report.

21 Q. Okay. I'm going to read
22 out the recommendations from the report to orient
23 you to it. So, it's a recommendation report and
24 under Recommendations that first one under A is
25 that general manager of Public Works be directed

1 to implement the short-term safety options
2 identified in report PW15091 as Appendix A and
3 that these options be funded from the red light
4 camera reserve and that staff be directed to
5 report back to the Public Works Committee as a
6 result.

7 Under B, it says that the
8 design with request to the medium and long-term
9 items in report PW15091 as Appendix B, so that's
10 the number for this report, be deferred pending
11 the outcome of the transportation master plan,
12 TMP, update.

13 C says that the request be
14 made to the Hamilton executive chief of police and
15 the Hamilton Police Services Board to undertake
16 regular speed and aggressive driving enforcement
17 on the LINC and the Red Hill Valley Parkway and
18 that they be requested to report back to council
19 annually on the results.

20 And under and it says that a
21 copy of report PW15091 be provided to the joint
22 stewardship board of the Red Hill Valley for
23 information.

24 And, Registrar, if you can
25 close this out. Thank you very much. And then

1 there's an executive summary over on the next
2 page. And, Registrar, if you don't mind pulling
3 that out just to make sure that you're oriented to
4 the report.

5 Mr. Conley, the executive
6 summary speaks about those recommendations in
7 Appendix A of the report and it goes on to say:

8 "Further to this
9 direction, staff retained
10 CIMA Canada to undertake
11 this review and identify
12 options that City could
13 consider implementing to
14 assist in improving
15 safety on the LINC and
16 Red Hill. A copy of the
17 CIMA reports can be made
18 available at request.
19 Staff recommends that the
20 options identified in
21 Appendix A, short-term
22 safety options and
23 estimated costing for the
24 LINC and the Red Hill
25 Valley Parkway be

1 approved for
2 implementation and funded
3 from the red light camera
4 reserve. The estimated
5 total cost with
6 contingencies to
7 implement these options
8 is \$8,015."

9 And then it goes on to say:

10 "Staff further recommend
11 that the medium and
12 long-term items in
13 Appendix B, medium and
14 long-term safety options
15 and estimated costing for
16 the LINC and the Red
17 Hill, be referred to the
18 general manager of Public
19 Works for review as part
20 of the process for the
21 assessment of expansion
22 of the LINC and Red Hill
23 as part of the City's TMP
24 update."

25 Do you recall a report in

1 which medium and long-term options were referred
2 pending the outcome of the consideration of
3 expansion of the Red Hill Valley Parkway and LINC?

4 A. But the medium and
5 long-term differ from the City's view and the
6 consultant's view, so which one are you talking
7 about?

8 Q. I'm talking about the
9 medium and long-term recommendations in the staff
10 report, which I'm happy to take you to.

11 A. That's our staff
12 recommended, okay.

13 Q. Yes, it's the staff
14 recommendations.

15 A. Okay.

16 Q. And I can orient you to
17 those recommendations as well.

18 Registrar, can you pull up
19 Appendix A to this report, which is HAM24701.

20 So, Appendix A lists off the
21 short-term recommendations that staff have
22 recommended implementing. And so, short term is
23 defined by staff as items to be implemented in
24 zero to two years, and there are a number of
25 things listed there: Trimming vegetation on

1 on-ramps at Queenston Road and Barton Street,
2 installing oversized speed limit signs, installing
3 slippery when wet signs. And then there are a
4 number of other items: Installing speed feedback
5 signs, installing raised pavement markings from
6 Greenhill to the QEW.

7 Do you recall those short-term
8 safety options?

9 A. Yeah.

10 Q. And then there's also
11 Appendix B to this report, which are the medium
12 and long-term options identified by staff.

13 Registrar, could you please
14 pull up HAM24702.

15 So, this is Appendix B to the
16 report, so these are the items that staff have
17 recommended be deferred for consideration along
18 with the expansion of the Red Hill Valley Parkway
19 and LINC. And so, under medium-term options,
20 which is identified as two to five years --

21 A. I've lost you.

22 Q. You can't hear us?

23 A. I can now, but there was
24 about -- when you started this report, it went
25 dead, but it's okay now.

1 Q. Okay. Let me start again
2 at the beginning of Appendix B.

3 So, Appendix B to this report
4 sets out the medium and long-term safety options?

5 A. Yes.

6 Q. And these are the ones
7 that staff is recommending be deferred pending the
8 outcome of the TMP and the consideration of the
9 expansion of the Red Hill and LINC. And under
10 medium-term options, which is defined as options
11 to be implemented in two to five years, it lists
12 off conduct pavement friction testing?

13 A. Yes.

14 Q. Shield rock cuts between
15 upper James and upper Wellington, and those are
16 the two medium-term options and it lists their
17 costs. And then under long-term options, which is
18 identified as six plus years, it says:

19 "Provide shoulder rumble
20 strips along the entire
21 length of the LINC,
22 install median barrier
23 system on the LINC,
24 install median barrier
25 system on the Red Hill

1 Valley Parkway and
2 install end-to-end
3 illumination."

4 And so, those are the items
5 listed under long-term recommendations. Do you
6 recall reviewing this report and noting that there
7 were items here listed for deferral, including the
8 medium options and the long-term options that I
9 just read out?

10 A. Yeah.

11 Q. Okay. So, it's my
12 understanding, and I think it would be fair to say
13 that -- actually, let me re-ask that.

14 The medium and long-term
15 options listed here, including median barriers and
16 friction testing, was it your understanding on
17 reviewing this report that these items were to be
18 deferred for review as part of the assessment of
19 the expansion of the Red Hill Valley Parkway and
20 LINC?

21 A. Yeah. I remember that.
22 I didn't like it, but...

23 Q. Okay. Do you recall the
24 discussions about the potential expansion of the
25 Red Hill Valley Parkway and LINC at this Public

1 Works Committee meeting?

2 A. I don't remember exactly
3 what -- the expansion, I was told, but I can't
4 remember if it was at this meeting or not, that it
5 couldn't be done until the QEW entranceway was
6 modified and that the 403 entrance was modified to
7 take the extra lanes. So, that is something that
8 is out of our control. It's a provincial
9 government thing. And what they're saying is the
10 expansion won't happen unless the province does it
11 and they don't have it on their schedule to do it,
12 so, you know, it's not going to be done. If it's
13 going to be done, it won't be in my lifetime.
14 That's what my impression was or that's what I
15 thought.

16 Q. I think that you said
17 earlier that you didn't like that these items were
18 being deferred pending the transportation master
19 plan update at the consideration of widening the
20 LINC and the Red Hill Valley Parkway. Why didn't
21 you like that?

22 A. Well, if they were
23 putting the median stuff into the expansion, it's
24 never going to happen. I mean, I can't say never,
25 but as I said, until the province does their act,

1 which is a major change that I didn't realize that
2 had happened, the expansion wouldn't happen. In
3 their view, if it didn't happen, we shouldn't put
4 barriers in until we finish the expansion, because
5 it would be a waste of money because we would have
6 to take them out and put them in again, which is a
7 lot of nonsense in my opinion. But that's what's
8 I was told.

9 Q. Were you concerned that
10 these safety options wouldn't be implemented
11 because there was no date or expectation as to
12 when the LINC and Red Hill would be raved or,
13 sorry, widened?

14 A. Yeah, of course I was.
15 Yeah.

16 Q. Just stepping back for a
17 moment to the transportation master plan, as of
18 December 7, 2015, when you received this report,
19 when did you expect to receive the outcome of the
20 transportation master plan update?

21 A. I think it was a year or
22 two before they would have it done. I can't
23 remember exactly, but it was long term. It wasn't
24 next week or next month or even that year, I don't
25 think.

1 Q. Okay. So, stepping a
2 little bit forward in time, Registrar, could you
3 take us to RHV892 at image 1.

4 So, Mr. Conley, just to orient
5 you a bit, I'm taking us back to that "It's Not
6 the Parkways, It's the Driver" article in the
7 Spectator that we were talking about a little bit
8 earlier, and this article is published on
9 January 17, 2018.

10 Registrar, could you please
11 call out the first couple of paragraphs for us.

12 So, I just wanted to flag this
13 in connection with your comments that you had made
14 about the province and the potential widening.
15 There is a quotation from you in this article and
16 the article says:

17 "The Stoney Creek
18 councillor grasps that
19 councillor won't install
20 median safety barriers to
21 prevent crossover crashes
22 until both the Red Hill
23 and LINC are widened, and
24 he notes there is not a
25 remote chance of that

1 happening until the
2 province ponies up the
3 do-re-mi -- "

4 Which I assume is a reference
5 to money:

6 " -- to add lanes at the
7 crucial connecting QEW
8 and highway 403 pinch
9 points."

10 A. That's right.

11 Q. So, this is well past
12 2015, in January 2018, but is that what you were
13 referring to in terms of --

14 A. Yeah, exactly what I was
15 referring to.

16 Q. And so, in 2015, was it
17 your view that expansion of the LINC and Red Hill
18 Valley Parkway would not be considered until the
19 province put money towards adding those additional
20 lanes and the QEW and 403?

21 A. Absolutely. I was told
22 that.

23 Q. Okay. Do you recall who
24 told you that?

25 A. You know, I put a motion

1 through right at the beginning when I got there
2 about expansion of the expressway to six lanes,
3 three on each side, and I put a motion forward and
4 I was the only one that voted for it, so -- but
5 afterwards, I think it was Chad Collins again, he
6 said to me, Doug -- no, it might have been
7 Mr. Ferguson, one of the two, said we can't do the
8 expansion until the province does their thing with
9 the beginning and end of the LINC. So, I didn't
10 know that. I didn't even contemplate that they
11 would have to be expanded before they could do the
12 expressway expansion. So, I learned that after my
13 motion that I did at the beginning of my term.

14 Q. And when you say that you
15 might have heard it from Mr. Ferguson, is that a
16 reference to Councillor Ferguson or David
17 Ferguson?

18 A. Yes, I'm sorry.

19 Q. Councillor Ferguson?

20 A. Councillor Ferguson. He
21 was concerned about the 403 entrance from the LINC
22 and all that. I was concerned mostly about the
23 Red Hill Valley Expressway, so we had common
24 concerns but one at one end and one at the other.

25 Q. Okay. Registrar, you can

1 take this down. Thank you. And so, turning now
2 to 2015 and the staff report that we were looking
3 at, Registrar, could you take us back to HAM24700.

4 So, this is the staff report
5 with those two appendices that we were just
6 talking about and the recommendations from CIMA,
7 which are discussed in this staff report, that's
8 submitted in September 7, 2015. Do you recall
9 today what your takeaways were from this staff
10 report in terms of why collisions were happening
11 on the Red Hill Valley Parkway?

12 A. Speed. That was my --
13 still is my biggest concern.

14 Q. Okay.

15 A. But I don't remember how
16 in that crash did they determine how fast the
17 girls were going when the accident happened. I
18 don't have any recollection. I don't recall what
19 the speeds were, if they were identified by the
20 police.

21 Q. Okay. Registrar, can you
22 take us to image 3 of this document.

23 So, there are two sections in
24 this report. There's one on the LINC and then
25 there's one on the CIMA report that discusses

1 safety options for the Red Hill Valley Parkway.
2 And so, in the first couple of paragraphs about
3 the Red Hill Valley Parkway, there's a summary of
4 some collision stats.

5 Registrar, do you mind pulling
6 out the middle two paragraphs under the Red Hill
7 Valley Parkway title. Actually, just pull out the
8 whole bottom half of the page. Thank you.

9 And so, a couple paragraphs
10 in, it says:

11 "A detailed review of the
12 collision incidents
13 identified that there is
14 a high number of
15 collisions that would be
16 expected as a result of
17 high vehicle speeds -- "

18 A. Yeah.

19 Q.

20 " -- in combination with
21 weather conditions. The
22 majority of collision
23 that are occurring are a
24 direct relation to poor
25 driving behaviour."

1 And then it goes on to speak a
2 little bit about speeds on the Red Hill. It says:
3 "A detailed review of
4 vehicle speed data
5 identified approximately
6 an average of more than
7 500 vehicles per day
8 trafficking in excess of
9 140 kilometres per hour
10 and an 85th percentile
11 speed of 115 kilometres
12 per hour. These speeds
13 are further confirmation
14 of poor driving behaviour
15 that is occurring on the
16 Red Hill Valley Parkway
17 and in many instances are
18 behaviours that under the
19 Highway Traffic Act would
20 be considered stunt
21 driving and would result
22 in the immediate loss of
23 vehicle and licence."

24 A. Yeah. I agree with all
25 that.

1 Q. Did you rely on this
2 summary by staff of the finding of CIMA's
3 collision history review informing your opinions
4 about what the major contributing factors were to
5 collisions on the Red Hill Valley Parkway?

6 A. I think so, yes. I
7 probably did. I did, yeah. There's no reason for
8 them to lie --

9 Q. So, you relied on it --

10 A. They must have got their
11 information from police or some other authority
12 that would know what's going on, so --

13 Q. So, you relied on it on
14 the basis that staff wouldn't have included it in
15 the report if it wasn't accurate?

16 A. That part was accurate
17 anyways. I don't know about what else you are
18 going to ask me, but I agree with that. I've
19 always said that. It's always been speed.

20 Q. Okay. Registrar, could
21 you take us back into Appendix B, which is
22 HAM24702.

23 So, Mr. Conley, I'm just
24 stepping back into Appendix B of this report,
25 which are the medium and long-term safety options

1 that staff recommend deferring pending the TMP
2 update.

3 So, under medium-term options,
4 there is a reference there to conduct pavement
5 friction testing and the estimated cost of that is
6 \$40,000. Did you take particular note of the
7 medium-term option for friction testing when you
8 were reviewing this staff report?

9 A. I don't think I took
10 particular note, but I noted it.

11 Q. Okay.

12 A. It sounded reasonable.

13 Q. Why did you think it
14 sounded reasonable?

15 A. Because any time you do
16 testing and it shows up any results, it's a good
17 thing, you know. If they did it every year, I
18 would agree with it, but they don't do it every
19 year, so I had no problem with it at all.

20 Q. I think you said earlier
21 that one of the key things that you wanted to
22 understand was why collisions were happening on
23 the roadway.

24 A. I already told you I
25 thought it was speed and that report backs that

1 up.

2 Q. Did you view conducting
3 pavement friction testing as something that would
4 help you to shed light on the reasons that
5 collisions were happening on the Red Hill?

6 A. Again, I haven't had any
7 experience of friction problems causing accidents,
8 so it wasn't a huge concern of mine.

9 Q. Okay. Did you make a
10 connection between this friction testing
11 recommendation and the reference that we were just
12 looking at to there being a higher number of
13 collisions due to high vehicle speeds in
14 combination with wet weather conditions in the
15 staff report?

16 A. Wet weather is not
17 friction, though. It's two different things, so.
18 Weather would definitely have a concern, but I
19 don't remember seeing a report saying to me how
20 many were done when it was dry or when it was
21 snowy out or was it raining. I haven't got those
22 statistics to make a comparison.

23 Q. Okay. And so, in your
24 view or in your understanding, there is not a
25 connection between higher incidences of collisions

1 in wet weather collisions and friction testing?

2 A. No.

3 Q. Okay. And did staff ever
4 indicate to you that there was a connection
5 between those two things?

6 A. Not that I remember, no.

7 Q. Understood. Under
8 long-term safety options here in Appendix B, which
9 are options to be implemented in six years or
10 beyond, there are four different options and two
11 of them relate to the Red Hill Valley Parkway,
12 install median barriers and install end-to-end
13 illumination. In the staff report, staff indicate
14 that medium and long-term safety options would be
15 considered with the expansion of the Red Hill and
16 LINC in the transportation master plan update.

17 Did you have any particular
18 concerns about staff's recommendations to defer
19 these two long-term safety options, so those are
20 the median barriers and end-to-end illumination?

21 A. Absolutely, I mean,
22 because one thing, the expansion is a wish that I
23 had and that would accomplish a lot of things, I
24 think, but it wasn't going to happen, as I said,
25 not in my lifetime. But median barriers and

1 lighting is -- we don't have to do expansion to do
2 those things, so I wanted the barriers put in as
3 soon as possible, which they did, so I guess I was
4 right. They put them in. The lighting is not in,
5 though, but one of the two isn't bad, I guess. I
6 think the lighting was a lot harder situation than
7 I realized because of the indigenous people
8 concerns, not that they couldn't be overcome, but
9 there wasn't a will to do it. I mean, staff
10 didn't want to get into it and have meetings with
11 the indigenous community that I know of. I wasn't
12 involved in any indigenous community meetings for
13 sure.

14 Q. Okay. And so, it was
15 your understanding that that was the primary
16 barrier to the implementation of lighting on the
17 Red Hill?

18 A. I think it was a big
19 barrier. I think it was the most difficult
20 barrier to get over, but I think we could have
21 done it if there was a will to work at it and
22 check it out and I'm sure there's -- I think the
23 indigenous community was reasonable that we can
24 prove it's a safety issue, that they could go with
25 it, but it never happened, so...

1 Q. So, these two items under
2 long-term safety options, the median barriers and
3 the end-to-end illumination, from your testimony
4 today, I get the sense that these go directly to
5 your two major concerns, aside from speeding,
6 about the Red Hill Valley Parkway. Why did you
7 think that staff were recommending that these
8 safety options be assessed as part of the
9 expansion of the Red Hill Valley Parkway and LINC?

10 A. Well, I'm only guessing
11 on that, but I think they knew that the expansion
12 probably wasn't going to happen, so they could say
13 these things and justify their point of view by
14 throwing in the expansion of the expressway.

15 Q. So, in your view these
16 things were preconditioned on the expansion of the
17 Red Hill Valley Parkway because staff knew that
18 that wasn't going to happen?

19 A. Yes.

20 Q. Okay.

21 A. Well, that was their
22 logic anyways --

23 Q. Okay. Why did you think
24 that staff would want to avoid implementing these
25 items?

1 A. Well, the lighting more
2 than the barriers, but a lot of these are probably
3 expensive. I'm not really sure. Because I put
4 lighting, when I was on Stoney Creek council, I
5 put lighting down Centennial Parkway all the way
6 down the mountain and, you know, I got so many
7 positive reviews from that it wasn't funny. A lot
8 more than I thought. And I didn't think it was
9 that expensive, so I couldn't I understand why it
10 was so expensive here. But they're saying, well,
11 we can't do it and then if we put the expansion in
12 we would have to tear them up and it's a lot of
13 money. I don't buy that because I think they
14 could have been done without -- in consideration
15 that if the expressway was ever expanded, that
16 they would put the lights so that it accommodated
17 them so they wouldn't have to tear everything up
18 and start over.

19 Q. When you say they, is
20 that a reference to city staff?

21 A. Yes.

22 Q. Do you recall who in
23 particular on city staff you were talking to about
24 those issues?

25 A. No, it was -- most of my

1 conversations on the Red Hill was with Gary Moore.

2 Q. Okay. And do you think
3 that conversation about having to take out the
4 lighting was with Mr. Moore?

5 A. That was suggested to me,
6 yes.

7 Q. By Mr. Moore?

8 A. As far as I can recall,
9 yes. I can't swear on it. It's a long time ago,
10 but he would be the logical person that I would
11 talk to about it.

12 Q. Okay. So, I understand
13 from your evidence here today that you were not
14 agreeable to deferring the issue of illumination,
15 median barriers, friction testing and these other
16 medium and long-term safety options on the Red
17 Hill Valley Parkway. Is that fair?

18 A. Well, the medium ones are
19 okay because they're two to five, so practically I
20 could have them done in two years, so I would
21 agree to that. But the long-term ones, no.

22 Q. Okay. Did you express
23 your concerns about deferring these items, the
24 long-term --

25 A. I probably did at the

1 meeting. I can't recall exactly what. I mean,
2 that was seven years ago. I can't remember what I
3 had for lunch yesterday, so. But knowing me, I
4 would have brought the subject up.

5 Q. You expect you would have
6 raised it at the Public Works Committee meeting?

7 A. Either there or council.

8 Q. Okay. Registrar, if you
9 can move over this document and pull up beside it
10 HAM56684 at image 57.

11 So, Mr. Conley, for your
12 reference, I'm pulling up the CIMA report from
13 2015 that this staff report was about and I'm on a
14 summary table of CIMA's recommendations. And in
15 the summary of the CIMA's recommendations,
16 conducting pavement friction testing is identified
17 as a short-term countermeasure in the CIMA report,
18 and as we've just discussed, in the Appendix B to
19 the staff report, conduct pavement friction
20 testing is identified as a medium-term option.

21 Were you aware that friction
22 testing was suggested as a short-term option by
23 CIMA but as a medium-term option to be deferred
24 for consideration with the transportation master
25 plan by city staff in the recommendation report?

1 A. I was aware of it, but
2 honestly friction reports weren't my first concern
3 because I didn't think there was a problem with
4 it.

5 Q. So, when you say you were
6 aware of it, you were aware that there was a
7 difference between it being a medium term option
8 in the staff report and a short-term option in the
9 consultant report?

10 A. Yes.

11 Q. Okay. And how did you
12 become aware of that?

13 A. No idea.

14 Q. You think you were aware
15 of that at the time of the Public Works Committee
16 meeting on December 7, 2015?

17 A. It would be the logical
18 place for me to see that, yes.

19 Q. Okay. So, you had
20 indicated that you would have reviewed the 2015
21 CIMA report. Do you think that you became aware
22 of that information as a result of your review of
23 the consultant report?

24 A. Probably was, yes.

25 Q. Okay. Would you have

1 expected staff to identify in the staff report
2 that they had listed friction testing as a
3 medium-term option while CIMA had listed it as a
4 short-term option?

5 A. No, because as I said,
6 friction testing wasn't my first priority and if
7 that's what they wanted to do, fine. I had more
8 important issues to deal with rather than the
9 friction, so it didn't matter to me what they
10 wanted to do.

11 Q. So, it wasn't a high
12 priority of yours?

13 A. No.

14 Q. But in general, where
15 staff modified recommendations from a consultant
16 report, would you expect their changes to be clear
17 on the face of the staff report?

18 A. I really don't understand
19 what the question is.

20 Q. If they're writing a
21 report about a consultant report and talking about
22 safety recommendations that are arising from their
23 review and assessment of that consultant report,
24 would you expect them to highlight for council or
25 the Public Works Committee where they are making

1 changes or changing the term of a recommendation
2 listed in the consultant report in their own
3 recommendations to council in a staff report?

4 A. No, I don't think -- they
5 would never highlight that. They would expect you
6 to read the reports and if you had a concern,
7 bring it forward. If we didn't, don't. I don't
8 think they highlighted anything that one said
9 against the other.

10 Q. So, I think, and correct
11 me if I'm wrong on this, that your evidence was
12 that they didn't highlight it because they
13 expected that council and the Public Works
14 Committee would read the appended consultant
15 report?

16 A. That's kind of what I
17 just said. If we read reports and if we had a
18 concern, we would bring it up.

19 Q. Okay. So, you wouldn't
20 expect staff to provide an explanation for that
21 change without being prompted by a councillor or
22 the Public Works Committee?

23 A. That's right.

24 Q. And you wouldn't expect
25 staff to provide an explanation to council or the

1 Public Works Committee where their recommendations
2 for safety options and their implementation
3 differed from that of a consultant?

4 A. No.

5 Q. Did the fact that the
6 CIMA report identified friction testing as a
7 short-term recommendation have any impact on your
8 assessment of the reasonableness of deferring that
9 medium-term option until transportation master
10 plan update?

11 A. I had no concerns about
12 that.

13 Q. Okay. Registrar, you can
14 take this down and if you could take us to OD 7,
15 image 74, paragraph 233.

16 So, on December 7, 2015, you
17 attended a Public Works Committee meeting where
18 staff presented their report on the 2015 CIMA
19 report, which is what we were just talking about,
20 and at that meeting Councillor Merulla put several
21 questions to Mr. Moore about the quality of the
22 asphalt used on the Red Hill Valley Parkway.

23 Registrar, actually, can you
24 expand this call out to include 233 through to
25 235.

1 I'm going to read out the
2 summary of that in the overview document for you
3 for some context:

4 "Counsellor Merulla asked
5 Mr. Moore, who was also
6 present at the meeting,
7 to elaborate on the
8 quality of the asphalt
9 used asking whether the
10 City used low grade
11 asphalt in comparison
12 that used by the MTO in
13 constructing the Red Hill
14 Valley Parkway.

15 Mr. Moore replied that
16 the City had used SMA in
17 the construction of the
18 Red Hill Valley Parkway,
19 which was the MTO's top
20 mix for high speed
21 freeway type roadways.

22 Mr. Moore informed the
23 Public Works Committee
24 that the MTO had
25 performed the initial

1 friction testing and
2 received results at or
3 above what the MTO
4 typically expected from
5 high grade friction
6 mixes. He also informed
7 the Public Works
8 Committee that they had
9 performed subsequent
10 testing 5 years after in
11 approximately 2012 to
12 2013 finding that the
13 road was holding up
14 exceptionally well. He
15 stated, we have no
16 concerns about the
17 surface mix. When asked
18 by Councillor Merulla
19 whether the quality of
20 the Red Hill Valley
21 Parkway was no different
22 than any 400-series
23 highway, Mr. Moore
24 replied that the Red Hill
25 Valley Parkway was above

1 that grade."

2 A. Yeah.

3 Q. Do you recall that
4 exchange between Councillor Merulla and Mr. Moore?

5 A. Yeah.

6 Q. In your experience, did
7 councillors often direct questions about the Red
8 Hill Valley Parkway to Mr. Moore?

9 A. I'm sorry, did who?

10 Q. Did councillors often
11 direct questions about the --

12 A. Oh, absolutely. That's
13 their job.

14 Q. And why did they direct
15 those questions to Mr. Moore specifically?

16 A. Because he's the head of
17 the department and he would be the most
18 knowledgeable guy in this, so you go to the top
19 and you ask the right questions and Councillor
20 Merulla asked the right questions and got the
21 answers that Gary Moore gave him -- go ahead.

22 Q. Did you know that
23 Mr. Moore was involved in the construction of the
24 Red Hill Valley Parkway as of December 2015?

25 A. Yeah. It was before my

1 time, but I'm very sure that he was. And if he
2 wasn't, he still got the answers from the province
3 on the status of the highway, of the expressway,
4 and gave them to us. I'm not sure if he was
5 involved when it was built.

6 Q. So, he indicates that the
7 City used SMA in the construction of the Red Hill
8 Valley Parkway?

9 A. Yeah.

10 Q. Were you aware that SMA
11 had been used in the construction --

12 A. I didn't even know that
13 SMA is. Never knew.

14 Q. Do you know now?

15 A. Well, it's a high-grade
16 quality asphalt that they use on highways and they
17 use on 400-series highways, so I was happy with
18 the answer. I don't think he was lying to us in
19 any way.

20 Q. So, you relied on
21 Mr. Moore's statements about the asphalt on the
22 Red Hill Valley Parkway at this meeting?

23 A. Did I?

24 Q. You relied on Mr. Moore's
25 statements --

1 A. Yes, absolutely. I
2 trusted Gary Moore.

3 Q. And you accepted his
4 statements about the asphalt on the Red Hill
5 Valley Parkway as accurate?

6 A. Absolutely. There's no
7 reason for him to lie about it.

8 Q. Okay. Mr. Moore's
9 comment that the MTO had performed initial
10 friction testing and received results at or above
11 what the MTO typically expected, were you aware
12 that friction testing on the Red Hill Valley
13 Parkway had been performed by the MTO prior to
14 this meeting?

15 A. No, not prior to the
16 meeting. I assumed that when they put a new
17 expressway in that that's just part of the
18 approval of the expressway. I assume that and I
19 think that I'm right, but I have no --

20 Q. Okay. And Mr. Moore also
21 advised the Public Works Committee that subsequent
22 testing had been performed on the Red Hill Valley
23 Parkway in 2013, 2012 or 2013, and that the road
24 was holding up exceptionally well and that we have
25 no concerns about the surface mix. Did you

1 understand from this that he meant there were at
2 least two sets of friction tests completed on the
3 Red Hill Valley Parkway as of December 2015?

4 A. Yeah. And I think they
5 do friction testing every so often and they know
6 the schedule that it should be done and they get
7 it done. That's all.

8 Q. Okay. Was it your
9 understanding --

10 A. Yes.

11 Q. Sorry, I didn't mean to
12 cut you off.

13 A. Yes. It's part of the
14 maintenance of the highway.

15 Q. Okay. So, it was your
16 understanding that city staff were conducting
17 regular friction testing on the Red Hill Valley
18 Parkway as part of the roadway maintenance?

19 A. I don't know if they were
20 doing it personally, but they would have it done
21 whatever schedule they had. Probably at least
22 five years or seven or five years or something
23 like that.

24 Q. And on what basis did you
25 form that impression?

1 A. From what I heard on the
2 report that they did it when it was built and that
3 they did it again in 2012, so why did they do it
4 in 2012 if they didn't have to?

5 Q. All right. So, this
6 impression is formed based on Mr. Moore's comments
7 at the Public Works Committee meeting --

8 A. Yes.

9 Q. -- about the MTO testing
10 and then the subsequent testing in 2012 or 2013?

11 A. Yes.

12 Q. All right. Did anyone
13 ever specifically indicate to you that friction
14 testing was part of the regular maintenance of the
15 Red Hill Valley Parkway --

16 A. No, they didn't, but I
17 think there's a lot of things that go on in the
18 City that we don't particularly know about. They
19 just do it as part of their routine.

20 Q. And did you accept
21 Mr. Moore's statement that based on that friction
22 testing in 2012, 2013, the road was holding up
23 exceptionally well as accurate?

24 A. Yes.

25 Q. Did you rely on the

1 comments from Mr. Moore in your own thinking about
2 what factors might be contributing to collisions
3 on the Red Hill Valley Parkway?

4 A. Well, like we talked
5 about before, speed, texting, using your phone,
6 drugs, alcohol, all those things are a major
7 contributor to it, not the surface of the
8 expressway.

9 Q. And at this point in
10 time, you didn't have any concerns about the
11 surface of the expressway contributing to
12 collisions?

13 A. No. Still don't.

14 Q. Registrar, could you take
15 us to HAM43374 and pull up images 1 and 2, please.

16 So, on December 9, 2015, so
17 this is a couple days after that Public Works
18 Committee meeting, a group called the Lakewood
19 Beach Community Council sends an e-mail to the
20 mayor, the councillors on the Public Works
21 Committee, including yourself, and they send it
22 under the subject line "Red Hill Valley Parkway
23 Improvements Ratification Tonight."

24 Registrar, if you don't mind
25 calling out that e-mail, so it's the last e-mail

1 in the chain. Thank you.

2 So, this e-mail from the
3 Lakewood Beach Community Council, they say they're
4 too late to have the item that they're raising
5 added to the agenda for the council meeting, but
6 then they go on to say -- I'll just let the
7 registrar finish his call out there. So, in the
8 second paragraph of their e-mail, they go on to
9 say:

10 "Based on the Red Hill
11 Valley Parkway safety
12 review, the consultants
13 are recommending a
14 pavement friction test be
15 conducted at a cost of
16 \$40,000. This was not on
17 the short-term list of
18 recommendations from
19 staff; however, we feel
20 the cost-benefit of
21 conducting this testing
22 would be money well spent
23 and is warranted based on
24 the Red Hill Valley
25 Parkway safety study

1 results."

2 And then they go on to list

3 results of the collision history review that CIMA

4 did with page references, so they list that the

5 majority of collisions are occurring in daylight,

6 the majority of the collisions occurred in clear

7 weather, the majority of the collisions occurred

8 when the surface was wet, single motor vehicle

9 accidents were most prevalent, 35 percent of the

10 drivers involved in the collisions stated they

11 lost control, and they have in brackets "way above

12 average," with 30 percent attributed to speeding,

13 following too close and improper lane changes.

14 And then in the next paragraph they go on to say:

15 "In addition, when

16 speaking to the public,

17 most state that the road

18 feels slippery on the Red

19 Hill. We have not heard

20 this about the LINC.

21 This is backed by the

22 fact the fact that the

23 majority of comments

24 during online media

25 articles following

1 collisions state that the
2 public feels that the
3 pavement might be a
4 contributing factor to
5 those collisions (in
6 addition to speed
7 obviously)."

8 Which is also in brackets:

9 "Since the majority of
10 the collisions are single
11 car occurring in daylight
12 in clear weather but with
13 wet road surfaces, we are
14 respectfully -- "

15 A. Clear weather but wet
16 roads, that don't make sense. Can't be clear
17 weather and wet roads.

18 Q. Well, I mean, you can
19 have clear weather and still have a wet roadway
20 after a rainfall.

21 A. Well, then it's not clear
22 weather.

23 Q. Anyway, so they go on to
24 say:

25 "Since the majority of

1 the collisions are single
2 car occurring in daylight
3 and clear weather but
4 with wet road surfaces,
5 we are respectfully
6 requesting you consider
7 adding this friction test
8 to the short-term
9 recommendations."

10 Do you recall receiving this
11 e-mail from the Lakewood Beach Community Council?

12 A. I probably received one
13 from them every other week on some item, but if
14 they sent it, I read it, so...

15 Q. So, the Lakewood Beach
16 Community Council was a fairly active community
17 group, then?

18 A. Active, but very -- I
19 don't even know the word. They would bring up
20 anything and most of the stuff was not even
21 reasonable, but if they wanted friction testing,
22 that's not a big deal. I still -- it wasn't a big
23 deal. Did they do the -- I can't remember. Did
24 they do the friction testing because of that?

25 Q. Well, I'm going to take

1 you to a couple of documents on that exact topic,
2 but there is not an indication to my knowledge
3 that the City did friction testing in 2016.

4 So, you were familiar with the
5 Lakewood Beach Community Council as of
6 December 2015?

7 A. Oh, absolutely I was.

8 Q. Okay. And so, they asked
9 the City to consider friction testing and adding
10 it to the list of short-term safety options for
11 the Red Hill Valley Parkway. Knowing that CIMA
12 had also recommended friction testing as a
13 short-term safety option, did this change your
14 assessment of the friction testing recommendation
15 and whether it should be deferred pending the
16 transportation master plan?

17 A. What's the short-term for
18 the CIMA people?

19 Q. Sorry, say that again?

20 A. I said what was the
21 definition of short-term with the consultants?

22 Q. So, I think short term --
23 oh, for the consultants. There's no set
24 definition, I don't believe, in the 2015 safety
25 report.

1 A. I thought theirs was six
2 years or more or something.

3 Q. So, in the staff report,
4 zero to two years is the timeline for the
5 short-term recommendations. I think two to five
6 years is the medium-term recommendations and then
7 six plus years is the long-term recommendations.

8 A. Yeah. Yeah. I mean,
9 they have every right to send that letter and ask
10 us, but we're not under any obligation to follow
11 what they think would happen. And I don't agree
12 with a lot of what they said in there, so...

13 Q. So, this review of CIMA
14 didn't change your position on --

15 A. No.

16 Q. Okay. On friction
17 testing being appropriate as a medium-term
18 recommendation?

19 A. It's whenever Public
20 Works people thought it was necessary to do. And
21 I say it again. I think they probably had a
22 schedule to do that. I don't know what it is.
23 Every five years maybe. To do friction testing.
24 But surely not done every year and consultants
25 would do that. I don't think we ever did our own

1 friction testing, but it wasn't a big deal.
2 They're making a big deal out of that, but it's
3 not. It's one of the items in the monitoring
4 expressways.

5 MR. LEDERMAN:
6 Mr. Commissioner, can I just interrupt for a
7 moment? I just have a certain --

8 JUSTICE WILTON-SIEGEL: Let me
9 just ask for a moment if the registrar could put
10 down these documents. Go ahead, Mr. Lederman.

11 MR. LEDERMAN: Thank you. I
12 just have a concern about the question that had
13 been posed to Mr. Conley by Ms. Bruckner where she
14 recited the timeframes associated with short-term,
15 medium-term and long-term options, because as I
16 understood it, that's not consistent with the
17 evidence that we heard from the CIMA witnesses as
18 to how they treated the timeframes in short-term,
19 medium-term and long-term matters that they put in
20 the recommendations in their report, and I believe
21 we heard Mr. Malone's testimony about what those
22 periods of time were established in the 2013 CIMA
23 report and I believe that he confirmed that those
24 were the same timeframes associated with the 2015
25 report.

1 JUSTICE WILTON-SIEGEL: Well,
2 I agree with your first statement, the first half
3 of this, that those were the timeframes in the
4 2013 report. The 2015 report is more complicated.
5 I believe Ms. Bruckner is right that there was no
6 explicit statement of what those time limits were.

7 MR. LEDERMAN: That's right,
8 but --

9 JUSTICE WILTON-SIEGEL: I also
10 think that there was a little dance around the
11 words, if you recall, Mr. Lederman, when, at the
12 insistence of Mr. Ferguson, the language was
13 changed from "recommendations" to "options for
14 consideration."

15 So, I'm not sure that the way
16 the question was put was actually wrong. I'm not
17 sure -- certainly the timeframes were not as fixed
18 as you have expressed them to be.

19 MR. LEDERMAN: That's fair in
20 terms of what is stated in the 2015 report, but I
21 believe the evidence from Mr. Malone that this
22 inquiry has heard was that the timeframes that
23 were established in the 2013 report were
24 applicable and carried on. That's how CIMA
25 applied them --

1 JUSTICE WILTON-SIEGEL: How
2 CIMA approached their report is one thing. What
3 the report says on its face to the reader is
4 another, and I think the question was put in the
5 latter context.

6 MR. LEDERMAN: Well, I don't
7 know. All I'm saying is in order to be fair to
8 the witness, I just don't want the evidence to be
9 characterized in a way that is inconsistent with
10 what this inquiry has heard.

11 JUSTICE WILTON-SIEGEL: Okay.
12 In any event, I don't see anything in this
13 particular issue. The real question, whatever
14 short-term meant, Mr. Conley has given his answer,
15 if I can suggest, in a totally different context,
16 which was the meaningful context in which
17 Mr. Conley approached this.

18 And I wonder if we have to
19 spend any more time on this at this point. I look
20 to Ms. Bruckner as well to find out whether she's
21 proceeding any further with questions that relate
22 to the difference between short-term and
23 medium-term.

24 MS. BRUCKNER: I'm not and if
25 the City would like to put Mr. Malone's transcript

1 evidence to Mr. Conley in their examination, we're
2 happy to hear that later today.

3 THE WITNESS: I wasn't around
4 in 2013, so --

5 JUSTICE WILTON-SIEGEL: Yes,
6 exactly. The only document you had was the 2015
7 document.

8 THE WITNESS: Yes.

9 MR. LEDERMAN: My only issue
10 is just how the timeframes were being
11 characterized for Mr. Conley. That's all.

12 JUSTICE WILTON-SIEGEL: I
13 don't feel that any of the answers that were given
14 would in any event have been different if the
15 timeframes had been expressed in the way that you
16 would like to suggest they should be regarded,
17 because Mr. Conley's answer, I say again, was
18 really framed independently of any discussion of
19 short-term or long-term.

20 MR. LEDERMAN: Yes, I agree.
21 His answer really didn't turn on how the
22 timeframes were characterized --

23 JUSTICE WILTON-SIEGEL:
24 Exactly. His answer did not turn on any of this.

25 MR. LEDERMAN: Yes, that's

1 fair.

2 JUSTICE WILTON-SIEGEL: So,
3 perhaps we might just drive on at this stage.

4 MR. LEDERMAN: That's fine
5 with me, thank you.

6 JUSTICE WILTON-SIEGEL: Okay.

7 MS. BRUCKNER: Commissioner,
8 may I proceed?

9 JUSTICE WILTON-SIEGEL: Yes,
10 please proceed.

11 BY MS. BRUCKNER:

12 Q. Registrar, could you
13 please take us to OD 7, images 79 and 80,
14 paragraph 250.

15 A. Who was that gentleman we
16 were talking to?

17 Q. That was Mr. Lederman,
18 who is counsel for the City.

19 A. He's a councillor for the
20 City or counsel for the City?

21 Q. Yes.

22 A. Okay.

23 Q. So, at the council
24 meeting on December 9, 2015, so that's a couple
25 days after the Public Works Committee meeting,

1 Councillor Jackson moves to receive the Lakewood
2 Beach community council's correspondence, which is
3 that e-mail that we were just talking about --

4 A. Yeah.

5 Q. -- for further review and
6 discussion. And the Public Works Committee ends
7 up receiving this correspondence at a meeting
8 which occurs on February 1, 2017.

9 Do you recall having any
10 discussions at the Public Works Committee meeting
11 about the request from the Lakewood Beach
12 Community Council to accelerate friction testing?

13 A. No. It was received at
14 City council, right, in 2015, was it? We received
15 the report that they brought in.

16 Q. Yes. So, it was received
17 by the Public Works Committee on February 1, 2017
18 and referred to the Public Works Committee meeting
19 at that December 9 council meeting.

20 A. And at the council
21 meeting it was voted to receive the report?

22 Q. I think it's actually a
23 Public Works Committee meeting that it's voted to
24 receive the report.

25 A. Okay. Well, that's a

1 normal procedure. We're recognizing that they did
2 send an inquiry in and we received the report.

3 Q. Do you recall if there
4 were discussions about that e-mail from the
5 Lakewood Beach Community Council --

6 A. I don't think there was.

7 Q. Okay.

8 A. I don't think there was.

9 Q. Registrar, could you
10 please take us to OD 7, image 111, paragraph 350.

11 So, on February 16, 2016, so
12 this is a couple of weeks after that Public Works
13 Committee meeting, David Ferguson writes to the
14 Lakewood Beach Community Council and he copies the
15 mayor, councils on the Public Works Committee,
16 including yourself --

17 A. Yeah.

18 Q. -- as well as certain
19 city staff, including Martin White, Geoff Lupton,
20 Mr. Mater and Mr. Moore, and he writes:

21 "The following
22 information is provided
23 with respect to your
24 e-mail dated December 9,
25 2015."

1 So, that's the e-mail that we
2 were just looking at to the mayor's office and
3 members of the Public Works Committee:

4 "Your e-mail was
5 requesting that the
6 identified friction test
7 for the Red Hill Valley
8 Parkway be considered for
9 short-term testing.

10 Through support from the
11 Public Works Committee,
12 I'm pleased to inform you
13 that this testing will be
14 completed by engineering
15 services in 2016. We're
16 confident that this
17 testing, along with
18 implementation of the
19 other short-term
20 recommendations as
21 outlined in the report
22 will assist in raising
23 awareness and educating
24 motorists as we work to
25 change driver behaviour

1 along the Red Hill Valley
2 Parkway and LINC with the
3 ultimate goal to make
4 both roadways safer for
5 motorists."

6 Do you recall receiving this
7 e-mail from Mr. Ferguson to the Lakewood Beach
8 Community Council?

9 A. I read all my reports, so
10 if he sent it to me, I read it. But do I recall
11 it, like, as a fact? No.

12 Q. Okay. But it would have
13 been your practice to review it --

14 A. Yes.

15 Q. -- in 2016? Okay.

16 A. Yeah.

17 MS. HALE: Ms. Bruckner, just
18 for a moment, on the screen I don't actually see
19 Mr. Conley's name being CC'd. If you could pull
20 up the e-mail to see if he was copied on it.

21 MS. BRUCKNER: He was, but I'm
22 happy to do that. HAM43575, please, Registrar.

23 THE WITNESS: I'm sure I was.

24 MS. BRUCKNER: And, Registrar,
25 if you had could please pull out the from and to

1 and CC in that e-mail, which is the last e-mail at
2 the bottom of the page.

3 BY MS. BRUCKNER:

4 Q. Mr. Conley, you'll see
5 that you are copied on this e-mail, along with the
6 other members of the Public Works Committee?

7 A. I would be surprised if I
8 wasn't.

9 Q. Okay. Thank you very
10 much. Registrar, you can take us out of this.

11 Did you take particular notice
12 of the statement from Mr. Ferguson that friction
13 testing would be conducted by engineering services
14 in 2016 when you received this e-mail?

15 A. It didn't stick out like
16 a big deal. If they wanted to do it in 2016,
17 that's fine.

18 Q. Okay. Were there any
19 discussions at the Public Works Committee meetings
20 after this e-mail or at council meetings or with
21 other councillors about friction testing being
22 completed in advance of the transportation master
23 plan update?

24 A. I don't think so.

25 Q. Okay. So, you said that

1 you would speak to Mr. Moore on occasion about the
2 Red Hill Valley Parkway. Did you speak to
3 Mr. Moore about friction testing on the Red Hill
4 Valley Parkway in 2016 when you received this
5 e-mail?

6 A. No, because it was
7 something that was complete. You want to do it in
8 2016, so there was no need for me to be talking to
9 him about it. They already agreed to do it.

10 Q. Did you speak to
11 Mr. Ferguson about this e-mail when you received
12 it?

13 A. No. There's no need to
14 because he says he's going to do it. What am I
15 going to do? Have an argument with him that he
16 shouldn't? If they want to do it and they think
17 it's going to help, god bless them, do it.

18 Q. Commissioner, I'm about
19 to move on to another area of testing and I know
20 that we're a little bit past 4:30 at this point
21 and I would suggest that now would be a good time
22 to take a break.

23 JUSTICE WILTON-SIEGEL: Let me
24 just ask how much longer you anticipate being?

25 MS. BRUCKNER: I think that

1 I'm going to be about 30 to 40 minutes.

2 JUSTICE WILTON-SIEGEL: Okay.

3 THE WITNESS: Holy moly. So,
4 you're going to be at least a quarter after to
5 half past 5:00?

6 MS. BRUCKNER: I think so.

7 JUSTICE WILTON-SIEGEL: Okay.

8 So, let's take a --

9 THE WITNESS: I don't need a
10 break, if that's your concern, but if other people
11 do, I'm happy to take one.

12 JUSTICE WILTON-SIEGEL: I'm
13 inclined to give other people a bit of a break.
14 Let's take a break just until five to 5:00.

15 --- Recess taken at 4:42 p.m.

16 --- Upon resuming at 4:55 p.m.

17 MS. BRUCKNER: Commissioner,
18 may I proceed?

19 JUSTICE WILTON-SIEGEL: Yes,
20 please proceed.

21 BY MS. BRUCKNER:

22 Q. Registrar, could you
23 please take us to OD 7, image 177, paragraph 516.

24 So, on March 24, 2017, Diana
25 Aquila e-mailed a copy of a final version of a

1 LINC/Red Hill Valley Parkway safety improvements
2 update to members of city council, including
3 yourself, and the report states as follows:

4 "At the February 27, 2017
5 Public Works Committee
6 meeting, staff were
7 requested to provide an
8 update on the short-term
9 safety improvements on
10 the LINC and Red Hill
11 Valley Parkway as
12 approved by council at
13 the December 9, 2015
14 meeting."

15 So, that's the December 2015
16 meeting that we were talking about:

17 "The list of identified
18 short-term improvements
19 is attached in Appendix
20 A, which indicates the
21 recommended improvements
22 and status of each
23 improvement. The medium
24 and long-term recommended
25 improvements are attached

1 as Appendix B, which
2 details the recommended
3 improvements and status."

4 Do you recall receiving an
5 update about the safety options that you had
6 discussed at the Public Works Committee in
7 December 2015 on March 24, 2017?

8 A. Not in detail, but I
9 remember we got a report.

10 Q. Registrar, could you
11 please pull up HAM25780. So, I just pulled up the
12 information report, which is dated March 24, 2017,
13 and submitted by Martin White, who at that point
14 was acting director at the transportation
15 division.

16 Registrar, could you pull up
17 image 3.

18 So, this is Appendix B to this
19 report, which is the same as Appendix B to the
20 December report that we were talking about which
21 lists the medium and long-term safety options
22 pursuant to the 2015 staff report on the CIMA
23 report.

24 A. Okay.

25 Q. And under this Appendix

1 B, in March of 2017, conduct pavement friction
2 testing has been marked as completed. On receipt
3 of this report, did you accept that this statement
4 about friction testing being completed was
5 accurate?

6 A. Yes. I have no reason
7 not to.

8 Q. You expect staff to be
9 accurate in information updates?

10 A. Yes.

11 Q. A number of the long-term
12 options, so just to refresh your memory on those,
13 those are the six-plus year options, providing
14 shoulder rumble strips along the entire length of
15 the LINC, install median barrier systems on the
16 LINC, install median barrier systems on the
17 parkway and install end-to-end illumination.

18 Each of those items now says
19 something along the lines of "to be completed
20 during resurfacing." The last one, installing
21 end-to-end illumination, says "to be reviewed by
22 engineering services," but the others say "to be
23 completed and considered during" or "to be
24 completed during resurfacing."

25 A. Okay.

1 Q. At this point in time,
2 what was your understanding of the timeline for
3 the resurfacing of the Red Hill Valley Parkway?

4 A. I think the timeline was
5 2021 to get them done.

6 Q. Okay. When did you first
7 learn that the resurfacing would be completed
8 prior to 2021?

9 A. I don't think I was on
10 council when that was approved. I might have been
11 but I don't think so.

12 Q. So, you think that you
13 weren't on council at that time that the
14 acceleration --

15 A. I think it was done in
16 2019, but I wasn't on council then.

17 Q. Okay. Were you ever
18 advised of any rationale for the acceleration of
19 the timeline for the resurfacing?

20 A. No, except probably
21 money. They got money that they didn't expect or
22 they shifted things around or priorities changed.
23 So, it's always got to do with money and timing,
24 you know.

25 Q. All right. But did

1 anyone ever communicate to you the reason that the
2 resurfacing was being accelerated?

3 A. No.

4 Q. Did you ever personally
5 suggest or advocate to city staff that the
6 resurfacing should be accelerated and occur in
7 advance of 2021?

8 A. Well, that was the same
9 time, wasn't it, that they were going to do the
10 median barrier, so I would be pushing for the
11 median barriers more than resurfacing. That's
12 what I wanted done. The resurfacing would be done
13 when it's done.

14 Q. Okay. In or around this
15 time, so in March 2017, had you ever heard
16 concerns from constituents about the surface or
17 pavement on the Red Hill Valley Parkway?

18 A. Specifically the
19 pavement?

20 Q. Yes.

21 A. No, no.

22 Q. Registrar, if you can
23 close this down and take us to OD 7, image 183,
24 paragraph 529.

25 So, on May 30, 2017, Nicole

1 O'Reilly, who is a reporter with the Hamilton
2 Spectator, e-mails you and she writes:

3 "Nice chatting with you.
4 If you can, I'm
5 interested in info on the
6 pavement friction testing
7 conducted on the Red Hill
8 Valley Parkway last
9 year."

10 Do you remember sitting down
11 with Ms. O'Reilly or having a discussion with her
12 in or around May 30, 2017?

13 A. I never met the lady, so
14 I didn't sit down with her.

15 Q. Do you recall if you had
16 a phone call with her?

17 A. Yes. She asked me about
18 the friction testing and I said I would look into
19 it.

20 Q. Okay. Did Ms. O'Reilly
21 explain to you why she wanted the results of
22 pavement friction testing?

23 A. No, but she is a
24 reporter, so I can understand. She's looking for
25 a story.

1 Q. Okay. Did she explain to
2 you why she thought that friction testing had been
3 conducted in 2016?

4 A. No, she didn't.

5 Q. Did you connect this
6 request for friction testing with Mr. Ferguson's
7 e-mail to the Lakewood Beach Community Council
8 advising them that engineering services would
9 conduct friction testing on the Red Hill Valley
10 Parkway in 2016?

11 A. Did I -- I'm sorry, say
12 the question again?

13 Q. Did you connect this
14 request from Ms. O'Reilly for pavement friction
15 testing on the Red Hill Valley Parkway in 2016 to
16 the e-mail that you had been copied on where
17 Mr. Ferguson advised the Lakewood Beach Community
18 Council that engineering services would conduct
19 pavement friction testing in 2016?

20 A. Well, yeah, I guess I
21 did. I assume if they said they were going to do
22 it, they were going to do it.

23 Q. Did you believe that that
24 testing that Mr. Ferguson had referenced in his
25 e-mail to the Lakewood Beach Community Council had

1 been completed as of March 2017?

2 A. The friction testing?

3 Q. Yes.

4 A. Yes. Yes.

5 Q. Why?

6 A. Because they said they
7 were going to do it and I have to -- they're not
8 lying to me, so I assume they did it.

9 Q. Okay. Did you connect
10 Ms. O'Reilly's request for friction testing to the
11 information update that you had received which
12 stated that the friction testing had been
13 completed further to the recommendation in the
14 2015 CIMA report?

15 A. Did I get a report saying
16 it was done?

17 Q. Yes. So, we were looking
18 at a couple minutes ago the appendix to that
19 information update, which had marked friction
20 testing as completed. Did you make a connection
21 between Ms. O'Reilly's request and that
22 information update?

23 A. I don't recall making
24 that connection, no.

25 Q. Okay. Registrar, can you

1 take us to OD 7, image 183, paragraph 530 to 532:

2 Thank you. Which is right in front of me.

3 So, on May 31, 2017, you
4 forward Ms. O'Reilly's e-mail to Robert Ribaric,
5 who is your assistant, and you ask him if he could
6 please follow up as per door, which I think is a
7 typo, for our conversation?

8 A. Yes.

9 Q. And Mr. Ribaric, on
10 June 1, 2017, e-mails Mr. Ferguson under the
11 subject line Red Hill Valley Parkway Pavement
12 Friction Testing and he copies you. He writes:

13 "Was there pavement
14 friction testing done on
15 the Red Hill Valley
16 Parkway last year and, if
17 so, what were the
18 results? Thanks."

19 Did you direct Mr. Ribaric to
20 reach out to Mr. Ferguson for the friction testing
21 results?

22 A. Sounds like something I
23 would do, yes.

24 Q. Okay. Why did you direct
25 him to reach out to Mr. Ferguson?

1 A. Because I wanted a
2 report --

3 Q. Why did you --

4 A. It's not a big deal. I
5 don't have to be the instigator of getting the
6 report. That's what I got an assistant for. It's
7 a report. He's not making any decisions. He's
8 just asking for the information on the report.

9 Q. Okay. And why did you
10 think that Mr. Ferguson would have the report?

11 A. Well, I think if it was
12 done, he would have probably been involved because
13 he was involved in the e-mail that we talked about
14 a little while ago, so I went to him.

15 Q. Okay. So, Mr. Ferguson
16 responds to this e-mail from Mr. Ribaric and he
17 copies you and Mr. Moore and he says:

18 "I've copied Gary on this
19 e-mail."

20 A. Yeah. Yes.

21 Q. And it turns out that
22 Mr. Moore was out of the office on vacation in
23 this period of time until June 12, so Mr. Ribaric
24 ends up reaching out to Ms. Cameron, who is
25 Mr. Moore's assistant, who in turn asks Marco

1 Oddi. Do you know who Marco Oddi is, just while
2 we're on that point?

3 A. Yes. I don't know him
4 well, but I've met him.

5 Q. Okay. Do you recall what
6 his role was at the City?

7 A. No, he worked for Gary
8 Moore, but I don't recall his exact
9 responsibilities.

10 Q. Okay. Registrar, if you
11 can take us to paragraph 536, which I think is
12 just the next page over.

13 And so, Mr. Oddi responds to
14 Ms. Cameron and Mr. Ribaric and you're still
15 copied, as are Mr. Moore and Mr. Ferguson, and he
16 says:

17 "Sorry, I was not aware
18 of and have not seen the
19 results from the Red Hill
20 Valley Parkway pavement
21 friction testing. This
22 will probably have to
23 wait until Gary returns
24 the week of June 12."

25 A. Yeah.

1 Q. And then, Registrar, if
2 you can take us to the next paragraph down. So,
3 on June 5, in a separate e-mail chain, you e-mail
4 Martin White and Mr. Moore and you're asking them
5 for pavement friction testing results. So, you
6 write:

7 "On my update sheet it
8 says the pavement
9 friction testing is
10 completed. What were the
11 results of the testing?"

12 A. Yeah.

13 Q. What update sheet were
14 you referencing in that e-mail?

15 A. What update sheets?

16 Q. Yes. You said:

17 "On my update sheet it
18 says that the pavement
19 friction testing is
20 completed."

21 A. That's my list, my list
22 of things to follow up or check out or follow
23 through, so it's my list to follow through with.

24 Q. So, when you say the
25 update sheet, that's your own personal list of

1 things that you wanted to follow through with?

2 A. Yeah.

3 Q. Okay. And you had marked
4 friction testing as completed on that?

5 A. No. I marked friction
6 testing as getting the report on it.

7 Q. Okay. But in the e-mail
8 you write to Mr. Moore and Mr. White, you say:

9 "On my update sheet, it
10 says that the pavement
11 friction testing is
12 completed."

13 A. Oh, yeah. I think that I
14 was told but nobody from his office, I was told
15 probably from the journalist, she said that the
16 testing was completed and can she have the report.

17 Q. Could the reference to
18 update sheet there be a reference to the
19 information update that we were looking at wherein
20 Appendix B friction testing had been marked as
21 completed?

22 A. Yeah.

23 Q. Okay. Yes, you think it
24 might have been or you recall that it was, just to
25 make sure I'm clear on that point?

1 A. Well, I assumed it was,
2 but I didn't have any proof or any e-mails saying
3 it was done.

4 Q. Okay. So, you assumed
5 that the friction testing had been done as of
6 June 5, 2017?

7 A. Yes.

8 Q. And you don't think that
9 this is a reference to the March 2017 information
10 update that stated that friction testing had been
11 completed on the Red Hill Valley Parkway?

12 A. You'll have to repeat
13 that question. You're getting me all confused
14 here.

15 Q. I'm sorry. I'm just
16 trying to drill down on the March 2017 information
17 update that you and other members of council
18 received that, in Appendix B, marked friction
19 testing as completed. Do you think that this
20 e-mail here, when it says update sheet, is
21 referencing that information update?

22 A. I guess it would be. I
23 can't recall right now. I can't recall exactly
24 what you're asking but...

25 Q. Okay. Why did you e-mail

1 Mr. White and Mr. Moore with this request for
2 friction testing results?

3 A. Well, Mr. Ferguson worked
4 for Mr. White, so I went to Mr. Ferguson's boss,
5 and Mr. Moore is the head of Public Works, so --

6 Q. Mr. Moore is the --

7 A. -- those are the people I
8 go to.

9 Q. Mr. Moore is the head of
10 engineering services at this point in time rather
11 than Public Works, just for context.

12 A. I don't recall that at
13 all.

14 Q. You don't recall that he
15 was the director of engineering services?

16 A. He was director of Public
17 Works at that time that I recall.

18 Q. Okay. Just for context,
19 he was the director of engineering services and
20 not Public Works as a whole, just if it helps you
21 with your answers.

22 A. Okay. If you say so, I
23 believe you.

24 Q. Well, thank you very
25 much.

1 A. You're welcome.

2 Q. So, Registrar, could you
3 please take us to OD 7, image 185 at paragraph 538
4 to 541.

5 So, during this period of
6 time, Mr. Moore is still out of the office, so you
7 ask his assistant, Ms. Cameron, to follow up on
8 the request in Gary's absence. And she initially
9 says she will ask Marco Oddi to investigate and
10 responds and then about 30 minutes later she says:

11 "My apologies, it was
12 Gary who requested the
13 friction testing in 2014
14 and unfortunately I do
15 not have a copy of that
16 report. I will follow up
17 with Gary on your request
18 when he returns to the
19 office on June 12."

20 Did you note that in this
21 e-mail, when Ms. Cameron responds to you, she's
22 talking about friction testing that was requested
23 in 2014, whereas Ms. O'Reilly is asking you for
24 friction testing that happened in 2016?

25 A. Yeah. I guess yeah. I

1 know she said that, but I just -- she must not
2 have been up to date on what was going on, that's
3 all.

4 Q. So, you assumed that this
5 was an error on Ms. Cameron's part?

6 A. Not an error. I don't
7 think she knew that it was done.

8 Q. All right. So, you think
9 she just wasn't aware that friction testing had
10 been conducted in 2016?

11 A. Yeah, yeah.

12 Q. Registrar, could please
13 you take us to paragraph 544, which is on
14 image 186.

15 So, Mr. White responds to your
16 e-mail to him and Mr. Moore, copying Mr. Ribaric,
17 Mr. Andoga and Mr. Sidawi, and she says:

18 "Hi, Doug. Traffic
19 doesn't have the Red Hill
20 Valley Parkway pavement
21 friction testing results.
22 I believe asset
23 management has this
24 info."

25 And just before we continue on

1 that point, did you know who Mr. Sidawi and
2 Mr. Andoga were when they were copied into this
3 e-mail?

4 A. Yeah.

5 Q. And you understood they
6 were both in the asset management group?

7 A. Well, I knew they worked
8 for Gary Moore.

9 Q. Okay. And did you know
10 that they were in asset management?

11 A. Probably did. I did, but
12 I didn't, you know -- I remember names, but I
13 don't remember what their titles were.

14 Q. Okay. So, the next
15 paragraph down, Registrar, if you can close this
16 out and take us to 554, Mr. Sidawi responds to you
17 and he says in response to Martin White's e-mail
18 which you're copied on and he says:

19 "We're trying to track
20 down who has the info."

21 So, at this point, it's
22 June 8, 2017, there seems to be a lot of people
23 who are saying they don't have a copy of the
24 report to give you. Were you concerned that city
25 staff couldn't provide you with a copy of the

1 friction testing results for the Red Hill Valley
2 Parkway?

3 A. I don't know if that's a
4 concern, but I found out Gary Moore would clear it
5 up when he gets back.

6 Q. Okay. How did this
7 experience, requesting these friction testing
8 results, compare to other experiences that you had
9 had requesting reports or information from city
10 staff?

11 A. Usually they were -- I
12 would have the reports within 20 minutes of asking
13 for them, so normally that's the case.

14 Q. Okay. So, this is an
15 atypical experience in that you didn't receive the
16 friction testing results --

17 A. Well, I don't necessarily
18 would have received it, but when I asked for it, I
19 would want to receive it, yes. I don't think they
20 sent us every report that they ever get, but when
21 we request a copy of the report, they will.

22 Q. Okay. And generally you
23 expected a fairly quick response when you
24 requested something from staff?

25 A. Well, you know, within

1 two or three days.

2 Q. Okay. Registrar, could
3 you please take us to OD 7, image 187,
4 paragraph 548, which is just the next image over.

5 So, on June 27, Mr. Ribaric
6 e-mails Mr. Sidawi, Mr. White and Mr. Moore and he
7 copies you on this e-mail and he says:

8 "Doug is still looking
9 for this information.
10 Has anyone found it yet?"

11 A. Who is looking for it?

12 Q. Doug, so you're --

13 A. Oh, yeah.

14 Q. -- looking for this
15 information. "Has anyone found it yet?"

16 A. Yeah.

17 Q. So, this is a couple of
18 weeks after you have made the request and it's
19 after Mr. Moore has returned to the office in the
20 week of June 12. This is June 27.

21 In terms of timing, did you
22 find it atypical that you still hadn't received a
23 copy of the friction testing results by June 27,
24 2017?

25 A. Yeah, it was unusual, but

1 I didn't have any problems with it. They're
2 either busy or they can't find it or whatever,
3 they're looking for it. That's fine. It's still
4 a priority of theirs.

5 Q. Was it unusual for you to
6 have to follow up on a prior request that you had
7 made for information to staff?

8 A. It was unusual that I had
9 to follow up that many times, but it wasn't a big
10 deal to me. It was just that I had this reporter
11 bugging me, this journalist, for the report, and I
12 wanted to get it off my desk.

13 Q. So, the same day, so
14 that's June 27, Mr. Moore responds to
15 Mr. Ribaric's e-mail and he tells Mr. Ribaric to
16 have you call him. Mr. Ribaric flips this e-mail
17 from Mr. Moore to you and sends you Mr. Moore's
18 extension number, so his phone extension number.

19 A. I knew what it was
20 anyways, but okay.

21 Q. Do you remember if you
22 called Mr. Moore to discuss your request for
23 friction testing results on June 27?

24 A. If I was asked to call
25 him, I would call him.

1 Q. Okay. Do you recall what
2 you discussed?

3 A. The report. I don't
4 recall the actual conversation, no.

5 Q. Do you recall anything
6 about the substance of the conversation?

7 A. No, I don't.

8 Q. Did he provide you with a
9 copy of the friction testing results for the Red
10 Hill Valley Parkway?

11 A. No.

12 Q. Did he tell you why you
13 wouldn't be provided with those results?

14 A. I think he was still
15 looking for it.

16 Q. You think he was still
17 looking for them. Can you expand on that for me?

18 A. Well, I mean, if he had
19 the report, he would have sent it to me, so
20 obviously he can't put his fingers on the report,
21 but I assume he's still looking for it, that I'll
22 get it when he gets it, when he finds it.

23 Q. Do you recall Mr. Moore
24 telling you that he couldn't put his fingers on
25 the report or is that an assumption that you

1 made --

2 A. No, that's my
3 understanding. I can't remember what he said
4 exactly.

5 Q. Okay. So, it was your
6 understanding that he didn't have it based on the
7 fact that he it didn't provide you with a copy of
8 it?

9 A. No. My understanding was
10 he couldn't find it. Not that he didn't have it,
11 he couldn't find it.

12 Q. Okay. So, you believed
13 there were testing results, it was just that
14 Mr. Moore couldn't locate them to give them to
15 you?

16 A. Well, there's no reason
17 to lie about it, so. And he wouldn't lie about
18 things anyway --

19 Q. So, when you say there's
20 no reason to lie about it, do you mean the fact
21 that friction testing had been performed?

22 A. No, that he can't find
23 the report.

24 Q. I think you had said that
25 was an assumption that you made. Is that a

1 statement that Mr. Moore expressly made to you,
2 that he couldn't find it?

3 A. No. I can't recall if he
4 did or not. I can't recall if he did or not.

5 Q. So, on June 27, after
6 Mr. Moore responds to Mr. Ribaric with his
7 extension line, Mr. Sidawi responds to
8 Mr. Ribaric's initial e-mail saying that you were
9 still looking for the friction testing results and
10 he writes:

11 "I wasn't able to a track
12 down skid resistance
13 information, however, we
14 are planning to resurface
15 the Red Hill Valley
16 Parkway starting next
17 year."

18 Does that refresh your memory
19 about when you first learned that the Red Hill
20 Valley Parkway would be resurfaced prior to 2021?

21 A. It would be for sure.

22 Q. Okay. Do you think that
23 that was the first time that you learned that it
24 was going to be resurfaced in advance of 2021?

25 A. Yeah.

1 Q. So, later that day --
2 Registrar, if you could just take us over to the
3 next page to paragraph 553 -- Mr. Moore -- okay.
4 So, this is after Mr. Moore has asked Mr. Ribaric
5 to have you call him. On June 27, 2017 at
6 4:06 p.m., you e-mail Mr. Moore under the subject
7 line Gary, Friction Testing, and you copy
8 Mr. Ribaric and you say:

9 "Gary, have you got any
10 information or results
11 from the pavement
12 friction testing done
13 last year?"

14 Do you recall sending that
15 e-mail to Mr. Moore?

16 A. You're asking me
17 something that happened a long time ago. If it
18 says I sent it, I sent it.

19 Q. Okay. And this is after
20 Mr. Moore has asked Mr. Ribaric to have you call
21 him. Does this help to refresh your memory at all
22 about your conversation with Mr. Moore or whether
23 you in fact had a phone conversation with him on
24 June 27?

25 A. I can't recall having a

1 phone conversation. I very well could have, but
2 he's a very hard guy to get a hold of at any time,
3 so it wouldn't be unusual that I couldn't hook up
4 with him on the phone.

5 Q. Okay. And if you weren't
6 able to hook up with him on the phone, what would
7 you have done?

8 A. I would keep it on my
9 to-do list, I guess, and follow up or have Rob
10 follow up.

11 Q. Okay. Did you ever
12 receive a response to this e-mail that you sent to
13 Mr. Moore asking about the pavement friction
14 testing done on the Red Hill Valley Parkway?

15 A. Did you ask me did I get
16 an e-mail?

17 Q. Did you ever receive any
18 response from Mr. Moore further to this e-mail
19 that you sent him on June 27, 2017 asking about
20 the results?

21 A. I don't think so. I
22 can't recall getting one.

23 Q. Did you continue to ask
24 for friction testing results after June 2017?

25 A. It would be in my nature

1 to follow it through, but can I specifically say I
2 did? I might have just -- I don't know what I did
3 there. I usually would follow through, but I
4 can't tell you that I did or didn't because I
5 can't remember.

6 Q. So, I haven't seen an
7 indication of further e-mails on this topic from
8 you, which of course is not to say that I can
9 speak to any conversations or phone calls that you
10 would have made.

11 A. There could have been
12 phone calls, but I don't know. I don't want to --
13 I could have gave up on it and said, well, I guess
14 he doesn't have it. I just can't remember what I
15 did.

16 Q. Did anyone on city staff
17 give you any information that led you to stop
18 making requests for friction testing on the Red
19 Hill Valley Parkway?

20 A. No, certainly not.

21 Q. Did you ever receive a
22 copy of friction testing results from the Red Hill
23 Valley Parkway from anyone --

24 A. No.

25 Q. -- at any time?

1 A. No.

2 Q. So, on June 9, 2022,
3 Mr. White testified before the inquiry and he
4 indicated that by the time you were asking for
5 friction testing results for the Red Hill Valley
6 Parkway in June 2017, there was a continuing theme
7 of people asking for the results of the friction
8 testing and having no results.

9 If city staff --

10 A. I guess.

11 Q. If city staff were aware
12 of a theme in which people requested friction
13 testing results for the Red Hill Valley Parkway
14 and those results weren't provided to them, what
15 would you have expected city staff to do on being
16 copied or receiving your request for friction
17 testing in June 2017?

18 A. Probably it should have
19 come to PW's, Public Works Committee. It never
20 got to any committee. I think it kind of fell
21 through the cracks after a while.

22 Q. And when you say it, is
23 that a reference to your request for the friction
24 testing results?

25 A. Yeah.

1 Q. And, Registrar, you can
2 take this down and if you can pull up HAM52704,
3 please.

4 So, on July 15, 2017,
5 Nicole O'Reilly publishes an article in the
6 Hamilton Spectator, which is titled "Highway
7 Traffic Tragedies: Why Are There So Many Crashes
8 on the Red Hill Valley Parkway?"

9 And just to orient you to this
10 article, Registrar, could you take us to image 2
11 and call out the last five paragraphs at the
12 bottom. I'm just going to read through a bit of
13 the content that I want to ask you about so you
14 have a sense of what the article says before we
15 dive into these questions.

16 So, at the bottom of this
17 article on the second page, it says:

18 "The Red Hill Valley
19 Parkway was originally
20 paved with stone mastic
21 asphalt, a more expensive
22 mix that's supposed to
23 last longer. It is known
24 to be slightly more
25 slippery though still

1 meeting provincial
2 standards in the first
3 few months but typically
4 has better friction once
5 the road is worn down,
6 yet that 2015 engineering
7 report found crashes when
8 the road is wet are
9 inexplicably going up,
10 not down, and recommended
11 the City study friction.
12 And the City did test
13 friction later that year,
14 the Spectator has
15 learned, but the results
16 were never made public.
17 There is no official
18 report, Moore said, only
19 an informal chart sent in
20 an e-mail in December
21 2015. The friction
22 testing was not fulsome
23 and the results were
24 inconclusive, he said.
25 But instead of doing

1 further testing, as was
2 recommended, the City has
3 decided to repave."

4 Do you recall if you reviewed
5 this article from Ms. O'Reilly in the Spectator?

6 A. I could have, but I don't
7 recall. You know, there's tons of articles and
8 you read them and, you know, as a journalist,
9 making the accusations, I don't know whether to
10 believe them or not, so...

11 Q. Okay. Does this
12 information in this Spectator article about an
13 informal chart in an e-mail or the reference to
14 testing not be fulsome or results being
15 inconclusive help to refresh your memory about
16 whether or not you had a conversation with
17 Mr. Moore about friction testing results on the
18 Red Hill Valley Parkway?

19 A. I never had a
20 conversation with him concerning friction testing.

21 Q. You never had one or you
22 don't recall having one?

23 A. I don't -- well, again,
24 you're asking me stuff that happened years ago. I
25 don't recall ever having a conversation with

1 Mr. Moore in this regard.

2 Q. Did Mr. Moore ever
3 indicate to you that friction testing on the Red
4 Hill Valley Parkway led to or was a contributing
5 factor in the decision to accelerate the repaving
6 of the road?

7 A. No.

8 Q. Did any other member of
9 staff ever indicate something along those lines to
10 you?

11 A. No.

12 Q. Do you recall ever having
13 a discussion with Mr. Moore about this article?

14 A. No. I wouldn't -- I
15 typically wouldn't talk to him about reports in
16 the Spectator because they're from a very specific
17 point of view and lots of times they're
18 exaggerating what they're saying, so I take it
19 with a grain of salt.

20 Q. Okay. Registrar, you can
21 close down this call out.

22 And so, Mr. Conley, it's my
23 understanding that you would have finished your
24 term as councillor for Ward 9 on December 1, 2018.
25 Is that right?

1 A. Yes.

2 Q. Do you know what the
3 Tradewind report is?

4 A. I'm sorry?

5 Q. Do you know -- like, if I
6 use the term Tradewind report, do you know what
7 that is a reference to?

8 A. No.

9 Q. So, the Tradewind report
10 is a consultant report from Tradewind, which was a
11 company that conducted pavement friction testing
12 on the Red Hill Valley Parkway in 2013.

13 A. Okay.

14 Q. Do you recall when you
15 first learned about the existence of pavement
16 friction testing conducted on the Red Hill Valley
17 Parkway (technical interruption) --

18 A. Was there a question and
19 did I miss it?

20 Q. Do you recall when you
21 first learned about the existence of a report on
22 pavement friction testing for the Red Hill Valley
23 Parkway in 2013?

24 A. No, I don't recall the
25 first time I ever heard about it, but it was

1 probably at a committee meeting. I was never told
2 by Gary Moore or any of his people that worked for
3 him about it.

4 Q. So, the Tradewind report,
5 which is the report that was discovered after
6 Mr. Moore retired as director of engineering
7 services and is the basis for this inquiry, was
8 made public in February of 2019.

9 Do you recall if you were
10 aware of the existence of a report on friction
11 testing by Tradewind before the press release?

12 A. No.

13 Q. You weren't aware of it
14 before February 2019?

15 A. No. I don't think I was
16 ever aware of it February '19, because my eyesight
17 had declined a lot in December and the new year.
18 So, I wasn't reading the paper in '15.

19 Q. Do you recall when you
20 learned about any information about the discovery
21 of the Tradewind report?

22 A. I think, again, Chad
23 Collins told me about it.

24 Q. Okay. And that's
25 councillor Chad Collins?

1 A. Yes, ex-councillor.

2 Q. Ex-councillor, okay.

3 A. Ex-councillor, yes.

4 Q. What did he tell you
5 about the report that had been discovered?

6 A. Well, I can't remember
7 exactly, but to the effect that they found the
8 report and on -- I can't even remember what the
9 report said, to tell you the truth. I just
10 remember thinking, oh, finally they found the
11 report, you know.

12 Q. Why did you think, oh,
13 finally they found the report?

14 A. Because I hadn't been
15 around. Because they didn't find it for a while.

16 Q. Okay. So, when you
17 learned about the Tradewind report, was it your
18 understanding that that was the same report that
19 staff has been unable to locate for you in June
20 2017?

21 A. I assumed it was, yeah.
22 But honestly, I wasn't interested in it after I
23 retired.

24 Q. Okay. So, you weren't
25 interested in it. Did you have any reaction when

1 you learned that there was a friction testing
2 report available in May-June 2017, that hadn't
3 been provided to you by city staff?

4 A. I was concerned that I
5 didn't have a copy of it, absolutely.

6 Q. Okay. What was the basis
7 underlying that concern?

8 A. That I should have it.
9 If I've asked for it, I should get one. You know,
10 I can't respond and do my job if I don't have the
11 tools to do it, and one of the tools is a report.

12 Q. Okay. Had you been
13 provided with a report during your term on council
14 that the recommended further investigation into
15 friction levels on the Red Hill Valley Parkway,
16 would that have changed your approach to or view
17 of the factors that might have been contributing
18 to collisions on the Red Hill Valley Parkway?

19 A. Not until I had the
20 report and when the report says friction testing
21 was bad, we have to do something about it, blah,
22 blah, blah, and then I respond to it. But in my
23 own mind, rightly or wrongly, I wasn't putting a
24 lot of emphasis on friction testing.

25 Q. Okay. Commissioner,

1 those are all of my questions for Mr. Conley.

2 JUSTICE WILTON-SIEGEL: Thank
3 you. Other counsel?

4 THE WITNESS: Yes, sir.

5 MS. BRUCKNER: So, it is my
6 understanding that counsel for the MTO has five to
7 ten minutes of questioning for Mr. Conley.

8 THE WITNESS: When? Now?

9 JUSTICE WILTON-SIEGEL: Yes,
10 Mr. Conley. The other counsel are entitled to put
11 some questions to you as well.

12 THE WITNESS: Gee, we're going
13 overboard on time, eh? Okay, let's go. Who am I
14 talking to?

15 MR. BOURRIER: May I proceed,
16 Commissioner?

17 JUSTICE WILTON-SIEGEL: Yes,
18 please do.

19 EXAMINATION BY MR. BOURRIER:

20 Q. Good afternoon,
21 Mr. Conley. I'm counsel for the MTO. I have a
22 couple questions I would like to ask you about the
23 evidence you gave today.

24 Commission counsel this
25 morning talked to you about events in 2015 and

1 there was a discussion about a potential expansion
2 of the Red Hill Valley Parkway. Do you remember
3 talking with commission counsel about that?

4 A. Absolutely, yeah.

5 Q. To your knowledge, there
6 was no firm commitment from the province to
7 contribute funding to an expansion of the Red Hill
8 in 2015. Do I have that correct?

9 A. Well, yes and no. I was
10 told -- that was built before I was on council,
11 but I was told the original idea or the original
12 funding was for three lanes each way and the
13 province was putting so much money into it. And
14 at the last minute, and this is what I was told
15 because I wasn't on council, at the last minute or
16 prior to starting the expressway, the province
17 pulled out something like \$20 million and, because
18 they pulled that money out, we couldn't put three
19 lanes in, so they decided in just doing two lanes.

20 Q. Do you remember who told
21 you that?

22 A. Ted Collins.

23 Q. And who is Ted Collins?

24 A. City councillor. He's
25 been on council for about 25 years and he's not a

1 councillor now, he's an MP, but him and I are good
2 friends and even now we see each other. In fact,
3 I'm going to see him tomorrow night. So, we were
4 friends and we talk about lots of things. And I
5 was a rookie on city council and he helped me a
6 lot to understand what's going on and what
7 procedures were, et cetera, et cetera.

8 Q. And in 2015, though, you
9 weren't aware of any details about what that
10 funding, when it would happen? I think you said
11 this morning --

12 A. No.

13 Q. And I think you said this
14 morning that the expansion was likely not to
15 happen in your lifetime. Is that what you thought
16 in 2015?

17 A. Well, yeah. When I got
18 on council, I put a motion through probably in the
19 first two or three months I was on council to
20 expand the expressway to three lanes each way, and
21 the motion was defeated 14 to 1. I was the only
22 one that voted for it. But after that meeting,
23 that's when I was told about why it wasn't done in
24 the first place.

25 Q. And regardless of whether

1 the expansion was going to take place or not, is
2 it fair to say that you felt that median barriers
3 were needed in 2017 for safety reasons on the Red
4 Hill?

5 A. I'm sorry, I'm going to
6 turn this off. Okay. Sorry about that. Can you
7 repeat the question, please?

8 Q. Yes, absolutely.
9 Regardless of whether an expansion of the Red Hill
10 was going to take place or not, you still felt
11 that median barriers were needed in 2015 for
12 safety reasons on the Red Hill. Is that fair to
13 say?

14 A. Yes, absolutely fair to
15 say.

16 Q. Those are all my
17 questions, Commissioner.

18 JUSTICE WILTON-SIEGEL: Thank
19 you.

20 MS. BRUCKNER: Commissioner, I
21 understand that counsel for Golder, Jennifer
22 Roberts, has about five minutes of questions.

23 JUSTICE WILTON-SIEGEL: Okay.

24 MS. JENNIFER ROBERTS: Thank
25 you. We have no questions.

1 MS. BRUCKNER: Perfect. It's
2 also my understanding that Mr. Buck for Dufferin
3 has no questions. Is that right?

4 MR. BUCK: That's correct.

5 MS. BRUCKNER: Okay. Perfect.
6 In which case, I believe that Ms. Hale has 15 to
7 20 minutes of questions for the City.

8 EXAMINATION BY MS. HALE:

9 Q. Hello, Mr. Conley, I want
10 to ask you a couple questions and I would like to
11 take you back to report PW15091, which was the
12 report presented at the December 7, 2015PWC
13 meeting relating to the 2015 CIMA report that
14 commission counsel took you to earlier.

15 Mr. Registrar, if we could go
16 back to HAM24700, please.

17 A. I can't see her anymore.

18 Q. She's off camera, but --

19 A. Okay. I can hear her.

20 That's all right.

21 Q. So, Mr. Conley, as
22 commission counsel was saying, this is a report
23 prepared by Stephen Cooper, David Ferguson, Martin
24 White, and submitted by John Mater. Commission
25 counsel previously read out the four

1 representations of the report, but just to refresh
2 your memory, one of the recommendations was that
3 the design with respect to the medium and
4 long-term items in report PW15091 as Appendix B be
5 deferred pending the outcome of the transportation
6 master plan update.

7 Now, in the executive summary
8 of this document, the report outlines how there
9 was an initial direction from council on May 27,
10 2015 for staff to investigate additional safety
11 measures for the LINC and the RHVP and that is why
12 CIMA in the took the review.

13 Mr. Registrar, if you could go
14 to page 7, please.

15 Now, Mr. Conley, on this page
16 there's a heading that says "Alternatives for
17 Consideration" and the report states that:

18 "Council may choose not
19 to approve the
20 recommendations. Council
21 could direct staff to
22 proceed with the barrier
23 installation now.

24 However, if expansion of
25 the LINC and/or RHVP is

1 identified as part of the
2 City-wide transportation
3 master plan update, the
4 barrier may need to be
5 redesigned to accommodate
6 additional travel lanes.
7 In addition,
8 implementation of a
9 number of the identified
10 short-term options may
11 assist in reducing the
12 nerve collisions that are
13 occurring and eliminate
14 the need for barrier
15 installation."

16 So, Mr. Conley, I take it that
17 while city staff recommended the four
18 recommendations that commission counsel read to
19 you earlier, it was left to council to decide
20 whether to accept all, part or none of the
21 recommendations?

22 A. Yeah.

23 Q. And in the alternatives
24 for consideration, city staff specifically
25 included that council could direct staff to

1 proceed with barrier installation now, even though
2 that was not what the consultants nor the city
3 staff's recommendation was?

4 A. Yeah.

5 Q. And I understand,
6 Mr. Conley, that at the PWC meeting you second the
7 motion and the motion was carried unanimously?

8 A. Yeah.

9 Q. And in voting for the
10 motion, does that mean that you were agreeing to
11 direct Public Works staff to start implementing
12 these four recommendations?

13 A. The recommendation for
14 barriers, I wanted them to be done ASAP. And I
15 can't really remember exactly what happened there,
16 but I did approve it because anything they were
17 doing was better than doing nothing. But I never
18 wavered once on the need for barriers. I
19 always -- it came down to, well, we can't do it
20 until we do the expansion, which is saying it
21 probably never will get done or not in my lifetime
22 anyways or it's going to cost \$2.5 million, which
23 I don't believe, but I don't believe it was that
24 much. It depends on what barrier system you're
25 going to put in because it could cost that much if

1 you put in the Cadillac. And so, I thought it was
2 worthwhile and the proof is in the pudding. They
3 did it. They didn't do the whole LINC, the whole
4 Red Hill Valley Expressway, but they did probably,
5 and I'm guessing on it, 60 percent is done with
6 barriers at the appropriate places that I guess
7 they thought were the most dangerous. And I'm
8 happy to say that they did, so I don't know if
9 that answers your question, but barriers were a
10 top priority for me.

11 Q. So, you told commission
12 counsel earlier, I understand, that you did not
13 like the decision to defer the long-term
14 recommendation for the median barrier, but I just
15 want to be clear. Is it correct that you voted in
16 favour of the motion to defer the median barrier
17 to after the transportation master plan results?

18 A. You know I voted for it,
19 so yeah. You know, if something is on the table,
20 you take it, and you can always approve it or
21 change it any time. So, that's the way I look at
22 it. I didn't get it at that meeting. Maybe next
23 year I'll get it. It's not -- because you vote
24 for something, it's not -- it doesn't mean it
25 can't be changed. It's just the way council and

1 motions work, you know. You try get what you can
2 and you work on stuff that you didn't get.

3 Q. And so, what was the
4 basis upon which you disagreed with both the
5 consultant's and the city staff's recommendation
6 to defer?

7 A. Two people being killed
8 on the expressway was a really big concern and it
9 could have been avoid -- I don't know if it could
10 have been avoided about being killed, but I know
11 if they didn't go over the median, that it would
12 have been a lot different results. So, I just
13 thought it was a no-brainer to put barriers in. I
14 still think so. I wish they would have done the
15 whole thing, but maybe they will in the future.

16 Q. Do you have an
17 engineering background?

18 A. I'm not an engineer, no,
19 but I've got a lot of background.

20 Q. Do you have any expertise
21 in road safety?

22 A. Let's get it clear.
23 Councillors aren't experts on anything, in most
24 cases, in any case. I don't know if anyone is.
25 Maybe Lloyd Ferguson, because he worked for

1 Dufferin, might be the closest we have. But we're
2 not there because we're experts. We're there to
3 represent our constituents and their problems.
4 And don't go on the, you're not an expert on this,
5 because it's not fair.

6 Q. Do you recall that in the
7 PWC meeting if you ever raised that staff should
8 be directed to install median barriers
9 immediately, which was what was under the
10 alternatives for consideration in the staff
11 report?

12 A. I think every meeting I
13 had concerning that, the expressway, I would bring
14 them up and they would say stuff like, well, if we
15 put the third lane in, we would have to rip them
16 up and do it again, so that's not something we
17 want to do, which is -- well, I thought it was
18 just an excuse, but I can't prove that. It's just
19 my opinion.

20 Q. At the time, did you send
21 an e-mail or make any written record of the fact
22 that you were not in favour of this?

23 A. Well, they knew I wasn't.
24 I probably talked to Gary Moore about it several
25 times. And, in fact, like, my point is they did

1 it in 2019, so it proves my point they were
2 supposed to do it in 2021, but they did it in
3 2019, which tells you that there was a concern and
4 they brought it forward.

5 Q. Okay. So, just one
6 moment. So, I want to take you to the 2015 CIMA
7 report itself.

8 Mr. Registrar, if you could
9 bring up HAM56684, images 55 and 56.

10 And, just to situate you,
11 Mr. Conley, what I'm going to read out to you
12 falls under the heading Options for Consideration,
13 which comes up on page 52, but on pages 55 to 56,
14 it says that, and this is from the 2015 CIMA
15 report, it says:

16 "It should be noted that
17 the purpose of median
18 barriers is to eliminate
19 median crossover outcomes
20 of collisions. The
21 installation of a barrier
22 does not necessarily
23 result in fewer
24 collisions, but reduces
25 the severity of

1 collisions. 53 percent
2 of median related
3 collisions occurred under
4 wet surface conditions
5 and a median barrier
6 would come into play
7 after the driver has
8 already lost control.
9 Therefore, it is possible
10 that a reduction in
11 median related collisions
12 will be achieved by
13 addressing speed and wet
14 surface related
15 collisions. Collision
16 could be potentially
17 prevented by using other
18 countermeasures as
19 detailed in other
20 sections of the report.
21 It would be prudent to
22 implement these
23 countermeasures before
24 implementing median
25 barriers and monitoring

1 their safety performance.
2 It is possible that these
3 countermeasures may
4 improve the safety of the
5 Red Hill Valley Parkway
6 and reduce the potential
7 benefit of providing the
8 median barrier. The
9 benefit cost calculations
10 for median barrier as
11 detailed above do not
12 consider the effects of
13 those potential
14 countermeasures."

15 So, quite apart from your view
16 that barriers should not have been deferred, did
17 you understand that the experts were only
18 recommending it as a long-term option?

19 A. I don't care about the
20 experts. I care about what my constituents were
21 saying and what actually happened. They say,
22 well, it won't stop a collision. You're
23 absolutely right, but it might save a life or
24 maybe it would do this. That's all supposition.
25 It means nothing. When there's an accident, they

1 can't go back and say maybe. It happened. So,
2 all their frivolous remarks that I think are about
3 median barriers, I don't agree with. They don't
4 stop -- I know they don't stop collisions. It's
5 got nothing to do with having a wet surface or not
6 wet surface. If there is a collision, it will
7 stop the car from going over the median and
8 hitting another car potentially coming the other
9 way causing a lot more severe accident. And two
10 girls were killed because there's no median, so
11 I've got proof they don't. They got supposition.
12 You can call them experts and they might be
13 experts and I'm not, but there's not one council
14 that is neither and we don't work on expertise; we
15 work on common sense and what our constituents are
16 asking us about and what we feel is right, and
17 that's how I reacted.

18 Q. Thanks. So, I want to
19 move back to the report PW15091 and I wanted to
20 bring you back to the some of the questions that
21 commission counsel asked you about the medium and
22 long-term recommendations contained in the report.

23 So, commission counsel asked
24 you about your understanding of purported change
25 in the term of the friction testing recommendation

1 between the CIMA report and the staff report. So,
2 Brian Malone, who was a partner at CIMA, who
3 undertook the safety review, testified earlier in
4 the inquiry that short-term was defined in the
5 2013 CIMA report, which I understand was prior to
6 your term as councillor, but the terms were
7 defined in the 2013 CIMA report as short-term,
8 zero to five years, medium-term, five to ten
9 years, and long-term was ten plus years.

10 And during the inquiry
11 testimony, the question was put to him, quote:

12 "And so I take it that
13 the same definitions
14 apply to the 2015
15 report?"

16 End quote. And his answer was
17 yes. So, now if we pull up the appendices to
18 PW15091, Mr. Registrar, if you could pull up
19 HAM0024701 and 24702, please. Thank you.

20 So, Mr. Conley, as commission
21 counsel took you to, both of these appendix list
22 out short-term, medium-term and long-term safety
23 options outlined by CIMA. And, however, instead
24 of using CIMA's definition of short, medium and
25 long-term, city staff identify short-term options

1 as zero to two years, medium-term options as two
2 to five years and long-term options as six plus
3 years.

4 A. Yeah.

5 Q. Do you see any difference
6 between a countermeasure being described as
7 short-term by CIMA versus medium-term by city
8 staff if the time limit for the completion is the
9 same, such as five years?

10 A. Well, short-term is zero
11 to two with ours and in theirs it's zero to five,
12 so there's a difference.

13 Q. So, let's say that a
14 recommendation was supposed to be completed in
15 five years. For CIMA, that would be a short-term
16 option?

17 A. Yes.

18 Q. And for the City, that
19 would be a medium-term option?

20 A. Yes.

21 Q. But they're both
22 completed in five years. Do you see a difference
23 in labelling it as short term or medium term?

24 A. Absolutely. I want
25 things done as soon as I can. Five years, zero to

1 two years, is a reasonable expectation of getting
2 it done because it goes through a budget year,
3 which you get funds for, and you get it done. But
4 zero to five years, it's way too long in most
5 cases.

6 Q. So, I think my question
7 was a bit confusing. I was saying if there was a
8 typical -- if there was a recommendation such as
9 conducting pavement friction testing was
10 considered to be a short-term option for CIMA
11 because that was zero to five years and it is
12 considered to be a medium-term option for the City
13 because it is two to five years, so they both end
14 up at five years, and my question to you is: Is
15 there a difference between labelling five years as
16 being short term or medium-term?

17 A. I don't know. I think
18 you're playing -- not playing games, but you're
19 playing with the numbers and, you know, I don't
20 like playing with numbers as much as -- I just
21 wanted things done. And they can call it zero to
22 five or zero to two or whatever they want and
23 those are just recommendations anyways because
24 council is the ones that set the timetable in most
25 cases, unless it was impossible to do. But we've

1 changed timetables lots of times.

2 Q. Absolutely. So, on that
3 point, when city staff proposed timelines for
4 implementing recommendations to council, did you
5 have an understanding as to how staff arrived at
6 those timelines?

7 A. No, not really. I didn't
8 have any. We didn't discuss why is it two years
9 or why is it five or why is it six and over and
10 all that stuff. To my knowledge, we never talked
11 about why --

12 Q. Was it your -- sorry.

13 A. No. The assumptions are
14 two years, as I just -- I'm not going to repeat
15 myself. But we went through there's a budget
16 year, so it gives them time to get money in and
17 start whatever the project is, you know. I mean,
18 most of us have good, I think, common sense and
19 some of us are on a particular subject more
20 intense than others, but in the long run it works
21 out most of the time.

22 Q. So, was it your
23 expectation kind of broadly as a city councillor
24 that city staff would consider certain factors
25 when proposing those timelines, regardless of what

1 they were?

2 A. They're just looking at
3 concerns that they have: Manpower, budget,
4 timing, all those kind of things. They're just
5 looking at, and that's what you want them to look
6 at it, the technical end of it. We're the
7 councillors. We determine not the technical, I
8 guess, but what we want to see done.

9 Q. And I take it that City
10 council expected staff to not simply make
11 recommendations for capital dollar intensive
12 projects in particular without considering all of
13 those factors?

14 A. I would hope they would,
15 yes.

16 Q. And did you also
17 understand that timelines proposed by city staff
18 ought to be reasonable?

19 A. What's your definition of
20 reasonable?

21 Q. That they would -- I
22 think my question would be: As a city councillor,
23 did you expect that the city staff would consider
24 all of those factors and make recommendations for
25 a timeline that is not just simply, you know,

1 we'll do something in a year when it would really
2 take three or four years because of budget, staff,
3 as you were saying?

4 A. Yeah. I think most times
5 they're reasonable, but I think sometimes we're
6 going to push an issue because we want it done
7 sooner for safety reasons. So, I think, you know,
8 most times we don't argue and fight with our
9 experts, if you want to call them that, our staff.
10 Most of the time we ask a lot of questions and we
11 make our decision based on what we hear and what
12 we think and what we want to push because a lot of
13 times it's constituents that are driving the
14 issue, to a certain point.

15 Q. So, I want to take you
16 back to the 2015 CIMA report.

17 Mr. Registrar, if you could
18 bring up HAM56684, image 57, please.

19 Now, this was the summary
20 table that commission counsel spoke to you about
21 earlier that was a summary table of the various
22 countermeasures, their construction costs, the
23 timelines and comments. And at the bottom of the
24 page it states that:

25 "Install continuous

1 illumination."

2 The construction costs of that
3 would be \$810,000. The timeline is long term and
4 the comment that is attached to it states:

5 "Requires sound
6 evaluation in the context
7 of the surrounding
8 network and environment,
9 an environmental
10 assessment will be
11 required."

12 So, did you understand that
13 CIMA had recommended to the City in 2015 that
14 illumination was a long-term option to consider?

15 A. I wasn't surprised that
16 they did that. Put it that way.

17 Q. And did you understand
18 that CIMA had advised the City that an
19 environmental assessment would be required in
20 order to consider continuous illumination?

21 A. I remember something
22 about that, but I can't recall exactly what it
23 was. I think the bigger issue was the indigenous
24 people approving of it, because they didn't want
25 that because it would bother the animals. So,

1 that was the biggest hurdle I could see, but they
2 never followed through with it.

3 And talking about that, I was
4 on a stewardship committee with Chad Collins and
5 we talked about it and he's the one that brought
6 up the fact that the indigenous people don't want
7 it and if they don't want it, you'll never get it.
8 Simple as that. It was never followed through,
9 never discussed with them, nothing happened. It
10 was just kind of that's the way it is.

11 Q. Thank you.

12 Mr. Commissioner, if I could have a brief moment
13 to check my notes.

14 JUSTICE WILTON-SIEGEL: Sure.

15 BY MS. HALE:

16 Q. Thank you, Mr. Conley. I
17 have no further questions.

18 A. You're welcome. Thank
19 you.

20 JUSTICE WILTON-SIEGEL:

21 Ms. Bruckner, do you have anything further?

22 MS. BRUCKNER: I don't. Thank
23 you, Commissioner.

24 JUSTICE WILTON-SIEGEL: Okay.

25 It's been a very long day, Mr. Conley, for all of

1 us, but I'm sure particularly for you.

2 THE WITNESS: That's okay.

3 And it went fast because being involved, time kind
4 of flies.

5 JUSTICE WILTON-SIEGEL: Good.

6 Well, it was good to have you involved. Thank you
7 very much for attending at the inquiry.

8 THE WITNESS: You're very
9 welcome.

10 JUSTICE WILTON-SIEGEL: You're
11 excused. And, counsel, we're now going to stand
12 adjourned until 9:30 tomorrow morning.

13 --- Whereupon the proceedings adjourned at
14 6:04 p.m. until Thursday, July 14, 2022 at
15 9:30 a.m.

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