

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE  
HERMAN J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Monday, July 18, 2022, at 9:30 a.m.

VOLUME 46

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1 Arbitration Place Virtual

2 --- Upon resuming on Monday, July 18, 2022,  
3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,  
5 Mr. Commissioner. I would like to open today with  
6 a land acknowledgement.

7 I open this week's proceedings  
8 with acknowledging that the City of Hamilton is  
9 situated upon the traditional territories of the  
10 Erie, Neutral, Huron-Wendat, Haudenosaunee, and  
11 Mississaugas. This land is covered by the Dish  
12 With One Spoon Wampum Belt Covenant which is an  
13 agreement between the Haudenosaunee and the  
14 Anishinaabek to share and care for the resources  
15 around the Great Lakes. We further acknowledge  
16 that the land on which Hamilton sits is covered by  
17 the Between The Lakes purchase, 1792, between the  
18 Crown and the Mississaugas of the Credit First  
19 Nation.

20 Many of the counsel appearing  
21 on this hearing today are in Toronto which is on  
22 the traditional land of the Huron-Wendat, Seneca,  
23 and most recently, the Mississaugas of the Credit  
24 River.

25 Today this meeting place is

1 home to many indigenous people from across Turtle  
2 Island and I'm grateful to have the opportunity to  
3 work on this land. Thank you.

4 Mr. Commissioner, we're  
5 proceeding with Mr. Moore's examination. Of  
6 course, he was sworn last day. May I proceed?

7 JUSTICE WILTON-SIEGEL: Yes,  
8 please. Proceed.

9 GARY MOORE; PREVIOUSLY AFFIRMED

10 EXAMINATION BY MS. LAWRENCE (cont'd):

11 Q. Good morning, Mr. Moore.

12 A. Good morning.

13 Q. Last day we were talking  
14 about the friction testing that you requested.

15 Registrar, can you pull up  
16 OD6, page 60, paragraph 151. Thank you. Just so  
17 we can ensure our tech is working, can you also  
18 pull up -- the next page, 61. Can you see both of  
19 those pages? They're not obscured by your video?

20 A. Yes, I can.

21 Q. Great. Registrar, if you  
22 can call out paragraph 151, please.

23 So on September 30th, and this  
24 is after the rainstorms that we spoke about, you  
25 wrote to Mr. McLennan, Mr. Shynal, Mr. White,

1 Mr. Mater and Mr. Lupton, and said:

2 "As part of the ongoing  
3 pavement monitoring for asset  
4 management purposes we will  
5 have skid resistance testing  
6 completed on both the LINC and  
7 the Red Hill."

8 Just stopping there. Did you  
9 at this point understand that skid resistance  
10 testing was for ongoing asset management purposes?

11 A. I believe so, yes.

12 Q. But in addition to any  
13 risk analysis, it would also be used for asset  
14 management purposes, whatever those might be?

15 A. I believe that's what I  
16 implied in my e-mail. I don't know about the risk  
17 analysis, but for the asset management purposes,  
18 yes.

19 Q. Okay. You said:

20 "There is a standard by which  
21 we can report on the relative  
22 level of resistance and by  
23 which we can gauge the  
24 performance of each mix and  
25 road surface."

1                   So this is September 2013.  
2    What did you mean by "there is a standard"?   What  
3    standard are you referring to?

4                   A.    I believe I was under the  
5    impression that there was some standard that the  
6    MTO had from the information we received from  
7    them -- from the initial information we received  
8    in 2007, in -- that I received from Golder, that  
9    it was good and it was above what they would  
10   normally get.

11                  Q.    Okay.  So that it was  
12   above what the MTO typically would see, you  
13   understood that there was some standard by which  
14   the MTO was assessing to be able to make that  
15   statement to Dr. Uzarowski who then provided it to  
16   you?

17                  A.    I wasn't aware of the  
18   standard but I think I implied that there must  
19   have been something that they compared it to.  I  
20   don't know whether it was an internal thing or  
21   what it was but -- I'm not sure.

22                  Q.    You said you think you  
23   implied that?  You mean in this e-mail you think  
24   you implied that?

25                  A.    From Golder's e-mail that



1 was reporting the initial -- the initial  
2 comparison of our measurement or their measurement  
3 of our roadway.

4 Q. Okay. And you go on to  
5 say:

6 "This should be sufficient for  
7 any due diligence required  
8 eliminating the ought to have  
9 knowns as well as dealing with  
10 the 'we think it was slippery'  
11 issues."

12 So again this, just to bring  
13 you back, was after the rainstorms and after  
14 Mr. McLennan said lawyers love ought to have  
15 knowns. Was that due diligence reference in  
16 respect of Mr. McLennan's comments about assessing  
17 the ought to have knowns?

18 A. Yeah, yes. I mean, from  
19 my own -- I thought we were simply being proactive  
20 because I couldn't think of anything else that we  
21 in engineering services could do to address that.

22 Q. Okay. When you directed  
23 Golder to have friction testing conducted did you  
24 ask him or suggest to him that he coordinate his  
25 work with CIMA?

1 A. No, I don't believe so.

2 Q. Last day we went through  
3 that CIMA had just put in friction testing  
4 recommendations in its draft 2013 report. Did you  
5 turn your mind to that at the time?

6 A. I don't believe I did. I  
7 don't -- I don't recall linking the CIMA report to  
8 this request. I believe this request was simply  
9 in response to John McLennan's e-mail about the  
10 ought to have. I didn't have any other  
11 information that would lead me to link the two.

12 Q. Do you recall that that  
13 e-mail from Mr. McLennan came from a series of  
14 e-mails that started with these significant  
15 September rainstorms and a number collisions on  
16 the Red Hill. Did you turn your mind to the fact  
17 that CIMA had identified higher than expected  
18 rates of wet weather conditions when you directed  
19 Dr. Uzarowski to complete the friction testing?

20 A. I don't believe so. I  
21 think at the time both risk and traffic weren't  
22 aware of any large number of accidents or any  
23 accidents related to slipperiness. So I don't --  
24 again I thought this was simply proactive not in  
25 response to anything that was happening out there.

1 Even the initial indications was that it was  
2 speed, not road conditions.

3 Q. Mr. Moore, that wasn't my  
4 question. My question was did you turn your mind  
5 to the fact that CIMA had identified higher than  
6 expected rates of wet weather conditions when you  
7 directed Dr. Uzarowski to complete friction  
8 testing?

9 A. No.

10 Q. Did you advise  
11 Dr. Uzarowski that CIMA had identified areas of  
12 the Red Hill with higher than expected rates of  
13 wet weather conditions?

14 A. No.

15 Q. Dr. Uzarowski testified  
16 that this information would have been helpful to  
17 his understanding of the macrotexture on the  
18 pavement. Did you turn your mind to the  
19 connection between macrotexture and wet weather  
20 conditions at the time?

21 A. No, because none of the  
22 indication to date had indicated that they were  
23 linked.

24 Q. Okay. Registrar, can you  
25 close this down and open up and call out 153,

1 please. And you'll have to go over both pages.

2 Chris Jacobson in reply asked  
3 if he could piggyback on the skid resistance  
4 testing that you had communicated that you would  
5 have done, and asked if there was a firm to do  
6 skid resistance testing on some crosswalks that  
7 were being painted in an intersection. So not on  
8 the Red Hill. Elsewhere. You recall that you did  
9 ask Golder to include this testing within its  
10 friction testing assignment?

11 A. I do recall that.

12 Q. And in the end you  
13 learned from Golder that it wasn't possible to get  
14 useable data on friction values from the  
15 intersections; is that right?

16 A. That was my  
17 understanding.

18 Q. Can you close this down.  
19 Thank you. If you can go to the next page,  
20 please, 62, and 63. If you can call up page 59,  
21 please. Pardon me. I think I meant paragraph  
22 159, and if you can call up the excerpt on page 63  
23 as well, please.

24 So, Mr. Moore, this will come  
25 up shortly. This is an e-mail exchange between

1 Mr. Lupton, Mr. White and Mr. Ferguson in  
2 mid-October of 2013. And you'll see in the back  
3 and forth GL is Mr. Lupton on the top callout, and  
4 he's asking Mr. White and Mr. Ferguson to  
5 summarize the actions that they are going to put  
6 in the staff report and how they propose to  
7 proceed, and he says "I would like to get a sense  
8 of this before we arm wrestle Gary."

9 Do you recall in this period  
10 of time -- this is October -- any invitation from  
11 the traffic engineering staff to meet with you to  
12 discuss any concerns you had, any things you were  
13 not pleased with about the 2013 CIMA report?

14 A. I don't specifically. I  
15 don't know whether I seen the report at that time,  
16 or I don't recall whether I did or not.

17 Q. Okay. Mr. Ferguson goes  
18 on to say the report will be proposed -- I'm going  
19 to try to rephrase the grammar here. The report  
20 will propose a phased approach, essentially doing  
21 the easy items first with an evaluation to be  
22 completed after one year to determine if they  
23 worked.

24 Do you recall at any time  
25 before the staff report was completed that you

1 came to understand that it was going to be a  
2 phased approach to the items from the CIMA report?

3 A. I don't believe I did. I  
4 don't know whether I seen the report or not.

5 Q. I was asking about your  
6 understanding rather than the report.

7 A. I'm not sure -- I don't  
8 recall because I don't -- I don't recall  
9 whether -- I know I -- I don't recall being  
10 involved in the development of the report so  
11 therefore I don't -- I don't recall being aware of  
12 this or not. I don't think I was.

13 Q. Okay. You'll see under  
14 MW, that's Mr. White, and he says in the second  
15 and third line "we have to resolve that matter  
16 now." So that's about a separate safety review.  
17 "Let's chat early in week before the meeting with  
18 Gary Moore."

19 Does that refresh your memory  
20 about a planned meeting with traffic engineering  
21 staff and you?

22 A. No.

23 Q. Okay. Registrar, can you  
24 close this down. Can you go to the next two  
25 pages, 64 and 65, and pull up 163, please. Thank

1 you. And Registrar, you only have to pull up the  
2 first paragraph, the 165.

3 So this is an e-mail from  
4 Mr. Lupton to Mr. Ferguson and Mr. White. You're  
5 not copied. And he's giving direction about the  
6 nature of the report, the staff report and its  
7 contents. At the very bottom of this under 4(ii),  
8 there's a referencing to timing, weather  
9 permitting, completion in the spring of 2014, and  
10 then over to the second callout he says "did Gary  
11 agree to the frictionless piece."

12 And I think that is a typo and  
13 it should be 'friction testing piece' or even just  
14 a 'friction piece.' Do you recall meeting with  
15 Mr. Lupton, Mr. Ferguson or Mr. White in which  
16 they raised the issue of friction testing and  
17 sought your consent to include it?

18 A. I don't recall the  
19 meeting, but I don't know why they could be  
20 seeking my blessing or approval to do anything  
21 within their report.

22 Q. Okay. So if they just  
23 included the friction testing recommendation in  
24 the report did you understand that it would be  
25 engineering services who would have to implement

1 that recommendation?

2 A. I don't -- I don't  
3 believe so at this time. I don't know whether I  
4 had been asked. I don't recall.

5 Q. My question was did you  
6 understand that if this recommendation was in the  
7 staff report that it would be engineering services  
8 who would have to implement the recommendation?

9 A. I don't recall seeing the  
10 recommendation or being -- or any meeting so I  
11 don't know that I would understand that it was  
12 going to be my or engineering services'  
13 responsibility.

14 Q. As a matter of different  
15 divisions within public works, did you understand  
16 that engineering services was the one -- was the  
17 division that would have conducted friction  
18 testing if there was any recommendation for  
19 friction testing?

20 A. I don't -- I don't know  
21 that that's correct. We had done friction  
22 testing, we had taken that on, but there's nothing  
23 in anybody's responsibility list that says you are  
24 the friction testing people. So I don't -- that's  
25 not necessarily the case. If traffic had written



1 it and said they are going to oversee it because  
2 it's part of the rest of the measures that they  
3 are doing, then that would have been quite  
4 acceptable as well.

5 Q. That would have been  
6 acceptable to you?

7 A. Yes.

8 Q. Registrar, can you close  
9 this down and go to page 70, please. And if you  
10 can pull up 176 once you get there.

11 So this is confusing and I'm  
12 hoping to get your help, Mr. Moore. Mr. Lupton  
13 sent Mr. White and you and Mr. Ferguson a calendar  
14 invitation with the subject line "Cancelled: RHVP  
15 safety review - internal discussions" and then the  
16 body of the invite says "revised location of  
17 meeting."

18 Do you recall meeting with  
19 Mr. Lupton and/or Mr. White and Mr. Ferguson on  
20 October 28th?

21 A. I don't recall that, any  
22 specific meeting in that regard, no.

23 Q. Okay. Can you close  
24 this, Registrar, and go to the next paragraph  
25 please and call that out, 177.

1                                   On that day Mr. Lupton  
2   e-mailed Mr. White and Mr. Ferguson to update them  
3   on a conversation that he had with Gary, which I  
4   think is you. Can you review this and say if it  
5   refreshes your memory about whether you met with  
6   Mr. Lupton on October 28.

7                                   A.   (Witness reviews  
8   document). I remember Geoff coming to my office  
9   and us talking about some -- I don't recall what  
10  it was specifically or even if it was at that time  
11  in that regard.

12                                  Q.   Do you recall having a  
13  meeting with Mr. Lupton that was about the Red  
14  Hill in 2013?

15                                  A.   I don't. I don't recall  
16  anything specific in that regard.

17                                  Q.   Okay. Mr. Lupton, did he  
18  convey to you on October 28 that the plan was to  
19  do a phased approach that would defer the lighting  
20  installation on the ramps for a year to see if  
21  other countermeasures were successful?

22                                  A.   Again, I don't -- I don't  
23  recall any specific discussions with Geoff at that  
24  time or at all.

25                                  Q.   Okay. Mr. Lupton reports

1 that you said it is not uncommon to get an FOI for  
2 these type of things and that you suggested that  
3 we manage the final version report to reflect what  
4 we are saying. What did you mean, manage the  
5 final version of the report to reflect what we are  
6 saying, if indeed you made those comments?

7 A. Again, I -- I don't  
8 recall the discussion with Geoff but, I mean, it  
9 doesn't sound like -- it doesn't sound like  
10 there's anything wrong with that -- that message.

11 Q. Okay. So your evidence  
12 is that you would not have any issue with  
13 suggesting to Mr. Lupton that the City go back and  
14 suggest that the CIMA report mirror the staff  
15 report; is that right?

16 A. It's always good to have  
17 consistency amongst the reports, I mean, unless  
18 there's some major differential between what the  
19 consultant's recommending and what staff's  
20 carrying forward with. But for consistency and  
21 just good practice, it is good to make sure that  
22 they are consistent in their message.

23 Q. Does it sound like you to  
24 raise the issue of the potential to get an FOI?  
25 Does that sound like something you would say?

1                   A.    Have I said something  
2    like that in the past, possibly.  Did I say it in  
3    this regard, I can't recall.

4                   Q.    Why would you care about  
5    the possibility that this could be an FOI in  
6    respect of 2013 CIMA report or the staff report?

7                   A.    I don't know that I said  
8    it, and I don't know what the context was of our  
9    discussion with Geoff.  So, I mean, these are  
10   Geoff's words.  You would have to ask him what the  
11   context of that was and what he was explaining to  
12   Martin and Dave.

13                  Q.    So Mr. Lupton appears to  
14   be attributing to you a notion that a consultant's  
15   report should be modified to reflect the staff  
16   report so they mirror each other in case a  
17   consultant's report is produced as part of an FOI.  
18   Did you hold that view in 2013?

19                  A.    I don't know -- I don't  
20   know in 2013, I couldn't say for sure.  Again,  
21   whether it's an FOI or council or committee or  
22   providing it to anyone, it's just good practice to  
23   not have -- I'm looking for the word -- yeah,  
24   discrepancies between the two reports.

25                  Q.    Okay.  In your view is it

1 more appropriate that a staff report be modified  
2 to be consistent with a consultant report rather  
3 than the reverse?

4 A. I don't know to the  
5 extent in which he was referring. It's the staff  
6 report that's going to go to council. If the  
7 suggestions were made to the consultant that this  
8 is the way we're going to go forward then we would  
9 like you to modify your report to be consistent  
10 with that. If they didn't like that then I would  
11 expect that consultant to retain their position  
12 and then we would have to explain -- staff report  
13 would have to explain the difference between two.

14 Q. Thank you. I'm just  
15 going to stop here and really move forward in  
16 time, Mr. Moore. We are going to talk a fair bit  
17 today, and over the coming days, about the  
18 Tradewind report and the Golder report.

19 Because we're on the topic of  
20 FOIs, did you ever provide the Tradewind report or  
21 the Golder report to anyone at the City for the  
22 purposes of a response to an FOI?

23 A. I don't believe so, no.  
24 I don't know whether one was requested under an  
25 FOI while I was there.

1 Q. And to your recollection  
2 did you ever receive an FOI for which the  
3 Tradewind report or the Golder report would have  
4 been responsive?

5 A. I don't believe so or we  
6 would have provided it under that regard.

7 Q. Thank you. Registrar,  
8 you can close this down.

9 Sir, around November 2013,  
10 that's the public works committee meeting, you did  
11 not attend the portion of the meeting in which the  
12 committee received the staff report related to the  
13 2013 CIMA report, did you?

14 A. I don't know.

15 Q. Do you have any  
16 recollection of attending?

17 A. I don't -- I mean, I  
18 attended a lot of those meetings in my time so, I  
19 mean, a specific meeting I couldn't recall, no.

20 Q. Well, we'll go through it  
21 shortly, but it looks like after the fact you have  
22 an e-mail exchange with Mr. Lupton where you say  
23 what did the committee not understand. It  
24 certainly left me with the impression that you  
25 didn't attend at the time.

1                   So just going back in your  
2 mind -- and we do have a video. I don't want to  
3 have to spend the time to take you to it. I don't  
4 see you on the video. So sitting here today can  
5 you refresh your memory about whether you attended  
6 that particular public works committee meeting?

7                   A. Again, I don't -- I don't  
8 recall. I wouldn't know unless again if -- unless  
9 I take your word for it that I didn't attend.

10                  Q. Did you review a copy of  
11 the final staff report before it was sent to the  
12 public works committee?

13                  A. It's possible but I don't  
14 recall.

15                  Q. Registrar, can you bring  
16 up RHV668, please.

17                         Would it have been your  
18 practice to review staff reports that were going  
19 to committee, especially where you had had  
20 discussions with other staff about the staff  
21 report?

22                  A. Not necessarily. If I  
23 had been asked -- I mean, I had no responsibility  
24 under this report I believe. It was done by  
25 traffic and they asked my -- I believe they asked

1 for my input at one time given the information  
2 here that they said Gary said. So I mean, I must  
3 have reviewed part of it but I don't know that I  
4 would respond or review the final in any regard.

5 Q. Okay. You said yesterday  
6 that you had an interest in maintaining the Red  
7 Hill even after you took on the director of  
8 engineering role. This is a report that's about  
9 the Red Hill. Did you have a practice of  
10 reviewing reports that touched on the Red Hill?

11 A. My interest was in the  
12 condition of the Red Hill. There's lots of  
13 operational stuff that took part out there. There  
14 would be snowplowing reports and other operational  
15 type reports that I wouldn't have that much of an  
16 interest in.

17 Q. Registrar, can you bring  
18 up the first two pages of this, please.

19 Just before I go into that  
20 document, is there a practice within public works,  
21 or sorry, was there at the time in 2013 by which  
22 actionable items coming out of an information  
23 report would be allocated amongst various  
24 divisions that have responsibility?

25 A. Can you give me that



1 again? I'm not sure I --

2 Q. I can try to say it  
3 differently. So this is an information report.  
4 Was there a practice within public works that  
5 after an information report went to, in this case  
6 public works, and there was some actionable items  
7 coming out of it, was there some practice to  
8 ensure that those actionable items were allocated  
9 to divisions within public works?

10 A. I don't know that there  
11 was a practice or a policy. If I had written an  
12 information report that was going to bind another  
13 section I would have had discussions with them  
14 and, you know, and got buy-in before it went. I  
15 don't know whether that was the case here or not.

16 Q. Well, what about after  
17 the fact, that's my question, coming out of the  
18 public works committee meeting?

19 A. If council accepts the  
20 report and the general manager is -- has signed  
21 off on the report, and then whoever needs to do  
22 what is going to be directed by the general  
23 manager.

24 Q. Okay. And was there some  
25 sort of process by which at this point Mr. Davis

1 was saying here's the list of actionable items and  
2 here's the division -- the allocation amongst the  
3 divisions? I suspect not from what I hear about  
4 Mr. Davis' managerial style.

5 A. Typically that type of  
6 thing would've been handled through his admin,  
7 whether it was an information report or an  
8 action -- a report, you would typically get an  
9 e-mail, whether it was this is has been approved  
10 you're now required to do this or this is a -- on  
11 the to-do list for something in the future, I mean  
12 Gerry had lots of other stuff to do rather than  
13 respond to administrative stuff.

14 Q. Thank you. Going to the  
15 full paragraph of image 2, please. Sorry, next  
16 paragraph down, the second full paragraph. Thank  
17 you.

18 Were you aware that traffic  
19 staff who had submitted this report had committed  
20 to -- and this is the very last line -- review  
21 further countermeasures such as friction testing  
22 with construction engineering? I'm sorry, I  
23 should be more specific. Were you aware, coming  
24 out of the public works committee meeting on  
25 November 13th, of this commitment?

1                   A.    I don't recall  
2 specifically but I don't recall the other  
3 recommendations either of the cat's eyes or the  
4 additional pavement marking at this time.  So  
5 it's -- I would say it's unlikely that I knew at  
6 that point in time either.

7                   Q.    Okay.  To your knowledge  
8 did traffic staff review the friction testing  
9 countermeasure with construction engineering after  
10 November 2013?

11                  A.    Well, I mean, there's --  
12 it's difficult to tell because I'm not quite sure  
13 who construction engineering is.  If they meant  
14 engineering services, our group, or construction  
15 engineering, the division within our group, I'm  
16 not quite sure who they were talking to, but I  
17 don't recall any specific discussion.

18                  Q.    You don't recall knowing  
19 about any specific discussion?

20                  A.    Or being included in any  
21 specific discussion.

22                  Q.    Okay.  Registrar, can you  
23 close this callout and go to image 5.  If you can  
24 call out the bottom half of this under ramp 6.

25                  Mr. Moore, one of the items in

1 the countermeasures was to install high friction  
2 pavement approaching in through the curve. You  
3 see that sort of in the middle on the second line.  
4 Were you aware that this was an actionable item  
5 coming out of the public works committee meeting?

6 A. Seeing it now I don't  
7 believe I was because it -- it's already high  
8 friction pavement so I would have likely  
9 questioned it at the time of what they were  
10 specifically talking about. So I'm not quite sure  
11 what -- it's unlikely that I was aware.

12 Q. Okay. And we talked a  
13 little bit yesterday about how engineering  
14 services works. Would the implementation of this  
15 countermeasure follow the capital works process  
16 that we discussed yesterday, that is, it goes to  
17 asset management, then design, then construction  
18 involving geomatics as necessary?

19 A. It's possible. Sometimes  
20 that is included in capital works if we're going  
21 out there to do another project. Something  
22 specific such as this may be a -- not on the main  
23 capital budget but it's a special project that may  
24 or may not be incorporated that fashion.

25 Q. Okay. The inquiry has

1 not received any document to suggest that you or  
2 anyone at engineering services ever considered  
3 whether to implement this recommendation, when to  
4 do it or exactly what should be done, nor any  
5 documents to suggest that it was done coming out  
6 of the 2013 report during your tenure as director  
7 of engineering services. Do you have any evidence  
8 to the contrary?

9 A. I don't believe I do. I  
10 don't recall any other paving that was done out  
11 there in that regard.

12 Q. Thank you. You can close  
13 this down. And if you can go back to image 2,  
14 please. If you can call out the second-to-last  
15 paragraph.

16 So this is that phased  
17 approach I was talking about to defer installation  
18 of new roadway lighting. If this recommendation  
19 had in fact been recommended for immediate  
20 implementation it would have been engineering  
21 services who would have been responsible for the  
22 installation of lighting; is that right?

23 A. Had this been a  
24 recommendation report I would have thought that  
25 specific recommendations for the type of lighting

1 would need to have been identified as well as a  
2 budget. Had that been the case then it's  
3 something that we could have implemented.

4 Q. So my question is  
5 specific, and perhaps I didn't ask it well so I  
6 will -- I don't want to interrupt you but just  
7 so --

8 A. Sure.

9 Q. Because I fear I wasn't  
10 clear. In terms of the divisions within public  
11 works who would have been responsible for the  
12 installation of lighting, that would have been  
13 engineering services if that project was going  
14 ahead; is that right?

15 A. Had a fully identified  
16 project been identified and budgeted engineering  
17 services would have been the ones to carry it out.

18 Q. Thank you. Registrar,  
19 you can close this down and if you can call out  
20 HAM4339, please. You can go to the next image,  
21 please, and if you can pull out Ms. Cameron's  
22 e-mail in the middle.

23 So Ms. Cameron circulates the  
24 outstanding business list that has -- that staff  
25 are directed to report back respecting the

1 lighting aspects of the improvements. Were you  
2 aware before you received this notice that the  
3 public works committee had put this issue on the  
4 outstanding business list?

5 A. I don't -- I don't  
6 believe so. I don't recall it specifically, you  
7 know, being outstanding. Diana let us know. She  
8 would monitor that type of thing or be told by the  
9 general manager's office it was on the list as a  
10 reminder.

11 Q. So that suggests to me  
12 that you didn't attend the public works committee  
13 meeting where this occurred. Do you agree with me  
14 logically that that would flow?

15 A. I -- we would get these  
16 whether I attended the meeting or not.

17 Q. Okay. You can close this  
18 down, Registrar, and go to -- open up -- call out  
19 Mr. Moore's e-mail at the top.

20 MR. LEDERMAN:

21 Mr. Commissioner, I'm sorry to interrupt, and  
22 perhaps before carrying on with this e-mail.

23 There was a question that Ms.  
24 Lawrence put to the witness a moment ago -- a few  
25 moments ago about whether the inquiry had no

1 information regarding the implementation, and I  
2 don't believe that that is correct, of the  
3 countermeasure relating to high friction pavement.  
4 And I just wanted to make sure that we didn't pass  
5 over that in light of the suggestion that there  
6 was no information before the inquiry in relation  
7 that.

8 JUSTICE WILTON-SIEGEL: If you  
9 feel that there is something there I would ask you  
10 to do two things. First of all, during the break  
11 provide it to commission counsel, and if you feel  
12 that whatever she does with it is not  
13 satisfactory, then of course you're free to raise  
14 it on your examination of this witness.

15 MR. LEDERMAN: Thank you, I'll  
16 do that at the break. I just didn't want to lose  
17 sight of it in light of this --

18 JUSTICE WILTON-SIEGEL: That's  
19 fine. Let's proceed.

20 MR. LEDERMAN: Thank you.

21 BY MS. LAWRENCE:

22 Q. Mr. Moore, you respond to  
23 Mr. Lupton, Mr. White and Mr. Mater and you say  
24 what part of, and I'm just going to summarize,  
25 what part of 1, 2, 3, 4, 5 did the committee not



1 get. So you have 5 points here. Take a look at  
2 this and read it. Do you agree you were  
3 expressing frustration at the committee's decision  
4 to keep the issue of lighting on the OBL list?

5 A. Yes, I would agree with  
6 that.

7 Q. That you had quite a  
8 strong view that council and the committee should  
9 not be considering any changes to lighting?

10 A. No, just the fact that  
11 we've done it over and over I felt was a  
12 repetitive response I believe at that time.

13 Q. Okay. But part from the  
14 2013 CIMA report, there hadn't been any analysis  
15 about the potential benefits of increasing or  
16 improving lighting, right?

17 A. I don't think that was my  
18 point. The fact that the environmental assessment  
19 had approved decision point lighting as well as  
20 the rest of the project is what we built, I  
21 mean -- so that is what I believe I was referring  
22 to here.

23 Q. You had quite a strong  
24 view given your understanding of the environmental  
25 assessment approval of decision point lighting,

1 that that was the lighting that existed on the Red  
2 Hill and that there shouldn't be further time or  
3 resources to try to change that. Did you hold  
4 that view at the time?

5 A. I don't know if it was a  
6 strong view. I had expressed the view several  
7 times that regardless of what you assess as need,  
8 without revisiting the EA and taking that into  
9 account you were -- if you weren't prepared to do  
10 that then you weren't -- you can do all the  
11 assessment that you want, but it's not -- until  
12 you're prepared to revisit the EA it's going to be  
13 an uphill battle and not going to be -- not -- not  
14 approved, not going to be implemented without  
15 that.

16 Q. Did you express that view  
17 that you just set out just now to Mr. Malone  
18 during your call in June 2013?

19 A. I don't recall  
20 specifically, but I was pretty consistent in  
21 anybody that asked about that in that regard.

22 Q. Okay. You say we  
23 shouldn't be talking about potential improvements  
24 that will give any claimants more ammunition.

25 Do you agree that if there is

1 a countermeasure that might improve safety that  
2 staff should provide analysis of the benefits of  
3 that countermeasure to the PWC?

4 A. Yes, we should be.

5 Q. You're not suggesting  
6 that the City should decline to commit (ph)  
7 measures to improve safety in place that because  
8 doing so might reveal a safety that could expose  
9 the City to liability, are you?

10 A. No, I'm not saying that.

11 Q. Okay. And it's  
12 ultimately the committee and then council's  
13 decision to decide whether to put in place  
14 countermeasures that might expose the City to  
15 liability. Do you agree with that?

16 A. It's incumbent upon staff  
17 to give recommendations that can be implemented  
18 and not just give them a list of possible things  
19 that are on a laundry list of things that might be  
20 done without a thorough analysis of available  
21 approvals and implementation and costs and  
22 benefits. So without all that analysis we  
23 shouldn't be just giving possible things out of  
24 hand.

25 Q. Okay. Just so that I

1 have your evidence. Had you reviewed this e-mail  
2 report at this point, to your recollection?

3 A. From my comment here did  
4 we get CIMA to finalize -- I would say no, I  
5 didn't see the final report.

6 Q. And then more generally.  
7 At this period of time, we're talking December  
8 2013, you reviewed the CIMA report?

9 A. I believe I had seen it  
10 in some fashion but I don't know whether I -- I  
11 had thoroughly examined the report.

12 Q. Can you close this down  
13 and to go image 1, please. And if you can pull up  
14 the e-mail exchanges between Mr. Moore and  
15 Mr. Lupton that -- in fact, Mr. Moore, can you  
16 review this if we don't pull out? Is it -- is the  
17 font big in enough?

18 A. Yes. I mean, is there  
19 something from before this?

20 Q. No, this is the follow on  
21 of the e-mail.

22 A. Okay.

23 Q. From your e-mail. So  
24 Mr. --

25 A. I'm just not sure what

1 the referral of good plan is.

2 Q. Well, we'll go up because  
3 it's from the bottom up. So on the bottom  
4 Mr. Lupton says yes to items 1 through 5, the  
5 items that we just looked at, the five things you  
6 asked for --

7 A. Oh, I see.

8 Q. -- budget and the  
9 committee understands. He asked did you review  
10 the info report and he says we did our best to  
11 discourage it. And you say they won't want a  
12 report on (indiscernible), they want a report  
13 on -- they want another report just on lighting  
14 now.

15 So you understood they wanted  
16 another report on lighting because of the  
17 outstanding business list?

18 A. Yeah, I think there was  
19 some confusion on what they exactly wanted.

20 Q. Mr. Lupton says you can  
21 lead a horse to water. We tried. And you said I  
22 just shoot the horse.

23 So as I read this metaphor,  
24 Mr. Lupton is saying that the committee is the  
25 horse who won't follow Mr. Lupton's suggestions.

1 And it seems that in response you're saying if the  
2 committee won't come along with staff reports you  
3 wouldn't permit them the opportunity to come  
4 along.

5 So I'm certainly not going to  
6 try to maintain this metaphor, but my question is:  
7 It appears you are frustrated with the outcome  
8 here. If you had been lead on this report what  
9 would you have done differently to achieve the  
10 outcome that you thought would be preferable?

11 A. I can't even begin think  
12 of all the steps, you know, I might have done.  
13 But I don't -- I don't know. At this time I  
14 don't -- without the full report in front of me  
15 and knowing the context of everything that would  
16 happen of being involved all the way through I  
17 don't know what I would have done.

18 Q. Registrar, can you close  
19 this down and pull up OD6 page 77, please. If you  
20 can pull 195. Actually it might be better to go  
21 into the actual document. Can you close this and  
22 go into GOL2647.

23 So you see at the bottom of  
24 this e-mail exchange Dr. Uzarowski e-mails you and  
25 says that the price to carry out friction testing

1 and prepare a short memo is \$8,000. And that's  
2 for the Red Hill, the LINC an the crosswalks.

3 And then you respond and you  
4 copy in some folks and you say this is acceptable,  
5 please proceed. You ask Diana to prepare a  
6 purchase order and you copy in Marco, Rich and  
7 Martin and say that Golder is going to do this and  
8 they need traffic control.

9 So that I understand  
10 Mr. Shebib, Rich, is a corridor management person  
11 so involved in traffic control coordination; is  
12 that right?

13 A. That's correct. If I  
14 recall Rich coordinated lane closures and that  
15 type of thing.

16 Q. Were you keeping  
17 Mr. White in the loop based on the fact that this  
18 friction testing that you have approved was  
19 following from the September rainstorms and the  
20 back and forth with him and Mr. McLennan?

21 A. In this memo I believe I  
22 was just letting him know because of the traffic  
23 control coordination that needed to be done. I  
24 don't -- I don't recall whether I was doing it as  
25 a double reason. I can't recall at this time.

1 Q. Registrar, can you close  
2 this document down and go back into OD6 83,  
3 please. And can you pull up 216.

4 So this is January 7th. The  
5 testing was done in late 2013 and we know by the  
6 end of January you receive further information  
7 about the testing. So kind of in the middle of  
8 those two points, January 7th.

9 And Dr. Henderson from Golder  
10 is following up with Tradewind, who has conducted  
11 the friction testing, asking for the results. And  
12 he says the client was starting to bug me.

13 Do you recall following up  
14 with Dr. Henderson or anyone else at Golder about  
15 the status of these friction test results.

16 A. Specifically I don't -- I  
17 don't recall.

18 Q. That's fine. Was there  
19 any particular date by which you were expecting to  
20 get the friction test results?

21 A. I believe I was expecting  
22 them as part of the overall five-year, six-year  
23 review and I don't -- I don't recall at this time  
24 what the timeline of that was. I think I was  
25 expecting it sooner than this but I don't



1 specifically recall bugging them as (garbled  
2 audio) specifically for these but --

3 Q. Okay. You approved the  
4 proposal, the \$8,000 quote on November 19, 2013.  
5 Did you expect a turnaround within two months?

6 A. It seems to me that I  
7 thought it had to be done before winter so that it  
8 was going to be done right away.

9 Q. Okay. And it was?

10 A. And so that I was  
11 expecting results in that regard but I don't  
12 remember a specific timeline for it.

13 Q. Okay. Stepping away from  
14 these friction results and stepping away from this  
15 period of time, just more generally, in your  
16 experience with Golder and with Dr. Uzarowski up  
17 to this point did you find that you had to chase  
18 him for work as a matter of course?

19 A. I wouldn't use the term  
20 chase. Remind that I had been expecting things.  
21 I understood Ludomir was a very, very busy guy and  
22 other things and I guess sometimes it took that  
23 reminder that things were outstanding, and  
24 sometimes more than one reminder.

25 Q. Registrar, can you close

1 this down and go to page 87, please. If you can  
2 call out 230 and 231.

3 So this is January 24th:  
4 "I received a message from my  
5 client this morning he needs  
6 the friction test results this  
7 morning. He has a meeting  
8 with the management to discuss  
9 the pavement issue."

10 And then shortly thereafter he  
11 sends another message to Tradewind:

12 "My client needs a comparison  
13 of friction numbers on the Red  
14 Hill Valley Parkway in  
15 Hamilton from 2007 to 2013. I  
16 gave summarized 2007 and I  
17 need the numbers from 2013."

18 That's what Tradewind is  
19 working on. He needs a summary before noon.

20 Can you close this down?

21 Did you ask for these -- the  
22 friction test results on January 24th?

23 A. I don't recall whether  
24 I....

25 Q. Did you have -- sorry?

1 Did you have a meeting with management to discuss  
2 the pavement issue on January 24th?

3 A. I don't recall any  
4 meeting in that regard. I don't know what it  
5 would be about or who it would be with. I  
6 don't -- I don't even remember a sense of a  
7 meeting in that regard so --

8 Q. In -- I'm sorry.

9 A. Hmm?

10 Q. I didn't mean to  
11 interrupt you. Are you done?

12 A. I'm sorry. Go ahead.

13 Q. We found an e-mail from  
14 January 24th that Susan Jacobs was acting in your  
15 absence as director.

16 Registrar, can you bring that  
17 up. It's HAM62857. And this is 10:28 in the  
18 morning:

19 "I understand I am acting in  
20 Gary's absence. However, I  
21 will be off site this morning.  
22 Chris is also off site for  
23 training and Diana says I  
24 don't see anything major  
25 happening."

1 Does that assist you at all in  
2 whether you had a meeting with management?

3 A. If I'm not in and Susan  
4 is acting it's unlikely that I was at a meeting --  
5 or required at a meeting.

6 Q. You wouldn't have a  
7 meeting and then designate someone as acting?  
8 Just because you're in a meeting doesn't mean that  
9 someone has to take on the acting director role;  
10 is that right?

11 A. That's correct.

12 Q. I'm going to suggest to  
13 you that you didn't have a meeting with management  
14 and that you were asking for these results so that  
15 you can pass them onto an industry colleague, a  
16 Tom Dziejko -- I may be mispronouncing his  
17 name -- at Aecon. Do you think that that's right?

18 A. From the correspondence  
19 I've seen during this I believe that's -- that's a  
20 likely scenario.

21 Q. On January 23, the date  
22 before, you attended a charity event in Toronto as  
23 Tom's guest; is that right?

24 A. That's correct.

25 Q. And you had some -- so

1 you went to the event and then you had drinks with  
2 him after; is that right?

3 A. I believe so.

4 Q. After that did you get  
5 back to Hamilton or did you stay the night in  
6 Toronto?

7 A. It's very possible I  
8 stayed over in Toronto.

9 Q. Okay. Do you know if the  
10 24th was a planned day out of the office or an  
11 unplanned day out of the office?

12 A. I don't know at this  
13 time.

14 Q. On that evening at this  
15 charity event did you discuss with Mr. Dziejko  
16 how the stone mastic asphalt was holding up?

17 A. I don't recall  
18 specifically discussion in that regard. Typically  
19 when Tom and I got together we did talk about all  
20 things asphalt. I mean, that's what we did. So  
21 what he was doing, what I was doing is typically  
22 what would occur during that meeting. So  
23 specifically I can't recall.

24 Q. Do you recall him asking  
25 you for friction test results because he was doing

1 a presentation and wanted to include them?

2 A. I believe I'm going to  
3 see correspondence in that regard that I sent him  
4 that information, so I believe that's correct.

5 Q. Okay. You didn't just  
6 send it unsolicited, right?

7 A. No, I don't believe so.

8 Q. You can close this down,  
9 Registrar, and if you can go to GOL2657. If you  
10 can blow up the entire thing just so that's --  
11 that's perfect. Thank you, Registrar.

12 So you did receive at 11:45  
13 for that noon deadline an e-mail from  
14 Dr. Uzarowski to you and copied to Dr. Henderson.  
15 And he says:

16 "Immediately following  
17 construction on the Red Hill  
18 in 2007 the MTO performed  
19 friction tests and provided a  
20 table of those MTO friction  
21 tests."

22 And then next paragraph is:

23 "In 2013 friction numbers were  
24 measured on the Red Hill in  
25 both directions by Tradewind

1 Scientific using a grip  
2 tester."  
3 And then he provides the  
4 average FN numbers. And in addition, the third  
5 paragraph, the MTO published a paper at a  
6 conference, Early Age Low Friction Problem at SMA  
7 in Ontario.

8 Am I right that your peer,  
9 Mr. Dziedziejko, who we were just talking about,  
10 is an author on that last paper? Do you recall  
11 that?

12 A. Oh, Tom was an author on  
13 that paper, yes.

14 Q. This e-mail also encloses  
15 some spreadsheets.

16 Registrar, can we leave this  
17 up but in the next image pull up GOL2658. Thank  
18 you.

19 So this is from the MTO. You  
20 remember receiving this and noting that it was the  
21 2007 results?

22 A. I know I've seen this.  
23 I'm not sure whether I seen it immediately in 2007  
24 but I more specifically recall the summary numbers  
25 so I'm -- I have seen that before.

1 Q. Okay. I'm not going to  
2 pull out the other -- there's another spreadsheet  
3 and there's that paper. There are also  
4 attachments.

5 At the time when you received  
6 this e-mail, and very specifically at that time,  
7 not like what you know now, given the way that the  
8 information was presented to you, did you take  
9 away from this e-mail that the average friction  
10 numbers from 2007 were comparable to the average  
11 friction numbers collected in 2013?

12 A. I believe so. I had no  
13 reason to -- I mean, they are presented here as  
14 comparable numbers. I mean, that was my  
15 understanding.

16 Q. It says that --  
17 Registrar, you can close down image 2.

18 It says that the friction  
19 numbers in 2013 were measured by Tradewind  
20 Scientific. Were you aware before you received  
21 this e-mail that it was Tradewind Scientific who  
22 completed the friction testing in 2013?

23 A. I don't believe I was. I  
24 don't believe I knew that it was Tradewind or a  
25 grip tester before seeing this because I -- I



1 don't recall giving any results prior to this.

2 Q. Not results, but just  
3 that it was Tradewind, that that was the name of  
4 the company who did this work.

5 A. I don't remember seeing  
6 any other correspondence to indicate, so I don't  
7 know that I would know.

8 Q. At the time did you  
9 understand the usefulness of an average friction  
10 number as an indicator of friction levels?  
11 Actually maybe I can rephrase that.

12 What did you understand, if  
13 anything, was the usefulness of an average  
14 friction number as an indicator of friction  
15 levels?

16 A. Well, I mean, from the  
17 information that I had received and I believed  
18 that it was -- I believe it was the average  
19 friction number you were looking for. I wasn't  
20 sure that there was anything else that was  
21 relevant, whether there was individual numbers. I  
22 mean, there's a range in numbers and then averages  
23 providing for the other, so I don't know what else  
24 I could conceive other than it's the average  
25 number that's applicable.

1 Q. So there's a fair bit of  
2 variability in the numbers that -- looking at the  
3 MTO chart that produce the average friction  
4 numbers. For example, southbound lane one is 28.1  
5 to 36.5. Do you see that?

6 A. I do see that.

7 Q. Do you recall if you paid  
8 any attention to the range of data that was set  
9 out in this table?

10 A. I don't -- I don't  
11 believe so. I don't recall being provided any  
12 sensitivity -- you know, numbers within three or  
13 four or two of the average are good or not. So I  
14 didn't have any sense of the sensitivity on the  
15 range of numbers, no.

16 Q. We spoke last day about  
17 your filing system. Did you save this e-mail when  
18 you received it or did you delete it?

19 A. Most likely I saved it.  
20 I mean, I passed it on so -- it's likely that I  
21 saved it.

22 Q. And you did pass it on.  
23 Registrar, can you bring out -- MTO 15946.

24 So this is a slide deck. If  
25 you can go to -- I'm quite sure that the slide

1 number that I'm going to reference is wrong. Just  
2 give me one second to make sure that it's right.  
3 Apologies. I believe it is slide number 11.  
4 There's a reference to the Burlington Street  
5 traffic areas. Sorry, and just stopping here.

6 Do you recall, did you attend  
7 the presentation where this was presented? It was  
8 the Municipal Road Technologies Workshop at the  
9 Mississauga Convention Centre.

10 A. I'm sorry, where was it?

11 Q. It was the Municipal Road  
12 Technologies Workshop at the Mississauga  
13 Convention Centre.

14 A. I don't recall -- I don't  
15 recall attending that workshop, and I don't think  
16 I seen this.

17 Q. Okay. I was wrong.  
18 Image 12 was the one I wanted to go to.

19 So in this slide presentation,  
20 we won't go through it, number of references to  
21 municipal SMA and provincial SMA projects. It  
22 references the Red Hill project and it says "city  
23 rates performance to date as excellent."

24 Now just to orient you, this  
25 is presented on January 29, and I haven't taken

1 you to it, but you do flip Dr. Uzarowski's e-mail  
2 to Mr. Dziedziejko before January 29. Do you know  
3 the source of the reference here "city rates  
4 performance to date as excellent".

5 A. I don't know for a fact,  
6 but it was likely in our discussions with Tom.

7 Q. Next slide. These are  
8 the friction numbers; is that right?

9 A. It appears to be  
10 consistent with the information I sent him, yes.

11 Q. Registrar, you can close  
12 this down and go back to OD6 page 89, please. And  
13 if you can call up -- actually hopefully you can  
14 just read it.

15 Mr. Moore, if you can call up  
16 not slide 90, image 90 addition to image 89,  
17 please. And you'll see you flip that to Tom and  
18 it includes that summary on the second page.

19 So that reference to the City  
20 rates performance as excellent. Was that a view  
21 you felt comfortable sharing or expressing in  
22 December of 2013, January of 2014?

23 A. I believe it was. I  
24 believe in general everything I had seen to date  
25 at that point had indicated the pavement was

1 performing very well.

2 Q. Okay. And I recognize  
3 you only have about 15 minutes to review this from  
4 receiving it and then sending it to your friend.  
5 Did your review during that period of time leave  
6 you with the impression that performance -- City  
7 rates performance as excellent was an accurate  
8 statement?

9 A. I believe at the time  
10 that was my -- that was my view that the road was  
11 performing very well, so yes, I believe so.

12 Q. Do you recall how you  
13 send the e-mail to Mr. Dzieziejko if you weren't  
14 in the office? This is 2013.

15 A. I don't. It could have  
16 been forwarded with -- I don't think I had a  
17 laptop at the time. It may have simply been a  
18 mobile device but I don't -- I don't know whether  
19 I was in in the early afternoon. This is sent  
20 before noon. If I was off I don't --

21 Q. You don't remember?

22 A. I don't recall, no.

23 Q. Okay. Registrar, can you  
24 go to page 96, please.

25 You see at 2:51 on January 31

1 Dr. Uzarowski e-mailed you an updated draft report  
2 on the conditions of pavement. Now we're six  
3 years after completion and it has a draft  
4 watermark throughout.

5 Registrar, can you bring up  
6 GOL2980, please. Pardon me, 2981, please.

7 So this whole document is  
8 120 pages. And just before we get into it,  
9 further to our discussion yesterday about your  
10 filing practices you said, I think yesterday, that  
11 your practice was to save e-mails that had  
12 attachments, that you would just save the e-mails  
13 and that you wouldn't pull off and save separately  
14 a document. Did you follow that practice in this  
15 case?

16 A. I don't -- I don't know.

17 Q. Did you save this  
18 document, the Golder report, anywhere in your M  
19 drive separately from the e-mail in which it was  
20 attached to?

21 A. Specifically no, I don't  
22 recall taking any action with this other than  
23 simply putting it in the -- I was still -- it  
24 likely still resided on my e-mail desktop until I  
25 was done with it.

1 Q. As an attachment to an  
2 e-mail, not as a separate document?

3 A. Just as an attachment to  
4 the e-mail.

5 Q. And to your recollection  
6 when you received it you didn't save it in any of  
7 the other places that we talked about yesterday,  
8 project-wise, M drives, S drives --

9 A. As a draft, no, I  
10 wouldn't typically do that.

11 Q. Registrar, can you go to  
12 the next image, please. So we'll go through and  
13 it has a draft watermark all throughout. Was it  
14 common for Golder to send a draft report for  
15 discussion before finalizing?

16 A. Yes, I believe that any  
17 consultant report, that was typical practice.

18 Q. Okay. Registrar, can you  
19 also bring up the next image, image 3. Can you  
20 bring them up together. Thank you.

21 So the table of contents shows  
22 the seven pages of the Golder report and then it  
23 has reference to the tables and figures and then  
24 it has the appendices. Those aren't paginated but  
25 they flow after page 207 to page 120.

1                   So you'll see we have the  
2 field investigation, looking at the table of  
3 contents, the results of the visual condition  
4 inspection, the pouring and the surface profile,  
5 and then the FWD data analysis.

6                   So we looked at all of those  
7 in an earlier draft and I think your view was you  
8 weren't sure if you had seen an earlier draft in  
9 respect of those aspects of the five-year pavement  
10 condition evaluation; is that right?

11                  A.    If I told you I didn't  
12 recall then I still don't recall.

13                  Q.    And then so what is new,  
14 at least from Golder's drafting exercise, is  
15 number 5, the friction testing, and then the  
16 analysis and recommendation. So we will get to  
17 this shortly, but you had a brief call and then a  
18 meeting with Dr. Uzarowski the following week.  
19 Did you review the Golder report, these first  
20 seven pages, before you met with him?

21                  A.    I believe I did.  
22 Something in my recollection seems that I read  
23 this right away when I got it because I had been  
24 expecting it.

25                  Q.    Did you print a copy of



1 all or part of this document for your review or  
2 did you read it in electronic form?

3 A. I may have printed the  
4 first seven pages, but I don't think I would have  
5 printed out the appendices type of thing. It's  
6 not -- it wasn't -- like you said, it's 130 pages,  
7 or whatever it was.

8 Q. We haven't found any  
9 hardcopy or electronic copies that have any of  
10 your notations on it. Do you recall if you made  
11 notations or marked up any copy of the Golder  
12 report?

13 A. I don't -- I don't know.

14 Q. Did you have a consistent  
15 practice about marking things up?

16 A. I don't know whether it's  
17 a consistent practice. I usually like to get hard  
18 copies and if I had a question then I would do  
19 that, but I don't know in this case whether I did  
20 or not.

21 Q. Okay. So I'm just going  
22 to take you through what the rest of this document  
23 looks like. So if you could go to page --  
24 image 7, please. Actually I meant 7 and 8,  
25 please. Thank you.

1                   This is -- apologies, I was  
2    talking about pages rather than images. I meant  
3    12 and 13, please.

4                   This is the end, the last bit,  
5    and then the appendix A starts. And I can tell  
6    you, so we're on image 12 of 120.

7                   Registrar, can you go to the  
8    next two images and bring them up. There are  
9    pages and pages and pages of photographs like this  
10   one that are about the visual inspection. Do you  
11   remember scrolling through those?

12                  A. I believe I did see  
13   those, yes.

14                  Q. Registrar, can you go to  
15   image 50. This is the second appendix and if you  
16   can go to 51 and 52, please.

17                  There's many pages of these  
18   core photographs. You also spoke to those?

19                  A. I have seen those before  
20   so yes, I would have to say that I went through  
21   those, yes.

22                  Q. If we can go to image 67.  
23   Actually go to image 66, please. If you can just  
24   scroll back. Pardon me. Go to 68, scroll  
25   forward. There we go. So this is appendix D. I

1 think I might've skipped have appendix C. That  
2 one was short. It's about the IRI that we were  
3 just looking at so. There's image, appendix D.  
4 This is the falling weight deflectometer results.  
5 And those scroll for -- there are just charts and  
6 charts and charts for -- up to page 110.

7 Registrar, can you scroll  
8 through a few of those. If you can go to image  
9 101, please. So it's page 101 of 120 where image  
10 F is and this is the friction test results.  
11 Registrar, can you bring up the next two images,  
12 please.

13 So did you thumb through the  
14 report, read appendix F before you met with  
15 Dr. Uzarowski on February 7th?

16 A. I believe I did.

17 Q. You scrolled through the  
18 hundred pages of text that we just highlighted and  
19 then you read this one as well?

20 A. I believe so.

21 Q. Okay.

22 A. I don't know with -- you  
23 know, scrolling through them is not that onerous.  
24 They are just pictures.

25 Q. Did you print out this

1 document to review it in hard copy?

2 A. Not that I can

3 specifically recall, no.

4 Q. Okay. Can you help me

5 with your best estimate of when you read the

6 Tradewind report for the first time. You received

7 it on January 31?

8 A. I would have to say that

9 there would have been no sense having a meeting

10 with Ludomir if I hadn't read it before I met with

11 him. So sometime in that week I would have said

12 that I read it or reviewed it in some regard.

13 Q. Okay. Is it possible

14 with how busy you are and with your practice to

15 meet with Dr. Uzarowski to discuss draft reports

16 that you did not review the Tradewind report

17 before meeting with him? Is that possible?

18 A. Given that I don't recall

19 specifically, it's possible but unlikely.

20 Q. Okay. Registrar, can you

21 go back to image 4 of this document, please.

22 So we went through yesterday

23 some of the earlier drafts and I think at the time

24 you said you didn't know if you had seen them or

25 not. This is -- we're just into the introduction.

1 So they go through the visual inspection with all  
2 those photographs.

3 Registrar, can you go to  
4 image 6. Actually can we have image 6 and 7.

5 They go through the asphalt  
6 pouring and they go through the surface profile.  
7 They go through the FWD analysis. Then they have  
8 some analysis and results from those -- I think  
9 following from those, the normalized deflection  
10 and pavement surface modulus.

11 Registrar, can you go the next  
12 page as well, so you have 7 and 8 up. Thank you.

13 I'm just giving you a chance  
14 to refresh your orientation of this report. I  
15 know you've seen it a number of times since.

16 Registrar, can you go to 9 and  
17 10, please.

18 Getting into the layer  
19 thickness, and then the friction testing starts on  
20 image 10. There is some analysis on this that  
21 comes -- I just -- the analysis and  
22 recommendations. There are sort of two bits of  
23 analysis and recommendations. So you recall  
24 reviewing 5.0 at the top of image 2 on the  
25 right-hand side?

1                   A.    I remember that text,  
2    yes.

3                   Q.    Registrar, can you call  
4    out that section, 5.0.

5                   So it says that the Tradewind  
6    report did friction testing using a grip tester.  
7    In 2013 you were aware there were different  
8    devices to test friction; is that right?

9                   A.    In 2013? I believe as a  
10   result of the discussions on this I was aware  
11   there was different ones. I don't know whether I  
12   was aware that there were different ones when I  
13   asked them to do it but --

14                  Q.    You were aware --

15                  A.    As a result of this  
16   discussion I was certainly made aware that there  
17   were different ones.

18                  Q.    Okay. So you weren't  
19   aware from work you had done before with friction  
20   testing or authoring papers about differences in  
21   devices?

22                  A.    Yeah, I don't know that I  
23   was -- I may have been aware that there was  
24   different device but I didn't think -- I don't  
25   know there was differences between maybe the

1 results or implied results.

2 Q. Or how they were  
3 correlated?

4 A. I'm sorry?

5 Q. Or how they were  
6 correlated?

7 A. Yeah, I wasn't  
8 specifically aware of that at all.

9 Q. Okay. At the bottom, the  
10 last paragraph it says the friction number values  
11 are higher -- it says: Although the friction  
12 number values are higher than when measured in  
13 2007 immediately after construction, between 30  
14 and 34, they are considered relatively low.  
15 Typically FN values should be at least equal to or  
16 higher than 40 to be considered adequate. In the  
17 United Kingdom, for example, FN values should be  
18 at least 48 for a motorway pavement.

19 Did you understand when you  
20 reviewed the Golder report that the numbers set  
21 out here from 2007, that is the 30, 34, and the  
22 numbers in table 6, were apples to apples  
23 comparators?

24 A. There's nothing to  
25 indicate they weren't. I mean, it was certainly

1 my understanding that they were. I mean, although  
2 these numbers now that we get, 34, 35, 39, 36, are  
3 higher than what we got in 2007, I don't know how  
4 you could imply that they were anything but apples  
5 to apples.

6 Q. And so just reading the  
7 very words, you understood that the 2007 MTO  
8 numbers had not been higher than 40; is that  
9 right, where it says between 30 and 34?

10 A. I knew that from the  
11 previous tables that I had sent Tom and read and  
12 got from Ludomir initially.

13 Q. Right. And did you  
14 recall the issue of early -- early age low  
15 friction on SMA? And Ludomir had sent you that  
16 paper along with his e-mail. Did you recall that  
17 issue around SMA having early age friction  
18 problems?

19 A. I believe it was my --  
20 yes, I knew that MTO was -- had that issue with  
21 their SMA and that was the reason they wanted to  
22 do friction testing on ours to, you know, see what  
23 ours was and how it compared to theirs, and that  
24 we didn't have the issue that they had because our  
25 numbers were higher.



1 Q. So you understood that  
2 the Red Hill numbers from the 2007 didn't  
3 demonstrate or reveal an early age friction issue?

4 A. I would say that's fair.

5 Q. That was your  
6 understanding?

7 A. Yes.

8 Q. Did you know that -- was  
9 it your understanding in 2007 that the Red Hill  
10 numbers didn't demonstrate an early age friction  
11 issue?

12 A. Is that --

13 Q. Did you understand in  
14 2007 or at some point after --

15 A. No. In 2007 I was -- my  
16 understanding was that, as Ludomir explained it to  
17 us, is that our numbers were higher than MTO got  
18 and we were good to go. There was no -- no  
19 further monitoring, nothing, no other actions that  
20 needed to be taken, that our numbers were good,  
21 higher than MTO's, and that we didn't have that  
22 early age friction problem at all.

23 Q. Okay. Registrar, can you  
24 close this out and go to the next image, please.  
25 Actually can you have out image 9 and image 10.

1 Can you go -- that's 11 and 12. Can you go to 9  
2 and 10, please. Back where we were. My fault.  
3 Can you go to 10 and 11, please.

4 And so this is the analysis  
5 and recommendations. It's the second of the two  
6 sections that deal with analysis and  
7 recommendation. Registrar, can you pull out  
8 image 10, the three paragraphs under 6.0. So just  
9 stopping here.

10 You were aware from following  
11 the development of the Red Hill that there was an  
12 expectation that daily traffic would increase over  
13 time, right?

14 A. I believe that was part  
15 of the analysis that we did initially, yes. I  
16 believe it was anticipated that would increase.

17 Q. But in fact there was a  
18 more dramatic increase than what had been  
19 predicted?

20 A. I believe that's the  
21 case, yes.

22 Q. And then there had been  
23 two flooding issues in the early 2010s -- no, late  
24 2020s and early 2010s; is that right?

25 A. There was two flooding

1 events on the expressway in the lower section,  
2 yes. I'm not sure when that was but it was early  
3 in the life of the freeway.

4 Q. Okay. In the next  
5 paragraph it says in the design and the lifecycle  
6 cost analysis it was anticipated there would be  
7 some cracking, mainly longitudinal top down, and  
8 that that would occur and have to be addressed,  
9 and that that would have to be addressed at some  
10 point between 5 and 12 years after the traffic was  
11 opened -- after the pavement was opened to the  
12 traffic -- after the pavement was opened to  
13 traffic. And then that resurfacing would occur in  
14 year 21, right? I'm just trying to summarize  
15 it --

16 A. Yes. I mean, that's what  
17 it says there. I don't know whether I was in the  
18 agreement of year -- year 21. That doesn't -- I  
19 thought it was more like 14 to 16 but I can't --

20 Q. 14 to 16 would be a full  
21 resurfacing?

22 A. That would be a normal  
23 resurfacing timeline that I would expect a road  
24 to -- you know, the period of time that you would  
25 normally expect that requirement.

1 Q. The report also says that  
2 the pavement would require routing and sealing  
3 over time, year 3, year 9, year 15, year 19. You  
4 see that in the last paragraph?

5 A. Yes.

6 Q. You can close this down.  
7 Registrar, can you pull out the next image. You  
8 can do it under the table.

9 The report goes on to say in  
10 fact those traffic values -- traffic loading has  
11 been quite -- much higher than was expected, and  
12 given the traffic load over the first six years,  
13 the -- in essence that they are starting to see  
14 that longitudinal cracking.

15 In the second paragraph it  
16 references that as being most visible at the end  
17 of the Red Hill that is closest to the QEW. And  
18 the FWD indicated that there was the -- the  
19 subgrade was softest in that section.

20 And then there is two  
21 paragraphs that have recommendations. You recall  
22 reading these recommendations at the time you  
23 received them? That's a -- is that yes?

24 A. I mean, I remember these  
25 recommendations.

1 Q. Okay. So the first  
2 recommendation in the third paragraph is to remedy  
3 the longitudinal top down cracking. It was  
4 recommended that the surface course SMA be milled  
5 and a new surface course mix be placed at select  
6 locations?

7 A. Hm-hmm.

8 Q. And in the next paragraph  
9 it says on the remaining portion of the Red Hill,  
10 the existing cracks should be routed and sealed to  
11 prevent the ingress of water and other material.  
12 And following the routing and sealing it was  
13 recommended that a single layer of microsurfacing  
14 be applied.

15 So as I read this, there are  
16 particular areas where there is longitudinal top  
17 down cracking that need to be milled and a new  
18 surface mix put on top, and then the remainder of  
19 the Red Hill that cracks need to be routed,  
20 sealed, and then a single layer of microsurfacing  
21 be applied. You understood at the time that that  
22 was Golder's recommendation to you?

23 A. That's what the  
24 recommendations were at the time, yes.

25 Q. Okay. And Golder also

1 suggest -- recommends that polished stone value  
2 testing of potential aggregate sources be tested  
3 in the laboratory. Do you see that in the bottom  
4 of that fourth paragraph?

5 A. Right, okay, yep.

6 Q. Still in that paragraph,  
7 Golder said by carrying out the mill and overlay  
8 where required and applying microsurfacing the  
9 issue of relatively FN on the Red Hill could also  
10 be addressed. And so you understood that Golder's  
11 recommendations of the mill and overlay and the  
12 application of microsurfacing would deal with the  
13 issue of low friction in addition to dealing with  
14 the issue of the top down cracking and routing  
15 that had been observed; is that right?

16 A. Yeah, would also be  
17 addressed, yes.

18 Q. Registrar, can you go  
19 close this and go to image 103, please.

20 So this is the first full page  
21 of the Tradewind report. We were just looking at  
22 first page that actually had that device.

23 And, Registrar, if you can  
24 pull out the second paragraph under introduction.  
25 The Tradewind report references that it's a grip

1     tester instrument that was used and that it is  
2     device used extensively by road authorities in UK,  
3     Australia and New Zealand. You saw that?

4                     A.    I see that, yes.

5                     Q.    Did you take note of that  
6     at the time you read this report in January or  
7     February of 2014?

8                     A.    I believe so, but I don't  
9     think it meant anything to me in any significant  
10    regard.

11                    Q.    Can you close this out,  
12    Registrar. Can you open the first paragraph --  
13    call out the first paragraph under Survey  
14    Description.

15                    Tradewind report says in  
16    Canada and the US there are no currently directly  
17    applicable reference standards or guidelines by  
18    which to compare data collected by the equipment.  
19    It says that the UK transportation authorities  
20    have come up with a reference investigatory level  
21    table, and it says will not explicitly be  
22    recognized by the Ontario MTO or other provincial  
23    transportation authorities as being applicable to  
24    Canadian roads, the listed reference values for  
25    different types of roads and highway surfaces

1 provide an established and reasonable guideline  
2 with regard to interpreting the recorded data from  
3 the survey. And you took note of that at the  
4 time?

5 A. I don't know in what  
6 regard I would have took note of it, but I believe  
7 the important part of that to me was that there  
8 was no standard, no recognized standard by MTO I  
9 think probably would have stood out to me or did  
10 stand out to me at the time.

11 Q. You would have read and  
12 comprehended the reference to the provision of an  
13 established and reasonable guideline and with  
14 regard that Tradewind was saying that in its view  
15 it was an established and reasonable guideline to  
16 interpret the recorded data. That's what it says,  
17 right?

18 A. That's what it says. I  
19 don't know whether I agreed with it but that's  
20 what it says.

21 Q. It also indicated that  
22 the company, that is Tradewind, is responsible for  
23 maintenance of the Highway 407 -- pardon me. I  
24 misspoke. The company that is responsible for the  
25 maintenance of 407 also uses -- operates a grip



1 tester that's owned by Tradewind, and engineering  
2 companies and some provincial highway authorities  
3 have also used the grip tester. And you noted --  
4 did you note that with interest, especially the  
5 reference to the 407 using this device?

6 A. Yeah, I'm not sure how it  
7 applied to what we were doing or how it applied to  
8 the information we previously had. So, I mean,  
9 you know, reading this without -- it's one thing  
10 to read through it and know what's coming; it's  
11 another thing to read through it initially -- at  
12 the first time I think it was probably rather  
13 confusing to me given --

14 Q. I'm sorry. Given your --  
15 I'm sorry, I interrupted you, Mr. Moore.

16 A. Given what I knew at the  
17 time I think it was rather confusing.

18 Q. Okay. Registrar, can you  
19 close this down and go to the next image, please.  
20 If you can call out -- sorry, can you try that  
21 call out again, Registrar. Image 105. Pardon me.  
22 I meant to say 105. If you can go to -- call out  
23 the fourth paragraph, please. The next paragraph  
24 down.

25 So there is a reference to the

1 SCRIM equivalent values and then an equation  
2 that's referenced there. This formula results in  
3 SCRIM values being some 25 percent lower than  
4 measured grip numbers. And so this information  
5 conveyed that SCRIM values, that is information  
6 obtained by using a SCRIM values, would be lower  
7 than grip tester values. Do you see that?

8 A. I can see that, yes. I  
9 don't know what SCRIM values are but --

10 Q. Registrar, can you close  
11 this out. Can you go to image 4 now, please.  
12 Actually -- I skipped over -- go back to  
13 image 103, please. Can you call out the second  
14 paragraph under survey description.

15 Grip tester measurements are  
16 tested using 50 kilometres per hour. Were you  
17 aware of whether the MTO also tested at  
18 50 kilometres an hour?

19 A. No, I wasn't aware of any  
20 of the conditions under what MTO tests or what  
21 their standards are.

22 Q. Registrar, can you go  
23 back to image 104 and pull out the last paragraph  
24 and the first paragraph of that image, please. I  
25 meant the first paragraph under "Friction

1 Measurement Results". Thank you. And the last  
2 paragraph of that image. We lost the call out.

3 THE REGISTRAR: So I can only  
4 do one at a time. It's all on the same page.

5 (DISCUSSION OFF THE RECORD)

6 BY MS. LAWRENCE:

7 Q. So Mr. Moore, can you  
8 look at this language and it says in respect of  
9 the LINC, the tested sections were found to be  
10 generally comparable to or above the reference  
11 investigatory level 2. And that this level 2  
12 applies to dual carriageway lane sections on  
13 relatively straight roads. More stringent levels  
14 apply to road sections near intersections.

15 Registrar, can you close that  
16 down and can you call out the last paragraph. It  
17 says this about the Red Hill: The tested sections  
18 were found to be generally well below the  
19 reference investigatory level 2. Most of the  
20 length of this road (skipped audio) numbers in the  
21 range of 30 to 40. Only a short section on the  
22 right-hand wheel track had friction values above  
23 investigatory level 2.

24 When looking at the language  
25 that Tradewind uses here, do you agree that

1     qualitatively the Tradewind report says the LINC  
2     is meeting a standard that Tradewind was applying  
3     and the Red Hill did not?

4                     A.     I will agree that that's  
5     what they were saying, yes.

6                     Q.     Did the fact that a  
7     consultant identified that the LINC had values  
8     that were comparable to or above a particular  
9     investigatory standard and in contrast the Red  
10    Hill did not, did that cause you concern?

11                    A.     What caused me concern is  
12    they were comparing it to some sort of standard  
13    that had no application.

14                    Q.     Mr. Moore, can you answer  
15    my question. I'm going to ask it again and I  
16    would like you to really listen closely to my  
17    question. You can add whatever you would like to  
18    after you answer my question. I would like you  
19    focus on what I'm asking, okay.

20                    A.     Sorry.

21                    Q.     Did the fact that the  
22    consultant identify that the LINC had values that  
23    were comparable to or above a particular  
24    investigatory standard, and that in contrast that  
25    the Red Hill did not, did that cause you concern?

1 A. I have to say no.

2 Q. So you understood that  
3 the MTO had found in 2007 that the Red Hill  
4 friction values were better than what they  
5 typically found, and Tradewind here is telling you  
6 something different based on the standard that  
7 they are applying, that the Red Hill wasn't  
8 meeting that standard. How did you square those  
9 two pieces of information?

10 A. I didn't. I asked Golder  
11 for an explanation. You know, why are we  
12 comparing to a standard that has no standing? How  
13 does it apply to our road? What does this -- I  
14 mean, I don't know -- I didn't know what a  
15 carriageway was or you know, whether it's the same  
16 speed limit, did they have the same standards  
17 of -- I don't know whether they were extremely  
18 conservative or even that at this time now that I  
19 understood that it was a different type of a way  
20 to test the road, the grip tester was different  
21 than the MTO, whether they were -- it was even  
22 comparable. So all those questions were raised in  
23 my mind when I read these paragraphs.

24 Q. Okay. So I understand  
25 those questions that were raised in your mind, but

1 did you come to some sort of analysis which would  
2 make sense of both Tradewind saying that there was  
3 the standard that they were applying (garbled  
4 audio) and the MTO saying that the results were  
5 better than they typically found? Were you able  
6 to look at these two things together and come up  
7 with some sort of analysis to make those two  
8 pieces of information make sense in your mind?

9 A. I believe that I was -- I  
10 mean, I had confidence in what the MTO told us  
11 initially, and my understanding was the numbers  
12 were good. I had no other information that the  
13 grip numbers that were generated, the FN numbers  
14 that were generated, weren't an apples to apples  
15 and that they were higher than what I had been  
16 told initially was good.

17 To be told now that oh, no,  
18 they are not good, you needed to be higher, was --  
19 that was what I was relying on my consultant  
20 Golder and that's what I asked Ludomir. I said  
21 how can these be right, how does this apply.

22 Q. When you say how can  
23 these be right, do you mean how can the standard  
24 that Tradewind applies be relevant here if the MTO  
25 says the numbers were typically better than they

1 had been and Tradewind is applying the standard?  
2 Like, your concern was with the standard itself  
3 and it's the application here?

4 A. That's correct.

5 Q. Because you understood  
6 that the numbers that Tradewind came up were  
7 higher than the MTO and the MTO had said that  
8 their numbers were good; is that right?

9 A. That was my  
10 understanding.

11 Q. Okay. And that's all  
12 premised on this being an apples to apples  
13 comparison?

14 A. That's correct, and I had  
15 no other information that they weren't.

16 Q. And it's also premised on  
17 not taking account of any early age friction  
18 issues that the Red Hill might have had; is that  
19 right?

20 A. I don't know that there  
21 was any relevance to the -- early age friction is  
22 a condition that didn't apply here because we had  
23 higher numbers. Early age friction is something  
24 that refers to low friction numbers initially. So  
25 we didn't experience that as far as I knew from

1 any information that I got from MTO or Ludomir.

2 Q. So you weren't expecting  
3 (ph) the friction to get better over time on the  
4 Red Hill as a result of having decreased early age  
5 friction numbers and then those would increase as  
6 the early age friction issue resolved itself.  
7 That wasn't your expectation in 2007?

8 A. My expectation was that  
9 the numbers were going to do nothing but get  
10 better. It's just that our initial numbers  
11 weren't as low as what MTO would get with their  
12 mixes or their aggregate or whatever the reason  
13 they came up with.

14 Q. I think what I'm trying  
15 to understand is in 2007 did you understand that  
16 Red Hill had an early age friction problem but it  
17 just wasn't as bad as the early age friction  
18 problem that the MTO had seen on their own  
19 pavements?

20 A. Absolutely not.

21 Q. And with respect to your  
22 expectation that the numbers -- friction values  
23 were going to continue to get good, you understand  
24 conceptually friction numbers do decline over  
25 time?



1 A. Eventually they will.

2 Q. Registrar, can you close  
3 this out. Can you pull up image 5 -- pardon me,  
4 image 105 along with image 104.

5 MR. LEDERMAN:

6 Mr. Commissioner, I'm just noting the time. I  
7 don't know whether Ms. Lawrence intend to carry on  
8 with another --

9 JUSTICE WILTON-SIEGEL: I'll  
10 leave that to Ms. Lawrence. She's aware of the  
11 time and she will have a good sense where an  
12 appropriate break would be.

13 MS. LAWRENCE: Commissioner, I  
14 would prefer to get through this section of the  
15 Tradewind report, but I always recognize that some  
16 people focus on the time and it has been a full  
17 two hours. I'm moving to a different topic within  
18 the Tradewind report and I'm happy to take a break  
19 now.

20 JUSTICE WILTON-SIEGEL: Okay.  
21 Why don't we do that. It's exactly 11:30 so we'll  
22 return at quarter to 12:00.

23 MS. LAWRENCE: Thank you.

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

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

1 MS. LAWRENCE: Thank you,  
2 Mr. Commissioner. May I proceed?

3 JUSTICE WILTON-SIEGEL: Yes,  
4 please proceed.

5 MS. LAWRENCE: Thank you.

6 BY MS. LAWRENCE:

7 Q. Registrar, can you call  
8 up image 104 of Golder 2981, please. And also  
9 image 105, please. Thank you. And can you pull  
10 out the third and fourth paragraphs on image 104,  
11 and the second and third paragraphs on 105. Thank  
12 you.

13 Mr. Moore, I'm not sure that  
14 this callout is helpful because it's still kind of  
15 small text, so just let me know if you can read  
16 it.

17 On the left-hand side in  
18 respect of the LINC four lines down -- actually  
19 no, the first sentence it says that the LINC  
20 displayed remarkable consistency when subdivided  
21 into 100-metre sections. And then jumping down it  
22 said that the values range from 50 to 55 and from  
23 52 to 60.

24 "This narrow range in friction  
25 levels is notable for a single

1 road surface at this length  
2 and indicates a high  
3 uniformity of surface texture  
4 and pavement composition."

5 (As read)

6 It goes on to say:

7 "All the areas of the road  
8 were above the UK  
9 investigatory level 2."

10 In the next paragraph it also  
11 references very consistent values from the centre  
12 of lane reference test run. Did you know what  
13 that was?

14 A. Well, the first one is a  
15 reference to the edge of -- then outside lane, and  
16 I assume this one would be the centre of the lane.

17 Q. Okay. And it says at the  
18 very bottom of the second paragraph on the  
19 left-hand side that all the data from the centre  
20 of lane friction measurements were well above the  
21 investigatory level.

22 And turning to the right-hand  
23 side this is in respect of the Red Hill. It says  
24 the -- it has the reference to the full length  
25 values, and then in the next paragraph it says:

1 "The Red Hill was quite  
2 consistent, but it did show  
3 localized variations of 10 to  
4 15 points over relatively  
5 short lengths." (As read)

6 References the values ranged  
7 on the outside lane test runs were 30 to 40, and  
8 the inside line was 30 to 45. It says:

9 "This range in friction levels  
10 is not unusual for a single  
11 road length and indicates  
12 significant variation in the  
13 surface texture pavement  
14 composition along the extent  
15 of the facility." (As read)

16 And then it goes on to say  
17 that the friction values were below or well below  
18 the investigatory level 2.

19 Then it says that:

20 "A close examination indicates  
21 only minor differences between  
22 the numbers recorded on the  
23 outside lanes and limited  
24 evidence of increased  
25 wear-related texture loss in

1                   these lanes compared to the  
2                   inside lanes." (As read)

3                   So did you interpret this as  
4 Tradewind saying that the friction values on the  
5 LINC were more consistent in respect of the  
6 various segments than the Red Hill's were?

7                   A. I don't recall coming to  
8 that conclusion. I don't know whether that's --  
9 whether that's accurate or not so I don't -- it's  
10 unlikely that I did.

11                  Q. Okay. You said earlier  
12 that you paid attention to the average friction  
13 values in the chart that Dr. Uzarowski had sent  
14 you. Is that because you're interested in the  
15 overall friction of the facility rather than  
16 individual localized variations?

17                  A. I believe it's in respect  
18 to how the information was given us to initially  
19 for the -- from the MTO, mostly in terms of the  
20 average number I believe which is what was  
21 referred to in the initial. So I don't know that  
22 I knew any different. I didn't know about any  
23 sensitivity or how close the numbers should be. I  
24 don't believe I had an appreciation for that other  
25 than the averages.

1 Q. Okay. Registrar, can you  
2 close these down and go to image 106, and if you  
3 can pull out those paragraphs.

4 So this is on the Greenhill  
5 and the Stone Church ramps, and you'll see that  
6 the average levels are comparable or slightly  
7 higher than the UK investigatory level 3. Which  
8 is the one that Tradewind appears to say applies  
9 to dual carriageway roads that near minor  
10 junctions. And it says that:

11 "The Stone Church off ramp is  
12 more consistent along its  
13 length than the other two off  
14 ramps tested but considerably  
15 lower overall." (As read)

16 And just stopping there, did  
17 you turn your mind as you were reading this to the  
18 differences in the pavements that were used on the  
19 main line versus the ramps?

20 A. I don't recall turning my  
21 mind to that because I don't -- I don't recall  
22 this -- me having a question on this to Ludomir.

23 Q. Okay. Let me close this  
24 down and go to image 114, please. And can you  
25 call out the three paragraphs under "Conclusion

1 and Recommendations."

2 So the first paragraph just  
3 sets out what we were looking at before:

4 "The reference to the LINC  
5 being comparable to or above  
6 the investigatory standard,  
7 the relative consistent  
8 friction values in different  
9 lane positions and along the  
10 full length, and that  
11 indicates a generally uniform  
12 pavement surface, texture and  
13 composition with limited  
14 variation due to traffic  
15 wear." (As read)

16 And so just stopping there.  
17 Those comments about the generally "uniform  
18 pavement surface texture and composition and  
19 limited variation due to traffic wear," did you  
20 view those aspects of friction that were a proxy  
21 to understanding the pavement condition?

22 A. I'm sorry, can I have  
23 that again? I'm just trying to understand the  
24 exact nature of the question.

25 Q. Sure. So -- and I'll

1 rephrase because it may have been how I asked it.  
2 So there's a reference to the relatively  
3 consistent friction values in different lane  
4 positions and along the full length, and Tradewind  
5 says this indicates a "generally uniform pavement  
6 surface texture and composition with limited  
7 variation due to traffic wear."

8                                   Did you view the commentary  
9 about the "generally uniform pavement surface  
10 texture and composition and limited variation due  
11 to traffic wear" as being proxies or proxies for  
12 the assessment of the pavement condition?

13                                   A. I don't know that I  
14 recognized that in those terms. I think I  
15 understood that that made sense in that the LINC  
16 had been resurfaced --

17                                   Q. I'm asking more  
18 generally --

19                                   A. -- in general terms so  
20 that it should have come to that conclusion.

21                                   Q. Okay. I don't mean to --  
22 I didn't mean to interrupt you. I was asking more  
23 generally, and maybe I'll ask more simply. Did  
24 you view friction as a -- one aspect to assess the  
25 condition of the pavement?



1                   A.    At that time I don't know  
2    that I did.

3                   Q.    Turning to that next  
4    paragraph.  This is in respect of the conclusions  
5    around the Red Hill.  And it says that the overall  
6    friction averages were below or well below the  
7    investigatory level 2, and it says:

8                               "The overall low levels and  
9                               the variability of the  
10                              friction values indicate a  
11                              need for further examination  
12                              of the pavement surface,  
13                              composition and wear  
14                              performance."  (As read)

15                             And it notes that:

16                             "In addition to the overall  
17                             low, average grip number  
18                             levels there were some  
19                             localized sections with quite  
20                             low friction values reaching  
21                             27 to 30 in several areas."

22                             (As read)

23                             And Tradewind goes on to say:

24                             "We recommend a more detailed  
25                             investigation be conducted and

1 possible remediation action to  
2 be considered to enhance the  
3 surface texture and friction  
4 characteristics on the Red  
5 Hill based on the friction  
6 measurements recorded in the  
7 current survey." (As read)

8 And so on the last  
9 recommendation the MTO, when they tested in 2007,  
10 hadn't suggested anything like a more detailed  
11 investigation or possible remedial action be  
12 considered, right?

13 A. That's correct, from my  
14 knowledge.

15 Q. And so the words that  
16 Tradewind used describe friction values in a quite  
17 different manner than the MTO had, right?

18 A. The numbers were higher,  
19 but the consideration of what they were is quite  
20 different than my knowledge of or understanding of  
21 what was out there.

22 Q. Okay. Did you think that  
23 Tradewind's recommendations, that those lines that  
24 we just went through, "for further investigation  
25 and friction levels," indicated a safety issue on

1 the Red Hill?

2 A. Not particularly. I  
3 mean, it's not unusual for a consultant to  
4 recommend additional investigation, but when you  
5 recommend something as possible remedial action be  
6 considered to enhance, it doesn't say anything to  
7 address problems or anything of that nature. If  
8 you want -- I mean, if you want to make them  
9 higher and consider enhancing the texture is  
10 what -- is how I read that, but it all goes back  
11 to the assumption that -- against the UK  
12 investigatory level.

13 Q. Okay. When you received  
14 and viewed the Tradewind report, did you cast your  
15 mind back to what prompted the friction testing in  
16 the first place, being that high number collisions  
17 during the September wet weather rainstorms?

18 A. I don't believe that --  
19 it wasn't rainstorm. It was the letter from risk  
20 indicating that, you know, doing something against  
21 possible future, but I don't believe there was  
22 anything -- this was -- the action wasn't taken  
23 against anything specific.

24 Q. Okay. Did you turn your  
25 mind back to that -- the back and forth with

1 Mr. McLennan where you said, we'll get friction  
2 testing done and that should address any -- you  
3 know, the road-was-slippery claims that could be  
4 made in the future?

5 A. I don't believe so  
6 because I don't believe that was the case.

7 Q. Okay. So you didn't turn  
8 your mind back to that e-mail where you said that  
9 we'll get friction testing done to address any  
10 issues about any claims that the road was  
11 slippery?

12 A. I don't -- I don't  
13 believe I turned my mind -- I was focused on  
14 assessing the numbers that I had been given and  
15 understanding how they applied. I don't think I  
16 went back to the other issues that you're  
17 referring to.

18 Q. Okay. Did you turn your  
19 mind back to the 2013 CIMA report that recommended  
20 friction testing to try to understand why the  
21 collision patterns might be atypical?

22 A. I don't believe I had  
23 that -- that that was my understanding of the  
24 friction testing in that regard. There was  
25 nothing that had been given to me in any regard

1 that the -- wet weather accidents were anything  
2 other than speed related.

3 Q. Okay. Did you go back  
4 and look at the 2013 CIMA report when you got the  
5 Tradewind report?

6 A. No, I don't believe so.

7 Q. Okay. And I fear I have  
8 asked this a number of times, but just so that I  
9 understand, is it your evidence that you ever read  
10 the 2013 CIMA report?

11 A. I don't recall  
12 specifically reading it, but given the references  
13 I made in some of the things, I believe I must've  
14 seen it at some point in time.

15 Q. Okay. But you didn't go  
16 back when you got this to look at why CIMA had  
17 recommended friction testing?

18 A. Yeah. I don't know  
19 whether I even had a copy with me.

20 Q. Okay. So Tradewind here  
21 doesn't recommend any particular remedy, right?

22 A. That's correct.

23 Q. Registrar, can you close  
24 this and go back to image 10, please. 10 and 11,  
25 in fact. You said that you read the Golder report

1 and Tradewind report before you met with  
2 Dr. Uzarowski. So around the same time?

3 A. I believe so.

4 Q. And so we already went  
5 through this, but Golder did recommend a  
6 particular response that would have the outcome of  
7 addressing a relatively low FN on the Red Hill and  
8 in particular routing and sealing and then  
9 applying a single layer of microsurfacing, right?

10 A. They made those  
11 recommendations, yes.

12 Q. And it's clear in  
13 Golder's report that those recommendations are to  
14 address the relatively low level of friction?

15 A. They are based on the  
16 assumption that there are low levels of friction  
17 comparative against the British standard.

18 Q. Okay. And that  
19 microsurfacing would be the measure that Golder  
20 would recommend to deal with the relatively low FN  
21 numbers on the Red Hill?

22 A. In this case that's what  
23 their draft recommended.

24 Q. Okay. Dr. Uzarowski  
25 testified that both in the e-mail that he sent you

1 on January 24 and also in the table, table 6 in  
2 this document, that he transposed the southbound  
3 and northbound lanes and that the numbers were  
4 correct but the reference to lane 1 and lane 2 in  
5 northbound and southbound were off. Did you take  
6 note of that error? I can tell you Dr. Uzarowski  
7 did not until the inquiry.

8 A. That's the first I've  
9 ever heard of it.

10 Q. Okay. Registrar, can you  
11 close this down and go back into OD6, and to  
12 page 99, please. Actually if you can bring up 99  
13 and 100 at the same time.

14 So Dr. Uzarowski's notebooks  
15 reference you in an entry on February 3, and  
16 February 4 there's a reference to a telephone  
17 call, and he's made some notes. And he testified  
18 that as was his -- sometimes his practice was he  
19 prepared notes in advance to allow him to, you  
20 know, follow a list of things to discuss. And  
21 that the call was to set an agenda for an  
22 in-person meeting.

23 Do you recall a telephone call  
24 with Dr. Uzarowski on February 4th?

25 A. No, I don't specifically.

1 Q. Okay. Registrar, can you  
2 call out paragraph 260, please.

3 Do you remember an in-person  
4 meeting with him on February 7th?

5 A. I can't say that I do  
6 specifically, no.

7 Q. Do you have any  
8 recollection even, if it's not a perfect  
9 recollection, of that meeting?

10 A. I remember meeting with  
11 him about this, but I couldn't say when -- you  
12 know, what the date was or anything specific. I  
13 know we talked -- I know we talked about the  
14 report.

15 Q. Okay. Dr. Uzarowski  
16 testified that these notes in the notebook that  
17 are transcribed here, that most of them were done  
18 in advance. Again, that process he had to sort of  
19 set the agenda, and he also said that the meeting  
20 started at 8:00 a.m. and lasted an hour. On that  
21 second point, was it generally your practice to  
22 meet with him at 8:00 a.m.?

23 A. It was a general -- if we  
24 met with -- if I met with Ludomir, it was  
25 typically early. It may have been even 7:00



1 sometimes or 7:30. He was usually coming from  
2 Toronto and it was easier for him to get there at  
3 that time of day, and I was in anyways.

4 Q. You tended to get in  
5 early to try to get some work done before all your  
6 meetings start; is that right?

7 A. Yes, generally that was  
8 the case, 7:00, 7:30 in the morning.

9 Q. Okay. Do you recall that  
10 Dr. Uzarowski brought hard copies of the Golder  
11 report with appendices for you to this meeting?  
12 He testified that he did.

13 A. I don't dispute it. I  
14 just don't recall. But it's likely if he'd sent  
15 it to me previously in the e-mail, that he had  
16 hard copies to give me.

17 Q. Okay. After this meeting  
18 did you put the Golder report on your bookshelf in  
19 your office?

20 A. It might have sat on my  
21 desk because I was still dealing with it. I had  
22 an in-box, things to do, so....

23 Q. Okay. How long did it  
24 sit in your in-box?

25 A. Well, I couldn't say.

1 Q. Okay. So once it left  
2 your in-box, did you put it on your bookshelf?

3 A. It's likely that that's  
4 where it went, yes.

5 Q. Okay. Are there any  
6 other likely locations for it?

7 A. At this point in time it  
8 was still a draft; no, I don't believe there were  
9 any other locations it would go.

10 Q. Okay. But you would have  
11 kept it even though it was draft?

12 A. Well, we were dealing  
13 with it for a long time, yes.

14 Q. Okay. Did you tell him  
15 that he should not have sent the report by e-mail  
16 and only brought you a hard copy?

17 A. I -- I don't recall that  
18 specifically, but the only reason would have been  
19 for blowing up my e-mail.

20 Q. Okay. There are a number  
21 of different items on this list; the first of  
22 which is the six years in the CTAA. Do you recall  
23 during this meeting that there was some discussion  
24 again about perhaps doing a paper in relation to  
25 the pavement evaluation project?

1                   A.    I don't recall the  
2   discussion, but it's not unlikely given that there  
3   were -- he'd now given me the report which he was  
4   going to base that on, so....

5                   Q.    Okay.  Do you recall that  
6   he specifically went through the sections of the  
7   Golder report that dealt with the cracking and the  
8   coring?

9                   A.    I think when we reviewed  
10  the report and -- we went through everything.

11                  Q.    Okay.  I'm asking  
12  specifically about the cracking and the coring.  
13  Do you remember that?

14                  A.    I do remember a  
15  discussion and him, you know, reviewing that in  
16  some fashion because I have some recall of looking  
17  at those photos in more detail; I do.

18                  Q.    Okay.  And the  
19  recommendation that Golder had in respect of the  
20  cracking was the mill and the overlay.  Do you  
21  remember discussing his recommendation on that  
22  with you?

23                  A.    Not specifically, no.

24                  Q.    Okay.  Did you have any  
25  questions or concerns about the recommendation for

1 mill and overlay being an appropriate way to deal  
2 with cracking?

3 A. No, that's -- I don't  
4 recall anything, but that's not a surprising  
5 recommendation, and it's consistent to what we  
6 anticipated. I mean, in order to preserve the  
7 grit the integrity of the perpetual pavement  
8 that's a very viable and understandable  
9 recommendation.

10 Q. Okay. It wasn't going to  
11 be a particularly cheap one, though, right?

12 A. Absolutely not. When you  
13 look at the total value of the investment, it's  
14 relatively cheap in terms of what you might have  
15 to do if you don't do it.

16 Q. Right. Because it saves  
17 the top so that you don't have to worry about  
18 having to rebuild the rich -- deep mix; is that  
19 right?

20 A. The additional layers.  
21 Because once you're into the additional layers,  
22 you're into reconstruction, and once you're into  
23 reconstruction you're no longer into partial night  
24 paving where you can move traffic over and do some  
25 work or do some localized closures. You're into

1 long-term impact on traffic and neighborhoods.

2 Q. Okay. He also testified  
3 before the inquiry that he went through the  
4 differences in the friction values that Tradewind  
5 had found in -- on the LINC versus on the Red  
6 Hill. Do you remember a discussion going through  
7 the friction values and how they were different  
8 for those roads?

9 A. I remember a discussion  
10 in that they were much higher on the LINC than the  
11 Red Hill, but anything other than that I don't --  
12 I don't recall any issue or major discussion in  
13 that regard.

14 Q. Okay. And you'll see on  
15 number 10 on this he says "PSV." Do you recall  
16 that he raised PSV to see -- testing, that's  
17 polished stone value, to see if there was an  
18 aggregate problem on the Red Hill and that you  
19 declined. That's what that no is. Do you recall  
20 discussions about PSV?

21 A. In 2014, I don't believe.

22 Q. Okay.

23 A. I don't recall anything  
24 in that regard on the existing stone value, no.

25 Q. Okay. In terms of the

1 recommendation that Golder had to route and seal  
2 and then apply a microsurfacing layer with -- do  
3 you recall if he referenced microsurfacing, shot  
4 blasting or skidabrading during this conversation?

5 A. I don't, and I -- I don't  
6 know that we were talking about doing an entire  
7 resurfacing or if we did do -- any discussion with  
8 regard to the microsurfacing would likely have  
9 involved my previous experience with  
10 microsurfacing, but I don't recall anything  
11 specific at that time, no.

12 Q. Okay. Well, you  
13 understood that Golder's recommendation to route  
14 and seal and apply microsurfacing, that that would  
15 be pavement rehabilitation and not resurfacing; is  
16 that right?

17 A. Well, the route and seal,  
18 I had -- I don't believe I had any problem with,  
19 but microsurfacing was not something that we had a  
20 successful experience with on other roads, so I  
21 don't recall specifically the discussion, but I  
22 know at some point in time I made that clear that,  
23 you know, the microsurfacing was not something  
24 that we would likely consider as a useful and good  
25 value for money type of treatment in this regard.

1 Q. Okay. My question was  
2 Golder's recommendation to route and seal and  
3 apply microsurfacing. That recommendation, if  
4 implemented, that would be a pavement  
5 rehabilitation measure and not a resurfacing  
6 project; is that right?

7 A. Rehabilitation. No, it  
8 would have been considered a resurfacing.  
9 Rehabilitation usually infers a deeper treatment  
10 of more -- you're rehabilitating more than just  
11 the surface. It's a different type of  
12 resurfacing, but it would be considered  
13 resurfacing in the same regard as a shave and  
14 pave. It's just a different type of resurfacing.

15 Q. Okay. If it was just a  
16 route and seal, would you consider that a pavement  
17 rehabilitation, or do you have is some other --

18 A. No. That's pavement  
19 maintenance.

20 Q. Maintenance, okay.  
21 Dr. Uzarowski testified that you didn't raise any  
22 questions at all about the UK standard during this  
23 meeting. Do you dispute that evidence?

24 A. I do. I mean, I know  
25 that the first thing that jumped off the page when

1 I read the Tradewind report was this reference to  
2 this standard that I had no knowledge of and never  
3 heard of before, didn't know how it applied, and  
4 that all the recommendations within that followed  
5 from the comparison to this standard. So it was  
6 the major issue as far as I was concerned in both  
7 the Tradewind and their recommendations.

8 Q. Okay. And you are  
9 confident sitting here today that that concern  
10 that you had -- that you had that concern in  
11 February of 2014, and that's when you expressed it  
12 to him?

13 A. Yes. If this is the  
14 first meeting that we had on the report, then  
15 that's when I brought that concern up, if not  
16 before. Maybe even of -- in any previous phone  
17 call that we had in preparation, because it was  
18 one of the only major things in the entire report  
19 that just jumped off that made no sense.

20 Q. Okay. And what exactly  
21 did you tell Dr. Uzarowski to do, if anything, in  
22 response to these concerns you had?

23 A. Clarify. What -- how  
24 does this apply? Is this -- I mean, are their  
25 roads the same as our roads? How does this --



1 give me a further explanation. How does -- how  
2 can I, you know, accept this and explain it to  
3 anybody else? How does it -- how does the fact  
4 that we had good numbers or numbers that MTO told  
5 us were good, that you told me were good, and now  
6 you're telling me we've got higher numbers, but  
7 they are not good. It makes no sense whatsoever.

8 Q. Okay. I'm going to jump  
9 forward in time just a little to December 2015  
10 when you and he have another meeting and coming  
11 out of that he does start contacting Tradewind and  
12 trying to get more information. And the inquiry  
13 doesn't have any e-mails between you and him  
14 discussing this matter or you following up with  
15 him until December 2015. Are you sure that it  
16 wasn't December 2015 where you raised this issue  
17 and directed him to undertake the information that  
18 you've just conveyed?

19 A. No, I'm confident it was  
20 in the initial aspects of the review of the  
21 report. It was the paramount thing that came out  
22 of the entire report. I mean, everything else  
23 was, you know, whatever it was, but I don't -- I  
24 don't recall anything else that we had a major  
25 regard in that that -- in the entire report.

1 Q. Okay. Coming out of this  
2 meeting, did you give Dr. Uzarowski any comments  
3 on the draft report, either oral comments or  
4 written comments?

5 A. Well, we -- I believe we  
6 did. I mean, that's what the meeting was. We  
7 went through the report, and so it -- you know,  
8 it's -- I didn't tend to write things down. If he  
9 was writing things down, we were sitting there  
10 reviewing the report, it's whatever we reviewed.

11 Q. Okay. He testified that  
12 you heard and understood the recommendation and  
13 were really on 'receive', that no decisions were  
14 made in that meeting. Is that your recollection?

15 A. I believe that's  
16 consistent with the review. I mean, we couldn't  
17 proceed with anything until these friction issues  
18 were resolved. I mean, if they were indeed what  
19 he's talking about and can confirm and explain,  
20 you know, that we need now to do something, then  
21 what's the next step? But until that point I'm  
22 not going to expend any funds or take any actions  
23 until I understand what the basis for those  
24 conclusions are.

25 Q. Okay. And just so that I

1 am clear. The mill and overlay recommendation,  
2 that recommendation didn't have anything to do  
3 with sealing, that was spot specific  
4 recommendation, right?

5 A. Yeah. I believe it was,  
6 you know, a couple of kilometres of work to be  
7 done, but I don't -- I don't recall a timeline for  
8 those recommendations. You know, I'm not sure  
9 what the -- whether there was any urgency with  
10 those recommendations, you know, that it be this  
11 year or next year. That may have formed part of  
12 the discussion when we reviewed it, that I was  
13 looking for a timeline, but I don't recall  
14 anything, in seeing anything even to date that  
15 that was the case.

16 Q. Okay. Did you ask  
17 Dr. Uzarowski to finalize the report?

18 A. Well, I asked him to  
19 resolve the issues with the friction.

20 Q. Okay. And apart from the  
21 issue around friction was there anything else in  
22 the report in respect of the other aspects of the  
23 now six-year pavement condition analysis that they  
24 had done that you thought was not resolved and  
25 finalized?

1                   A.     Other than some text or  
2     grammar that I would normally note, I don't think  
3     I had any problem with the others. I mean, any  
4     recommendation that was a result of the  
5     friction -- I may have -- we may have talked about  
6     the applicability of the microsurfacing. So I  
7     don't know -- I can't recall specifically whether  
8     he was going to look at another treatment for that  
9     or whether we just considered, you know -- when we  
10    addressed the timing issue whether we were going  
11    to do the whole thing in light of the increased  
12    amount of traffic. You know, we'd gotten 14 years  
13    of traffic in six, so it's likely we had some  
14    discussion on that, but I don't recall  
15    specifically, no.

16                   Q.     Okay. He testified that  
17    he didn't provide a final report to you. Is that  
18    your understanding as well?

19                   A.     Yeah, I don't remember  
20    seeing a final, no.

21                   Q.     Okay. He also testified  
22    that although it's Golder's practice to provide  
23    final reports, his view was that you didn't really  
24    care about getting final reports. Do you agree  
25    with that?

1                   A.    Well, as long as I didn't  
2    pay for the final report.  You know, the content  
3    is what we were looking for, and the action that  
4    we needed to take.  Making it pretty and putting  
5    it on the bookcase was, you know, something that  
6    usually followed as a matter of course but not  
7    something I would chase.

8                   Q.    Okay.  You didn't send a  
9    copy of the Golder report or the Tradewind report  
10   to anybody at the City after you received it in  
11   2014, did you?

12                  A.    I don't believe I did.  I  
13   wouldn't forward a draft report that I had  
14   problems with, no.

15                  Q.    Okay.  You didn't respond  
16   to those individuals in traffic and Mr. McLennan  
17   in that e-mail where you said you were going to go  
18   get friction testing, and you said, I'll let you  
19   know when we get it; you didn't send a copy to  
20   them?

21                  A.    No.  I mean, we weren't  
22   done.  There wasn't something I could send him  
23   without clarification of what they were comparing  
24   to, so it wasn't -- it wasn't appropriate to  
25   forward that type of report on.  Traffic was aware

1 that we were done in -- when I advised them that,  
2 you know, we couldn't do the crosswalk testing for  
3 them.

4 Q. Okay. So did you update  
5 Mr. Jacobson that that wasn't any good data  
6 available from -- about the crosswalks, right?

7 A. Yeah, there's no  
8 meaningful information.

9 Q. And as you received the  
10 Tradewind report in the form that you received it,  
11 that report didn't eliminate the  
12 ought-to-have-knowns -- ought-to-have-knowns that  
13 Mr. McLennan had raised, right?

14 A. Well, until we're  
15 clarified on what we're comparing it to, no, it  
16 doesn't give any clarification to anyone.

17 Q. Okay. And if you did  
18 accept that the investigatory standard was an  
19 appropriate standard to apply, the content of the  
20 Tradewind report didn't assist in -- or would not  
21 assist in defending a claim that the road wasn't  
22 slippery, right?

23 A. I don't know that. I  
24 mean, gathering the information and having it as a  
25 baseline for use, I don't know whether it's in two

1 years, 10 years or 15 years or simply well, we  
2 did, and we looked at it, and -- I mean, it would  
3 have been more useful to be able to say  
4 definitively that it meets this standard or  
5 doesn't meet this standard, but at least it would  
6 have provided a -- some information that at least  
7 you did it.

8 Q. Okay. So you said  
9 earlier that you didn't have much of a memory of  
10 this meeting, but it seems now that you had quite  
11 a specific memory of the direction that you gave  
12 to Ludomir. Is that right? How do you -- I'm  
13 having trouble with your evidence on this point.

14 A. I don't remember the  
15 meeting. I don't remember sitting there talking  
16 to Ludomir. I remember reviewing the Tradewind  
17 report and the issue of this investigatory  
18 standard and discussing it and saying, how can --  
19 you know, this report makes no sense. The details  
20 of that discussion, I don't -- I don't recall  
21 other than that general area of concern.

22 Q. Okay. So did you  
23 understand that the Tradewind report itself was a  
24 final report from Tradewind contained in a draft  
25 report from Golder?

1                   A.    I don't know whether I  
2    knew that of -- or was aware of that intricacy at  
3    the time.  It was an appendix provided to Golder  
4    as the sub consultant.  So I mean, I didn't hire  
5    Tradewind; I hired Golder.  Whatever  
6    recommendations their sub consultant gave to them,  
7    I was looking to Golder to give to me and explain.

8                   Q.    Okay.  Did you ever  
9    follow up with Mr. Dziejko to say that the  
10   data you had sent him maybe wasn't as easily  
11   understood or as clear as you thought it had been  
12   when you sent it -- when you flipped it to him in  
13   the e-mail the week before.

14                  A.    Not that I recall.  I  
15   don't recall anything in that regard, no.

16                  Q.    Okay.  On that point, and  
17   I may have asked you, but just in case I didn't,  
18   you didn't put any constraints on how  
19   Mr. Dziejko could use the data in the e-mail  
20   that you sent him, right?

21                  A.    I don't believe there was  
22   anything specific in the e-mail.

23                  Q.    Or at the charity event  
24   you didn't tell him anything about how he could  
25   use it?



1 A. Yeah, I don't recall.

2 Q. Okay. You didn't ask the  
3 MTO to come in and run their tests again to see if  
4 there had been some change in their measurement of  
5 the friction levels since they did the tests in  
6 2007, did you?

7 A. I never had any direct  
8 correspondence with MTO. Any of the friction  
9 testing that was done on the facility was always  
10 through Ludomir.

11 Q. Okay.

12 A. So who did it and how  
13 they did it or if we needed it was through him.

14 Q. Okay. And you didn't ask  
15 Ludomir to ask the MTO to come back in and do  
16 testing again in light of this report that you  
17 found confusing?

18 A. No. I just asked him for  
19 clarification. I didn't know that there was any  
20 further testing needed to be done. It was -- I  
21 really didn't have a problem with the numbers  
22 specifically in my understanding of how they were  
23 used in the past in terms of how it was presented  
24 from MTO. So it was -- the reference, the single  
25 reference to the British standard that I was

1 looking for --

2 Q. Okay.

3 A. -- and I never got any  
4 clarification on its applicability or not.

5 Q. You never got  
6 clarification?

7 A. I don't believe I ever  
8 did.

9 Q. Okay. So if you accepted  
10 Dr. Uzarowski's information in 2007 that the  
11 friction was better than typical MTO results and  
12 so it was good to go and there was nothing else  
13 for you to do, why didn't you accept the view that  
14 he put in his report that the friction values were  
15 relatively low and that something did need to be  
16 done?

17 A. In my regard it was  
18 totally inconsistent with the information he had  
19 previously given. Here's the numbers from MTO.  
20 These are the numbers they rely on. They are  
21 higher than what they normally get. They are good  
22 to go. And now these numbers are even higher than  
23 that. Oh, but wait a minute, against some  
24 standard from a foreign country, they don't count.  
25 It made no sense whatsoever.

1 Q. Okay. You didn't contact  
2 the 407 to see what standard used for remediative  
3 work, right?

4 A. No, I wouldn't have any  
5 contact with -- I wouldn't even know where to  
6 start.

7 Q. Okay. And you didn't  
8 contact Tradewind directly at any time, right?

9 A. No, not that I recall,  
10 no.

11 Q. Okay. Through the course  
12 of your tenure at the City up to your retirement,  
13 did you give a copy of the Tradewind report to any  
14 city employee?

15 A. I don't recall. I  
16 thought I handed out copies when I left to -- you  
17 know, if I had extra copies on my shelf, I -- take  
18 it to the back and put it in the library. I mean,  
19 that's what I did with all the stuff that was on  
20 my shelf, either took it to the library or gave  
21 copies if they were appropriate or -- to asset  
22 management staff or possibly to our quality  
23 control Geotech rep.

24 Q. Okay. Let's hold that  
25 period of time, and you're at your retirement for

1 now.

2 A. Right.

3 Q. So up to the point where  
4 you're preparing to retire and you're purging your  
5 documents. Between receiving this in February,  
6 January of 2014 and, let's say, April of 2018  
7 before you start your purge, did you give a copy  
8 of the Tradewind report to any City employee?

9 A. I don't recall, but I  
10 don't believe so.

11 Q. Okay. Did you discuss  
12 the Tradewind report or the results in it with  
13 anyone in asset management?

14 A. Not that I can recall.

15 Q. Anyone -- did you discuss  
16 the Tradewind report or the results contained in  
17 it with anyone in engineering services more  
18 broadly?

19 A. I don't know. I just --  
20 I don't -- I don't recall any specific meeting or  
21 event or -- that I would have or that I did say,  
22 hey, here's a copy of this in this regard or any  
23 discussion during that time.

24 Q. Okay. And did you send  
25 the Tradewind report to anybody -- pardon me, I

1 misspoke. Did you discuss the Tradewind report or  
2 the results with anybody within public works but  
3 outside of engineering services?

4 A. I don't remember anything  
5 specifically, but when we started talking about  
6 resurfacing needs and that it -- the existence of  
7 the report and where I got that information from  
8 would be the only place where I would refer to,  
9 you know, why we needed to do those types of  
10 things, but I can't specifically recall anything.

11 Q. Okay. Did you send the  
12 Golder report, so the seven pages of the Golder  
13 report, to anyone in asset management to assist  
14 them with their work of the preservation of the  
15 Red Hill?

16 A. Given it was still  
17 draft -- unless it was, you know, for road  
18 programming, you know, the fact that we had got  
19 some IRI information out of it, I don't know  
20 whether I would have forwarded it on to them or  
21 not.

22 Q. Okay. Well, I think you  
23 said last day that the analysis, apart from the  
24 friction testing, was all information that was  
25 useful and the kind of information that asset

1 management might need to assess future rehab or  
2 resurfacing needs, right?

3 A. Right.

4 Q. And so did you send  
5 Golder report to anyone at asset management?

6 A. I don't recall. Again,  
7 given the fact that the programming of the  
8 resurfacing proceeded, there is information in  
9 this report which would have supported that  
10 decision. So did they have it? It's very likely  
11 they did, but I do not recall specifically giving  
12 them a copy of the report.

13 Q. Okay. When you were  
14 finding the Tradewind report -- actually, sorry, I  
15 have one more question on that. The -- I think  
16 you said earlier that the aspects of the Tradewind  
17 report, except for the friction testing, except  
18 for grammar and that sort of thing, were basically  
19 final, you didn't have any questions about those,  
20 right?

21 A. Not that I recall  
22 anything, now that -- I mean, IRI, I wouldn't have  
23 any real comment on. The pictures, the cores, I  
24 can't think of anything that would have been --  
25 that I would have had any major interest in or

1 ability to comment on or that -- I mean, they're  
2 factual type of things. I didn't have any -- I  
3 couldn't talk to the raw numbers from the friction  
4 testing and whether it was 27 or 28 or a 34. It's  
5 just what does it mean when you compare it to  
6 something. That was the only question, so I can't  
7 recall anything else.

8 Q. Okay. So my question  
9 was, the aspects, apart from the friction testing,  
10 the IRI, the coring, the surface evaluation, there  
11 was nothing coming out of the February 7th meeting  
12 that was not final about Golder's findings on  
13 those parts of the project, right?

14 A. Well, given that I don't  
15 recall the meeting, I don't -- there's nothing  
16 major that I can recall that I had any dispute  
17 with any of the other components.

18 Q. Okay. And the mill and  
19 overlay recommendation that Golder made went  
20 directly to those -- to their analysis and  
21 findings. So did you convey that Golder had  
22 recommended a mill and overlay to deal with  
23 longitudinal cracking to anyone in asset  
24 management?

25 A. It's very possible, and

1 it's likely, but --

2 Q. But you didn't provide  
3 the underlying Golder report to them?

4 A. I don't -- I don't know.

5 Q. Okay. When you received  
6 the Tradewind report and you found -- I think your  
7 evidence has been -- you didn't understand that  
8 aspect of the investigatory level, did you send  
9 that Tradewind report to anyone in the City to ask  
10 them for their input about what it meant?

11 A. I don't believe there  
12 was -- that I understood that there was anyone  
13 else within the City that had any --

14 Q. So that's a no?

15 A. -- knowledge in that  
16 regard. So it's unlikely that I did.

17 Q. Okay. You can't do  
18 better than "unlikely"; you're just not sure?

19 A. It's -- I probably  
20 didn't. No, I don't believe so.

21 Q. And did you send it to  
22 your friend Tom Dziedziejko who had some  
23 experience with low age early friction on the SMA  
24 just to get his insight into it?

25 A. I don't believe.



1 Q. Okay. Did you talk to  
2 anybody at the MTO who you had seen at industry  
3 events or other things about this UK investigatory  
4 standard?

5 A. I was on several other  
6 committees, and I believe I had some verbal  
7 discussions --

8 Q. Oh. With whom?

9 A. -- with these -- you  
10 know, with some people at other committees. Have  
11 you ever seen anything like this or heard of this,  
12 and I don't believe I got any no, don't know  
13 anything about that, can't help you type of thing,  
14 but that was just informal, you know, at other  
15 industry --

16 Q. When and whom did you  
17 speak to about this?

18 A. Oh, it's likely that it  
19 was shortly after this when I received it, I was  
20 on a Municipal Engineers Ontario Good Roads  
21 Municipal Asphalt Committee and, you know, may  
22 have -- it may have been at those ones or at  
23 another seminar given by Ontario Good Roads, but  
24 --

25 Q. Who exactly did you --

1                   A.    I don't -- I don't recall  
2    at this time.

3                   Q.    Sitting here today, you  
4    said, I may have done that.  Do you actually have  
5    anything except for speculation that you actually  
6    spoke to anybody about this, any direct  
7    recollection of doing that?

8                   A.    I do recall asking the  
9    question, but I don't recall getting any --  
10   anything in response of any nature that would have  
11   been helpful to me.

12                  Q.    Okay.  Registrar, can you  
13   close this down and can you bring up HAM23701.  
14   Sorry, I misspoke, HAM23702, and if you can leave  
15   this one up.  Sorry, Registrar.  I've now confused  
16   you.  Thank you.

17                   I'm just going to test our  
18   eyes.  So on the left-hand side is an e-mail in  
19   March of 2014.  It's to Chris McCafferty and Rich  
20   Andoga, and it has the geotechnical municipal  
21   engineering and structural engineering roster  
22   assignments.  Were you roster captain for all of  
23   those?

24                  A.    Geotechnical, municipal  
25   and structural, yes, I was.

1 Q. Okay. And why are you  
2 copying Chris McCafferty and Rich Andoga on this,  
3 and it says:

4 "Perhaps we can talk about  
5 future assignments at our  
6 meeting on Tuesday." (As  
7 read)

8 A. So as part of the roster  
9 working it was important to balance assignment  
10 values ultimately over the two-year period, and as  
11 well as, you know, who was doing what job.

12 As roster captain I had the  
13 best knowledge on the capability of the  
14 consultants on that, and both Chris and Richard  
15 would routinely be looking to get geotechnical  
16 work done. Rich would look for preliminary  
17 geotechnical information for subgrades for roads  
18 and their condition, depths of pavement, and Chris  
19 would routinely be looking for pavement  
20 recommendations and subgrade condition for design  
21 assignments.

22 So to coordinate those, that's  
23 for Geotech, but Chris would also use structures  
24 and road design. So it was routine to meet with  
25 staff that were asking for assignment so that we

1 could coordinate coming forward in the year.  
2 Given that's in March, that's a time when we're  
3 starting to look for additional future  
4 assignments.

5 Q. Okay. Registrar, thank  
6 you for your attempts to call out the document a  
7 bit. I don't think that's going to work. Can you  
8 close it out, and can you call out just the column  
9 that is staff contact. And if this is not going  
10 to work, perhaps I'll get you -- there we go -- I  
11 don't know how -- it's a column rather than a row,  
12 right there. I don't know if this is going to --  
13 well, something.

14 I don't know if this is going  
15 to be workable, but I looked through these, and  
16 this is the staff contact. Am I correct that  
17 these are the individuals who were most -- who  
18 were the staff contact for the consultant?  
19 They're the project managers, if you will.

20 A. There would be the ones  
21 that requested the assignment in the first place  
22 that set the scope and contacted the consultant to  
23 do the work, yes.

24 Q. Okay. Registrar, you can  
25 close that down, and if you can go image 3,

1 please. And if you can call out the five lines  
2 under "Golder."

3                                 So you'll see your staff  
4 contact is here. I don't see any -- you listed as  
5 staff contact for any of the other geotechnical  
6 roster assignments, and I think we spoke about  
7 that last time. Again, this is just 2014, but I  
8 think you said that you couldn't recall any  
9 examples of being the staff contact or the project  
10 manager with any other consultants. Does that bit  
11 of information refresh your memory or help you  
12 clarify that evidence?

13                                 A. If you could make it just  
14 a little bigger so that I can see what those were.

15                                 Q. Sure. So this is the  
16 Golder assignment, and really my question was --  
17 perhaps I raised these -- oh, perfect -- too  
18 prematurely, but apart from these where you are  
19 listed as G. Moore, all of the other staff that  
20 are listed are other people, and I was wondering  
21 if that might assist you with clarifying the  
22 evidence you gave last day about whether you were  
23 the project manager or staff consultant on other  
24 geotechnical roster assignments. I was asking for  
25 over time, so it might not be helpful. I just

1 wanted to give you that as --

2 A. These are all the 2013.

3 These are the --

4 Q. These are, but these are  
5 the only ones that I can see in geotechnical.

6 A. Right.

7 Q. Okay. And that's right,  
8 you think that these Golder assignments are the  
9 only ones where you were actively engaged for  
10 geotechnical?

11 A. Yes.

12 Q. Okay. So here you'll see  
13 that there's a number of things. What's not  
14 coming up is that this is all reference to Golder,  
15 so these are the projects. And it says the  
16 pavement -- we're at the first one, "the Red Hill  
17 pavement condition investigation report," that is  
18 listed as "complete," and then last one is the  
19 "pavement skid testing performance friction  
20 testing" is listed as "started."

21 So you'll recall that  
22 five-year condition report was you assigned that  
23 to the roster first and then you sort of  
24 piggybacked, or Golder added in the later friction  
25 testing assignment into that report.

1 A. Right.

2 Q. So in terms of the  
3 reference to complete versus started, does that  
4 deal with the substance of the project or the  
5 spend of the project?

6 A. More to do with the  
7 spend.

8 Q. Okay. And at this point  
9 I'm not going to take you to it, but the City had  
10 been invoiced for about \$4,000 for the skid  
11 testing performance, and is that why it says it's  
12 started but not completed because there's more  
13 possible spend?

14 A. Yeah, as of January 3rd  
15 we may not have had any invoice to date.

16 Q. Okay. All right. Can  
17 you close this down. And just before I move --  
18 and you can close that down too.

19 Just before I move on to  
20 another topic, Chris McCafferty, he -- I think you  
21 said he would sometimes be looking for pavement  
22 assignments on geotechnical. Did you ever discuss  
23 the Tradewind report or the friction testing that  
24 Tradewind did with him?

25 A. I don't believe so

1 because his scope was the -- all of the other  
2 roadways within the -- there was the typical road  
3 program, so I don't believe I would have discussed  
4 it with him.

5 Q. Okay. Registrar, can you  
6 bring up OD6, page 125. And 126, please.

7 Do you recall a crossover  
8 collision on the LINC that resulted in a fatality  
9 in October of 2014?

10 A. Is this one in the area  
11 of Dartnall Road?

12 Q. It was the one that  
13 occurred on the LINC. There was several crossover  
14 collisions over time.

15 A. Yeah, I don't know  
16 which -- I don't know which one or what the  
17 conditions of this one were.

18 Q. I just wanted to know if  
19 you recalled it in 2014?

20 A. Not specifically, no.

21 Q. Okay. So there's some  
22 back and forth within operations that there might  
23 be a legitimate problem with the LINC collision  
24 data, and the public is reaching out to  
25 councillors about this fatal collision on the LINC



1 with suggestions that a median barrier might be  
2 appropriate, and some of this commentary gets  
3 forwarded to you.

4 Registrar, can you pull out  
5 357 at the bottom of 126, please.

6 And this is your response to  
7 some of the back and forth and in particular to a  
8 suggestion about -- from the member of the public,  
9 councillor, about median barriers. Is it fair to  
10 say that you were of the view in 2014 that median  
11 barriers would be very expensive?

12 A. Well, it's not a view; it  
13 was a fact.

14 Q. Okay. And were you also  
15 of the view that they would not necessarily reduce  
16 fatalities or serious injuries?

17 A. I believe I was under the  
18 opinion that it would simply change the type of  
19 collision. You're going to have a different  
20 collision with a barrier depending on the type of  
21 barriers put in. So you always have to take that  
22 assessment into consideration with barriers.

23 Q. Okay. And where in your  
24 view there wasn't a very clear benefit to the  
25 reduction of fatalities or serious injuries, it

1 wouldn't be worth the money to do a very expensive  
2 project to install them. Was that your opinion?

3 A. No. I mean, that's  
4 not -- my -- all I can provide is the facts. It's  
5 going to be very expensive. I know from  
6 experience in discussions is that barriers change  
7 the nature of collisions that are going to happen.  
8 But, you know, whether this is a benefit or not,  
9 this is up to council and the discussion that is  
10 provided to them.

11 Q. Okay. And did you  
12 continue to hold that general view that barriers  
13 -- sorry, I want to make sure I get your language  
14 right -- change the collisions that are going to  
15 happen? Did you maintain that position throughout  
16 your time at the City up to March of 2018?

17 A. Well, I mean, it's not a  
18 position; it's a fact of road design and taking  
19 into account what they do. So, I mean, it's not a  
20 view or an opinion.

21 Q. Okay. So it didn't  
22 change your --

23 A. It didn't change.

24 Q. Your assessment of that  
25 did not change up to you --

1                   A.    Yes.  I wasn't made aware  
2   that anything other than that was true.

3                   Q.    Okay.

4                   MS. LAWRENCE:

5   Mr. Commissioner, I see it's one o'clock which is  
6   time for our lunch break.  And I'm moving on to  
7   another topic, so I think it's an opportune time  
8   to do that.

9                   JUSTICE WILTON-SIEGEL:  Okay.  
10  That's fine.  Let's take our lunch break.  We'll  
11  stand adjourned until 2:15.

12                  MS. LAWRENCE:  Thank you.

13  --- Recess taken at 1:00 p.m.

14  --- Upon resuming at 2:15 p.m.

15                  MS. LAWRENCE:  Thank you.

16  Mr. Commissioner, may I proceed?

17                  JUSTICE WILTON-SIEGEL:  Yes.

18                  MS. LAWRENCE:  Thank you.

19                  BY MS. LAWRENCE:

20                  Q.    Registrar, can you bring  
21  up OD6, page 130 and 131, please.  And if you can  
22  call out paragraph 372.  Thank you.

23                  Mr. Moore, in December of 2014  
24  the OHMPA, which is the Ontario Hot Mix Producers  
25  Association; is that right?

1                   A.    Yes, Ontario Hot Mix  
2 Producers Association, yes.

3                   Q.    They posted a video to  
4 their YouTube channel, and it features you in an  
5 interview about the LINC and the Red Hill, and it  
6 in the back -- I'm not going take you to the  
7 actual video, but in the background you're sitting  
8 outside, and it looks like a very nice day. Do  
9 you recall when this interview was filmed roughly?

10                  A.    I believe it was July or  
11 August of that same year. It was up at Dundurn  
12 Park, Dundurn Castle in the park there.

13                  Q.    Okay. You didn't receive  
14 any compensation for this interview, did you?

15                  A.    No, I did not.

16                  Q.    So you'll see we've just  
17 excerpted the portion that related to the  
18 roadways, and it introduces you, and you talk in  
19 that second callout about the Red Hill in  
20 particular, and you say "it's perpetual pavement."  
21 "It's unique." And then in the next quote under  
22 GM it says:

23                                "Perpetual pavement gave us  
24 that advantage to be able to  
25 do resurfacings we could do at

1 night with very little impact  
2 on traffic to keep it serviced  
3 over a long period of time."

4 (As read)

5 And you spoke a little bit  
6 about that this morning, Mr. Moore. You go on to  
7 say:

8 "We did use the Superpave  
9 mixes on it which gave us a  
10 lot choice." (As read)

11 And ultimately chose SMA on  
12 the top layer. And you say that:

13 "Technology was very helpful  
14 for us for the skid resistance  
15 and the noise and the ability  
16 to channel away the water and  
17 reduce the spray." (As read)

18 The narrator then says:

19 "It's been nine years since  
20 the parkways opened, and how  
21 has the asphalt worked out,  
22 Gary?" (As read)

23 And you said, "it's working  
24 out very well."

25 Did you have any concerns

1 about the comments, first, the reference to skid  
2 resistance as one of the reasons that SMA was  
3 helpful to you given the commentary that you had  
4 reviewed in the Tradewind report?

5 A. No, I don't believe so.  
6 I mean, the SMA -- I mean, all three or four of  
7 those things are applicable for SMA. It's on the  
8 MTO's list for high friction pavements, and the  
9 noise was important to us from the EA point of  
10 view as well as its ability to channel away the  
11 water and reduce the spray. So all those things  
12 were important.

13 Q. Okay. And even the fact  
14 that you reference skid resistance there, you  
15 didn't have any concerns coming out of the  
16 Tradewind report about making that statement?

17 A. No. This was back, like  
18 I said, in July of '14. The information I still  
19 had at that time was that it was performing. The  
20 numbers that we had showed it higher. I still  
21 hadn't received any other indication that it  
22 wasn't performing from my consultant, so I had --  
23 there was no advance notice of these questions, so  
24 this is an off-the-cuff response to the best of my  
25 ability sitting in a park at the time.

1 Q. Okay. Registrar, can you  
2 close these down go to page 136, paragraph 392.  
3 And sorry, if you can call up 137 as well. No,  
4 pardon me. Never mind, Registrar, just 392.  
5 Thank you.

6 And so, Mr. Moore, I'll just  
7 explain the context that leads to this back and  
8 forth.

9 The traffic engineering group  
10 is installing cat's eyes coming out of the  
11 recommendations from the 2013 CIMA report and the  
12 staff report. And there's some back and forth  
13 about how big the cuts need to be to make those  
14 installations, and MTO says it needs to be 5 feet  
15 rather than 4 feet. And there are some back and  
16 forth with you about this, and then you provide  
17 this response to Mr. Ferguson. Do you remember  
18 this e-mail exchange?

19 A. I do.

20 Q. You knew that cat's eyes  
21 were recommended in the CIMA report; is that  
22 right?

23 A. I do recall that.

24 Q. Okay. So why were you  
25 questioning the need for reflectors?

1                   A.    I wasn't questioning the  
2    need for reflectors.  I was questioning the fact  
3    that they were cutting into the pavement  
4    extensively to put them in.  I guess when I seen  
5    cat's eyes I was thinking they were  
6    surface-mounted features at the time.  I didn't  
7    really understand that they were going to take --  
8    require a 5-foot long by 4-inch or 5-inch wide cut  
9    into the surface of the pavement, which is almost  
10   the depth of the surface course.  So it really has  
11   an impact.  It's one thing when you design the  
12   surface course for these to be installed because  
13   it's likely that you would make the surface course  
14   deeper.  It's another thing to retroactively  
15   install these into something that's never  
16   anticipated these.  That was my concern.

17                   Q.    Okay.  What you said was:  
18                    "Okay, but when the pavement  
19                    fails prematurely because of  
20                    these cuts, I'll be asking you  
21                    to provide an explanation  
22                    about this need for both  
23                    reflectors and the cuts."

24                    Do you agree looking at this  
25    e-mail today that your tone in it is somewhat



1 confrontational?

2 A. I would have to see all  
3 the rest of the correspondence and see how I was  
4 being replied to to make a full -- I mean, just to  
5 pick this out of the blue and say it was  
6 confrontational, I can't provide a comment on  
7 that.

8 Q. Okay. Why were you  
9 personally involved in this exchange as opposed to  
10 a project manager in engineering services?

11 A. I don't know.

12 Q. Okay. Registrar, you can  
13 close this down. Can you go to the next page,  
14 please. And if you can bring out 396, please.

15 So this is an e-mail that  
16 you're not copied on. It follows from some back  
17 and forth among the traffic operations and  
18 engineering staff about your commentary in that  
19 e-mail that we just looked at, and Mr. White  
20 replied to Mr. Mater and said:

21 "Has anyone told him we're  
22 doing the LINC collision  
23 crossover study with CIMA?  
24 He's going to react when he  
25 finds out."

1                   Did anyone ever tell you that  
2    traffic operations and engineering staff were  
3    worried that you were going to react badly to the  
4    retainer of consultants to address the safety of  
5    the Red Hill or the LINC?

6                   A.    Not to my knowledge.  I  
7    don't know why I would or why they would care.

8                   Q.    To the extent that you  
9    had a view about median barriers, did you think  
10   that it was a good use of resources for CIMA to be  
11   paid to do a study about collision crossovers?

12                  A.    I don't know that I would  
13   have a -- that's not up -- wasn't up to me.  I had  
14   nothing to do with that discussion or whether they  
15   should investigate that or not.  I'm sure they got  
16   direction from council to investigate that, or  
17   they used their judgment that it was necessary in  
18   order to deal with whatever questions they had  
19   been asked by committee or council to deal with.

20                  Q.    Thank you.  I wasn't  
21   asking about whether you had authority to make  
22   these comments.  I was asking did you have a view  
23   about whether median barriers -- whether it would  
24   be a good use of resources for CIMA to do a study  
25   about collision crossovers?

1                   A.    No, I wouldn't have an  
2    opinion on that.

3                   Q.    Okay. Registrar, could  
4    you close this out, and could you pull up 138  
5    along with 137, please. Sorry, page 138. Thank  
6    you.

7                   And you can see on the bottom  
8    of the first page and onto the second in  
9    paragraph 398 you left Dr. -- I can call out if  
10   you're having --

11                  A.    No, I'm good.

12                  Q.    You left him a voicemail,  
13    and there was no context, and his note in his  
14    notebook says on the same date "Gary Moore - RHVP  
15    six year later." Do you have any recollection of  
16    what the message was or what the purpose of that  
17    call was?

18                  A.    I don't have -- I don't  
19    have a recollection of what I would be calling him  
20    in regard to.

21                  Q.    Okay. Apart from your  
22    evidence about asking Dr. Uzarowski to go do more  
23    assessment about the Tradewind analysis, was the  
24    rest of the six-year project entirely complete  
25    from Golder's side by January of 2015?

1                   A.    I don't know.  I couldn't  
2    say.  I don't know what revisions I had made on  
3    the original review and whether they had made them  
4    or not, so I couldn't say.

5                   Q.    Okay.  But we did speak  
6    this morning, and I think your evidence was that  
7    there was nothing in the other aspects of the --  
8    of Golder's work that you had any concern with or  
9    that you had any issue with.  I think your  
10   evidence was that that -- that those aspects were  
11   final?

12                  A.    I believe I said that  
13    there was nothing major that I can recall that we  
14    discussed in those aspects.  There was likely, as  
15    there was typically in the reports, small  
16    clarifications or grammar or even spelling that  
17    may have been required.

18                  Q.    Okay.  But sitting here  
19    today you can't remember either way?

20                  A.    No, I can't.

21                  Q.    Okay.  And if  
22    Dr. Uzarowski said there wasn't any -- anything  
23    else, and he viewed him -- that at least that  
24    aspect of the work to be done, would you dispute  
25    that?

1                   A.    I couldn't dispute it  
2 either way.

3                   Q.    Okay.  Registrar, you can  
4 close this out.  So I'm going to turn now to some  
5 questions that -- in 2015 that lead to the 2015  
6 the CIMA report which is what we call the report  
7 that CIMA did in respect of the Red Hill.  There  
8 actually ends up being two reports that go to  
9 public works committee.  One is about the LINC,  
10 and one is about the Red Hill, just to orient you.

11                  A.    Okay.

12                  Q.    The 2015 CIMA report on  
13 the Red Hill had its origins in a crossover  
14 collision on the Red Hill that killed two young  
15 women on May 5, 2015.  Do you recall being aware  
16 of that crossover collision when it occurred?

17                  A.    I do.

18                  Q.    It was fairly high  
19 profile.

20                  A.    Yes, it was.

21                  Q.    Registrar, can you bring  
22 up OD7, page 7, please.  Could you also bring up  
23 page 8 on the next image, please.

24                                So you'll see in paragraph 16  
25 a communications officer is dealing with requests

1 for interviews because of this high profile  
2 collision and says:

3 "Given the recent collision  
4 and those in the past, some  
5 are calling for there to be a  
6 barrier between two lanes."

7 Do you recall that this  
8 crossover collision brought again to the forefront  
9 of the public's mind the idea of barriers?

10 A. I believe it did. I  
11 don't specifically recall.

12 Q. Okay. So in paragraph 18  
13 you reply to the communications officer who's  
14 trying to assess whether to agree to an interview,  
15 and you say:

16 "I'm not in today. It would  
17 have to be someone from  
18 traffic, but any message  
19 should include the safety  
20 record for the LINC and the  
21 Red Hill. There's almost  
22 100,000 vehicles a day that  
23 travel and the overall safety  
24 record is very good except for  
25 a few very fortunate

1 incidents." (As read)

2 What was -- was that just your  
3 perception of the safety record on the LINC and  
4 the Red Hill, that the overall safety record is  
5 very good?

6 A. I believe so. I mean,  
7 that's -- I mean, other than -- there are a --  
8 there were 100,000 vehicles a day on the LINC I  
9 know, and -- I mean, other than these very few  
10 tragic incidents on the crossover depths, I wasn't  
11 aware of any other information.

12 Q. Okay. So there was no  
13 particular report or set of data that you were  
14 thinking about to ground that comment?

15 A. No.

16 Q. Okay. Registrar, can you  
17 call out page 10 of this document, please.

18 So Councillor Conley initiated  
19 a motion, and the motion you'll see in 29.

20 Registrar, can you pull that  
21 out.

22 "That staff be directed to  
23 investigate additional safety  
24 measures for the Red Hill and  
25 the LINC, such as additional

1 guardrails, lighting, lane  
2 markings and other means to  
3 help prevent further  
4 fatalities and serious  
5 injuries; and to report with  
6 recommendations by December 7,  
7 2015." (As read)

8 And you can close that out.

9 Mr. Moore, do you remember  
10 receiving notice or information that PWC had taken  
11 this motion, passed this motion?

12 A. If it was at the public  
13 works meeting, it's likely that I attended.

14 Q. This was a significant  
15 meeting. You know, it's on the heels -- it's just  
16 a week after the death of these two young women.  
17 Do you remember attending that meeting?

18 A. I seem to recall I think  
19 I was, but....

20 Q. Okay. Registrar, can you  
21 bring up page 11, please. So this is the motion.  
22 We're at the point in time the motion is going to  
23 added to the agenda. Mr. Mater and Mr. Ferguson  
24 and Mr. Lupton are -- loop you into an e-mail  
25 about the drafting, and at paragraph 32 you say



1 "the motion is fine."

2 Registrar, can you pull up  
3 paragraph 3, please.

4 What was the basis of your  
5 cost estimate in this reply? Is it back of the  
6 envelope?

7 A. Well, I was aware -- I  
8 mean, guide rail runs about \$150 a metre to  
9 install, so \$150,000 per kilometre. If you're  
10 doing it the length of the LINC and the Red Hill,  
11 that's 22 kilometres times two. So I mean it's --  
12 I don't need an envelope to do it. I can do it in  
13 my head because I'm quite aware of these costs and  
14 numbers and lengths.

15 Q. Okay. And you say:  
16 "Put up a guide rail and  
17 you'll have an immediate  
18 damage to the car as well as  
19 the possibility of redirecting  
20 the car back into the  
21 travelled lanes." (As read)

22 I think earlier today you  
23 spoke about how it might change the nature of the  
24 injuries, but it wouldn't necessarily prevent the  
25 injuries. Is that what you meant?

1 A. That's correct.

2 Q. You also say:

3 "Not a simple answer

4 especially when you add in the

5 speed profile issue." (As

6 read)

7 Did you understand that there

8 was a speeding issue on the Red Hill?

9 A. I believe at this time I  
10 was aware or it was my -- from some point that  
11 there was speed issues. I believe there was other  
12 council reports that referred to the speed on the  
13 facility.

14 Q. Okay. Was it your view  
15 at this period of time in May of 2015 that the Red  
16 Hill and the LINC had been designed correctly and  
17 that the issue leading to these accidents was  
18 speeding drivers?

19 A. Well, yes, I believe the  
20 design was appropriate. I mean, with all of the  
21 involvement of every consultant that we had along  
22 the way, the extensive public consultation,  
23 involvement of the MTO throughout the process, I  
24 had no indication that there was anything other  
25 than a proper design on the roadway.

1 Q. Okay. And the second  
2 part of my question was, and that the issue  
3 leading to these -- to accidents was speeding  
4 drivers?

5 A. I believe that was the  
6 discussion, you know. That for the -- especially  
7 on the LINC it's very, very straight. It's not  
8 like it's a tricky geometrics that you have to  
9 deal with. That -- I believe that that was the  
10 problem.

11 Q. Okay. Registrar, can you  
12 close this down and go to page 12, please. And if  
13 you can pull up paragraph 35.

14 So traffic operations and  
15 engineering retained CIMA to do the 2015 CIMA  
16 study on the Red Hill following from their 2013  
17 study on the Red Hill and their 2015 study on the  
18 LINC.

19 Did you have any discussions  
20 with Mr. Ferguson or anyone else in the traffic  
21 division on their intention to retain CIMA?

22 A. No, I don't believe so.

23 Q. Did you have any  
24 discussions with them about their intention to  
25 have CIMA do a full assessment of illumination on

1 the Red Hill?

2 A. No, I don't.

3 Q. Okay.

4 A. I don't recall any  
5 discussion with them or in setting the terms of  
6 reference.

7 Q. Okay. I brought this up  
8 because this is an e-mail. It's Mr. Malone who is  
9 summarizing a call he had with Mr. Ferguson where  
10 he said, the answer -- it's at the very bottom.

11 "The answer regarding lighting  
12 is not simply a no as it was  
13 previously." (As read)

14 So you didn't have any sense  
15 of the scope of the 2015 CIMA report and how or  
16 whether it would include illumination?

17 A. No.

18 Q. Okay. Registrar, you can  
19 close this callout.

20 Would you have expected staff  
21 from engineering services to be involved on the  
22 project team if there was a possibility that CIMA  
23 would recommend lighting countermeasures?

24 A. I don't know whether  
25 expectation is the word. We would have been glad

1 to provide that. There may have been something  
2 that we can contribute in that fashion, but  
3 traffic had organized a number of -- a whole  
4 committee on safety in the City and no one in  
5 engineering services had been included in that, so  
6 I didn't really have an expectation for a review  
7 of the LINC or Red Hill in that fashion. We would  
8 be asked to participate.

9 Q. What committee are you  
10 talking about, a Vision Zero-related committee?

11 A. It's a community safety  
12 committee, something that reviewed safety issues  
13 across the City on all roads and operations of  
14 those.

15 Q. Okay. Would you have  
16 expected engineering services to be involved on  
17 the project team if there was a possibility that  
18 CIMA would recommend countermeasures that would  
19 change any aspect of the way that the Red Hill was  
20 designed, for example, geometry?

21 A. I don't know that we  
22 needed to be on the project team. I mean, we're  
23 always available to participate in whatever  
24 fashion, so....I mean, they did lots of studies  
25 that we weren't aware of or that we didn't

1 participate in -- on the, quote/unquote "official  
2 study team" but still participated or were still  
3 asked for our opinion when -- you know, on certain  
4 aspects of whatever came up. So I don't have  
5 an -- I didn't have an expectation that we would.

6 Q. Okay. And do you have  
7 the same answer as it relates to potential  
8 countermeasures that might change the pavement  
9 material?

10 A. If they are capable of  
11 making those recommendations to council in a  
12 fulsome and they needed our input and asked us our  
13 input, I don't -- I don't know that it's  
14 happening. I don't think I have an expectation.

15 Q. Okay. Maybe I'll put it  
16 this way. As a matter of good practice in terms  
17 of collaboration with people who have the  
18 knowledge that would be helpful for a consultant,  
19 would it have been your expectation that someone  
20 from engineering services would have been  
21 involved?

22 A. I don't know about the  
23 expectation, but yes, it would have been helpful.

24 Q. Okay. You didn't have  
25 any -- personally any day-to-day involvement with

1 the work of CIMA during this project, the project  
2 that led to the 2015 CIMA report?

3 A. No.

4 Q. Registrar, can you go to  
5 page -- to OD6 rather than 7 and page 140 and 141,  
6 please.

7 In March of 2015 -- and sorry,  
8 we've sort of jumped around in terms of time.  
9 This is now before the Red Hill crossover  
10 collision.

11 The folks in traffic  
12 operations were preparing an update in respect of  
13 the countermeasures that they were doing on the  
14 Red Hill coming out of the 2013 CIMA report. And  
15 you'll see at the bottom of 140, paragraph 410  
16 that Mr. Ferguson e-mailed you and Mr. Field  
17 attaching a draft of that update report, and this  
18 is for the June 15, 2015 PWC meeting. And then  
19 you respond at the top of 141:

20 "Sorry guys, my only comment  
21 is I can't go to public works  
22 when I'm away in June. Please  
23 pick another day." (As read)

24 And so eventually we were just  
25 looking at the period of time there's a May 21st,

1 public works committee meeting.

2 Registrar, can you bring up  
3 the draft that Mr. Ferguson sent to Mr. Moore.  
4 It's HAM24142. And if you can bring up the first  
5 and second image, please.

6 Just so you can see this. Do  
7 you remember receiving this from Mr. Ferguson and  
8 reviewing it? Sorry, Mr. Moore, you might not  
9 have heard me. Do you remember receiving a  
10 copy --

11 A. Yeah. I'm trying to do a  
12 quick scan to see if something jogs my memory, but  
13 I don't -- I don't recall this specific report.

14 Q. Okay. So you'll see that  
15 there's -- on image 2 there's a reference to  
16 modifying pavement marking and rumble strips, and  
17 it says:

18 "To be reviewed and completed  
19 during future repaving." (As  
20 read)

21 Do you recall traffic  
22 engineering and operations to your knowledge  
23 having any discussions with anyone in engineering  
24 services about their intention to say that we  
25 can't do this aspect until a future repaving?



1                   A.    That's consistent with a  
2    comment I made at some time with regard to rumble  
3    strips, but I don't know whether it was this one  
4    or not.

5                   Q.    Okay.  And you weren't  
6    involved in any discussions between traffic  
7    engineering and engineering services about how to  
8    frame the status of this countermeasure for this  
9    report?

10                  A.    I don't believe so.

11                  Q.    Okay.  Registrar, can you  
12   bring up image 3 and image 4, please.  Thank you.

13                         So this is the rest.  This is  
14   the -- it's a four-page document.  So you've seen  
15   it all now.  On image 3, the image on the  
16   left-hand side, under the Mud Street interchange  
17   you'll see that's one of the places where lighting  
18   was recommended on the ramps, but it's not there.  
19   But three down it says:

20                                 "Install high friction  
21                                 pavement approaching and  
22                                 through the curve."  (As read)

23                                 And it also says:

24                                 "To be reviewed and completed  
25                                 during future repaving."  (As

1 read)

2 And so I asked you earlier if  
3 you had any evidence that engineering services had  
4 considered this countermeasure or taken any steps  
5 to consider whether or how or when to implement  
6 it. And I think you said that you did not.

7 Does this change your evidence  
8 on that?

9 MR. LEDERMAN: Well, sorry, it  
10 was the evidence that he gave, but it was in  
11 response to, I thought, a question earlier about  
12 the kink where he did not have any documents that  
13 suggested that anyone in engineering services had  
14 considered that issue. So I don't know whether  
15 it's a matter of changing his evidence, but  
16 perhaps easiest if you show him the e-mail in  
17 which this draft report was sent to him.

18 MS. LAWRENCE: Thank you for  
19 your suggestion, Mr. Lederman. I had put to him  
20 that the inquiry hadn't received -- and pardon me,  
21 Mr. Commissioner, I don't know if you would like  
22 me to respond.

23 JUSTICE WILTON-SIEGEL: Yeah,  
24 please proceed.

25 MS. LAWRENCE: Thank you. So

1 what I asked Mr. Moore earlier was that the  
2 inquiry didn't have any evidence that -- about  
3 engineering services considering the issue of when  
4 or how or what to do in respect of this  
5 countermeasure, and I asked Mr. Moore if he had  
6 any evidence to the contrary.

7 JUSTICE WILTON-SIEGEL: Right.

8 MS. LAWRENCE: And so now I'm  
9 asking him if this changes or if he would like to  
10 reassess any of the evidence that he gave earlier  
11 this morning in respect of that point.

12 JUSTICE WILTON-SIEGEL: Well,  
13 I wonder if the missing question is whether he had  
14 any involvement as was the case with respect to  
15 the previous item.

16 MS. LAWRENCE: Sure. I think  
17 that is the question. I was just trying short  
18 circuit it.

19 BY MS. LAWRENCE:

20 Q. Mr. Moore, did you have  
21 any involvement in traffic engineering's decision  
22 to include the status listed here as "to be  
23 reviewed and completed during future repaving"?

24 A. I don't believe so. I  
25 don't recall any specific question, but I don't --

1 I don't believe I was involved in this question.

2 Q. Okay. And you said you  
3 have no comments in response Mr. Ferguson's  
4 delivery of this e-mail to you. Did you go and  
5 ask anybody within engineering services if they  
6 had any particular comments or views about this  
7 countermeasure and the status that traffic  
8 engineering had included?

9 A. No, if I had seen  
10 something in here that had been inconsistent or  
11 erroneous, I may have asked where he obtained that  
12 information and then asked that question, but I  
13 didn't need to circulate this amongst staff to  
14 assess that I didn't have any problem with what  
15 was being said.

16 Q. Okay. So just to ensure  
17 that the evidence is clear, did you have any  
18 involvement either in advance of the March  
19 delivery of this document or at any point later,  
20 any discussions with anybody in engineering  
21 services about implementing the installation of  
22 high friction pavement approaching and through the  
23 curve on the Mud Street interchange?

24 A. I'd have to say no  
25 because I don't ever remember discussing that

1 issue and how we might do it or when it was coming  
2 up, so I don't believe so.

3 Q. Okay. And would you  
4 agree if this was raised amongst engineering  
5 services staff, they likely would have come and  
6 talked to you about it because, one, it deals the  
7 pavement, two, it deals with the Red Hill. Do you  
8 agree with that?

9 A. Well, it -- I'm not sure  
10 about the Red Hill portion, but they probably  
11 would have come to me about the question about  
12 high friction pavement because the FC2 was already  
13 there, so I'm not sure what -- they may have not  
14 known what kind of pavement they were referring to  
15 or some sort of a specialized thing and when in  
16 the future is -- you know, one year, two years or  
17 when we come to resurface the entire interchange,  
18 so....

19 Q. Okay. Thank you.  
20 Registrar, can you close this out and could you go  
21 to OD7, page 36, please. This is a note --  
22 Registrar, can you pull up the note at the top of  
23 this page.

24 This is a note from Brian  
25 Malone's notebook from -- the date at the top is

1 August 6th, and it references a call with you. Do  
2 you remember speaking to Mr. Malone on August 6,  
3 2015.

4 A. I do recall talking to  
5 Brian, but I couldn't tell you when it was.

6 Q. Okay. I think you said  
7 yesterday that you recall having two conversations  
8 with him. We went through one in 2013. This one  
9 was about friction testing. Does that refresh  
10 your memory about the conversation recognizing you  
11 don't know exactly when it occurred?

12 A. No. I mean, if you had  
13 asked me out of the blue without seeing this, you  
14 know, did you talk to Brian about -- I wouldn't  
15 have -- I remember talking to Brian, but I don't  
16 remember what it was about.

17 Q. Okay. So you have a  
18 recollection of talking to Mr. Malone. And do you  
19 have a recollection that that conversation was  
20 something to do with the work that CIMA was doing  
21 on the Red Hill?

22 A. Well, I would assume that  
23 was what it was, but I don't -- I couldn't  
24 specifically say, yes, we talked this. No, I  
25 don't remember that.

1 Q. Okay. Mr. Malone  
2 testified that he called you because his team at  
3 CIMA had found for a second time a high  
4 preponderance of wet road crashes because they  
5 were doing the 2015 CIMA project at this point.  
6 First they found it in the study area in 2013 and  
7 now again. And that CIMA had recommended friction  
8 testing in 2013, and that CIMA at this point in  
9 August of 2015 doesn't know whether the City had  
10 done friction testing in 2013 or taken action as a  
11 result of any testing, and he decided to reach out  
12 to you to ask for clarification.

13 Do you recall speaking to Mr.  
14 Malone during a (ph) conversation in which he  
15 conveyed the background to the purpose of his call  
16 to be an inquiry about friction testing.

17 A. No, I'm afraid I don't.  
18 I don't recall the call. I do recall talking to  
19 Brian, but I don't -- I don't recall any  
20 specifics.

21 Q. Okay. He testified that  
22 you and he spoke and that you provided a bunch of  
23 information regarding the nature of the roadway,  
24 perpetual pavement and SMA, and his notes of that  
25 call are in part reflected here where it says

1 "SMA, asphalt, stone mastic asphalt," and that you  
2 said that SMA has a high skid -- has high skid  
3 resistance properties. Does that refresh your  
4 memory about information that you conveyed to  
5 Mr. Malone during this call?

6 A. I'm sorry, where does it  
7 say? I don't know what I said to him. I mean, if  
8 we were talking about stone mastic asphalt, I  
9 would have told him it came off of the MTO  
10 reference for high skid resistant roadways as SMA  
11 does.

12 Q. Okay. Do you recall  
13 telling him that SMA has high skid resistance  
14 properties as a pavement type?

15 A. No, I don't.

16 Q. Okay. He testified that  
17 you told him that the MTO had done skid resistance  
18 testing. And you'll see in the middle of these  
19 notes it says, "skid resistance, MTO did skid  
20 resist test." Do you recall conveying that to  
21 him?

22 A. I don't.

23 Q. Okay. During this call  
24 did you tell him anything about the Tradewind  
25 testing or any concerns that you had raised about



1 the UK investigatory standard from your evidence  
2 earlier today?

3 A. I don't know. I don't  
4 recall what I gave to him or told him.

5 Q. Okay. Registrar, you can  
6 close this down. And if you can call up  
7 CIM0010018. CIM0010018.

8 THE REGISTRAR: Sorry,  
9 Counsel, what is the doc ID without the zeros in  
10 front?

11 MS. LAWRENCE: Oh, I'm sorry.  
12 CIM10018.

13 THE REGISTRAR: Is it .1 or  
14 just --

15 MS. LAWRENCE: No.

16 THE REGISTRAR: Okay.

17 MS. LAWRENCE: Thank you for  
18 the clarification.

19 THE REGISTRAR: Thank you.

20 MS. LAWRENCE: Thank you.

21 BY MS. LAWRENCE:

22 Q. So, Mr. Moore, on  
23 August 7 you forwarded to Mr. Malone the e-mail  
24 that you had received on January 24, 2014 from  
25 Dr. Uzarowski, and you said:

1 "Here is the Red Hill friction  
2 testing summary. Not for  
3 republication, thanks." (As  
4 read)

5 And unless you would like me  
6 to go into it, I can tell you that there's  
7 attachments there, and they're the same  
8 attachments that we looked at this morning. They  
9 are the two 2007 MTO graphs and the early age low  
10 SMA friction paper. Do you want to go into those  
11 just to refresh your memory?

12 A. No, I'm....

13 Q. You remember that?

14 A. Yep. Well, I see that  
15 they were here. I mean, that's my e-mail, so I  
16 don't have any doubt that I sent it to him.

17 Q. And that it included the  
18 attachments. That's really -- I just -- I don't  
19 have to go in just to clarify that.

20 A. No.

21 Q. Okay. So how would you  
22 have found the January 24th e-mail in order to  
23 forward it to Mr. Malone?

24 A. Well, it's likely in my  
25 e-mail.

1 Q. Under your RHVP folder  
2 within your e-mail?

3 A. Very likely.

4 Q. Is there anywhere else  
5 that it could have been by this point?

6 A. I don't know whether I  
7 had a Golder file for everything I received and  
8 sent to Ludomir or not.

9 Q. Either way it would have  
10 been your in-box in your e-mail folder system, not  
11 somewhere outside in some other electronic  
12 location; is that right?

13 A. That's correct. That's  
14 correct.

15 Q. Did you tell Mr. Ferguson  
16 or anyone else in the traffic operations and  
17 engineering that you were providing this  
18 information to Mr. Malone?

19 A. No, I don't believe so.

20 Q. After you provided it,  
21 did you update any of the traffic folks that you  
22 had done it?

23 A. Had there been an  
24 opportunity or a discussion, I would likely have  
25 mentioned it, but if Mr. Malone asked me for the

1 information and I forwarded him the information,  
2 that would have been end of it.

3 Q. Okay. Do you recall why  
4 you forwarded this information to Mr. Malone?

5 A. Well, I believe I was  
6 asked for it.

7 Q. Okay. And in particular  
8 what were you asked for, if you recall?

9 A. I don't know what I was  
10 asked for. Typically I was -- I would send people  
11 what they asked for following a discussion. You  
12 know, I wouldn't have sent him additional  
13 information that we didn't discuss without, you  
14 know, oh, by the way here's some other stuff. You  
15 know, here's the Red Hill friction testing  
16 summary, I assumed that's what we were discussing,  
17 and he asked me for it. I can't think of anything  
18 else.

19 Q. Okay. So I take that  
20 answer to be that you can't recall exactly what he  
21 asked you for; is that right?

22 A. I can't recall exactly,  
23 but this is consistent with what I would normally  
24 do in response to an inquiry of that nature.

25 Q. Okay. So this e-mail

1 that you forward him the attachments, they provide  
2 the chart that Ludomir had summarized from the  
3 MTO, they include the spreadsheets from the MTO  
4 and then there's a reference to the average  
5 friction numbers in 2013. Do you agree that you,  
6 in flipping this document, provided a fair bit  
7 more information about the MTO testing and quite a  
8 bit less about the 2013 testing?

9 A. I don't know what I was  
10 asked for, so I mean, I -- yes, there's more  
11 information from the 2007 than there is from the  
12 2013.

13 Q. Okay. What did you mean  
14 when you said "not for republication"?

15 A. I guess another way you  
16 want to put that was FYI, for your information.

17 Q. Okay. So you knew that  
18 CIMA was preparing a report for traffic operations  
19 and engineering, right?

20 A. Yes.

21 Q. And did you intend to  
22 convey by saying "not for republication" that CIMA  
23 was not permitted to reference this information in  
24 its report?

25 A. I don't -- I don't recall

1 what the nature of our discussion was or whether  
2 it was -- he simply had an interest, and I just --  
3 how he was going to use it. I just wanted to make  
4 sure that MTO wasn't -- this information, I just  
5 didn't want too much information out there.

6 Q. Okay. So did you intend  
7 when you said "not for republication," to convey  
8 that CIMA should not reference this information in  
9 the report it was preparing for the City?

10 A. Not for -- that they  
11 couldn't use the information or refer to the  
12 information I don't believe, but I don't -- now I  
13 don't recall exactly what I was referring to in  
14 that regard but....

15 Q. Okay. So at the time you  
16 would have expected the City's consultant to  
17 provide a source of the information if they were  
18 going to include information in their report,  
19 right?

20 A. I put that comment in. I  
21 would have expected if Brian had needed it, that  
22 he would have responded and questioned and said,  
23 okay, but I need to put this in my references, but  
24 I don't believe I got any of that back.

25 Q. Okay. And you said you

1 wanted to limit -- you didn't want too much  
2 information out there. You didn't provide any  
3 limit on Mr. Dziedziejko when you sent him this  
4 same e-mail and materials, did you?

5 A. I believe at the time Tom  
6 was for the -- this was part of an MTO project.  
7 So including MTO information to a consultant that  
8 was working for the MTO, I didn't have that same  
9 concern.

10 Q. Knowing that he was going  
11 to be presenting at a conference you didn't have  
12 that same concern?

13 A. Not when he's working for  
14 MTO. If MTO had had a problem with the  
15 information that he was providing, that would have  
16 been up to them to limit that.

17 Q. Okay. I don't think I  
18 fully understand why you had different treatment  
19 for a consultant who was preparing a report for  
20 your colleagues at the City than you did for a  
21 colleague in the industry who was preparing a  
22 presentation that was going to be presented  
23 publicly. Can you help me with that?

24 A. The -- Tom was presenting  
25 on behalf of the MTO and I was providing him with

1 information that MTO had given us. The other one  
2 is two pieces of information. One, the 2013  
3 friction information that I still don't have  
4 clarified from Golder on its accuracy, and two,  
5 the MTO information that was given to us, I mean,  
6 through Golder as a third party.

7 So having MTO giving us  
8 information that, you know, was helpful to the  
9 City and then turnaround and provide it for public  
10 information is not something that I was  
11 comfortable with.

12 Q. Okay. And just so I'm  
13 clear. I understand that Mr. Dzieziewko at the  
14 time you gave him this information was working for  
15 Aecon; is that right?

16 A. Well, he -- that's his  
17 firm. But the work that he was doing at that  
18 presentation was on behalf or in conjunction with  
19 MTO.

20 Q. Okay. Registrar, can you  
21 close this down and go to OD7, page 37, please.  
22 And if you can call out -- actually you don't need  
23 to call it out.

24 I'm just going to refer you,  
25 Mr. Moore, to paragraph 109. Mr. Malone



1 responded. And the reason I'm not going to call  
2 it out is because then you responded sort of  
3 imbedded in that -- in the e-mail. So here's the  
4 first e-mail from Mr. Malone to you.

5 And the, Registrar, can you go  
6 to page 39, please.

7 And then you'll see this is  
8 the e-mail where it contains Mr. Malone's original  
9 e-mail and then your responses in red, right?

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

12 Q. So you respond on  
13 August 10th, which is a Monday. Your earlier  
14 evidence today was that you had asked  
15 Dr. Uzarowski to do some further work to explain  
16 the UK investigatory level 2 standard or the  
17 level. At this point, so we're in August 2015,  
18 you haven't heard back from him about this?

19 A. No, I have not.

20 Q. Okay. And you didn't  
21 contact Dr. Uzarowski before you wrote back to  
22 Mr. Malone on August 10th, did you?

23 A. I don't believe so.

24 Q. So in the first paragraph  
25 Mr. Malone says:

1 "Just to make sure I'm  
2 understanding correctly, this  
3 is data from the MTO testing  
4 in 2007, as well as the MTO  
5 report on the subject. Am I  
6 correct that FN numbers of  
7 less than 30 are below a  
8 desired level?" (As read)  
9 And your response was:  
10 "Only MTO can tell you that.  
11 They keep this info very close  
12 to the vest so it can't be  
13 used against them in an action  
14 or suit. But it seems to be  
15 the case." (As read)  
16 So at this point you don't say  
17 to Mr. Malone, I've asked my consultant to go get  
18 a bit of information about an applicable standard  
19 and I haven't heard back. Why didn't you convey  
20 that to Mr. Malone?

21 A. This didn't apply to the  
22 2013. This applied to the -- he was asking about  
23 the 2007, and my question of Ludomir was the  
24 applicability of the British standard, I believe.

25 Q. Okay. But I think what

1 you said in your evidence this morning was you  
2 just didn't understand that standard. You  
3 understood the numbers, but you didn't understand  
4 the application, but you do have numbers in the  
5 Tradewind report, and those numbers do reflect a  
6 standard or a threshold that Tradewind is  
7 applying. Why don't you mention that?

8 A. This is the 2007 numbers  
9 that MTO provided, not the Tradewind numbers.

10 Q. So you just didn't think  
11 that that information as it related to the 2013  
12 Tradewind report would be helpful for Mr. Malone;  
13 is that right?

14 A. Absolutely not.

15 Q. Okay. So you don't  
16 suggest that Mr. Malone reach out to Dr. Uzarowski  
17 about this, right?

18 A. No, I don't.

19 Q. Okay. He said:

20 "Do you have a performance  
21 specification for the FN value  
22 strive for?"

23 And you say:

24 "No, it's not a city  
25 specification."

1                   So here (indiscernible) is  
2    talking generally about a specific for an FN  
3    value. Why don't you there say no, but we do --  
4    we have friction test results, and those results  
5    reference a standard that might be helpful to you.  
6    Why don't you do that?

7                   A. I believe I provided him  
8    the response that he was looking for. Do you have  
9    a performance specification, FN? We don't have a  
10   City one, and -- "the FN value you strive for."  
11   No, that was the information I'm providing.

12                  Q. Okay.

13                  A. I don't know why I'd give  
14   him anything else in that, you know....

15                  Q. You don't know why you  
16   would give him something more than the very  
17   specific thing he asked for.

18                  A. When I'm sort of replying  
19   in between the lines of his e-mail, I try to be  
20   concise and -- that he was looking for, but....

21                  Q. Okay. So in the first  
22   paragraph, the last couple of sentence says:

23                         "I have also read that FN  
24                         numbers greater 35 or higher  
25                         or in a zone that would

1 suggest skid resistance is not  
2 an issue on the pavement."

3 (As read)

4 And then in the last paragraph  
5 he says:

6 "The 2013 testing values  
7 certainly look higher. Are  
8 they done using the same  
9 methodology and tool as the  
10 MTO work, and thus could be  
11 directly compared?"

12 So in respect of those two  
13 points that Mr. Malone phrases you have the  
14 Tradewind report that has friction values on the  
15 Red Hill and the LINC. It has a description of  
16 Tradewind's testing methodology. It has the  
17 standard that Tradewind has compared the friction  
18 values to. You have all those things, and I think  
19 you said earlier all those things are in the same  
20 part of your e-mail where you found Ludomir's  
21 January 24th, 2014 e-mail, so why don't you  
22 forward the Tradewind report to Mr. Malone.

23 A. I provided him a summary.

24 Q. Okay. And then he comes  
25 back, and he says:

1 "Are they done using the same  
2 methodology and tool as the  
3 MTO work, and thus could be  
4 directly compared?"

5 A. Yeah.

6 Q. He's asking for more  
7 information. Why then don't you provide the  
8 Tradewind report to him?

9 A. I don't know why I  
10 didn't.

11 Q. Okay. Instead you say:  
12 "The testing was done by MTO  
13 both times, so I would say  
14 they are comparable."

15 And we know just from all of  
16 the -- what we've done today, that's not correct,  
17 right.

18 A. That's totally incorrect.

19 Q. Okay. And you said  
20 before it was not possible that you hadn't read  
21 the Tradewind report by this point in August  
22 of 2015. That's your evidence, right?

23 A. That's correct.

24 Q. It would explain your  
25 error if you then hadn't actually read the

1 Tradewind report and just relied on the Golder  
2 report that you might have misunderstood and  
3 thought that it was the MTO doing the work both  
4 times, right? That would be an explanation?

5 A. I can't even speculate on  
6 why I would answer in that fashion.

7 Q. Did you go back and  
8 reread the Tradewind report or the Golder report  
9 before you sent this response to Mr. Malone?

10 A. I don't believe so.

11 Q. Okay. And if you had, it  
12 would have refreshed your memory that the testing  
13 had been done by Tradewind, right?

14 A. I knew it was done by  
15 Tradewind. I knew it was different. This is  
16 just -- I have no explanation for that answer.

17 Q. Okay. Did you make a  
18 conscious decision not to attach a Tradewind  
19 report?

20 A. I don't believe so. I  
21 mean, thanks Gary, much Gary, don't worry. I  
22 mean, you know, other than the questions he's not  
23 asking for any other information.

24 Q. So you didn't -- I don't  
25 want to do a double negative, but my question was

1 did you make a conscious decision not to attach  
2 the Tradewind report?

3 A. I don't know, I don't  
4 know what....

5 Q. Did you purposely provide  
6 incorrect information to Mr. Malone about the  
7 testing being done by MTO both times?

8 A. I did not. I don't -- I  
9 don't know why this would come from me. It's just  
10 wrong. It doesn't -- I don't know why or what I  
11 was thinking at the time or what I was doing. It  
12 wasn't my intent to provide incorrect information.

13 Q. Okay. Did you not  
14 provide a copy of the Tradewind report to  
15 Mr. Malone because you didn't want to tell him or  
16 give him information that suggested that the  
17 LINC's friction values were much less -- pardon  
18 me, the Red Hill's friction values were much less  
19 than then LINC's friction values?

20 A. I don't know that I made  
21 a conscious decision not to give him the report  
22 for any reason.

23 Q. Okay. After this back  
24 and forth did you update Mr. Ferguson or anyone  
25 else in traffic operations and engineering that



1 you had had this exchange with Mr. Malone?

2 A. Again, no.

3 Q. Do you agree that it  
4 would have been better practice to loop in those  
5 who had the direct assignment responsibilities?  
6 Those who are on the project team.

7 A. It would have made more  
8 sense for me to respond to them and tell them I  
9 had had conversation with their consultant if they  
10 had asked me to contact their consultant and  
11 provide him with a certain amount of information.  
12 But since -- typically if I'm just getting a call  
13 from someone asking for me information or an  
14 e-mail from someone, I simply respond to them and  
15 provide them the information. I assume they would  
16 provide their -- who's ever giving them direction  
17 that they had talked to Gary or whoever on this  
18 and this is where we got the information. So I  
19 don't know that I found it necessary to tell  
20 anyone that I was speaking to Brian. It wasn't a  
21 secret, but it wasn't something I needed to do.

22 Q. Okay. Is it possible  
23 that you didn't update those in traffic  
24 engineering and operations about this because you  
25 didn't want to provide them with a copy of the

1 Golder report or the Tradewind report?

2 A. I mean, they didn't ask  
3 for it.

4 Q. That wasn't my question.

5 Is it possible that you didn't update those in  
6 traffic engineering and operations about this  
7 because you didn't want to provide them with a  
8 copy of the Golder report or the Tradewind report?

9 A. I don't believe so.

10 Q. Is it possible that you  
11 didn't provide Mr. Malone with a copy of the  
12 Golder report or the Tradewind report because you  
13 didn't want those to get back to your colleagues  
14 in traffic operations and engineering?

15 A. No, I don't believe so.

16 Q. Okay.

17 MS. LAWRENCE: I see I've gone  
18 a little past our normal break time. Just a  
19 couple of housekeeping matters.

20 I realize there was a document  
21 earlier that I referenced that needs to be marked  
22 as an exhibit. It's the e-mail from Ms. Jacobs  
23 about being acting director on January 24th, and  
24 it's HAM62857, and I believe that we're on  
25 Exhibit 132.

1 THE REGISTRAR: Thank you,  
2 Counsel.

3 EXHIBIT NO. 132: E-mail from  
4 Diana Cameron to Susan Jacob  
5 1/24/2014; HAM62857.

6 MS. LAWRENCE: Thank you.  
7 Mr. Commissioner, I'm looking at the time. It's  
8 3:20, and we usually take our break between 3:15  
9 and 3:30.

10 JUSTICE WILTON-SIEGEL: Let's  
11 take 15 minutes and we'll return at 25 to 4:00.

12 MS. LAWRENCE: Thank you.

13 --- Recess taken at 3:20 p.m.

14 --- Upon resuming at 3:35 p.m.

15 MS. LAWRENCE: Thank you  
16 Commissioner. We're back, may I proceed?

17 JUSTICE WILTON-SIEGEL: Yes,  
18 please proceed.

19 MS. LAWRENCE: Thank you.

20 BY MS. LAWRENCE:

21 Q. Mr. Moore, just before we  
22 leave the exchange that you had with Mr. Malone,  
23 do you agree that the reason that you didn't  
24 provide -- or the reason that you said not for  
25 republication was because you had some view that

1 there was liability concerns in disclosing this  
2 friction values publicly?

3 A. I was aware that MTO held  
4 that regard to those types of numbers which, yes,  
5 may have in turn led to a belief in that regard  
6 for myself.

7 Q. And for the City?

8 A. Well, for the City, yes.

9 Q. Okay. Registrar, can you  
10 bring up OD7, page 44, please. And if you can  
11 call out paragraph 132.

12 So we're in September of 2015,  
13 the council direction to investigate matters on  
14 the Red Hill that led to the CIMA 2015 project was  
15 in May, and you may recall that the motion said to  
16 report back to PWC by December of 2015. And I  
17 think you said yesterday there's a long lead time  
18 for staff report preparation in advance of  
19 committee meetings; is that right?

20 A. There is, yes.

21 Q. At this point in  
22 September had you seen a copy of the draft 2015  
23 CIMA report?

24 A. I don't recall that I  
25 had. I believe the next one you're going to show

1 me is my reply to Dave, and I don't believe I had  
2 seen that report.

3 Q. Okay. You do definitely  
4 know -- we'll go there in a minute. You said, I  
5 wasn't aware. I'm just not sure what you were not  
6 aware of, so I'm just going back in time.

7 As you are receiving this  
8 e-mail from Mr. Malone that sets out draft  
9 recommendations that he says impact engineering  
10 services, at this point can you confirm either way  
11 whether you had seen the underlying 2015 CIMA  
12 report?

13 A. I can't. I don't recall  
14 whether I had or not.

15 Q. Okay. So you say "take  
16 engineering services off every line." Oh, pardon  
17 me, I should pull up the document where you say  
18 that.

19 Registrar can you keep this  
20 document and this call out up, and then can you  
21 also bring up page 45 and call out paragraph 134.  
22 Thank you.

23 So hopefully this will better  
24 help with directing you for my questions. So you  
25 say under point number 1:

1 "You can take engineering  
2 services off every line. We  
3 don't do investigations. We  
4 do programming, design, tender  
5 and construction supervision."

6 (As read)

7 And did you mean you can take  
8 engineering services off the four recommendations  
9 that Mr. Ferguson had provided to you?

10 A. I believe that's what I  
11 was referring to, yes.

12 Q. Okay. And just above the  
13 point number 1 in your e-mail you say:

14 "Dave, sorry, I wasn't aware.  
15 I need to see it and it needs  
16 to be discussed at DMT, or at  
17 least with John, Gerry and  
18 myself before it goes out. In  
19 any event here's my comments."

20 (As read)

21 So the "it" there, "before it  
22 goes out," did you mean the staff report or did --

23 A. Yeah.

24 Q. -- you mean the  
25 underlying CIMA report?

1                   A.    No, I believe it was the  
2    staff report.

3                   Q.    Okay.  So you didn't want  
4    to provide comments on draft recommendations  
5    without seeing the context?

6                   A.    I assumed that this -- by  
7    that time it was a done deal, and this was just  
8    the staff report, so....It was the recommendations  
9    in the staff report that I had the problems with.

10                  Q.    No, I understand.  And so  
11   you wanted to see the language of the staff report  
12   before you made comprehensive comments on the  
13   recommendations in the staff report?

14                  A.    Yeah.  I mean, this is  
15   just excerpts that Dave sent me.

16                  Q.    Yeah.

17                  A.    I would like to see the  
18   whole staff report in order to make comprehensive  
19   comment, but --

20                  Q.    Okay.

21                  A.    -- in any case here's  
22   what I got.

23                  Q.    Okay.  So going through,  
24   and again back to point 1, you say:

25                         "We don't do investigations.

1                   We do programming, design,  
2                   tender and construction,  
3                   supervision." (As read)  
4                   So if the public works  
5           committee wanted to approve a recommendation  
6           report that included the installation and proposed  
7           budget for a median barrier, would that project  
8           fall to engineering services?

9                   A.    Yes.  Once the,  
10           quote/unquote "what you're building is  
11           identified," then that would definitely fall to  
12           engineering services.

13                  Q.    Okay.  And similarly, the  
14           sheet (sic) rock cuts would also -- if properly  
15           identified and approved by public works committee,  
16           that would also fall to engineering services,  
17           right?

18                  A.    Shield rock cuts.

19                  Q.    It's in recommendation --

20                  A.    Yeah, it's work, yes.  So  
21           doing that work, what do you want done.  Once you  
22           identify what you want done, that's our job.

23                  Q.    Okay.  Your second point  
24           you say:

25                         "What is friction testing



1                   going to tell you if you don't  
2                   have anything to compare it  
3                   to."

4                   You had at this point the 2007  
5 and 2013 friction test results, so you did have  
6 that to compare it to if you went out and got  
7 another friction test, right?

8                   A.    You could compare it to  
9 it, but I don't know what comment you could make.  
10 If it was a little bit higher or a lot higher or  
11 between the initial test and the test, I don't  
12 know what you would do with it if you didn't know  
13 what the standards were or how to interpret it  
14 or -- you know, no one had any ability to assess  
15 what the number meant even if you could compare it  
16 to something.

17                  Q.    So this is about, if my  
18 math is right, 20 months after you gave -- you say  
19 and you said this morning in your evidence that  
20 you gave Golder direction to seek out information  
21 about the UK standard. You hadn't heard anything  
22 back by this point?

23                  A.    No.

24                  Q.    Okay. And we don't have  
25 any evidence that you followed up in writing in

1 that period of time. Do you have any recollection  
2 about following up in writing?

3 A. No.

4 Q. Okay. So you said just  
5 now:

6 "No one has any ability to  
7 assess what the number meant  
8 even if you could compare it  
9 to something." (As read)

10 Now, is it -- it's your  
11 understanding that there's no one who was an  
12 expert in friction to be able to provide an  
13 analysis to compare two sets of friction data.

14 A. Well, I just waited  
15 20 months for Golder to tell me what they thought  
16 it meant and got nothing, so I don't believe there  
17 was too much knowledge out there at that time  
18 other than the MTO.

19 Q. Okay. So I think you've  
20 said a number times during your testimony that  
21 you're not an expert in friction. Wouldn't this  
22 recommendation to get additional friction test  
23 give you the opportunity to go out and either ask  
24 the MTO to do another test or go out and get a  
25 test and then try to find an expert on friction to

1 evaluate it for you?

2 A. Well, I would hope that  
3 you would know whether or not it's useable before  
4 you spent the money, the time and the resources to  
5 go out and get the information; not vice versa.

6 Q. So by this point you know  
7 that the MTO has some process where they assess  
8 the friction data that they are collecting, right?

9 A. That they are collecting,  
10 yes.

11 Q. So isn't it fair to say  
12 that there are some entities that use friction  
13 data and take meaningful information from that  
14 data?

15 A. But the MTO won't discuss  
16 it with you.

17 Q. You know that because  
18 Dr. Uzarowski told you that?

19 A. That was my information,  
20 and I had not found any MTO along the way that  
21 would discuss it.

22 Q. Okay. And by this point  
23 you have never reached out to MTO to talk about  
24 any of the 2013 -- or the issues that you had with  
25 the 2013 Tradewind report, right?

1                   A.    I don't believe so.  I  
2    don't recall anything specific or anyone that -- I  
3    don't know who I would have called.

4                   Q.    Okay.  So you don't say  
5    at this point, we got some friction testing done  
6    in 2013/2014, and it wasn't very helpful.  Why  
7    don't you convey that to Mr. Ferguson?

8                   A.    Well, I think that's what  
9    I said.

10                  Q.    No.  You said, what is  
11   friction testing going to tell you if you don't  
12   have anything to compare it to.  You don't say, I  
13   went and did some before and didn't find it  
14   helpful.  Why didn't you say that?

15                  A.    I guess I could have said  
16   a lot of things, but that's what I said, and I  
17   mean, it -- it's the result of not having anything  
18   helpful, so it's the result rather than what I  
19   did.

20                  Q.    Why didn't you tell  
21   Mr. Ferguson that you had done testing in 2013  
22   instead of this response?

23                  A.    Mr. Ferguson was quite  
24   aware that we had done the testing, as was all of  
25   traffic at the time.  They knew I did the testing.

1 They were aware. I told both -- previous e-mail  
2 show that both Martin and I forget who it was for  
3 the crosswalks were aware that the work had been  
4 done, and their consultant had had the summary of  
5 the information. So they knew -- they knew that  
6 the report was available and that the work had  
7 been complete.

8 Q. That was what you  
9 understood at the time?

10 A. That was what I  
11 understood at the time.

12 Q. Okay. So why didn't you  
13 reiterate that to them in this e-mail?

14 A. I'm reading off a report  
15 that I'd just been surprised with, that I don't  
16 know is going, and I'm giving them a quick off the  
17 top of my head, you know, before we discuss it,  
18 here's what I think.

19 Q. Your last point you say,  
20 in point number 4 on the right-hand side, over --  
21 "We have said over and over  
22 illumination of the Red Hill  
23 or LINC is never going to  
24 happen so stop asking. The  
25 approval was based on no

1 illumination for environmental  
2 reasons. It's unaffordable,  
3 unsustainable and unnecessary.  
4 It would be and 8 to  
5 \$12 million project plus  
6 protection and then the  
7 maintenance costs."

8 When you say "we have said  
9 over and over," who is the "we" there?

10 A. Staff.

11 Q. Okay. And when you say  
12 "so stop asking," who were you suggesting to stop  
13 asking?

14 A. I don't know whether it  
15 was anybody in particular.

16 Q. Okay. Just a turn of  
17 phrase?

18 A. Just a phrase.

19 Q. Okay. So you knew from  
20 the 2013 PWC meeting that led to the outstanding  
21 business list item that the committee did continue  
22 to be interested in lighting, right?

23 A. I believe so.

24 Q. Okay. And when you say  
25 "it is unnecessary," how did you conclude that

1 lighting was unnecessary?

2 A. From the fact that the  
3 original design concluded that partial  
4 illumination was -- satisfied all the design  
5 parameters for the roadway. So necessary and  
6 desirable aren't necessarily the same thing. You  
7 didn't --

8 Q. Okay. So when --

9 A. -- need additional  
10 lighting; you wanted additional lighting.

11 Q. So I think you've told us  
12 several times that you're not an expert in traffic  
13 safety. From a traffic safety perspective what  
14 steps, if any, had you done to conclude that  
15 lighting wasn't necessary?

16 A. From a traffic safety  
17 perspective -- it's the illumination design  
18 perspective that I'm referring to.

19 Q. Okay.

20 A. Okay.

21 Q. So --

22 A. We wouldn't have  
23 installed partial lighting had it not been an  
24 acceptable design parameter at the time of the  
25 construction of the freeway.

1 Q. I understand, but you're  
2 aware by this point that councillors have received  
3 complaints about it being too dark and feeling  
4 unsafe. Regardless of how it was designed, can  
5 you acknowledge that in fact there was a good  
6 reason to try to assess whether from a safety  
7 perspective additional illumination was necessary  
8 or not?

9 A. I don't think that was  
10 the point.

11 Q. I'm not asking about what  
12 your point in this e-mail was. I'm just asking  
13 can you knowledge that?

14 A. Ask me the question  
15 again.

16 Q. Okay. Councillors have  
17 received complaints about it being too dark and  
18 feeling unsafe, and so regardless of how it was  
19 designed, can you acknowledge that there is a good  
20 reason to try to assess whether from a safety  
21 perspective additional illumination was necessary  
22 or not?

23 A. I don't disagree that the  
24 assessment of whether additional illumination may  
25 have addressed those concerns, but the ability to



1 install, build or get approval for whatever that  
2 might be has to come to bear and has to be  
3 provided with any assessment of the lighting.

4 Q. Okay. So would you then  
5 acknowledge that if a safety expert had concluded  
6 that the Red Hill was too dark to be safe, that  
7 the next step should be going through the process  
8 of trying to figure out how to make it more  
9 illuminated even though that was going to be quite  
10 a process? Do you agree with that?

11 A. I don't know that that's  
12 the approach I would have taken. I need council  
13 to know what all of the constraints are going to  
14 be going forward before resources and time and  
15 expectations are developed. It doesn't make a  
16 good reason to build expectations that can't be  
17 fulfilled regardless of how well they might be.

18 Q. Okay. So in these  
19 recommendations you understand that traffic  
20 engineering and operations has hired a consultant  
21 to complete the CIMA report. You know that  
22 because you spoke to Mr. Malone, who at least gave  
23 you some information about that, right?

24 A. They are doing a report,  
25 yes, on the north/south and east/west, yes.

1 Q. And did you take from  
2 Mr. Ferguson's e-mail to you that these  
3 recommendations were coming from recommendations  
4 that CIMA was considering in the drafting of its  
5 report? Did you make that connection?

6 A. Well, it's the staff  
7 report. I believe I understood that it's the  
8 staff report that's going forward as a result of  
9 that consultant report. Yes, I believe I  
10 understood that.

11 Q. Okay. So when you are  
12 making these comments to Mr. Ferguson, is your end  
13 goal to encourage Mr. Ferguson to change the  
14 nature of the recommendations that he has set out?  
15 Not that they include engineering services on  
16 every line, but the content of them.

17 A. No, I don't believe so.  
18 I mean, I didn't have anything about the high  
19 tension steel barrier or the rock shields, just --  
20 you know, it's more appropriate or was more  
21 important and was our practice that these type of  
22 recommendations direct the general manager to --

23 Q. Yeah, I recognize that.  
24 I don't mean to interrupt you. That wasn't my  
25 question. My question was really more about the

1 content.

2 Were you trying encourage  
3 Mr. Ferguson to go back and tell CIMA that these  
4 recommendations didn't make any sense from your  
5 perspective?

6 A. No. I believe I was  
7 making an attempt to educate Mr. Ferguson on what  
8 the impacts of these recommendations were.

9 Q. Okay. Can you see how  
10 the tone of this e-mail may have come across as  
11 confrontational to Mr. Ferguson?

12 A. No.

13 Q. Okay. Registrar, can you  
14 close these down and go to page 46, please. And  
15 can you call up 139. You can just call up the  
16 section on 46. And can you also open on the  
17 right-hand side CIM9287. In fact it might be....

18 So you can see -- Mr. Moore, I  
19 just want to direct you to what we're looking at  
20 here. On October 20th Mr. Malone and two other  
21 individuals from CIMA met with you and  
22 Mr. Ferguson and Mr. White at 1375 Upper Ottawa to  
23 discuss the LINC report and the CIMA report.

24 Do you remember attending a  
25 meeting with Mr. Malone and individuals from the

1 City about these reports?

2 A. I can't say that I do  
3 specifically, no.

4 Q. Okay. In this period of  
5 time in 2015 do you remember attending more than  
6 one meeting with Mr. Malone?

7 A. No, I couldn't say for  
8 sure whether I do or not.

9 Q. Okay. Just so that I  
10 understand your evidence, is it that you can't  
11 recall if you ever met with Mr. Malone or that you  
12 have a recollection of meeting with Mr. Malone,  
13 but you can't remember how many times?

14 A. I would say the latter.  
15 I mean, I do remember a meeting. This was at the  
16 traffic operations centre. I do remember going  
17 there for a meeting. I wouldn't have out of the  
18 blue said it was to meet with CIMA, but I do  
19 remember attending a meeting up there.

20 Q. Okay. Registrar, you can  
21 close down image 1 and just leave up image 2,  
22 please.

23 So this is in October. It's  
24 several weeks after that e-mail exchange with  
25 Mr. Ferguson that we just looked at. Had you

1 received a draft of the 2015 CIMA report in  
2 advance of this meeting?

3 A. I couldn't tell you. I  
4 don't know.

5 Q. Okay. And what about a  
6 draft of a staff report?

7 A. I don't remember  
8 receiving either or looking at either.

9 Q. Okay. So you'll see that  
10 on this page there's sort of two sections. The  
11 first one is:

12 "BM summarized findings and  
13 recommendations from the LINC  
14 report." (As read)  
15 And then after the dotted line  
16 it says:

17 "BM summarized findings and  
18 recommendations from are the  
19 Red Hill report." (As read)  
20 So in the sixth bullet point  
21 from the top it says:

22 "Discussion followed on the  
23 benefit/cost of providing  
24 median barrier." (As read)  
25 Registrar, can you pull out

1 that bullet and the next bullet and the next  
2 bullet, the last three bullets before the dotted  
3 line.

4 So you are recorded as saying  
5 that the benefits for median barriers will not  
6 offset costs and that the current situation  
7 reflects the level of risk the City is willing to  
8 assume. Do you recall making that statement?

9 A. I don't. I believe  
10 that's a paraphrase of something I might have  
11 said, but that doesn't look like something I would  
12 have said.

13 Q. Okay. You said, it's a  
14 paraphrase of something you might have said. What  
15 would you have said?

16 A. Well, I might have -- I  
17 mean, I couldn't comment on the benefits because I  
18 don't know how they calculated that, but I might  
19 have provided an update or commented on the cost  
20 that they were carrying against that analysis.

21 Q. Okay. What about "the  
22 reference to the current situation reflects the  
23 risk the City is willing to assume." Did you say  
24 that?

25 A. That doesn't -- again,

1 that doesn't looks like my wording, so I might  
2 have said something, you know, along the line with  
3 regard to the design parameters that we used and  
4 the width of the median and the fact that it was  
5 in a zone that you could choose not to provide a  
6 barrier, and it was well within the acceptability  
7 for the chart that was provided. That may have  
8 led to that summarization of that comment, but --

9 Q. Okay.

10 A. -- again, it doesn't look  
11 like my wording.

12 Q. So you mean at the time  
13 of design the -- not having median barriers was a  
14 risk the City was willing to assume?

15 A. For the --

16 Q. At the time that the Red  
17 Hill was designed.

18 A. At the time -- I think  
19 we're talking about the LINC here, aren't we?

20 Q. Yes. Apologies. We are  
21 talking about the LINC here.

22 A. So the LINC barrier  
23 between edge of travelled ways is  
24 13-and-a-half metres, and when you go to the chart  
25 for should you provide a barrier or not provide a

1 barrier, the 13-and-a-half metres is -- provides  
2 you with the -- you can provide a barrier if you  
3 want to, but you don't have to provide a barrier.  
4 It's off of that nomograph. It's well within the  
5 area that the barriers aren't required for design  
6 purposes. So as far as I know that chart never  
7 changed with regard to the design speed.

8 Q. So, Mr. Moore, my  
9 question was at the time -- when it says here,  
10 attributed to you, the current information  
11 reflects the risk the City is willing to assume,  
12 is it possible that you said when the LINC was  
13 designed the City didn't require median barriers,  
14 and so that was a risk at the time of design that  
15 the City was willing to assume? Does that sound  
16 like something you would have said?

17 A. I don't know about the  
18 risk part. But outlining why we chose what we  
19 chose at the time and the design parameters that  
20 were available to us is something that I likely  
21 would have outlined.

22 Q. Okay. Can you close this  
23 down, Registrar. And can you call out the four  
24 bullets at the bottom, please.

25 Mr. Moore, you're attributed



1 as stating that friction testing was conducted  
2 recently following standards and results  
3 satisfactory. Do you recall telling CIMA and your  
4 colleagues that friction testing was conducted  
5 recently? This is in 2015.

6 A. I don't recall telling  
7 them that, but that would have referred to the  
8 2013 testing that we did.

9 Q. Okay. What standards are  
10 you referencing here, following standards?

11 A. I don't know that I am.  
12 I don't know that that's my wording. In fact I  
13 don't know -- I don't know what standards that  
14 would be.

15 Q. Okay.

16 A. I wasn't following  
17 standards. Some sort of ASI or CSA or -- I don't  
18 know what the number or the ones they do --

19 Q. You say results -- I'm  
20 sorry, I didn't mean to cut you off. Are you  
21 done?

22 A. No, I'm done. Thank you.

23 Q. Okay. You're attributed  
24 as saying results satisfactory. Did you believe  
25 that to be an accurate statement when you made it?

1                   A.    I don't know that I made  
2    it.

3                   Q.    Okay.  You think it was  
4    reported here but misreported?

5                   A.    Yeah.  I don't know  
6    whether I was ever afforded an opportunity to  
7    review these minutes.  And had I did, I would  
8    probably have commented on that in that regard.

9                   Q.    Okay.  So sitting here  
10   today you don't think that you said the comment  
11   attributed to you results satisfactory?

12                  A.    No.  I believe it would  
13   have explained, you know, what I had received to  
14   date, I mean, that the numbers appeared higher,  
15   and I had no other information other than the  
16   foreign standard to make a comment on.  So I'm not  
17   sure whether that was truncated or what the nature  
18   of the discussion was.

19                  Q.    Okay.  So I think what  
20   you've told the inquiry over the course of the day  
21   is that when you reviewed the 2014 Tradewind  
22   report you thought that Tradewind's conclusion  
23   that the results were below or well below the  
24   investigatory level didn't make any sense because  
25   the friction values in 2013 were higher than the

1 friction values in the 2007; is that right?

2 A. That's correct.

3 Q. And so if you said to  
4 CIMA and your colleagues, I got friction tests  
5 back and the results were satisfactory, if that's  
6 all you said to them do you think that that would  
7 have been an accurate representation of the  
8 Tradewind report?

9 A. No, I don't think so.  
10 And I don't think that that's what I said.

11 Q. Okay. So sitting here  
12 today your evidence is that at this meeting with  
13 Mr. Malone and your colleagues you went into it to  
14 provide context about the concerns you had with  
15 the investigatory standard in respect of the  
16 Tradewind report.

17 A. I can't comment either  
18 way. I don't know what the nature -- it seems  
19 like a very short summarization or comment. I  
20 mean -- and no other discussion which is the  
21 truly -- confusing.

22 Q. Okay. So CIMA goes on  
23 and says:

24 "Clarified that actual weather  
25 conditions occurring on the

1 Red Hill may exceed typical  
2 testing conditions and more  
3 rigorous testing could be  
4 undertaking in order to rule  
5 out pavement friction as a  
6 problem."

7 So attributing that to CIMA,  
8 they are saying no, there's actually weather  
9 conditions and -- that may exceed testing --  
10 typical testing conditions and more rigorous  
11 testing could be undertaken to rule out a pavement  
12 friction issue. Do you remember CIMA saying that?

13 A. Absolutely not.

14 Q. Okay. So if they said  
15 that, that more rigorous testing could be  
16 undertaken, that would have given you an  
17 opportunity to provide all this information that  
18 you said that you provided to them about the  
19 investigatory standard, right?

20 A. I don't know whether one  
21 leads to the other, but it seems to me there was  
22 some discussion, but none of this in here seems to  
23 be making sense. It's not my understanding that  
24 you can do more rigorous testing. You do it at a  
25 given speed and the amount of water and that's it.

1 So I'm not sure what this is referring to.

2 Q. Okay. So you'll agree  
3 with me that this does seem to suggest that there  
4 was a fair bit of -- you know, some discussion  
5 about the friction testing, why CIMA wanted them  
6 and what they might help to rule out. Do you  
7 agree with that?

8 A. I agree that there was  
9 some discussion. I'm not sure that the person  
10 that was writing it down understood what the  
11 nature of the discussions were.

12 Q. And you think that you  
13 mentioned a UK standard, an investigatory level in  
14 this conversation?

15 A. I don't know.

16 Q. Okay. So I'm having a  
17 bit of a hard time following you. But it says,  
18 and what's -- you're attributed as saying is that  
19 you said the results were satisfactory. Do you --  
20 is your evidence here today that you did not say  
21 that?

22 MR. LEDERMAN: I believe the  
23 witness has already answered that question several  
24 times during the course of this testimony.

25 MS. LAWRENCE: You're muted,

1 Mr. Commissioner.

2 JUSTICE WILTON-SIEGEL: Sorry,  
3 I accidentally muted. Mr. Lederman, I'm going to  
4 allow the question. The evidence of the witness  
5 is very confusing, somewhat circulatory. I think  
6 as we close off this we should be clear exactly  
7 what his evidence is on the principal issues that  
8 have been raised here.

9 MR. LEDERMAN: I understand  
10 that, Mr. Commissioner, I think. But it has to be  
11 taken having regard to the fact that the witness  
12 has repeatedly expressed a view as to his  
13 inability to recall the details of the discussion.  
14 And so it is in the context in which he's  
15 answering those questions and responding to the  
16 propositions that Ms. Lawrence is putting to him.  
17 And so that's the reason for my concern.

18 JUSTICE WILTON-SIEGEL: Thank  
19 you for that. I think we should be clear that his  
20 position here is that this summary doesn't reflect  
21 what he believes he said.

22 MR. LEDERMAN: Right.

23 JUSTICE WILTON-SIEGEL: But  
24 what he believes he said has been expressed in a  
25 very illusive manner, and I think that commission

1 counsel is allowed some leeway in order to try to  
2 ensure that we all have that clarity about what he  
3 now says he believes he said.

4 MR. LEDERMAN: Very well.

5 MS. LAWRENCE: Thank you,  
6 Commissioner.

7 BY MS. LAWRENCE:

8 Q. Mr. Moore, my question  
9 was that you're attributed as having saying --  
10 having said the friction testing results were  
11 conducted recently, and this is the point I want  
12 you to focus on. They resulted satisfactory, or  
13 maybe results satisfactory. Is it your evidence  
14 that you didn't say results satisfactory at this  
15 meeting?

16 A. I don't -- I don't recall  
17 what exactly was said, but I don't believe that  
18 that's a correct attribution of what was said.

19 Q. You didn't give or offer  
20 to give CIMA a copy of the Tradewind report and  
21 response to their comments here that more rigorous  
22 testing could be undertaken in order to rule out  
23 pavement friction as a problem, did you?

24 A. I don't believe so.

25 Q. Okay. Can you close this

1 down -- the callout down, please, and can you call  
2 out image 2, please. If you could call out the  
3 last two bullet points.

4 You're attributed as saying  
5 that you prefer the term "potential solutions"  
6 instead of "recommendations," and the City will  
7 consider all required context to make decisions.

8 Do you agree that "potential  
9 solutions" is softer language than  
10 "recommendations"?

11 A. I don't know about the  
12 term softer language, but it's more appropriate to  
13 address what they are providing.

14 Q. Do you agree that  
15 potential solutions doesn't build in a sense of  
16 analysis, assessment, consideration and coming to  
17 a conclusion. Do you agree with that?

18 A. Yes, I would agree with  
19 that.

20 Q. You would also agree that  
21 consultants actually do do that work. They don't  
22 just come up with potential -- all the potential  
23 solutions and put them into a report and sort of  
24 throw them over to the City. They actually do, in  
25 their expertise, assess which ones would be



1 appropriate and which ones would not?

2 A. Well, I don't necessarily  
3 agree with that.

4 Q. Do you disagree with it?

5 A. I would disagree with  
6 that in that their potential solutions don't  
7 always fully address costs and implications that  
8 only City staff can bring to bear on the  
9 assessment of those solutions.

10 Q. Sorry, my question is  
11 specifically about what you understood consultants  
12 to do, but I'm going to move on.

13 Did you make contact with  
14 Dr. Uzarowski at all while you were having  
15 discussions with either Mr. Ferguson or with CIMA  
16 about the CIMA report to discuss the issue of the  
17 UK standard?

18 A. I couldn't say. I don't  
19 know.

20 Q. Okay. Can you close this  
21 out -- close the callout, Registrar, and go back  
22 to image 1. And if you can go to the columns at  
23 the top that say "Persons Present and  
24 Distribution." It says "distribution to persons  
25 present." Do you recall receiving a copy of these

1 minutes?

2 A. I can't say that I did or  
3 didn't. I don't recall, no.

4 Q. Okay. If you had  
5 received them, you would have reviewed them and  
6 ensured that they were accurate representations of  
7 the comments that you made at the meeting, right?

8 A. That was my usual  
9 practice.

10 Q. Okay. Registrar, you can  
11 close this down. And can you go to page 47 of  
12 OD7, please. If you can pull up 142.

13 And, Mr. Moore, I had intended  
14 to put this to you before I asked the question  
15 about your -- about whether you spoke to  
16 Dr. Uzarowski during this period of time. On  
17 October 21 he made a note in his notebook, and  
18 then -- that says "Hamilton meet," and then made  
19 another note that says "Gary Moore."

20 Does that assist you with  
21 whether you had any discussions about the UK  
22 standard at this time?

23 A. It doesn't other than it  
24 appears that I called him for something.

25 Q. Okay. You were working

1 on other things with him at this time; is that  
2 right?

3 A. I don't know if I was or  
4 not.

5 Q. Okay. Registrar, can you  
6 close this out and go to page 50, please. And can  
7 you pull up 151. So just as the registrar is  
8 pulling up the --- if you can pull up the rest of  
9 it on 50. Thank you.

10 Mr. Moore, after this callout  
11 I'm going to take you to the comments that you  
12 made on the 2015 CIMA report. But in advance of  
13 doing that, do you recall in advance providing  
14 comments on the CIMA report if you had any  
15 meetings with Mr. Lupton, Mr. Ferguson, Mr. White  
16 or Mr. Mater about the 2015 report or the proposed  
17 draft staff recommendations?

18 A. I don't know.

19 Q. Okay. You say here  
20 taking -- pardon me. Mr. Lupton says here:

21 "Taking from one of Gary's  
22 comments from the meeting,  
23 it's sometimes how we say it  
24 helps put things into the  
25 right context."

1                   And there's a reference to  
2    considering liability risk within the City.  And  
3    I -- could you be -- could you provide any  
4    assistance as to what meeting Mr. Lupton is  
5    talking about here.

6                   A.    If I had to guess I would  
7    say it was in context to the meeting that we just  
8    had.

9                   Q.    Mr. Lupton wasn't at that  
10   meeting which is why I wonder if maybe there was  
11   another meeting.  Just going back in your mind, do  
12   you recall any meetings that -- sometime around  
13   that meeting with CIMA with Mr. Lupton?

14                  A.    I don't believe so.  I  
15   don't recall anything specific that I had with  
16   Geoff or -- in that regard.

17                  Q.    Okay.  So he says:  
18                        "We need to consider liability  
19                        risk to the City with what we  
20                        say and how we say it.  We  
21                        need to comment on what we've  
22                        done."  (As read)

23                  And is there anything from  
24   this, recognizing it's just a snippet of an  
25   e-mail, that assists you in any discussions you

1 had with Mr. Lupton about liability risk?

2 A. I don't -- I think it's  
3 all consistent with what we were talking about for  
4 the staff report and the way that the consultant  
5 was framing things so....There may have been a  
6 secondary meeting. We may have -- comments from  
7 the meeting. I can't confirm that I had another  
8 meeting at all in this regard. No, I don't  
9 recall.

10 Q. Okay. I want to take you  
11 into the 2015 CIMA report and the comments you  
12 made on it. That's going to be I think sort of a  
13 lengthy back and forth that we're going to have.  
14 So I'm going to ask you just a few more questions  
15 about trying to understand who you spoke to around  
16 this period of time. But just to orient you in  
17 terms of context, you did get a copy of the 2015  
18 CIMA report and the 2015 LINC report, right?

19 A. I believe I did. I  
20 believe I remember seeing those reports.

21 Q. Okay. And you provided  
22 comments in PDFs -- in a PDF like sort of sticky  
23 notes, highlights in them. Do you remember that?

24 A. I believe so.

25 Q. Okay. So we're going to

1 come back to those details, but I'm just -- I'm  
2 noting we only have seven minutes left for our  
3 day.

4 So after making those  
5 comments -- and, Registrar, if you can bring up  
6 page 56 -- do you recall -- and if you can bring  
7 up 170.

8 Do you recall meeting with  
9 Mr. Mater and/or with Mr. Davis about the 2015  
10 CIMA report or the staff report that was going to  
11 come out of that. Mr. Mater references that here  
12 that Charlene was working to arrange a meeting  
13 with Mr. Mater and Mr. Davis and you.

14 A. No. I mean, I routinely  
15 met with Mr. Davis and Mr. Mater, so another  
16 meeting in this regard doesn't seem to stand out  
17 in my mind.

18 Q. Okay. But this is the  
19 point where you've gone from speaking to  
20 Mr. Ferguson about -- you know, about this, and  
21 we've gone through a couple of instances where  
22 you've had interactions with him. Now it's been  
23 escalated to the director and the general manager  
24 and you to have a discussion about this. Does  
25 that help refresh your memory about whether there

1 was ever a meeting with Mr. Mater and Mr. Davis?

2 A. It doesn't.

3 Q. Okay.

4 A. I'm sorry, it doesn't.

5 Q. Can you close this out.

6 And I had sort of jumped over this when we were  
7 looking at it before, but do you recall in  
8 response to Mr. Ferguson's sending you that e-mail  
9 with the proposed recommendations, you say, this  
10 is something that should go to DMT, or to at least  
11 Gerry and I. Do you remember that? I can take  
12 you to it, but --

13 A. I do recall that,  
14 included in those comments.

15 Q. Okay. Do you recall  
16 having a discussion at a departmental management  
17 team meeting about the 2015 CIMA report or the  
18 staff report?

19 A. I believe it may have  
20 been discussed at DMT.

21 Q. Okay. What do you recall  
22 about it?

23 A. I seem to recall some  
24 discussion, and that wasn't unusual to review  
25 pending reports at DMT. I'm just not sure what

1 the nature of that discussion, whether it would  
2 have been, well, we need to meet separate, because  
3 it didn't -- it wasn't something that involved all  
4 of the directors, so it's -- it's unlikely that we  
5 discussed it in detail at DMT.

6 Q. Okay. Mr. Lupton  
7 testified that he thought he recalled meeting with  
8 you and Betty Matthews-Malone who was at the time  
9 in (skipped audio) ops and Mr. Mater after a DMT  
10 meeting likely on October 27. Does that help to  
11 refresh your memory about that --

12 A. It's very --

13 Q. -- after DMT a meeting?

14 A. It's very possible.  
15 That's typically how these types of things were  
16 dealt with. If they -- if there was an extensive  
17 discussion to take place that didn't involve all  
18 the directors, the other -- after we were done,  
19 the other directors would be excused and only  
20 those ones that were involved stayed behind to  
21 have a discussion, but I can't say that I recall  
22 anything specific in this regard.

23 Q. Okay. Do you remember  
24 ever meeting with Mr. Davis and other directors  
25 about the 2015 CIMA report?



1 A. I don't.

2 Q. Is that to say you're  
3 quite confident that you didn't speak to Mr. Davis  
4 about this?

5 A. No, I just don't recall  
6 the -- it's very possible, but it's quite a long  
7 time ago, and we had --

8 Q. Yes.

9 A. -- countless meetings  
10 about different things, so one specific meeting  
11 doesn't stand out.

12 Q. Okay. What do you  
13 remember, if anything, about that meeting after  
14 the departmental team meeting on October 27th?  
15 What do you remember about the content of that?

16 A. Oh, I don't know that I  
17 recall the meeting at all.

18 Q. Okay. So you're not sure  
19 it happened? Your evidence is just that if a  
20 meeting like that was going to happen, it wouldn't  
21 be unusual for it to happen after a DMT meeting?

22 A. It's consistent with how  
23 those types of things were dealt with. I don't  
24 know -- I don't recall the specifics of that  
25 meeting or -- I can't dispute it one way or the

1 other.

2 Q. Okay. But you can't  
3 remember the content at all of that meeting?

4 A. No, I don't.

5 Q. Okay. On this same page  
6 on October 30th, Mr. Murray replied to -- pardon  
7 me, Mr. Ferguson replied to Mr. Murray as part of  
8 a back and forth and he says:

9 "We had a meeting last week  
10 with John Mater and Gary  
11 Moore."

12 And it was about the timing of  
13 the PWC meeting in which the report would be  
14 provided. I don't know if this is a different  
15 meeting, but do you remember meeting with  
16 Mr. Mater and Mr. Ferguson in particular sometime  
17 around the end of October.

18 A. I don't. I don't dispute  
19 it if Geoff said or Dave said we attended a  
20 meeting, but I don't have any recall one way or  
21 the other.

22 Q. Okay. Do you recall any  
23 of those individuals that we've just been talking  
24 about asking you for a copy of the friction test  
25 results at any of these meetings?

1                   A.    I don't specifically  
2    recall the meeting, but I don't recall anyone ever  
3    asking me for a copy of the report specifically.

4                   Q.    You don't remember  
5    anybody asking you for a copy of the report  
6    specifically?

7                   A.    Not at this time, no, I  
8    don't.

9                   Q.    Okay.  And sorry, just so  
10   that the evidence is clear, I might have missed  
11   it.  You don't recall if anyone asked you for the  
12   results rather than a copy of the report?

13                  A.    Well, I provided the  
14   results to a number of different people or  
15   discussed them.  I mean, I gave results to Brian,  
16   Mr. Malone.  So I mean, I did provide the -- and I  
17   did provide the report to -- through legal and  
18   risk a different time, but those are the only  
19   times I can recall being asked for the results.

20                  Q.    Okay.  And for a  
21   non-friction expert results might just be like, is  
22   the friction good or is there a problem.  Did  
23   anybody ask you to confirm with them that, you  
24   know, the friction was all good, that there was no  
25   issue with friction?  Do you remember that?

1                   A.    Other than after  
2    providing that information to Brian, I don't  
3    recall having anyone follow up and ask what this  
4    information meant.

5                   Q.    No.  I'm sorry, and I  
6    know it's been a long day.  My question was  
7    actually broader than that --

8                   A.    Okay.

9                   Q.    -- but also narrower, so  
10   let me try to rephrase it.

11                   In respect of other City  
12    employes do you recall anyone asking you for a  
13    bottom line sense of the results of friction  
14    testing from 2013 when you told a few people that  
15    you were going to do friction testing up until  
16    point?

17                   A.    I can't recall anyone  
18    asking that nature of that question.

19                   Q.    Okay.  And again just for  
20    clarity, when you say you can't recall, does that  
21    mean that you're pretty sure that no one did or  
22    you just can't recall either way?

23                   A.    I can't be absolutely  
24    sure.  I just -- I don't recall off the top of my  
25    head, but I don't believe I've seen anything that

1 would can indicate otherwise, but....

2 Q. Okay. And this is the  
3 very last question because we've gone a few  
4 minutes over.

5 Mr. Ferguson testified that  
6 you met a second time with Mr. Malone and with  
7 Mr. Ferguson, Mr. Mater and Mr. Lupton at the  
8 civic centre, and that was after you gave him your  
9 markup of the 2015 draft CIMA report to go over  
10 the recommendations and the wording of the  
11 recommendations and to discuss the concerns that  
12 you had with them. Do you recall a meeting that  
13 would fit that description at the civic centre  
14 with Mr. Malone and others from the City?

15 A. I believe that he's  
16 referring to the City centre which is, you know,  
17 where our offices were, but I don't -- I don't  
18 recall a meeting of that nature to discuss that,  
19 no.

20 MS. LAWRENCE: Okay. Thank  
21 you, and thank you for letting me go just a few  
22 minutes over 4:30.

23 Mr. Commissioner, it is 4:33  
24 now, and I'm going to be turning to a fairly  
25 lengthy topic, so I think this is a good time to

1 conclude for the day.

2 JUSTICE WILTON-SIEGEL: Okay.

3 Then let's stand adjourned until 9:30 tomorrow

4 morning. Thank you. Have a good evening

5 everybody. Thank you.

6 MS. LAWRENCE: Thank you.

7 --- Whereupon at 4:34 p.m. the proceedings were

8 adjourned.

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