

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Thursday, August 11, 2022 at 9:31 a.m.

VOLUME 51

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Chris Buck	For Dufferin Construction
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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, August 11, 2022

3 at 9:31 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: We have
9 Mr. Ferguson with us today. May I proceed?

10 JUSTICE WILTON-SIEGEL: Yes,
11 please proceed.

12 MS. LAWRENCE: Thank you.
13 Just to remind you, Mr. Ferguson commenced his
14 testimony in June and this is his second day of
15 testimony. He was affirmed in the beginning of
16 his last day of evidence and I would just remind
17 him that his affirmation remains in effect.

18 PREVIOUSLY SWORN; DAVID FERGUSON

19 EXAMINATION BY MS. LAWRENCE:

20 1 Q. Good morning,
21 Mr. Ferguson.

22 A. Good morning.

23 2 Q. When you were last with
24 us, we discussed the events in 2013 and into 2015.
25 I'm now going to start with some information

1 around the time period at the end of 2015 and into
2 2016.

3 Registrar, can you bring up
4 OD 7, page 77, please, and if you could bring up
5 78 as well. Registrar, could you call out
6 paragraph 246, which starts on 77 and then
7 continues on to 78. Thank you.

8 Mr. Ferguson, when you were
9 last giving your evidence, we discussed the
10 December 7, 2015 public works committee meeting.
11 We're now looking just a couple of days after
12 that, to December 9, 2015, and this is as council
13 is ratifying the public works committee decisions.

14 You'll see at paragraph 246
15 that the Lakewood Beach Community Council, the
16 LBCC, e-mailed the mayor and council under the
17 subject line "RHVP Improvements, Ratification
18 Tonight," and that community group asked, you'll
19 see on the second of the call outs, that pavement
20 friction testing be listed as a short-term
21 measure. They say:

22 "This was not on the
23 short-term list of
24 recommendations from
25 staff, however, we feel

1 that the cost benefit of
2 conducting this test
3 would be money well spent
4 and is warranted based on
5 the RHVP safety review
6 studies."

7 And they list a few of the
8 studies about collision types and wet weather
9 collisions.

10 Registrar, could you close
11 that down. You don't need to call it out,
12 Registrar.

13 And you'll see at the next
14 paragraph, 247 on page 78, that Councillor Jackson
15 responds and copies his assistant and you,
16 Mr. Moore, Mr. White and Ms. Leduc in the e-mail,
17 which is at the bottom of page 78. Do you recall
18 receiving the forward of the e-mail from the LBCC
19 on December 10?

20 A. Yes.

21 3 Q. Were you familiar with
22 the LBCC before receiving this e-mail?

23 A. Yes.

24 4 Q. What interactions had you
25 had with them, if any?

1 A. In dealing with them with
2 neighbourhood issues.

3 5 Q. Okay. Registrar, can you
4 call out page 79 and 80, please. Registrar, in
5 fact, could you call out 78 and 79 first. Thank
6 you.

7 You'll see, Mr. Ferguson, at
8 the bottom of page 78, in that forward from
9 Mr. Jackson to you and others, he indicates that
10 last night at city council, he moved the LBCC's
11 correspondence to be referred to the next public
12 works committee meeting.

13 And am I correct that a
14 referral from council back to the public works
15 committee means that the LBCC's request should be
16 heard and debated and considered at the next
17 public works committee meeting?

18 A. Yes.

19 6 Q. Thank you. Registrar,
20 now could you bring up 79 and 80, please. You'll
21 see at the top of page 80 that there's a
22 resolution for that referral back to public works
23 for further discussion.

24 Registrar, can you call out
25 251 to 252, please.

1 On December 14, Mr. Mater
2 forwarded the e-mail with the resolution to
3 Mr. Lupton, to Mr. White and you and he said:

4 "Please coordinate with
5 Gary so we can send a
6 response on this to the
7 group."

8 And you responded to Mr. White
9 alone:

10 "Do we answer them? I'm
11 confused."

12 What was the nature of your
13 confusion?

14 A. In terms who was sending
15 the response.

16 7 Q. That is, your group or
17 Mr. Moore?

18 A. Correct.

19 8 Q. Did you know why
20 Mr. Mater wanted you to coordinate with Mr. Moore
21 to send a response to this group?

22 A. Because obviously it had
23 to deal with the friction or the condition of the
24 pavement, which, as we've discussed before, fell
25 under the engineering group, so we had to

1 coordinate with Gary in terms of a response.

2 9 Q. Okay. The next meeting
3 of the public works committee, which we'll come to
4 in a moment, is in February. Did you have
5 discussions with Mr. Moore between December 14 and
6 February about a response to this group?

7 A. I don't remember specific
8 timelines or dates, but I do know that I did talk
9 to him. I believe we provided a response to the
10 group.

11 10 Q. I'll take you to it. My
12 question was really there was discussions before
13 the next set of e-mails, but perhaps when we go
14 there, that will assist you.

15 Registrar, can you go to
16 page 109 of this document, please, and if you can
17 bring up 110 as well. Could you call out 343 at
18 the bottom of 109. Thank you.

19 So, Mr. Ferguson, you'll see
20 that Councillor Jackson e-mailed you a few days
21 before the February 1 PWC meeting and he copied
22 Mr. Moore as well and he asked if you had had a
23 chance to look at this issue of item 5.2, which
24 related to the LBCC. And he says:

25 "Thoughts on what I

1 should do for Monday. Do
2 I refer it to you or
3 other recommendations?"

4 You can close that out,
5 Registrar, and if you can call out 345 and 346 and
6 347, please. Thank you.

7 So, you reply and you said:

8 "I believe that as part
9 of the overall works,
10 this is already being
11 covered off, road
12 friction test. I've
13 copied Director Moore for
14 clarification."

15 So, my earlier question was:

16 Did you have discussions with Mr. Moore in
17 December of 2015 or in January of 2016 before
18 Councillor Jackson contacted you in late January?

19 A. I don't recall.

20 11 Q. Okay. What did you mean,
21 "I believe as part of the overall works, this is
22 already being covered off"?

23 A. In terms of it was
24 identified in the report for friction testing to
25 be completed.

1 12 Q. And you'll recall last
2 day when you gave evidence we went through that
3 report and that it was on Appendix B. When did
4 you understand friction testing was going to be
5 done, given that it was deferred pending the
6 assessment of the transportation master plan?

7 A. In terms of timing, I
8 didn't have an understanding of when the timing
9 was. That was left to obviously Mr. Moore's
10 group. There obviously is a timeline in there
11 within the report that says the works should be
12 completed within, I believe it's within five years
13 or something, so it was left to essentially
14 engineering to work on that and determine when it
15 was programmed.

16 13 Q. Okay. So, the LBCC is
17 asking specifically that friction testing is
18 warranted and notes that it's not on the
19 short-term list. Did you take any assessment to
20 speak to Mr. Moore to try to escalate or
21 accelerate the timeline for friction testing
22 before you sent this e-mail?

23 A. Not that I recall.

24 14 Q. Do you recall having any
25 discussions with Mr. Moore before sending this

1 e-mail?

2 A. The e-mail to Councillor
3 Jackson, no, I don't recall.

4 15 Q. When you say you don't
5 recall, is that you did not or you just don't
6 recall either way whether you did or didn't?

7 A. I don't recall either
8 way.

9 16 Q. Councillor Jackson
10 responds:

11 "If Director Moore
12 concurs, I'll move this
13 to receiving the
14 correspondence only with
15 a caveat that staff
16 provide a written
17 response to the Lakewood
18 group and commenting on
19 their suggestions about
20 how staff are already or
21 will be implementing
22 these measures
23 accordingly."

24 And you say:

25 "I would confer with that

1 direction."

2 Whether something is moved to
3 receiving the correspondence only, what discussion
4 occurs at the public works committee about the
5 correspondence?

6 A. Well, really, I mean,
7 that's up to council themselves, what types of
8 discussions they take. They could have a
9 wholesome discussion or they might not have any
10 discussion.

11 17 Q. And so, when something is
12 received as correspondence only, as Councillor
13 Jackson says here, does that typically mean that
14 there is little discussion as compared to items
15 that are identified as for discussion?

16 A. I can't really answer the
17 question because that's dependent on council, what
18 they do.

19 18 Q. Okay. Did you understand
20 in Councillor Jackson's e-mail that where it said
21 receiving the correspondence only with a caveat
22 that staff was going to provide a response meant
23 it wasn't going to go on the councillor's plate
24 for discussion at the next public works committee
25 meeting?

1 A. Well, I look at it as
2 they're receiving it and essentially directing
3 staff to respond to Lakewood.

4 19 Q. So, they're not actually
5 discussing Lakewood's suggestion to accelerate the
6 timing of the friction testing. Is that how you
7 understood the outcome of this back and forth?

8 A. Again, that's up to
9 council whether or not they want to discuss it. I
10 can't speak for how they wish to proceed with
11 things like that.

12 20 Q. I understand. I'm asking
13 about your long experience as working in municipal
14 government. When Councillor Jackson sent this
15 e-mail, did you understand that it was still going
16 to be subject to discussion at the public works
17 committee meeting or did you understand that, as a
18 result, staff was going to deal with it and
19 councillors were not?

20 A. Yeah. In my experience,
21 when they receive correspondence, there might be a
22 minimal amount of discussion. There may be some
23 questions asked, but not to the extent of a report
24 or something like that.

25 21 Q. Okay. Registrar, you can

1 close this down.

2 You concurred with that
3 direction. Do you recall if you had any
4 discussions with Mr. Moore about whether he would
5 also concur with that direction?

6 A. I don't recall.

7 22 Q. Registrar, can you bring
8 up 111, please, and can you call out 350 and 351.

9 On February 16, so we're about
10 two weeks after the public works committee
11 meeting, you e-mailed the LBCC, copying the office
12 of the mayor, the public works committee,
13 Mr. White, Mr. Lupton, Mr. Mater, legislative
14 services clerk and Mr. Moore and you said:

15 "Your e-mail was
16 requesting that the
17 identified friction test
18 for the Red Hill be
19 considered for short-term
20 testing. Through the
21 support of the public
22 works committee, I'm
23 pleased to inform you
24 that this testing will be
25 completed by engineering

1 services in 2016."

2 Stopping there, do you recall
3 if there was any discussion at the February 1
4 public works committee meeting about accelerating
5 the friction test into short-term testing?

6 A. No, I do not.

7 23 Q. What discussions, if any,
8 did you have with Mr. Moore before you sent this
9 e-mail to the LBCC?

10 A. I believe I had contacted
11 him by phone to determine his timeline, and that's
12 where he provided the information that they were
13 going to do the work in 2016.

14 24 Q. Okay. During that phone
15 call, did you have any discussions about the past
16 friction tests that Mr. Moore had mentioned at the
17 public works committee meeting in December?

18 A. No.

19 25 Q. Did you ask him for a
20 copy of the friction test that he had mentioned at
21 that December public works committee meeting?

22 A. Not that I recall.

23 26 Q. Why not?

24 A. As mentioned before, we
25 had already requested a copy of a report. Again,

1 I can't remember the timeline of when we did that.
2 But, no, I was dealing with this specific issue
3 and the question that was raised. I didn't ask
4 for any additional information.

5 27 Q. Okay. On your first day
6 of evidence you provided some evidence about
7 Mr. Moore's comments on the draft 2015 CIMA
8 report, including his comments in respect of
9 friction tests, what will friction tests tell you,
10 the MTO holds this close to their vest. Do you
11 remember those comments?

12 A. From Mr. Moore, yes.

13 28 Q. Did Mr. Moore give you
14 any sense during your phone call with him as to
15 what had changed between his position when he was
16 telling you -- when he was making comments on the
17 2015 CIMA report and now, in February of 2016,
18 where he says, fine, I'll do a friction test?

19 A. No.

20 29 Q. Did you understand from
21 those discussions with Mr. Moore that he would do
22 a new friction test that would be completed in
23 2016?

24 A. That was my
25 understanding, yes.

1 30 Q. Did you have any
2 discussions about whether the friction test that
3 he had mentioned at that PWC meeting he mentioned
4 had occurred in 2012 or 2013, whether that could
5 be used to respond to the LBCC?

6 A. No.

7 31 Q. Okay. So, you understood
8 that Mr. Moore was committing to do a fresh
9 friction test. Is that right?

10 A. Correct. Yes.

11 32 Q. Registrar, can you close
12 this down.

13 Did you understand, having
14 provided this commitment to the LBCC, that
15 Mr. Moore would provide you with a copy of the
16 results of the friction test that he was going to
17 complete in 2016?

18 A. No.

19 33 Q. Did you understand he was
20 not going to provide you with the results?

21 A. I had no expectation
22 whether I would be receiving the results. All I
23 knew is that he was committing to doing the study.

24 34 Q. Okay. Registrar, can you
25 go to the next page, please, and call out 356.

1 So, we've just been looking at
2 the e-mail that you sent to the LBCC on
3 February 2016. This is now February 25 and
4 there's some back and forth between Ms. Cameron,
5 Mr. Lupton, Mr. Mater and others about a
6 delegation request from the LBCC. And in a
7 response, Mr. Moore e-mailed -- I believe we
8 should go to the e-mail itself.

9 Registrar, could you call out
10 HAM58666, and if you can call out the middle
11 e-mail, please.

12 So, Mr. Moore e-mails you and
13 he copies Mr. Lupton. He says:

14 "Some roughness/skid
15 resistance/friction
16 testing has been done;
17 however, I'm still trying
18 to get the analysis for
19 it and put it into
20 context, like how does
21 this compare to other
22 highways of similar
23 type."

24 Then he mentions that:

25 "The MTO is very guarded

1 with this information and
2 does not share numbers
3 due to liability and
4 concerns they will form
5 part of a legal action.
6 We should be similarly
7 wary."

8 Did you understand, upon
9 receipt of this e-mail, that Mr. Moore had had
10 friction testing done at some point between
11 February 16, 2016, when you sent that e-mail to
12 the LBCC, and when he sends this e-mail, on
13 February 25?

14 A. That's how I understood
15 it.

16 35 Q. Did you ask for a copy of
17 the roughness/skid resistance/friction testing
18 data that he had?

19 A. I don't believe so.

20 36 Q. Why not?

21 A. As I mentioned before,
22 I'm not trained or have a background in skid or
23 pavement materials. He's the City engineer and
24 he's looking at it. It falls under his
25 jurisdiction of works, so there would be no point

1 to me asking for that type of information.

2 37 Q. Did you at any time
3 follow up on this e-mail and ask Mr. Moore if he
4 had had the analysis that he says he's trying to
5 get, if he had received that analysis?

6 A. Not that I recall.

7 38 Q. Registrar, you can take
8 that down. Thank you. Registrar, can you close
9 this and go back to OD 7, page 124, please. Thank
10 you.

11 In May of 2016, Mr. White
12 e-mailed Mr. Lupton, Mr. Moore and
13 Ms. Matthews-Malone and attached a draft staff
14 report about safety improvements, LINC and Red
15 Hill, and he, Mr. White, noted in the e-mail that
16 John, Mr. Mater, had asked that an info update be
17 provided to council to advise them of the timing
18 of the safety improvements that would be made and
19 he attached a report that, a staff report, that
20 would go to council.

21 Registrar, could you bring up
22 HAM5102, please, and, if you could, could you
23 bring up the second page as well.

24 Mr. Ferguson, were you
25 involved in the compilation of information that

1 led to the drafting of this report?

2 A. Our staff, my staff,
3 would have been involved, yes, and myself.

4 39 Q. And so, you would have
5 reviewed this draft before Mr. White sent it to
6 Ms. Matthews-Malone and Mr. Moore?

7 A. Correct.

8 40 Q. And there's completion
9 dates for some of the safety measures that CIMA
10 had recommended. Just taking you to the third one
11 down, install slippery when wet signs, June to
12 July, where it says install those signs, does that
13 mean to this point that slippery when wet signs
14 had not been installed on the Red Hill?

15 A. Correct.

16 41 Q. Registrar, can you keep
17 up page 2 and also bring up page 3, please. Thank
18 you.

19 So, after that list of the
20 improvements/safety enhancements with proposed
21 completion dates, there's several paragraphs that
22 talk about, at the bottom of page 2, the image on
23 the left, that Hamilton Police Services would be
24 investigating various types of digital radar speed
25 feedback signs.

1 Are those the signs that, when
2 you drive over them, it will reflect back to the
3 driver what their current speed is?

4 A. Yes. It's not exactly
5 how they work, but yes, they provide a visual
6 speed representation of the approaching vehicle,
7 yes.

8 42 Q. Okay. And in the bottom
9 of that paragraph, there's also a notation that
10 the police have been conducting regular
11 enforcement on both the LINC and the Red Hill and
12 have issued over 1,600 violations in four months.
13 Is it fair to say by this point, so we're in May
14 of 2016, that the Hamilton Police Services is
15 actively trying to enforce speed limits on the Red
16 Hill?

17 A. Correct.

18 43 Q. Was there some discussion
19 by this point about the use of photo radar or
20 other monitoring systems to attempt to identify
21 drivers who were going over the speed limit?

22 A. Well, at this time,
23 automated speed enforcement wasn't in place. At a
24 future date, we do send correspondence to the
25 Ministry requesting essentially a special

1 provision to permit use of ASE on the parkways,
2 but at this point in time, no.

3 44 Q. Yeah, it's not happening
4 in 2016, but is there a discussion about the
5 possibility of doing that in 2016?

6 A. I don't recall
7 specifically the times, but we were having
8 discussions that when ASE is available, it would
9 be nice to be able to utilize those on the
10 parkways.

11 45 Q. Okay. And did the
12 province at any point agree to use that kind of
13 automated speed monitoring?

14 A. At any point, are you
15 referring to our future request that we make?

16 46 Q. That's right. Did the
17 province agree to that when you made that request?

18 A. No. They denied the
19 request.

20 47 Q. Okay. And was there any
21 automated speed monitoring system in place on the
22 Red Hill during your tenure at the City?

23 A. Our corridor management
24 group at that time was operating the traffic count
25 program and they did have two, I believe,

1 permanent count stations, one on the Red Hill and
2 I believe one on the LINC.

3 48 Q. Okay. So, you were able
4 to monitor the traffic counts?

5 A. The traffic counts, yes.

6 49 Q. And did that also extend
7 to monitoring the speed of the individual
8 vehicles?

9 A. I believe the speed data
10 was part of that also.

11 50 Q. Okay. Moving away from
12 that type of monitoring in terms of photo radar or
13 other video monitoring feeds, anything like that
14 that would actually have eyes on vehicles and
15 being able to assess their speed, did that kind of
16 program ever come into effect?

17 A. In the future years, yes,
18 past 2016, yes.

19 51 Q. We'll come to that. In
20 this document, there's a reference to queue end
21 warning systems, rain activated slippery when wet
22 flashing beacons and a variable speed limit.
23 That's on the right-hand side in the first full
24 paragraph. What is a variable speed limit? What
25 does that mean, variable speed limit?

1 A. So, to look into the
2 ability to adjust the speed based on congestion,
3 operations of the roadway, weather conditions, et
4 cetera.

5 52 Q. Such that signs would
6 change about what the speed limit was, depending
7 on how congested the parkway was?

8 A. Correct.

9 53 Q. Is that one of the
10 potential initiatives that led to assessing
11 appropriate speed limits more generally on the Red
12 Hill?

13 A. I don't believe so
14 specifically, no.

15 54 Q. Okay. The queue end
16 warning system, is that a process to give drivers
17 notice about what's happening up ahead?

18 A. Correct, yes.

19 55 Q. And the rain activated
20 slippery when wet flashing beacons, where were
21 those going to be installed?

22 A. On the parkways. I
23 believe it was identified in both the Red Hill and
24 LINC reports.

25 56 Q. Okay. But these are

1 flashing beacons that are rain activated rather
2 than having permanent slippery when wet signs up?

3 A. Correct.

4 57 Q. CIMA had also recommended
5 in its report illumination, high-tension median
6 barriers and friction testing and those aren't
7 mentioned in this report. Why is that?

8 A. Sorry, can you repeat
9 that one?

10 58 Q. Sure. In 2015, CIMA had
11 also recommended illumination, high-tension median
12 barriers and friction testing. Why are those
13 potential safety measures not mentioned in this
14 report?

15 A. There had been
16 discussions about the barriers. For example, the
17 barriers were going to be reviewed as part of
18 future -- it was more identified as a long-term
19 approach. They were going to do a TMP study. I
20 believe that the lighting was also something that
21 was to be reviewed, but there was no timing
22 identified in terms of when that would be
23 completed. So, I suspect that's why it's not
24 identified specifically in this report.

25 59 Q. Okay. Was there any

1 administrative process in place within public
2 works at this time to ensure that traffic and
3 engineering services worked together to implement
4 all of the recommendations that came out of the
5 December 2015 staff report?

6 A. To work together? I
7 mean, we would share information obviously.
8 Reports were shared with engineering. I wouldn't
9 say we necessarily worked together. Obviously,
10 for example, the friction testing, that was
11 engineering and they were off on their own. The
12 lighting issues, they were off on their own. The
13 barriers, it was assigned to engineering. So, I
14 wouldn't say it was a process where we worked
15 together, no.

16 60 Q. Okay. Was there any
17 process by which traffic engineering and
18 engineering services had insight into what the
19 other was doing in respect of implementing the
20 safety measures from that staff report?

21 A. I would -- no.

22 61 Q. So, particularly friction
23 testing, given the back and forth that you had had
24 with the LBCC, why wasn't friction testing
25 referenced here in this report?

1 A. To be honest, I can't
2 answer the question. I'm not sure why not.

3 62 Q. Registrar, can you close
4 this down and go to OD 7, page 124 and 125,
5 please, and if you could call out the bottom of
6 125, 397 and 398, please.

7 So, in response to the draft
8 report being sent to Mr. Moore for comment, he
9 responded:

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

19 Did you have any insight into
20 why engineering services was looking into pavement
21 rehab work for 2017?

22 A. No.

23 63 Q. Was this the first
24 indication that you had that they were considering
25 pavement rehab work in 2017?

1 A. I believe so.

2 64 Q. Did that affect whether
3 traffic engineering was going to complete any of
4 its anticipated safety improvements?

5 A. We would have looked at
6 any of the works that needed to be completed.
7 And, obviously, any time there's a construction
8 program like that, it's much more beneficial and
9 cost efficient to complete the works at the same
10 time, so we would have reviewed that.

11 65 Q. Okay. And did it have
12 any effect? Was there anything that you pushed
13 off doing in 2016 because of Mr. Moore's comments
14 about this future pavement rehab work?

15 A. I don't recall
16 specifically.

17 66 Q. I can probably help you
18 out with that and I probably should have done
19 this.

20 Registrar, can you pull up 126
21 and if you can call out the chart.

22 So, you'll see this is a
23 revised and final version of the appendix of the
24 report that we were looking at, and it says:

25 "Install permanent raised

1 pavement markings from
2 Greenhill to QEW."

3 And then it now says:

4 "Timing pending pavement
5 review. Possible
6 resurfacing."

7 Does that refresh your memory
8 about traffic engineering's assessment of whether
9 they could proceed with or whether they should
10 proceed with all of the safety enhancements as a
11 result of Mr. Moore's comments about the pavement
12 rehab?

13 A. Yes. And the raised
14 pavement markings, that was an issue for
15 engineering. They didn't necessarily like us
16 going in and grinding out an existing roadway.
17 And, obviously -- I can't remember the specific
18 cost associated with us doing that work
19 independently. It would obviously be more
20 beneficial and cost effective to do the work when
21 they're doing construction.

22 67 Q. Okay. And at this point,
23 were there temporary cat's eyes installed in this
24 location?

25 A. We had installed cat's

1 eyes. I believe at this point, I want to say we
2 have maybe done two installations.

3 68 Q. And so, the installation
4 that was being proposed in 2016, was that to
5 replace damaged cat's eyes or was it some
6 different kind of installation of a different
7 nature?

8 A. So, you're referring to
9 it being identified in the report, I believe?

10 69 Q. Yeah, where it says
11 install permanent raised pavement markings, but
12 you just said that you had already done two
13 installations --

14 A. Yeah, so -- sorry.

15 70 Q. No, go ahead.

16 A. So, the original
17 installation was between, I believe, Mud and
18 Greenhill, and as part of this report, we've
19 essentially some forward and recommended that it
20 be the full parkway, so picking up the remainder,
21 Greenhill to the QEW.

22 71 Q. I see. Thank you.
23 Registrar, can you close this call out and if you
24 can go to page 150, please.

25 And so, I just jumped ahead in

1 time to January of 2017. We were just at
2 May 2016. Perhaps I should have asked this before
3 I closed the last call out, but is it fair to say
4 that over the course of 2016, your group tried to
5 implement the traffic safety improvements that
6 were set out in that chart that we were just
7 looking at?

8 A. Yes, we would have.

9 72 Q. Okay. So, moving now to
10 January of 2017, Registrar, can you call out 554,
11 please.

12 So, you follow up on -- well,
13 you send an e-mail to Mr. Moore and to Mr. Sidawi
14 saying:

15 "Just following up on the
16 plans for the Red Hill.
17 You mentioned last year
18 that you were planning on
19 repaving and that we
20 should hold off
21 installing the reflective
22 markers at that time. Do
23 you have a timeline?"

24 Registrar, can you close that
25 down.

1 And Mr. Moore responds:
2 "We need to do it soon.
3 Or at least start a
4 program (a bit each year
5 for five years). I don't
6 know yet. Sam, please
7 set up a meeting with
8 traffic and operations to
9 discuss timing and need."

10 Did you understand that your
11 group, traffic engineering, would have input into
12 the scope of the repaving project?

13 A. Yes. That was the
14 process.

15 73 Q. And you would provide
16 your comments on the related countermeasures that
17 you thought would be useful as part of the
18 repaving?

19 A. Correct.

20 74 Q. Registrar, could you
21 close this down and go to page 153, please.

22 So, in February of 2017,
23 shortly after that discussion that we were just
24 looking at with Mr. Moore, you ask your team to
25 prepare some collision mapping.

1 Registrar, could you also
2 bring up 154, please.

3 I won't take you through all
4 of it, but you'll see there's some collision
5 mapping done in early February. And then if you
6 look to the top of 154, Mr. Worrton responds to
7 Mr. Cooper, copying you, and asks for particular
8 collision mapping. Was this collision mapping
9 related to identifying the scope for the repaving
10 from your team's perspective?

11 A. Yes. Yes. So, what we
12 tried to do is obviously we look at collisions
13 holistically, try to identify the problem
14 locations and -- sorry, I just had a battery
15 issue. Excuse me just one second. There we go.
16 Sorry. It's so that we can provide that
17 information to engineering so that when they're
18 doing the scoping and evaluation of the works,
19 that we can identify specific locations where
20 there may be a need for additional barrier, et
21 cetera, that we can be able to provide that
22 information to them.

23 75 Q. Okay. Registrar, can you
24 go to the next page, 155, please.

25 So, Mr. Worrton had asked for a

1 number of different kinds of heat maps, mainline
2 collisions, ramp collisions, crossovers, serious
3 injury or fatality, nighttime versus daytime and
4 wet weather and Mr. Cooper provided all of those
5 and the one that we have excerpted here are the
6 wet weather conditions for the LINC. I recognize
7 it's hard to see the details.

8 Do you recall what you took
9 from this map plotting collisions in wet weather
10 conditions?

11 A. I don't recall
12 specifically, no.

13 76 Q. Okay. Do you recall if
14 your analysis of wet weather conditions, as done
15 by Mr. Cooper, compared to the collision review
16 that CIMA had done in 2015?

17 A. I believe it was similar
18 in nature. I mean, I think looking at -- just
19 looking at it here, you're looking at the areas
20 where you're seeing an increase in collisions in
21 areas where the geometrics of the roadway change,
22 which is to be expected.

23 77 Q. Okay. Registrar, could
24 you call out just the map. So, here, you said
25 you're seeing collisions where the geometrics

1 change. Do you mean where there's curves? Like
2 at the far right-hand side it says fatal injury,
3 and you can't really see it, but there's a bit of
4 a curve there. Then if you go down to the next
5 where it says fatal injury, there's a larger
6 parenthesis or bracket and that's also where
7 there's some curvature. Does that larger bracket
8 or the size of the bracket, does that mean there's
9 more collisions in that area?

10 A. Correct.

11 78 Q. And then again at the
12 bottom, closer to where the LINC meets the --
13 pardon me, the Red Hill meets the LINC, there's
14 also another large bracket around one of the
15 curves. Is that right?

16 A. Correct.

17 79 Q. And none of that was
18 surprising to you, given your review of CIMA's
19 past collision reviews?

20 A. Correct.

21 80 Q. Thank you. Registrar,
22 you can close that down and if you could bring up
23 156, please. Pardon me, sorry. I meant 155 and
24 156 at the same time.

25 And you'll see at the bottom

1 of 155, Mr. Andoga reaches out further to that
2 back and forth about setting a meeting and sets
3 out the proposed resurfacing of the LINC and the
4 Red Hill over a four-year period. It says, "RHVE
5 2018 to 2019."

6 So, before Mr. Moore had said
7 it was -- in 2016 he said they were considering in
8 2017 and here Mr. Andoga has said the proposed
9 schedule is 2018 to 2019. Did you have any
10 information about why the proposed resurfacing was
11 not happening in 2017?

12 A. No.

13 81 Q. Okay. And do you recall
14 meeting with your colleagues, Mr. Cooper and
15 Mr. Worrton, to develop a scope that you thought
16 would be appropriate to add to the paving? And
17 I'll direct you to 169, which I think is the
18 outcome of that meeting. Do you remember having a
19 meeting with them?

20 A. Not specifically, but I
21 suspect we did talk about it.

22 82 Q. Okay. So, you sent the
23 e-mail at 469 on February 28 and you set out a
24 scope, and I'm going to come back to that.

25 But first, Registrar, if you

1 can go to page 166, please. Pardon me, 165 and
2 166.

3 So, at 490, you'll see on
4 February 22 Mr. White e-mailed you and others and
5 notified you of a fatal accident the previous
6 evening, so February 21, another crossover
7 fatality on the Red Hill last night, and he says:

8 "We need to review the
9 CIMA report on barriers
10 as these fatals are
11 likely to be mitigated by
12 a barrier. Vision Zero
13 is about reducing
14 fatalities and serious
15 injury. Dave, please
16 update the collision
17 stats."

18 Am I correct by this point you
19 were actually already doing that for the purposes
20 of your scope assessment?

21 A. Correct.

22 83 Q. And do you recall doing
23 media in respect of this crossover fatality?

24 A. Not specifically, I
25 don't, no.

1 84 Q. Okay. At 493 there's a
2 reference to e-mails between you and Ms. Graham
3 about talking points, so you did do media on this?

4 A. I suspect so based on the
5 e-mail. I just don't remember it specifically. I
6 did a number of interviews over the years, so...

7 85 Q. Okay. Registrar, can you
8 go to 168, please, and if you can call out 495,
9 please.

10 So, this is an e-mail from you
11 and in the second paragraph of the e-mail it
12 reads:

13 "I just got off the phone
14 with Collins and Conley
15 asking questions about
16 barriers and the recent
17 incident. I believe they
18 also talked to Gary."

19 Do you recall around this time
20 that councillors were starting to ask questions
21 about whether barriers might be useful to mitigate
22 crossover collisions?

23 A. I don't recall
24 specifically them thinking that, no.

25 86 Q. All right. You don't

1 recall specifically. Did you have any
2 recollection?

3 A. Not from a council
4 perspective. I know from traffic's perspective it
5 was something we had obviously been interested in.

6 87 Q. So, you don't recall
7 either way whether you were getting any questions
8 or pressure from councillors to be thinking
9 through the barrier issue?

10 A. No. I recall at that
11 time I know the public itself were questioning
12 about barriers or the need for barriers, and so, I
13 mean, usually when it's in the public, the
14 councillors will also bring it forward, but I
15 don't recall specifically councillors contacting
16 me about barriers.

17 88 Q. Okay. Registrar, could
18 you close this down and go to page 156, please.
19 Thank you. And if you can call out 469.

20 So, I took you to this e-mail
21 briefly just a minute ago. This is just a few
22 days after the media hits you've done in that
23 e-mail about councillors contacting you, and you
24 respond to Mr. Andoga and Mr. White about scope
25 and it says:

1 "Traffic operations and
2 engineering has completed
3 a quick review of the
4 safety reports."

5 Just stopping there, are you
6 referencing the CIMA reports?

7 A. Yes.

8 89 Q. Okay. And then there's a
9 number of sentences. I think they're all, sort
10 of, bullet points. To my review, the first five
11 of them all relate to CIMA recommendations that
12 they have made about safety improvements. Do you
13 agree with that?

14 A. Correct.

15 90 Q. And then you say in the
16 sixth line:

17 "We have also conducted
18 the five-year collision
19 history review for both
20 roadways with a specific
21 focus on crossover
22 incidents."

23 Is that the collision maps
24 that I had took you to that Mr. Worrton had asked
25 Mr. Cooper to pull together?

1 A. Correct.

2 91 Q. And you go on to say:

3 "Based on this
4 evaluation, we have
5 identified two segments
6 of concern that barriers
7 would be installed. We
8 have one on the LINC and
9 one on the Red Hill."

10 And then you say:

11 "Staff have also
12 identified secondary
13 locations of concern in
14 which edge markers can be
15 installed, one on the
16 LINC and one on the Red
17 Hill."

18 And then in the next full

19 paragraph you say:

20 "A review of total
21 collisions over a
22 five-year period showed a
23 distinct higher level of
24 incidents occurring
25 between Upper Ottawa and

1 King Street in either
2 direction and would also
3 include on/off ramps. I
4 would say this would be
5 our highest priority area
6 for improvements."

7 You also mention between Upper
8 Ottawa and Barton, the highest area for collisions
9 that results in injuries and fatalities. So, the
10 barrier segments, the two segments that you have
11 identified, were you proposing for median barriers
12 to be installed even absent the final conclusions
13 coming out of the transportation master plan?

14 A. Yes.

15 92 Q. Why was that?

16 A. Again, going back to we
17 talked previously about Vision Zero and what the
18 whole purpose of Vision Zero is. We've obviously
19 done these studies. We're noting that there's
20 specific areas where certain types of collisions
21 are occurring and it would obviously be beneficial
22 obviously to stop crossover collisions from
23 occurring. A barrier would assist with that, and
24 so that's why we're making that recommendation.

25 93 Q. Okay. Registrar, can you

1 close this out and go to the next page, 157,
2 please, and if you can call out 470.

3 Mr. Andoga responds, and
4 you'll see item 6, being the installation of
5 barriers:

6 "Will be a sensitive
7 issue."

8 Did you anticipate when you
9 sent your proposed scope that engineering services
10 would be resistant to the installation of median
11 barriers?

12 A. Did I expect them to be
13 resistant?

14 94 Q. Yes.

15 A. I had a feeling it would
16 be questioned, yes.

17 95 Q. What led you to that
18 feeling?

19 A. Just based on previous
20 discussions with Mr. Moore about the barriers.

21 96 Q. Okay. Registrar, can you
22 close this down, please.

23 You'll see at 471, Mr. Mater
24 scheduled or circulated a calendar invitation to
25 Mr. Moore and Mr. McKinnon, and scheduled for

1 March 20, 2017. Do you recall did you attend that
2 meeting?

3 A. I can't remember
4 specifically. I attended a number of meetings. I
5 know there was a meeting set up, but, again, I
6 just don't remember the dates.

7 97 Q. Okay. Do you recall a
8 meeting that specifically addressed traffic
9 engineering's scope or proposed scope and
10 Mr. Andoga's response to that scope?

11 A. Not specifically to that,
12 no. I don't recall.

13 98 Q. Do you recall escalating
14 Mr. Andoga's comment about installation of
15 barriers being a sensitive issue to Mr. Mater?

16 A. Not to -- I don't recall
17 specifically to Mr. Mater. I would have --
18 Mr. White obviously was my supervisor and we would
19 have had a discussion. He would have been aware.

20 99 Q. Okay. So, do you recall
21 escalating Mr. Andoga's comment about the
22 installation of barriers being a sensitive issue
23 to Mr. White?

24 A. I don't specifically
25 remember, but that was kind of my practice. I

1 dealt closely with Mr. White, and so we had
2 discussions on things like this on a regular
3 basis.

4 100 Q. Okay. And I'm asking
5 specifically about the escalation of this issue
6 around median barriers. Do you recall escalating
7 that to your bosses?

8 A. Not specifically, no.

9 101 Q. Generally?

10 A. Like I said, generally,
11 yes, because Mr. White and I were in close
12 communications daily and things like this would
13 have been shared with Mr. White.

14 102 Q. Okay. Registrar, can you
15 go to page 172, please.

16 So, around the same time that
17 this back and forth is happening with Mr. Andoga,
18 it appears that your team has started drafting an
19 information report to the public works committee.
20 You'll see at paragraph 507 Mr. Cooper, in March,
21 sends you two documents: An info report
22 resurfacing and info report barriers. He provides
23 that and then you send it to Mr. White.

24 Registrar, can you go to
25 page 175, please.

1 So, just referencing at 512,
2 you send a further revised version to Mr. White
3 and to Mr. Mater.

4 Registrar, can you bring up
5 HAM25832 and if you can call up -- thank you.

6 Do you recall the preparation
7 of this information update?

8 A. Not specifically, no.

9 103 Q. Okay. Do you recall the
10 preparation of an information report just to give
11 an update to -- this is actually to the mayor and
12 members of council rather than the public works
13 committee about the safety improvements that your
14 team had been doing?

15 A. We did a number of
16 reports during this time. I mean, it felt almost
17 like every three months we were sending some type
18 of report related to the Red Hill and the LINC.
19 Again, to say specifically this report, I don't
20 remember, other than reading it.

21 104 Q. Okay. Registrar can you
22 bring up pages 3 and 4, please.

23 So, this is the appendices
24 that are appended to this draft report and it
25 says, Appendix A, it has a number of things with

1 completion dates or that works are going to be
2 assessed during resurfacing, so, really, quite
3 similar to that appendix that we were looking at
4 from May of 2016.

5 And then Appendix B, it says
6 conduct pavement friction test, \$40,000,
7 completed. And then it has the rest, which is
8 either to be reviewed and considered during
9 resurfacing or to be reviewed by engineering
10 services.

11 So, just stopping there,
12 Mr. Cooper does the first draft of this report.
13 It then comes to you for revisions. What steps,
14 if any, did you do to confirm if friction testing
15 had been completed?

16 A. Well, that would have
17 been included or identified just based on Gary's
18 previous comments that works had been -- studies
19 had been done. That would have been the extent of
20 it.

21 105 Q. That e-mail where he says
22 that roughness, skid testing and friction testing
23 has done and that he's waiting on analysis?

24 A. Correct.

25 106 Q. Okay. Did you ask

1 Mr. Cooper to contact Mr. Moore to confirm if the
2 analysis that he was waiting on had been
3 completed?

4 A. I don't recall.

5 107 Q. Okay. Did you personally
6 take any steps to confirm whether the statement
7 that friction testing was complete was accurate?

8 A. I would say -- no.

9 108 Q. Okay. Registrar, you can
10 close this down and if you can go to page 178 of
11 OD 7, please.

12 So, in late March, it was on
13 March 27, Mr. Mater circulated a calendar
14 invitation for a LINC/RHVP plan scheduled for
15 May 1, 2017 and the attendees were Mr. McKinnon,
16 Mr. Mater, Mr. Moore, Ms. Matthews-Malone,
17 Mr. White, Mr. Kirkpatrick, Jason Worrone and
18 yourself, and it was to occur in room 400A at City
19 Centre. Do you remember attending that meeting?

20 A. Yes.

21 109 Q. Did you have any
22 discussions with Mr. Mater in advance of this
23 meeting about why he had circulated a calendar
24 invitation for this meeting?

25 A. No.

1 110 Q. Registrar, can you pull
2 up HAM889, please.

3 This is the agenda and you'll
4 see there's a reference to the status of
5 recommended improvements, friction testing
6 results, OBL directions and strategy to address.
7 You just said just recently in your testimony it
8 felt like you were sending reports every three
9 months to PWC or to council on the Red Hill.

10 By May -- pardon me. By March
11 of 2017, were you frustrated with the continued
12 safety issues on the Red Hill?

13 A. No.

14 111 Q. Maybe I'll put that
15 differently. Were you frustrated with the fact
16 that PWC was asking for safety improvements and
17 those safety improvements did not seem to be
18 reflective of change in your collision reviews?

19 A. No, not specifically.
20 So, any time you undertake safety improvements,
21 it's kind of industry standard that you -- once
22 you've implemented the improvements, it takes
23 between three to five years before you're able to
24 really see -- to be able to do a comparison. So,
25 even though we've implemented various types of

1 measures, it doesn't necessarily mean you're going
2 to see an immediate change in statistics.

3 112 Q. Okay. Friction testing
4 results are listed as an agenda item. Do you have
5 any information about who added friction testing
6 results as an agenda item?

7 A. No, I don't.

8 113 Q. At this point, were you
9 curious about the results of the friction testing
10 that Mr. Moore had said he had had done?

11 A. Yes.

12 114 Q. Did you have any
13 discussions with anyone about putting that issue
14 on an agenda for a meeting with him?

15 A. I don't recall.

16 115 Q. I'm not going to take you
17 to it yet, but there was a PowerPoint that
18 Mr. Worrone prepared about this. Do you remember
19 that PowerPoint?

20 A. Yes.

21 116 Q. Okay. Before I get to
22 it, at this meeting, did Mr. Moore provide any
23 information about friction testing or friction
24 testing results?

25 A. Yeah. If I recall

1 correctly, his comment was that they had done
2 friction testing, they had received the results
3 and he was still reviewing and trying to determine
4 what they meant. I believe he mentioned that
5 there was no Canadian standard or anything like
6 that, so he was trying to, again, understand what
7 it all meant.

8 117 Q. Okay. And you think that
9 he provided those comments at this meeting on
10 May 1, 2017, the meeting where Mr. Worrone attended
11 and Mr. Kirkpatrick?

12 A. Yes, he did.

13 118 Q. Okay. Did anyone at this
14 meeting ask Mr. Moore to provide a copy of the
15 data that he was talking about, the data he was
16 going and seeking analysis on?

17 A. Not that I recall.

18 119 Q. Okay. Before this point
19 in May 1, 2017, how many times had you personally
20 asked Mr. Moore for friction testing results?

21 A. Once.

22 120 Q. Okay. Registrar, can you
23 call up HAM25976, please. This is the PowerPoint
24 presentation I was just referencing. Registrar,
25 can you bring up the next image. Actually, that

1 image and the next image as well, please.

2 You remember this PowerPoint
3 presentation?

4 A. Yes. Mr. Mater had asked
5 us to put that together. If I recall correctly, I
6 believe this is maybe around the time that
7 Mr. McKinnon is in the general manager role or
8 acting general manager role, and so he wanted us
9 to put this together to be able to provide to
10 Mr. McKinnon to give him some background
11 information on things.

12 121 Q. Okay. And did Mr. Worrone
13 take the pen first in preparing this presentation?

14 A. Yes.

15 122 Q. And did you review it
16 before it was sent to Mr. Mater and then
17 circulated?

18 A. Yes, I would have
19 reviewed it.

20 123 Q. Registrar, can you pull
21 up image 9 and image 18, please.

22 So, each slide has references
23 to staff reports or safety reports or resolutions.
24 It's a lengthy presentation, but you had brought
25 up about the CIMA reports in 2013 and 2015. And

1 on both, it says friction testing or conduct
2 pavement friction testing. It's listed as
3 complete.

4 Did you personally take any
5 steps to confirm that that information was
6 accurate as you were reviewing the draft of this
7 presentation?

8 A. No. Our position was
9 that based upon the previous comments, our
10 understanding was the work had been completed and
11 Mr. Moore was reviewing it. There was no further
12 followup.

13 124 Q. Okay. Registrar, could
14 you close that down and could you close image 9
15 and bring up -- pardon me, close image 18 and
16 bring up image 10 and could you call that out.
17 Sorry, apologies. Actually, I called out the
18 wrong thing. Could you close that down and bring
19 up image 10 on one side and image 11 on the other
20 side. You don't have to call them out. You can
21 call out image 11, please. Thank you.

22 So, five lines down here, and
23 this is again we're going back to 2013, it says:

24 "Install high-friction
25 pavement."

1 And that was particular to
2 ramp 5. And it says incomplete. Do you recall
3 having any discussions with anyone in the
4 preparation of this presentation to confirm
5 whether or not the high-friction pavement had been
6 installed on ramp 5?

7 A. I don't recall
8 specifically, no, but we knew it had not been
9 completed because we would have been aware of a
10 pavement project obviously on the Red Hill and we
11 were never notified that that work had been
12 completed.

13 125 Q. Okay. Registrar, you can
14 close this down.

15 What do you recall about the
16 tone of this meeting on May 1, 2017, if anything?

17 A. From what I recall, it
18 was somewhat of a briefing to bring, I guess,
19 Mr. McKinnon, sort of, up to speed on the Red Hill
20 and the issues that staff had been dealing with
21 and obviously the action items that were in there.

22 126 Q. Okay. And I asked
23 specifically about tone. Was there any tension in
24 this meeting?

25 A. No. Not that I recall,

1 no.

2 127 Q. Okay. Registrar, you can
3 close this down.

4 Do you recall any other
5 meetings with Mr. Moore that addressed friction
6 testing in and around this time, so the spring of
7 2017?

8 A. Not specifically. As I
9 think I mentioned before, we used to have project
10 coordination meetings, which was where engineering
11 would talk about various construction projects,
12 what was coming, et cetera. There were
13 discussions -- again, I don't remember the
14 specific timings or dates, but I know there were
15 still discussions in there about repaving projects
16 for the parkways and they had done studies but it
17 was the same sort of information, that they were
18 still reviewing data and doing testing and things
19 like that.

20 128 Q. Okay. And at those
21 meetings, did friction testing come up?

22 A. Only, like I said, just
23 in general that the testing had been done and they
24 were reviewing the results, there's no standard in
25 Canada, we're trying to figure out what this

1 means, and that was about it. Nothing further.

2 129 Q. Just so I'm very clear on
3 your evidence, at project coordination meetings
4 where engineering would talk about various
5 construction projects, Mr. Moore raised that there
6 was friction testing results and he was trying to
7 determine the analysis and that was the no
8 standard on friction, summarizing what you've just
9 said. Is that right?

10 A. Yes. I can't say
11 specifically it was Mr. Moore. It would have been
12 someone in engineering. And, again, I don't
13 remember the specific dates, but I do recall the
14 discussions coming up about the parkways.

15 130 Q. If it wasn't Mr. Moore,
16 who else would it have been?

17 A. Well, project
18 coordination was a very large group. There was
19 probably 25 staff from various departments. There
20 would have been multiple staff from engineering,
21 Mike Becke, Susan Jacobs, I think Mr. Oddi used to
22 attend, Mr. Andoga, Mr. Sidawi at the time when he
23 was there, so it could have been any one of them
24 that actually brought it up.

25 131 Q. Okay. Are those meetings

1 minuted?

2 A. I believe they were, yes.

3 I believe Ms. -- I want to say Ms. -- no, it
4 wasn't. I can't remember specifically who took
5 the minutes.

6 132 Q. Okay. So, it's your
7 evidence then in meetings with 25 staff, someone
8 raised the fact that there was friction testing
9 results and engineering services was waiting on an
10 analysis of them?

11 A. From what I recall. Like
12 I said, they didn't go into detail of what results
13 were. Again, they were looking at it and
14 investigating further.

15 133 Q. Specifically friction
16 testing. Is that right?

17 A. Correct.

18 134 Q. Okay. Can you give me
19 any sense of the time frame of this? Was it 2017?
20 2018?

21 A. No, I can't. I'm sorry.

22 135 Q. Okay. And in the context
23 of what project did those discussions come up?

24 A. It would have been
25 through the discussions on the parkway projects

1 and how they were going to -- what type of work
2 they were going to complete. So, would it be a
3 shave and pave? Would it be a full
4 reconstruction? Et cetera.

5 136 Q. Okay. You have said a
6 few times it would have been this, it would have
7 been that, which strikes me as you might be trying
8 to talk about normal practices rather than a
9 recollection. Do you have a particular
10 recollection that at a project coordination
11 meeting the issue of friction testing results in
12 particular came up?

13 A. Yes. I recall the --
14 again, I just don't remember the dates.

15 137 Q. Okay. Do you recall
16 having any other meetings, particularly with
17 Mr. Moore, Mr. Mater, Mr. McKinnon and Mr. White,
18 in which Mr. Moore provided information about
19 friction testing results?

20 A. No, I don't.

21 138 Q. Okay. Registrar, can you
22 call up OD 7, page 157.

23 In the last paragraph on this
24 page, we're still in March 2017, you e-mailed
25 Mr. Malone, RHVP design speed, and you said:

1 "In our meeting the other
2 day, did I hear correctly
3 that design speed for the
4 Red Hill was 100
5 kilometres?"

6 Just stopping there first, so
7 this is 2017, what meetings are you having with
8 CIMA at this point? For what project?

9 A. I don't recall
10 specifically what those meetings were. Yeah, I
11 don't recall specifically.

12 139 Q. Okay. Why are you asking
13 Mr. Malone about design speed? And recall we're
14 still at the point in time where you're talking
15 scope for repaving with Mr. Andoga.

16 A. Well, based on what I'm
17 reading there, I remember we had some type of
18 meeting. I don't remember the specific details
19 around it, but I do remember there was a comment
20 about the design speed and this was something that
21 we had been trying to actually look into for some
22 time as to what the actual design speed was,
23 because that obviously assists in setting your
24 posted speed limits. And so, obviously some
25 comment was made about 100 kilometres an hour as

1 the design speed, so I'm just questioning him on I
2 want to confirm that that is what he actually
3 said.

4 140 Q. Okay. You said that you
5 had been looking into this for some time. To whom
6 were you making enquiries about the design speed?

7 A. I know we had discussed
8 engineering about it, what the design speed was,
9 so the whole background of this was should we be
10 looking at reducing the speed limit, so we wanted
11 to know what the design speed was and we were
12 trying to obtain clarification on what the actual
13 design speed was. And up to this point, you know,
14 our assumption was that the design speed was 110,
15 120, and so now obviously Mr. Malone had made some
16 type of comment with respect to 100 kilometres.

17 141 Q. Okay. So, design speed
18 is set out in design documents for a road. Is
19 that generally correct or at least what you
20 assumed?

21 A. Correct. That's how you
22 design your facility, based on a certain design
23 speed, yes.

24 142 Q. And who in engineering
25 services did you ask about what the design speed

1 was?

2 A. Again, it would have been
3 Mr. Moore or Mr. Oddi.

4 143 Q. And why were you going to
5 Mr. Malone? Didn't Mr. Moore and Mr. Oddi, aren't
6 they positioned to provide that information to
7 you?

8 A. We had never been
9 provided an actual response with respect to what
10 that design speed was.

11 144 Q. Did you think that was
12 curious, that you didn't get a response on this?

13 A. It was unusual, yes.

14 145 Q. Registrar, can you go to
15 page 182, please, and if you can call out 528.

16 This is an e-mail that you're
17 not copied on. It's Ms. Graham to Mr. Moore, but
18 she says:

19 "Martin and Dave met with
20 a reporter from the Spec
21 yesterday to go over
22 safety improvements along
23 the LINC and the Red
24 Hill."

25 Do you recall meeting with a

1 reporter, I believe it was Nicole O'Reilly, on
2 May 25?

3 A. Yes. I believe we met in
4 Mr. White's office.

5 146 Q. Okay. And Ms. Graham
6 says to Mr. Moore the next day:

7 "They did not answer some
8 questions relating to
9 lighting and pavement and
10 have referred to reporter
11 to you."

12 What did the reporter ask you
13 about the pavement?

14 A. I don't remember
15 specifically.

16 147 Q. Did she ask you about
17 friction testing?

18 A. I don't recall.

19 148 Q. Okay. Coming out of the
20 interview or the discussion that you had with the
21 reporter from the Spec, did you understand that
22 the Spectator was interested in RHVP friction
23 testing results?

24 A. Again, I don't recall
25 specifically. I know the Spec was interested in

1 the parkways in general. Obviously there was the
2 press itself reporting on the parkways and various
3 issues or concerns that were brought up, so...

4 149 Q. Okay. Registrar, you can
5 close that call out and if you can go to the next
6 page, please.

7 You were not copied on this,
8 but just in terms of narrative, Ms. O'Reilly
9 e-mailed Councillor Conley on May 30 and said:

10 "If you can, I'm
11 interested on info on
12 pavement friction testing
13 conducted on the Red
14 Hill."

15 Again, you're not copied on
16 that e-mail. Two days later, on June 1,
17 Councillor Conley's assistant, Mr. Ribaric,
18 e-mailed you under the subject line "RHVP Pavement
19 Friction," copying Councillor Conley, and asked:

20 "Was there pavement
21 friction testing done on
22 the Red Hill last year,
23 and if so, what were the
24 results? Thanks."

25 Did you have any discussions

1 with Mr. Ribaric or was this all by e-mail?

2 A. No, it was all e-mail.

3 150 Q. And did you have any
4 discussions with Councillor Conley about this or
5 was it all just e-mail exchanges?

6 A. Yeah. I never talked to
7 Councillor Conley on it. It was just through his
8 admin assistant.

9 151 Q. Okay. But all by e-mail?
10 There was no phone calls?

11 A. Correct.

12 152 Q. Okay. So, on that same
13 day, you responded to Mr. Ribaric, copying
14 Councillor Conley and you copied in Mr. Moore and
15 said:

16 "I have copied in Gary on
17 this e-mail."

18 Why did you copy Mr. Moore on
19 this e-mail rather than going to Mr. Moore and
20 seeking the results that Mr. Ribaric was looking
21 for?

22 A. Again, as we've discussed
23 previously, Mr. Moore is responsible for those
24 works and those studies and has a background in
25 that type of material and information, so it would

1 be more appropriate for him to be able to respond
2 and provide that information and any summary type
3 that needs to be provided.

4 153 Q. Okay. Apart from copying
5 Mr. Moore into this e-mail exchange, did you take
6 any other steps to assist the councillor or his
7 assistant to obtain these results?

8 A. No.

9 154 Q. Did you follow up with
10 Gary Moore afterwards to confirm that he was
11 dealing with Councillor Conley?

12 A. No. That's not my job.

13 155 Q. Okay. Registrar, can you
14 close this down and can you go to -- I want to go
15 to paragraph 547. Let me just double check the
16 page number. Page 186, please. Thank you.

17 Ms. O'Reilly e-mailed you.
18 We're now in June, June 21. You had met with her
19 first on May 25. And she says to you and to
20 Mr. White:

21 "I was finally able to
22 talk to Mr. Moore today
23 about RHVP pavement and
24 lighting and now have a
25 couple of follow-up

1 questions."

2 And she referenced the
3 repaving work for the downbound lanes next year
4 and upbound lanes in 2018, and that was your
5 understanding of the schedule for the repaving?

6 A. Yes, it would have been.
7 Yes.

8 156 Q. She also says:
9 "What does the repaving
10 mean for considering a
11 median barrier system?"

12 Do you recall what response,
13 if any, you gave her?

14 A. No, I don't.

15 157 Q. Okay. Registrar, you can
16 close that down.

17 So, that's June 21. In fact,
18 it seems like discussions amongst city staff about
19 barriers around this time.

20 Registrar, can you go to
21 page 157, please. Pardon me, 158.

22 So, you'll see in June, this
23 is the bottom of the page -- Registrar, could you
24 bring up 159 as well, please -- Mr. Worrone
25 e-mailed Mr. Vala, project manager, and he says:

1 "Thanks for the
2 opportunity to set down
3 and discuss the upcoming
4 contract for improvements
5 to NB, northbound RHVP."

6 And then he sets out five
7 bullet points. Do you recall sitting down with
8 those in engineering services and Mr. Worrone to
9 discuss traffic ops and engineering's scope that
10 they wanted to add?

11 A. So, I don't believe I was
12 at that meeting.

13 158 Q. Okay. Mr. Worrone
14 references traffic ops and engineering's
15 recommendations for a type M steel beam guide rail
16 system on both sides of the median.

17 So, just for laypeople to
18 understand, a steel beam guide rail system, is
19 that a median barrier or is that something else?
20 Sorry, I can call it out for you. I may not have
21 been clear where it is.

22 A. That's okay.

23 159 Q. It's at the bottom of
24 page 158.

25 A. Yeah, so that's

1 essentially a full length barrier.

2 160 Q. It's a median barrier?

3 A. Correct.

4 161 Q. And it's a steel beam

5 median barrier. Is that the same as a

6 high-tension cable median barrier?

7 A. No. That's your

8 standard, what you would see as a standard steel

9 beam barrier.

10 162 Q. The recommendation

11 here --

12 A. Yeah.

13 163 Q. -- is a steal beam

14 barrier, whereas a high-tension cable, that's just

15 a cable that runs along rather than a piece of

16 steel?

17 A. Correct.

18 164 Q. Registrar, can you close

19 that, please, as a callout.

20 Then in addition to that

21 recommendation in number 5 on page 159, Mr. Worrone

22 also provides some suggestions on marking

23 off-ramps as single lanes and modifications to how

24 the off-ramps are going to be organized. Do you

25 remember having discussions with Mr. Worrone about

1 that before he recommended it?

2 A. Yes, I do.

3 165 Q. Okay. And what was the
4 rationale for suggesting that off-ramps should be
5 single lane accents?

6 A. So, the primary one with
7 that was the -- I have to think here -- northbound
8 to Mud Street and I believe at that time Stone
9 Church Road, that the configuration wasn't well
10 laid out, and so there was weaving issues
11 occurring because people would be getting in the
12 wrong lane, so we wanted to re-stripe the off-ramp
13 so that it was a single off-ramp. Currently it's
14 two lanes and we wanted to re-create it as a
15 single lane so we wouldn't have that weaving issue
16 occurring.

17 166 Q. Okay. Registrar, can you
18 pull up the next page, 160 and 161, please.

19 So, a few days later, you
20 respond and I think you reference the rationale
21 that you have just described for marking all
22 off-ramp single lane exits, and that's, sort of,
23 in the middle of page 160.

24 And then at the bottom of that
25 e-mail, you say:

1 "One additional
2 question."

3 Do you see that, Mr. Ferguson?

4 A. Yes.

5 167 Q.

6 "Can you please confirm
7 if we're also repaving
8 the ramps. We have had a
9 number of requests from
10 the public and an area
11 councillor related to the
12 off-ramp on Stone Church
13 upper Red Hill and where
14 collisions occurring."

15 And so, by this point -- and
16 you said:

17 "If we are repaving the
18 ramps, we believe this
19 may address this
20 collision concern."

21 Why did you think -- let me
22 give you the full sentence:

23 "Might want to add some
24 additional pavement
25 friction on the ramp."

1 Why did you want clarity about
2 whether the repaving on these ramps were
3 happening?

4 A. So, that ramp
5 specifically is identified in our collision data
6 as a top location, and so we wanted to get the
7 work done on it. It's a tight alignment in terms
8 of a curve coming through there and, over the
9 years, we had had a number of run-off-the-road
10 collisions occurring there, so we wanted to get
11 that location addressed.

12 168 Q. Okay. And you go on to
13 say:

14 "If we aren't repaving, I
15 would recommend that we
16 add a guide rail through
17 this section."

18 So, again, just for laypeople,
19 when you address a guide rail, is that a median
20 barrier or is that just a steel piece on the side
21 of the ramp?

22 A. Yeah. So, I think -- so,
23 a median barrier can be anything. Right? It can
24 be cables, it can be steel guide rail, it could be
25 concrete. Right? Just for clarification. So,

1 we're essentially asking or want to consider a
2 guide rail that goes around the curve obviously to
3 help from not having vehicles run off the roadway.

4 169 Q. Okay.

5 A. So, it's a form of a
6 barrier.

7 170 Q. Okay. But rather than in
8 the middle and a median, as you would have with
9 many lanes, it's on the side. Is that right?

10 A. Correct. You're
11 addressing that curvature where people would be
12 running off the roadway.

13 171 Q. Okay. And you'll see at
14 the bottom of 160 and the top of 161, Mr. Andoga
15 responds and he says:

16 "Upon further review,
17 we'll proceed with the
18 project scope as outlined
19 in your e-mail. We are
20 assuming the request for
21 mentioned the placement
22 of continuous guide rail
23 and/or previous
24 discussion surrounding
25 lighting improvements

1 will not be required.
2 Council direction as well
3 as any funding source
4 would be required for any
5 such enhancements."

6 So, that's what Mr. Andoga
7 says and Mr. White then forwards that e-mail to
8 you, copying Mr. Mater, and he says:

9 "They are stating that
10 they are rejecting the
11 centre barrier and the
12 street lighting as they
13 are not required unless
14 we provided a funding
15 source and get council
16 approval."

17 And then you respond:

18 "I would concur. They're
19 saying the barriers and
20 the lighting are not
21 required."

22 And then Mr. White asks

23 Mr. Mater at the very bottom:

24 "Do you wish us to pursue
25 this barriers?"

1 And he says:
2 "As Dave suggests
3 below -- "
4 Which is that you would say:
5 " -- we're going to
6 respond by saying the
7 transportation division
8 requires the inclusion of
9 barriers as recently
10 submitted in a previous
11 scope."

12 So, just that I'm clear, I
13 know that back in the CIMA report there was a
14 recommendation for median barriers which we were
15 continuous over the course of the entire parkway.
16 Is that right?

17 A. Yes. That's something
18 that they reviewed. I believe, if I recall
19 correctly, it was identified as optional. I don't
20 think it was fully warranted, so it was in the
21 reports, yes.

22 172 Q. So, that's continuous.
23 And then your suggestion in the scope was to put a
24 guide rail in two particular locations: One on
25 the LINC and one on the Red Hill. Is that right?

1 A. Sorry, is that the scope
2 on the left-hand side?

3 173 Q. No. That would be that
4 e-mail from Mr. Worrton initially after the meeting
5 that you said you didn't attend. I can take you
6 back to it.

7 A. If you could.

8 174 Q. Sure. Just give me one
9 moment. Page 158.

10 So, Mr. Worrton says:

11 "A steel beam guide rail
12 on both sides of the
13 median, but -- "

14 And so, just stopping there,
15 that's what he says in June, but back in March you
16 had said let's put them in on two particular
17 locations: One on the LINC and one on the Red
18 Hill?

19 A. Yeah, so again, those
20 original comments, I knew there was questions
21 around the need for the barriers, so my previous
22 comments were, okay, well, let's try and identify
23 locations that we've identified and at least try
24 and get in partial installations, but the final
25 scope as submitted by Jason on our behalf is for

1 essentially a full parkway installation.
2 175 Q. Okay. Thank you for that
3 clarification. And then so, going forward from
4 here, and let's just go back to where we were a
5 moment ago at 162 and 163, please, thank you,
6 Registrar, so you go from suggesting a limited
7 section to Mr. Worrton suggesting a steel beam for
8 the entire section, and then there's the back and
9 forth between Mr. White and you about engineering
10 services. And you'll see at the top of 162, Mr.
11 Mater says:

12 "Hold on a second, guys.
13 I thought the barriers
14 were suggested in the
15 CIMA report to be done in
16 conjunction with the
17 widening. The question
18 of lighting is restricted
19 by the environmental
20 conditions. Let's
21 discuss before we
22 respond."

23 And going forward from here,
24 first, one, do you recall discussions with
25 Mr. Mater about continuing to advocate for a

1 median barrier?

2 A. Yes.

3 176 Q. And what was his view on
4 that?

5 A. His view was that, I
6 mean, Mr. Mater was always very supportive of the
7 works and things that we requested; however, his
8 position was really it's a decision that needs to
9 come down from engineering and whether it's
10 required. It was identified that it would be
11 something that was reviewed as part of the TMP.
12 By us adding the comment, we're kind of
13 circumventing that process because we're saying
14 don't wait for the TMP, we're recommending it now.
15 So, I believe he was concerned about that, that we
16 were circumventing that.

17 And the other part to it all
18 is the barriers. It's not just a case where you
19 can drop barriers in. There is a lot of
20 engineering and design work that needs to take
21 place to make sure it's done correctly, so I think
22 his position was it really needs to be vetted by
23 engineering rather than us just making the
24 comment.

25 177 Q. Okay. And so, from that,

1 did traffic ops and engineering pull from its
2 proposed scope the reference to median barriers?

3 A. I don't remember
4 specifically. Do you have a copy of the final
5 scope submission?

6 178 Q. Well, what I can take you
7 to is 163 at the bottom. It's under number 6, to
8 be discussed further.

9 Registrar, I don't know if you
10 can see the bottom of 163:

11 "To be discussed further,
12 we have conducted -- "

13 So, I think this is a cut and
14 paste from your earlier comments and it says, to
15 be discussed further. And I don't know if that is
16 helpful, but you sort of reverted back to two
17 segments and I'm just asking in the interest of
18 time if you recall where all of this landed in
19 terms of median barriers in the scope discussions?

20 A. If I recall correctly, I
21 know some barriers were extended somewhat, some
22 existing barriers, but there was no installation
23 of a full barrier system as we had been
24 recommending.

25 179 Q. Okay. And sitting here

1 today in 2022, there isn't a continuous median
2 barrier system on the Red Hill, is there?

3 A. No, there's not.

4 180 Q. Registrar, can you go to
5 page 168, please.

6 At 496 and 497, so this is in
7 August and it's about, again, the installation of
8 barriers and Mr. Mater says -- pardon me,
9 Ms. Wunderlich says to Mr. Mater:

10 "FYI, according to Gary,
11 it is a traffic issue."

12 That is the installation of
13 barriers. And Mr. Mater replies, adding
14 Mr. White:

15 "According to Gary,
16 everything is a traffic
17 issue."

18 In your department, did you
19 view the installation of median barriers as the
20 responsibility ultimately of engineering services
21 or was it the responsibility of traffic operations
22 and engineering to advocate for the use of median
23 barriers?

24 A. Well, we would advocate
25 obviously for the barriers, as we've done through

1 the scoping process, but the final decision making
2 is part of engineering.

3 181 Q. Okay. Registrar, can you
4 close this down and go to page 186, please.
5 Pardon me, 188, please.

6 On July 15, Ms. O'Reilly --
7 the Spec published Ms. O'Reilly's article,
8 "Highway traffic tragedies: Why are there so many
9 crashes on the Red Hill?" and it appears this is
10 the article that comes out of the discussions you
11 had had with Ms. O'Reilly and Mr. White. Did you
12 review this article when it was published?

13 A. I believe I did. I don't
14 remember specifically, but I believe I read it.

15 182 Q. Okay. In it, there's
16 reference to -- there's quotations from Mr. Moore
17 and there's reference to friction testing. In the
18 third line of this excerpt at 554 -- and,
19 Registrar, could you highlight that:

20 "There's no official
21 report, Moore says, only
22 an informal chart sent in
23 an e-mail in
24 December 2015. Friction
25 testing was not fulsome

1 and the results were
2 inconclusive."

3 Prior to July of 2017, had
4 Mr. Moore ever conveyed to you that the tests that
5 he had were an informal chart?

6 A. No.

7 183 Q. And had he conveyed to
8 you that the results were inconclusive?

9 A. No.

10 184 Q. In that same article two
11 lines down:

12 "All we got was an
13 indication that we should
14 do further work."

15 Had Mr. Moore ever conveyed to
16 you that he had received any indication from
17 friction testing results that we should do further
18 work?

19 A. Sorry, what line are you
20 at?

21 185 Q. I'm two down from the
22 highlighted section. Registrar, if you could
23 highlight that as well. It's a quote from
24 Mr. Moore:

25 "All we got was an

1 indication that we should
2 do further work, Moore
3 said."

4 Prior to July of 2017, had
5 Mr. Moore conveyed to you that the friction test
6 results had an indication that we should do
7 further work?

8 A. No. And, I'm sorry, I'm
9 not quite understanding the question.

10 186 Q. That's fine. So,
11 Mr. Moore says:

12 "All Moore understood
13 from the friction testing
14 results was that there
15 was an indication that we
16 should do further work."

17 Had Mr. Moore ever conveyed to
18 you that the friction testing results that he had
19 indicated that the City should do further work?

20 A. Yeah, I guess my question
21 is: What is further work?

22 187 Q. I'm trying to stick very
23 closely to the quote from Mr. Moore. Did
24 Mr. Moore ever convey to you that the friction
25 testing results or the analysis that he was

1 waiting on suggested that the City should be doing
2 any other kind of work flowing from the results?

3 A. So, how I'm reading this
4 and based on comments from engineering was further
5 work was them looking into what the results meant.
6 I know they were doing, like, core sampling and
7 investigating the core samples and things like
8 that. I suspect that's what is being referred to
9 here.

10 188 Q. Okay. So, you were aware
11 that there was some core sampling. Did you
12 understand that that was further investigation
13 arising from the friction testing results that
14 Mr. Moore had?

15 A. No.

16 189 Q. Okay. Had Mr. Moore ever
17 conveyed to you that the friction test results
18 suggested doing something further, anything? Did
19 he ever convey anything that suggested the
20 friction testing results suggested some further
21 action?

22 A. No. As I said, the only
23 action I was aware of was they were still
24 evaluating the numbers and what they meant and
25 then doing the samples. That was the only action

1 I was aware of.

2 190 Q. Okay. Mr. Moore is also
3 quoted as saying:

4 "It was moot when we
5 decided to go ahead with
6 repaving."

7 And Ms. O'Reilly writes, this
8 is a quote attributable to Mr. Moore in the line
9 just above that:

10 "Instead of doing further
11 testing as was
12 recommended, the City has
13 decided to pave."

14 Did you understand that the
15 purpose of the repaving was to address the
16 potential for the -- let me say that again. Did
17 you understand that the purpose of the repaving
18 was to avoid completing further testing or further
19 work arising from the friction tests?

20 A. No.

21 191 Q. Did you understand there
22 was any connection with the decision to repave and
23 the results of the friction testing or the core
24 sampling?

25 A. No.

1 192 Q. Would it have been
2 helpful for traffic ops and engineering to know
3 that there was a report that suggested that
4 further investigation of friction levels was
5 warranted on the Red Hill?

6 A. Sorry, can you repeat
7 that?

8 193 Q. Sure. Would it have been
9 helpful for traffic ops and engineering to know
10 that there was a report that suggested further
11 investigation of friction levels was warranted on
12 the Red Hill?

13 A. I mean, it would be,
14 again, beneficial in the end to know, have a final
15 information in terms of what it all means. You
16 know, is it passed? Is it failed? Inconclusive?
17 Whatever it may be. Obviously because we're doing
18 a road safety and we're trying to determine what
19 is causing collisions, and so it's identified in
20 our reports with CIMA for additional or for
21 testing, friction testing, to be completed.

22 So, I mean, if the roadway is
23 staying as is, would it be beneficial? Yes,
24 because then hopefully engineering can provide us
25 with a final answer on the conditions.

1 194 Q. Would it have altered
2 your analysis of the safety improvements that
3 should be put in over time from 2015 onward if you
4 had known that there was a report that indicated
5 further investigation of friction levels was
6 warranted?

7 A. No, because we've
8 already -- as I said before, it was already
9 identified in our CIMA report for friction
10 testing, so it wouldn't have changed.

11 195 Q. Okay. In October of
12 2017 -- Registrar, actually, can you bring up
13 HAM26463 and can you call out both of these
14 e-mails, just because the font is a bit small.
15 Thank you.

16 So, this is an e-mail that
17 includes first Mr. White to you and Mr. Mater
18 about barriers saving lives at the bottom. And
19 then you respond and you copy in Jasmine and you
20 reference doing an interview on Thursday morning.

21 Registrar, I'm sorry, can you
22 close this call out and open it up again but
23 having the date and the recipients. Thank you.

24 So, again, just so that you
25 can see, Mr. Ferguson, this is October of 2017.

1 So, you say you're doing an interview and that you
2 have gone into the weeds of the report and
3 completed the following. And then you reference
4 references to the LINC between 2008 and 2014, the
5 Red Hill between 2008 and July 2015 and you're
6 referencing the crossover collisions or median
7 related collisions.

8 And just skipping down, so the
9 discussion becomes:

10 "Spending \$10 million to
11 install a barrier to
12 address crossover
13 collisions, which are
14 represented as 6 percent
15 and 3 percent. If the
16 true concern of traffic
17 safety is on the table,
18 then we need to look
19 beyond the crossover
20 collisions and identify
21 what the true issues are.
22 Here are the things we
23 know to be true."

24 And then you reference direct
25 relations of collisions to vehicle speeds and

1 aggressive driving, the reference to police target
2 enforcement on the facilities and that 95 percent
3 of the violations were attributed to speeding, the
4 police chief reporting that a majority of fatal
5 collisions occurring in Hamilton are related to
6 vehicle speeds, aggressive driving and distracted
7 driving and the OPP making a similar conclusion.

8 So, here those are things that
9 you say, you know, to be true and it strikes me in
10 reading your words that your view is that the real
11 issue on the parkway, the Red Hill, is speeding in
12 October of 2017. Is that correct?

13 A. Driver behaviour issues,
14 yeah.

15 196 Q. And would your assessment
16 have changed if you had had further information
17 that friction testing had been done and that a
18 consultant had recommended doing further
19 investigation of the friction values that they had
20 found?

21 A. No.

22 197 Q. Why not?

23 A. Well, one is I don't
24 understand what further evaluation is, you know.
25 You need to have the specific information as to

1 whether something has passed, failed or is
2 inconclusive.

3 The other section to this is,
4 and I know we had discussions internally about
5 this because obviously the pavement condition
6 would come up on a regular basis with especially
7 the public and the press, we have, I think, the
8 average daily traffic was something like 70,000
9 vehicles per day or something like that, so if we
10 were saying that if pavement is truly the issue,
11 then we should be expecting a high level of more
12 collisions, essentially pile-ups occurring under
13 wet conditions, but what we were seeing is it was
14 one or two collisions. So, what is it about those
15 one or two collisions that are occurring that the
16 other 69,998 vehicles don't go through? So, you
17 know, and everything from the reports and studies
18 we had done was all pointing back to driver
19 behaviour.

20 We also had a very good
21 working relationship with Hamilton Police Services
22 and their comments were that the collisions, the
23 primary issue around the collisions on the Red
24 Hill or the parkways in general, was a result of
25 driver behaviour.

1 198 Q. Thank you. In terms of
2 Hamilton Police Services and their comments,
3 they're seeing that they can do violations for
4 speeds, they can assess how many people are
5 speeding, but what analysis, what expertise do
6 they bring to an analysis of why collisions are
7 occurring? Is that part of the police role?

8 A. Yeah. So, when a major
9 collision occurs, they do an investigative report,
10 and so they have that information within those
11 reports and work on a conclusion as to why a
12 certain collision occurred, what occurred as part
13 of that collision, so they would have that
14 information.

15 199 Q. Okay. Registrar, you can
16 close this down and can you go back to OD 7, page
17 190, please, and can you call out 560 to the
18 bottom of the page, please. Thank you.

19 So, we're in July of 2017.
20 This is just a few days after Ms. O'Reilly has
21 released that article, just to follow on that
22 chronology. Ms. Crawford, a law clerk at
23 Shillingtons law firm, e-mailed you under the
24 subject line "Hamilton, Melo/Lee/Barlow," and she
25 says:

1 "As you will likely
2 recall, we represent the
3 City with respect to
4 several accidents on the
5 LINC and the Red Hill.
6 We would like to arrange
7 a telephone conference
8 with you to review the
9 roads, the recent
10 friction studies
11 completed by the City and
12 the proposed roadwork.
13 Can you advise if you
14 have time to discuss the
15 matter with us over the
16 next couple of weeks?"

17 And it seemed like your e-mail
18 was full, so one of your colleagues forwarded it
19 to you. And then you respond on the 25th:

20 "Kim provided me with a
21 copy of your e-mail. If
22 you want to send me a
23 date in the next couple
24 weeks, I can talk to you
25 about it. When it comes

1 to friction testing, Gary
2 Moore, director of
3 engineering, should be
4 approached as I have not
5 seen the results, nor
6 have I been involved in
7 the process."

8 And Ms. Crawford responds:

9 "Perhaps we should first
10 talk to Mr. Gary Moore
11 regarding the friction
12 test as you have not been
13 involved in that
14 process."

15 So, some questions arising
16 from this e-mail exchange. What was your role in
17 this litigation before July 2017?

18 A. I don't believe I had any
19 involvement.

20 200 Q. Okay. I can tell you
21 Mr. Cooper ends up being the City's representative
22 in examinations for discovery. Does that assist
23 you with what role you had in this litigation
24 really at any point?

25 A. Yeah. So, our process

1 was Mr. Cooper would primarily deal with
2 litigations. I would only be involved if I was
3 asked for specifically to be involved, but
4 otherwise Mr. Cooper would handle the litigations.

5 201 Q. Okay. Why did you direct
6 Ms. Crawford to Mr. Moore instead of obtaining
7 information from him to send to her?

8 A. Again, as I've said
9 before, Mr. Moore is the person responsible for
10 the friction testing and is familiar for what's
11 going on in that area and it would be more
12 appropriate for them to talk to Mr. Moore. Even
13 if it goes into, obviously, discoveries, it
14 wouldn't be something I would talk to. They
15 would, obviously, have to talk to Mr. Moore about
16 it. I wouldn't be able to answer any of their
17 questions.

18 202 Q. Did you reach out to
19 Mr. Moore and give him a heads up that you had
20 directed Shillingtons to him?

21 A. I don't recall
22 specifically, no.

23 203 Q. Did you learn at any
24 point from Ms. Crawford or anyone else at
25 Shillingtons that Mr. Moore had given them further

1 information about friction test results?

2 A. I don't recall.

3 204 Q. I'm going to stop there
4 because I know it's been a long morning. We're
5 about to take a break. I'm just going to ask that
6 question again just to make sure you can really
7 think through your memory on this one.

8 Did you learn at any point
9 from Ms. Crawford or anyone else at Shillingtons
10 that Mr. Moore had given them further information
11 about friction testing results?

12 A. I don't recall at all.

13 205 Q. Is that to say you don't
14 recall either way whether you had any discussions
15 with Ms. Crawford or Shillingtons about this
16 issue, about friction testing results coming out
17 of this e-mail exchange?

18 A. Yeah. I don't recall
19 that at all. I don't believe I did. I don't --

20 206 Q. Okay. It's always hard
21 when you say "I don't recall" because --

22 A. I know.

23 207 Q. When you say "I don't
24 recall at all," is that to say you are confident
25 that Ms. Crawford or anyone at Shillingtons did

1 not convey that information to you?

2 A. Correct.

3 208 Q. Or you can't recall

4 either way whether you had any discussion and

5 learned that information from Ms. Crawford?

6 A. Yeah. I'll say I don't

7 believe I was informed that they had received that

8 material from Mr. Moore.

9 209 Q. Okay. Did you discuss

10 Ms. Crawford's request to discuss friction tests

11 with anyone superior to you? Mr. White?

12 Mr. Mater?

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

14 210 Q. Thank you.

15 Mr. Commissioner, I'm looking at the time and I've

16 gone a few minutes after our usual break. It's

17 now 11:30 and I would propose that we take a

18 15-minute break.

19 JUSTICE WILTON-SIEGEL: Sure.

20 All right, so we'll return at ten to 12:00.

21 --- Recess taken at 11:34 a.m.

22 --- Upon resuming at 11:51 a.m.

23 MS. LAWRENCE: Thank you.

24 Commissioner, may I proceed?

25 JUSTICE WILTON-SIEGEL: Yes,

1 please proceed.

2 MS. LAWRENCE: Thank you.

3 BY MS. LAWRENCE:

4 211 Q. Mr. Ferguson, I'm going
5 to take you now to a staff report that I believe
6 you were involved in preparing that went to the
7 public works committee on January 15, 2018.

8 Registrar, can you bring up
9 OD 8, page 9, please.

10 The draft staff report was for
11 a public works committee meeting that was
12 originally scheduled for December 4, 2017 and then
13 later rescheduled to January 15, 2018. And I
14 think you said in your evidence on our last day
15 that there's quite a lag period between the
16 preparation of a report and the actual public
17 works date. Is that right?

18 A. Correct.

19 212 Q. Registrar, can you go to
20 page 9 of the same document, please. Pardon me,
21 page 12 of this document, please.

22 So, I'm going to take you to
23 the draft of this in a moment, but just in terms
24 of the back and forth, you'll see at paragraph 22,
25 in November of 2017 you e-mailed Mr. White an

1 updated version following some comments he made on
2 the staff report and then Mr. White forwarded, in
3 paragraph 23, the draft report to
4 Ms. Matthews-Malone in operations and Mr. Moore
5 and said:

6 "Attached is the final
7 draft of the report and I
8 will be sending to John
9 for review. Please
10 provide any comments you
11 have as soon as possible.
12 This will go to the
13 December 4 PWC, but we're
14 a bit late, so I think it
15 will have to go in
16 January."

17 Registrar, can you bring up
18 HAM45964, please.

19 And that's the e-mail back and
20 forth.

21 Registrar, you can close that
22 down and can you go to HAM26494, please. Thank
23 you.

24 So, this is quite a lengthy
25 report and you'll see there's a number of

1 different recommendations, the last of which is to
2 take some items off the outstanding business list.
3 Mr. Ferguson, do you recall being involved in the
4 drafting of this quite comprehensive update on a
5 number of issues related to the LINC and the Red
6 Hill?

7 A. Not specifically, but I
8 suspect I was.

9 213 Q. It does say prepared by
10 you and Mr. White. You'll see there's a number of
11 recommendations. I'm just, sort of, going to go
12 through them. The first is that staff undertake
13 an annual traffic count program. What was the
14 purpose of counting traffic?

15 A. Well, there's a number of
16 reasons. One is obviously to monitor traffic
17 conditions, volumes and be able to analyze how
18 volumes and speeds are growing or what's going on
19 within the facilities.

20 214 Q. Okay. Was that already
21 planned as part of the Hamilton strategic road
22 safety program annual report, to do traffic
23 counts, or would this be something new?

24 A. No. This was something
25 new.

1 215 Q. Okay. Was that relating
2 to wanting to know more about whether to widen the
3 road or was it for some other purpose?

4 A. That would have been one
5 of the purposes.

6 216 Q. What are other purposes
7 of having traffic counts as it relates to the work
8 that you do?

9 A. As it relates to what we
10 do, we're primarily looking at the speed data to
11 see how the facility is operating, identifying
12 congestion periods, et cetera.

13 217 Q. Okay. So, does the
14 annual traffic count program that's set out in
15 that first recommendation, would that include
16 speed data or just number of vehicles?

17 A. No. We would include
18 speed data as part of those. The devices that do
19 the traffic counts also record the speed data, so
20 we would include that as part of it.

21 218 Q. Okay. The second
22 recommendation is to implement the short and
23 medium-term collision countermeasures that are set
24 out in Appendix B. I'm going to come to that in a
25 moment.

1 The third is an annual
2 detailed collision analysis as part of the
3 Hamilton strategic road safety program annual
4 report.

5 So, just stopping there, was
6 it the practice of traffic operations and
7 engineering to do regular collision analysis on
8 the LINC and the Red Hill by December of 2017?
9 Had that become part of your practice?

10 A. No.

11 219 Q. Okay. And was the
12 expectation of having an annual detailed collision
13 analysis of these parkways intended to be
14 published or distributed to the public in a
15 report?

16 A. Yes. It was the annual
17 collision report. And just for clarification, it
18 wasn't a specific -- it was a section within the
19 annual collision report. Obviously with the
20 amount of attention on the parkways, I felt it was
21 important to include a section within the annual
22 collision report specific to the parkways to be
23 transparent.

24 220 Q. Okay. And the annual
25 collision report and this recommendation here to

1 do an annual detailed collision analysis, were
2 those new practices that your team was going to
3 put in place in 2017 and going forward?

4 A. Correct. So, the annual
5 collision report was a brand new program that we
6 had created as part of our Vision Zero action
7 plan.

8 221 Q. The inquiry has documents
9 from much earlier, 2007, 2008, where there were
10 reports, annually or biannually, that had some
11 collision analysis. Am I correct that those had
12 sort of dropped off as a practice of the City for
13 a period of time before 2017?

14 A. That's correct.

15 222 Q. And so, your Vision Zero
16 program would have reinvigorated that kind of
17 reporting?

18 A. Correct.

19 223 Q. A reference to the police
20 will continue to deal with speed. The next
21 recommendations is that median barriers be
22 installed in coordination with any future widening
23 of the facilities.

24 So, just stopping there,
25 you'll recall on your last day of evidence that

1 median barriers had been a measurement that would
2 be assessed or, pardon me, that would be deferred
3 pending the finalization of the TMP, including
4 whether or how to widen. Is this recommendation
5 here different?

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

8 224 Q. Okay. As I read it, does
9 this -- as you read it, if you could tell me, does
10 this recommendation, if accepted, mean that
11 council had pre-approved that median barriers
12 would be installed if widening happened?

13 A. That's correct.

14 225 Q. Okay. Did you have any
15 discussion with Mr. Moore about this
16 recommendation before Mr. White sent the draft to
17 him?

18 A. Well, the previous
19 discussion with respect to the barriers was
20 obviously, one, we weren't sure what was going to
21 occur with the parkways in terms of a widening,
22 and so that's why it was, sort of, put on hold
23 until the TMP could be completed and evaluation of
24 the parkways to determine what the plan would be
25 in terms of widening, et cetera.

1 Obviously there was a quite
2 extensive cost to install the barriers, and so I
3 believe the feeling was that if you were to put
4 the barriers in now and then, five years from now,
5 you decide you're going to widen the roadway,
6 essentially it's a \$10 million throwaway because
7 you're going to have to rebuild the barriers to
8 meet the current design standards. So, that was
9 kind of the thinking around it.

10 226 Q. Okay. And were you
11 involved in the status of the assessment of
12 whether the parkways could be widened as part of
13 the TMP?

14 A. No. Our transportation
15 planning group, I believe, was doing the analysis
16 on that.

17 227 Q. So, this is quite a long
18 report. I'm not going to go through it in any
19 particular detail, but I do want to take you just
20 through a couple pages just to refresh your memory
21 about what this covers.

22 Registrar, can you go to
23 page 3 and 4, please.

24 So, there's an executive
25 summary, then there's a reference to capacity and

1 then there's a reference to the TMP and widening
2 on page 4 in the second full paragraph and they go
3 through a fair bit of detail about the City's
4 attempts to contact the MTO to investigate the
5 ability and the need for widening.

6 Registrar, can you go down to
7 5 and 6, please.

8 And then there's references to
9 comparing the collisions on the LINC and the Red
10 Hill, including the chart that's on the left-hand
11 side. And you'll see at the bottom:

12 "Both safety reports
13 identified that
14 collisions are occurring
15 as a result of speeding,
16 aggressive driving,
17 following too close,
18 distracted driving and
19 driving too fast for
20 weather conditions."

21 And then there's a reference
22 to the police conclusions that 90 percent of
23 violations were directly relating to speeding, so
24 what we were talking about just before our break.

25 On the next page, on page 6,

1 the right-hand side, there's reference to
2 crossover collisions being quite a small
3 proportion of collisions. Mr. Ferguson, I'm just
4 taking you through this to refresh your memory.
5 You had said earlier you couldn't quite recall
6 whether you've been involved in the preparation.
7 Having gone through the first few pages, do you
8 recall that you were involved in the drafting and
9 review of this report?

10 A. Yes, I would have written
11 this report.

12 228 Q. I'm not going to go
13 through all of it, but I'm going to take you to
14 the appendices, which are a different document.

15 Registrar, can you bring up
16 HAM26493, please.

17 So, this is one of the
18 appendices and you'll see that it has -- we've
19 seen versions of this chart before at earlier
20 stages. It has the status of the completion. It
21 also has the lead department. Did you want to
22 identify which department would have lead over the
23 various safety measures that were upcoming?

24 A. Sorry, you want me to
25 read through this?

1 229 Q. No. I said did you want
2 to identify which department would have lead over
3 the various safety measures that were upcoming?

4 A. Yes. Yes, I did.

5 230 Q. Was that to ensure that
6 it was clear to everybody whose department was
7 responsible for what?

8 A. Correct.

9 231 Q. And is that the kind of
10 information that generally goes to the public
11 works committee or is that as part of the planning
12 amongst the different departments within public
13 works?

14 A. Yeah. I mean, I think it
15 was something you kind of see this sort of layout
16 in the last couple of reports, and my mindset was
17 I just wanted to make it clear who was responsible
18 for what.

19 232 Q. Okay. On this, four from
20 the bottom, it says:

21 "Conduct pavement
22 friction testing,
23 completed."

24 Did you take any steps as you
25 were drafting this document to contact Mr. Moore

1 to confirm if friction testing should be noted as
2 completed?

3 A. I'm going to say no.

4 We've already identified that it's been completed
5 in a number of the previous reports, and so it was
6 just a continuation of that.

7 233 Q. Okay. Registrar, can you
8 go back to HAM26493, so back to the report, and
9 image 7, please.

10 So, we're still looking at
11 your draft, but at the top you'll see it says:

12 "There were two
13 additional outstanding
14 motions, a speed limit
15 reduction feasibility
16 study and then photo
17 radar."

18 And so, on that first one, do
19 you recall being aware of the speed limit
20 reduction feasibility study that was undertaken as
21 a result of the outstanding motion that's
22 referenced here?

23 A. Yes.

24 234 Q. Were you the project
25 manager on that project?

1 A. I believe Mr. Decleir was
2 dealing with that.

3 235 Q. Okay. Can you remind me,
4 what was Mr. Decleir's title at the time? Was he
5 project manager?

6 A. I believe he was a senior
7 project manager.

8 236 Q. Okay. And what was your
9 role, if you were not the project manager, if any,
10 on what I'm going to call the speed study?

11 A. My role is primarily a
12 higher level role. I sort of assign the work to
13 the staff and the staff go off and do their work
14 and get them done and make sure that be have the
15 budgets to complete the works, et cetera. That's
16 my primary role.

17 237 Q. Okay. In terms of the
18 photo radar, there was an outstanding motion about
19 photo radar that said specifically when provincial
20 legislation permits the establishment of photo
21 radar, staff are going to be directed to consider
22 it and to report back and to consider whether
23 making the parkways a community safety zone for
24 these purposes. I just want to raise that we're
25 in December 2017 and you had said earlier that

1 photo radar had been something that had been
2 considered prior to this time and, as of
3 December 2017, it still hadn't been implemented or
4 moved forward in any way. Is that fair to say?

5 A. Correct. The provincial
6 regulations weren't put in place for automated
7 speed enforcement until 2020, 2021 operations.

8 238 Q. Registrar, you can close
9 this and can you go back to OD 8, page 13, please.

10 So, you'll recall when we
11 first got into this document that Mr. White had
12 sent the draft report to Ms. Matthews-Malone and
13 to Mr. Moore, and you'll see at the bottom of this
14 page Ms. Matthews-Malone responds and says:

15 "Only comment is to
16 change roads to
17 operations or operations
18 division. Tough one to
19 write, but an easy read.
20 Thanks for the
21 opportunity to review."

22 To your recollection, did
23 Mr. Moore provide any comments on the draft that
24 Mr. White had circulated?

25 A. Not that I recall.

1 239 Q. Okay. I'm just going to
2 go back to the speed study, the feasibility study,
3 that we were just looking at in that motion. You
4 had said you registered at a high level.

5 Registrar, can you close down
6 OD 8 and can you go to HAM12308, please.

7 We have in the inquiry a
8 number of copies of a speed study that CIMA
9 prepared for the City of Hamilton in 2018. Was
10 this speed study the outcome of the motion that we
11 were just looking at for the feasibility study?

12 A. It may have. I can't say
13 specifically.

14 240 Q. Okay. Is that because
15 you can't recall or you think that there's
16 something else that was related to the feasibility
17 study?

18 A. Yeah. I just don't
19 recall.

20 241 Q. Okay. Registrar, can you
21 go to the next two pages, images 2 and 3. Pardon
22 me, 4 and 5.

23 I'm not going to take you to
24 through all of this, Mr. Ferguson, but in an
25 attempt to refresh your memory, the table of

1 contents of the CIMA speed study report has a
2 listing of methodologies for setting speed limits,
3 some data collection about different methodologies
4 and speed differentials and a summary and
5 recommendations.

6 Does that refresh your memory
7 about this report and how it related to the motion
8 for a feasibility study about speed limits?

9 A. Yes. It's related to
10 that, yes.

11 242 Q. Okay. The inquiry has
12 documentation that suggests that Mr. Cooper was
13 the person who was primarily involved at a project
14 manager level. You had said earlier you thought
15 it was Mr. Decleir. Having seen the table of
16 contents, can you confirm if or does your evidence
17 stand that it was Mr. Decleir who was involved?

18 A. No. Correct. It would
19 have been Mr. Cooper.

20 243 Q. Okay.

21 A. I was thinking of a
22 different study. Sorry.

23 244 Q. That's okay. Registrar,
24 can you go to -- let me just make sure I have the
25 image number right -- image 6, please.

1 So, just taking you to the
2 background of this and the scope of work, again,
3 just to refresh your memory, the City initiated
4 the project to establish a reasonable and safe
5 speed limit along the LINC, it says under the
6 scope of work, and it says the major tasks were
7 undertaken to collect speed data, to review and
8 evaluate methodologies for setting speed limits
9 and to select a preferred approach and
10 recommendations for posted speed limits based on
11 observed traffic along the two highways.

12 In terms of the other safety
13 reviews that we have looked at during your
14 evidence, do you recall, with this was the
15 approach that CIMA was taking for the speed
16 studies different in that it really related more
17 to the methodologies for setting speed limits
18 rather than to looking at the particular
19 circumstances on the parkways? Is that a fair
20 characterization of this compared to other
21 reports?

22 A. Yes.

23 245 Q. Registrar, can you go to
24 image 14, please, and if you can bring up 42 as
25 well, please.

1 So, I've just jumped over a
2 fair bit of back and forth about an analysis of
3 different methodologies that one might use to
4 determine how to set the appropriate speed limit
5 to the recommendations, summary and
6 recommendations. And there are three bullets of
7 findings.

8 Do you recall reviewing this
9 draft report when it was circulated to the City
10 from CIMA?

11 A. I would have reviewed it,
12 yes.

13 246 Q. And do you recall that
14 for the Red Hill, you'll see in the second bullet,
15 the proposed path forward was to maintain the
16 existing posted speed limit of 90 kilometres an
17 hour?

18 A. That's correct, yes.

19 247 Q. And from here, did you
20 expect that the next step would be to finalize
21 this report and to have a staff report that would
22 send it to public works for approval?

23 A. I don't recall if there
24 was a staff report that had to go to committee.

25 248 Q. I was thinking more about

1 what your practices would be, given that all the
2 back and forth we've had about other CIMA reports,
3 that that would be the next step in the usual
4 course in dealing with a consultant's report. Is
5 that fair?

6 A. I mean, the practice
7 would have been it would have been identified at
8 some point. Whether it was another summary report
9 or something like that, we would have included it
10 as part of that for sure.

11 249 Q. Do you recall that
12 Mr. Cooper did in fact prepare a draft
13 recommendation report summarizing CIMA's
14 conclusions in the speed study?

15 A. I don't recall
16 specifically, no.

17 250 Q. Okay. Registrar, you can
18 close this down and if you can go to OD 9,
19 page 43.

20 Just moving away from the
21 speed study and into some of the other events that
22 were happening on the parkway around this time, in
23 2018 there was a progress meeting for the speed
24 limit study, the one we were just looking at the
25 draft from October.

1 Registrar, can you bring up
2 page 44, please, and if you can call out 106.
3 Actually, just call out the minutes. Thank you.

4 So, I didn't take you through
5 the entirety of the speed limit study that CIMA
6 prepared. There is some reference to collision
7 history analysis in that draft report, but here,
8 so this is a progress report from July before that
9 draft that we were just looking at and I don't
10 think you were at this meeting, but it does say:

11 "An overrepresentation of
12 wet pavement related
13 collisions may be
14 alleviated by upcoming
15 pavement rehabilitation
16 project."

17 Just stopping there, do you
18 recall that in the speed limit study, CIMA again
19 found that there was an over representation of wet
20 pavement related collisions?

21 A. Yes. They would have,
22 yeah.

23 251 Q. And, Registrar, can you
24 just close this and call it out for a moment.

25 Mr. Ferguson, just so that you

1 can see, this is minutes of a meeting attended by
2 Mr. Cooper, Mr. Decleir, Mr. Melendez and folks
3 from CIMA, so I just wanted to ensure that, at
4 least to my knowledge, you were not at this
5 meeting, so you may not know about this.

6 Registrar, can you call out
7 the minutes again.

8 So, at that meeting, there's a
9 reference in the minutes that a lower priority
10 should be given to the weather warning system, and
11 I think that that relates to that rain activated
12 flashing light beacon. Am I correct in my
13 assumption there?

14 A. Correct.

15 252 Q. And do you recall having
16 discussions with anyone on your team, including
17 those people that I just mentioned who were at
18 this meeting, that a lower priority would be given
19 to that weather warning system because of the
20 upcoming pavement rehabilitation project?

21 A. I don't recall
22 specifically, no.

23 253 Q. Okay. What about
24 generally? Is there any general discussions about
25 not proceeding with the weather warning system

1 because of the upcoming pavement rehabilitation
2 project?

3 A. Again, I suspect we had
4 discussions. I just don't recall it.

5 254 Q. Okay. You can close this
6 call out, Registrar.

7 So, that's the speed study.
8 The police are also doing enforcement all through
9 this time on speeding and other issues on the
10 parkway. Is that fair to say?

11 A. I believe so, yes.

12 255 Q. Registrar, can you go to
13 page 51 of OD 8, thank you, and can you bring up
14 52 as well.

15 So, we're jumping around a
16 little bit in time but we're still in 2018, and
17 the inquiry has received information that suggests
18 that there's a good working relationship with the
19 police, as think you mentioned before, in sharing
20 collision data between the police and the City.
21 Is that fair to say?

22 A. That's correct, yes.

23 256 Q. What was the purpose of
24 providing the police or maybe can you explain to
25 me exactly what that data sharing looked like and

1 what its intention was?

2 A. There was a couple of
3 reasons. One was to ensure that data that was
4 being communicated was consistent between the two
5 organizations. They also had their own internal
6 database that sometimes did not reflect similar to
7 our database, and so I know on a couple of
8 instances we had some inconsistencies, so we would
9 work together to make sure that the information we
10 had was provided to Hamilton Police Services for
11 whatever works they were undertaking.

12 257 Q. Okay. And the
13 inconsistencies that you're talking about, was
14 that in terms of how collisions were characterized
15 or the number of collisions or some other kind of
16 inconsistency?

17 A. Yeah. It could be, you
18 know, how the police, for example, they may code a
19 collision that occurred on the mainline, but when
20 you review the collision report, you identify that
21 it's actually a ramp-related collision. So, we
22 would modify it to make sure it was correct within
23 our system, but the police would not do that.

24 258 Q. Okay. Registrar, can you
25 go to page 57, please. Can you pull up 58 as

1 well.

2 And, at the bottom, this is in
3 the context of an e-mail that you're sending to
4 Mr. White. At the very bottom, you say:

5 "HPS provided us with an
6 update on enforcement
7 statistics. From
8 December to February,
9 there's been a total of
10 8,880 violations."

11 Do you see that right at the
12 bottom?

13 A. Yes.

14 259 Q. And over to the next
15 page, it says:

16 "Of these, 91 percent
17 were for speeding and 48
18 of the total were issued
19 to vehicles exceeding 120
20 kilometres an hour."

21 So, you may recall,
22 Mr. Ferguson, when you last testified there was
23 some discussions in 2015 about the speed data that
24 CIMA used in its report about 500 cars a day going
25 over 140 kilometres an hour. Do you recall that?

1 A. Yes.

2 260 Q. And at the time I think I
3 asked you over time did you see that that kind of
4 volume of high speeding cars persisted from 2013
5 and then into 2015 and now we're in 2018. And at
6 the time when you last testified, you said I'm not
7 sure, and so maybe I'll ask it now with this
8 information.

9 In your experience, between
10 the data collected in 2013, the 500 cars speeding
11 over 140 kilometres an hour per day, was that
12 volume of high speeding cars roughly consistent
13 through your tenure at the City?

14 A. Yes.

15 261 Q. At the top, and the
16 Registrar has helpfully highlighted, he says:
17 "Officers can't keep up
18 with the number of
19 violations that are
20 occurring."

21 Is it fair to say during this
22 period of time, and right now we're looking at
23 February of 2018, that there was still
24 considerable numbers of violations related to
25 speeding?

1 A. That's correct.

2 262 Q. And was that concerning
3 for you from a Vision Zero perspective?

4 A. Yes, obviously. Yes.

5 263 Q. Can you help the inquiry
6 with the connection, if any, between Vision Zero
7 principles and speeding?

8 A. Well, obviously the
9 premise of Vision Zero is you're looking to reduce
10 collisions that involve injuries, serious
11 injuries, or fatalities, and we know there's a
12 direct correlation between injuries and vehicle
13 speeds, so obviously when an incident happens
14 where a vehicle is driving at a higher rate of
15 speed, there's a higher chance that serious
16 injuries will occur if a collision is to happen.

17 264 Q. Thank you. Registrar, if
18 you could go to page 43 at OD 8, please. Could
19 you bring up 42 for me as well, Registrar. Thank
20 you.

21 So, apologies for jumping
22 around in time. I really wanted to deal with a
23 few of the other related initiatives relating to
24 the parkway before getting into this next topic,
25 which is the collision analysis that you had CIMA

1 complete starting in January of 2018.

2 So, the draft public works
3 staff report that we were looking at just a few
4 moments ago, that was scheduled to go to the PWC
5 on January 15, 2018. And on January 9, 2018, you
6 e-mailed three staff members at CIMA and said:

7 "Wondering if you would
8 be able to assist me with
9 this. We're heading back
10 to committee. And during
11 the management
12 discussions yesterday,
13 the GM -- "

14 Just stopping here for a
15 moment, GM, is that Mr. McKinnon?

16 A. Yes.

17 265 Q.

18 " -- asked have you done
19 this compared to other
20 locations? Are we on par
21 with others?"

22 And they asked if it would be
23 possible to have a comparison of similar type
24 roadways and then you reference a couple
25 locations, 406, Highway 78, DVP.

1 Then you go on to ask a few
2 other questions about a report for a collision
3 relating to the median barrier.

4 And so, am I correct that this
5 is a smaller scope of a project for CIMA than the
6 safety reviews that they had done in 2013 and
7 2015?

8 A. That's correct.

9 266 Q. Had Mr. McKinnon or why
10 was Mr. McKinnon involved in the discussions
11 leading up to the public works committee meeting
12 that led to the retainer of CIMA on this minor
13 project?

14 A. At some point when
15 Mr. McKinnon started, there began sort of regular
16 update meetings for Mr. McKinnon, and so he would
17 obviously ask questions and want to know some
18 information, so that's how this came about. In
19 that meeting, Mr. McKinnon had asked the question
20 and this is me following up with CIMA to try and
21 get him the answer.

22 267 Q. Okay. Do you know why
23 there were regular update meetings for
24 Mr. McKinnon, as you just mentioned? And what was
25 the impetus to have regular update meetings with

1 him in respect of the parkways?

2 A. I took it as, you know,
3 Mr. McKinnon was newer to the role and I always
4 found that Mr. McKinnon was always engaged in what
5 was going on and I wanted to know what was
6 happening and was always interested in the works
7 that we were doing, so that's kind of what I took
8 it as. And obviously with the parkways being as
9 public as they were, he had an interest in being
10 kept up to speed on things.

11 268 Q. Okay. What were you
12 hoping to learn by looking at comparators with
13 similar type roadways?

14 A. The purpose of it was to
15 really look at, you know, how does the parkway
16 perform from obviously a collision perspective
17 compared to similar type roadways. It's a good
18 exercise. It's always difficult to truly compare
19 roadways because, you know, every roadway is
20 different. They have different geometrics and
21 different alignments, et cetera. So, I think, if
22 I recall correctly, the 406 was really the closest
23 type of comparator and I think the numbers were
24 similar in nature.

25 269 Q. Sure. Why don't we go

1 and look at them.

2 Registrar, can you first go to
3 page 44 and 45.

4 So, CIMA does put the this
5 memo together in advance of the January 15, 2018
6 PWC meeting, and you'll see at -- and you can call
7 this out, Registrar, please -- on page 44, 119,
8 Mr. White forwards the memorandum that CIMA
9 prepares to Mr. Mater, Ms. Matthews-Malone,
10 Mr. Moore and Mr. McKinnon. You've been copied in
11 from CIMA. And he says:

12 "Please find the analysis
13 conducted by the
14 consultant to address the
15 questions we discussed at
16 our meeting this week.

17 David and I will review
18 the data and will be
19 prepared to use it as
20 required to assist PW
21 during the discussion.

22 In general, the collision
23 rates and accident rates
24 are lower than on
25 corresponding MTO

1 roadway we discussed.
2 In fact, in comparison,
3 we have much lower
4 collision rates. Should
5 you have any questions or
6 concerns, please uniquely
7 let us know."

8 And the attached document is
9 HAM1095, Registrar, if you could pull that out.
10 And if you can call up the next image as well,
11 please.

12 Mr. Ferguson, you recall
13 receiving this memorandum. Is that what you were
14 just a moment ago speaking about in terms of the
15 comparisons?

16 A. Correct, yeah.

17 270 Q. So, there's a collision
18 rate comparison with those three different
19 comparators and you'll see on the second page
20 table 1 summarizes the five-year combined
21 collisions and then shows the average weighted
22 collision rates.

23 Registrar, can you go to the
24 next two images, please.

25 You'll see that there's also a

1 reference to cross median collision rates at the
2 top and collision rates by direction and to
3 provincial collision rates. So, I think you said
4 just before I pulled this document up that your
5 recollection was that the 406 was the closest type
6 of comparator. Was that something that CIMA told
7 you or was that something that you assessed from
8 your knowledge of the parkways and 406?

9 A. Yeah. That was just
10 based on my general observations of driving those
11 roadways.

12 271 Q. And can you help us with
13 what you took from the table number 1? There's
14 the LINC and the Red Hill at the top segmented out
15 in the table, and then there's the average
16 collision rates for comparison sites from 406,
17 Highway 78 and Highway 8. Did you agree with
18 Mr. White's analysis that the Red Hill had lower
19 collision rates than each of these other roads?

20 A. Yes. When you look at
21 the overall average, it's obviously lower. There
22 are obviously, looking at the Red Hill
23 specifically, there are segments of spikes which
24 also further align with the previous studies that
25 were done. But overall, like I said, it gave us a

1 good comparison, especially when you look at the
2 406 there and the fourth avenue to QEW, you know,
3 the 0.67 and then the Westchester to Fourth
4 Avenue, 159. That's really where the geometrics
5 are similar in types compared to the Red Hill.
6 So, when you look at those, that's where I was
7 saying that there's a comparison there.

8 272 Q. Okay. Just for clarity,
9 you're looking at the last column where it says
10 collision rate?

11 A. Correct.

12 273 Q. And under the Red Hill it
13 says LINC/Mud and it says 0.17. That's the
14 collision rate that's being used and then the rest
15 of them are different collision rates based on
16 individual segments. So, Greenhill to King and
17 Barton to railway overpass, those are the highest
18 of those collision rates at 0.66 and 0.67. I've
19 got that right?

20 A. That's correct.

21 274 Q. And then I think what you
22 were saying just now is comparing that to the
23 Westchester to Fourth Avenue under 406, that was
24 at 1.59 as a collision rate?

25 A. Correct, and the Fourth

1 Avenue to QEW.

2 275 Q. Was at 0.67?

3 A. 67.

4 276 Q. So, it's quite similar to
5 those two segments on the Red Hill?

6 A. Correct.

7 277 Q. Did I understand you
8 correctly that that gave you some perspective or
9 some comfort because you knew that those segments
10 of Highway 406 were actually quite similar in
11 geometry to the Red Hill geometry? I just want to
12 make sure I understood your evidence.

13 A. Yeah. I mean, they're
14 still not apples to apples obviously because every
15 roadway is different, but it did provide some
16 comparative. At the end of the day, collisions
17 still occur, so I don't like to say that, oh,
18 well, we are fine, we're lower than everybody
19 else, because collisions still do occur and, you
20 know, from a Vision Zero perspective people are
21 being injured and we wanted to prevent that. But
22 at least it was providing us with some comparison
23 to say, well, we're not -- it's not something
24 that's outrageous compared to other comparative
25 type roadways.

1 278 Q. Okay. I note that the
2 timeframe for these collisions is 2009 to 2013, so
3 CIMA is comparing the same periods of time. Do
4 you know why that period of 2009 to 2013 was the
5 timeframe that was used by CIMA?

6 A. I know the MTO data isn't
7 as quickly updated as municipalities, so that may
8 have been a case where that was the time period
9 that had the most up-to-date data from the MTO
10 database, and so obviously to compare, properly
11 compare, they used to 2009, 2013.

12 279 Q. Okay. Registrar, can we
13 go back into OD 8 and to page 44 and 45, please.
14 Actually, can you bring up 45 and 46, please.

15 So, I think I heard your
16 evidence earlier to be or from the documents as
17 well that the intention was to use this memorandum
18 from CIMA at the PWC meeting on January 15 if
19 necessary. Is that right?

20 A. Correct.

21 280 Q. At the bottom of page 45
22 and into page 46, Mr. Izadpanah e-mailed you with
23 additional comments. He said:

24 "I was thinking about
25 your questions today and

1 thought it would be
2 useful to know the
3 proportion of fatal and
4 injury collisions, severe
5 collisions, in total
6 number of collisions for
7 the LINC and the Red
8 Hill."

9 So, he did this analysis. And
10 up at the top of 46 -- and, Registrar, can you
11 pull out the top of 46 -- he notes that:

12 "The table showed that
13 more than half of
14 collisions on the LINC
15 and almost half of the
16 collisions on the Red
17 Hill were either fatal or
18 injury collisions. These
19 percentages are
20 significantly more than
21 the highway sections in
22 the comparator group.
23 This is despite the fact
24 that they had smaller
25 collisions rates as per

1 the memo that we sent you
2 on Friday."

3 You can close that out. And
4 you'll see you forward that e-mail and say:

5 "Interesting stuff."

6 And Mr. White responds:

7 "Yeah. Why is the LINC
8 and the Red Hill less
9 forgiving?"

10 So, just stopping there, we
11 can go through this if we need to, but did you
12 come to understand from CIMA what was included in
13 their phrase severe collisions that they have
14 listed in the chart at the bottom of 45?

15 A. Sorry, can you repeat
16 that?

17 281 Q. Sure. At the bottom of
18 45, there's the chart and it says presented severe
19 collisions and CIMA talked about this being a
20 proportion of fatal or injury collisions. Did you
21 come to understand what is included when CIMA uses
22 the phrase fatal and injury collisions?

23 A. Yeah. It was my
24 understanding that any collision that involved
25 obviously a fatal or any type of injury was looked

1 at.

2 282 Q. Okay. And did you
3 understand that injury collisions, when you first
4 received this information, that injury collisions
5 mean any kind of injury, a sprained wrist, a
6 broken toe, not just serious injury?

7 A. Yeah. I don't believe at
8 the time I put that connection together. It
9 wasn't until after the fact.

10 283 Q. Okay. But at some point
11 you came to realize that that phrase, fatal and
12 injury collisions, is actually quite broad in
13 terms of any injury whatsoever to a person?

14 A. Correct.

15 284 Q. And prior to you learning
16 that, did you have some concerns with CIMA's
17 analysis that almost half of collisions are either
18 fatal or serious injury as compared to any injury?

19 A. When you look at the
20 other numbers, yes. And I believe we went back to
21 CIMA and had a discussion about what the potential
22 causes of those are.

23 285 Q. Just following that, I
24 think you did have some back and forth with CIMA
25 to get clarity on what the causes of this would

1 be. When you say you went back, were you trying
2 to get clarity about what was included in the
3 presumptions that they were giving you?

4 A. That wasn't the initial
5 discussion. I think that came out through the
6 discussions, but it was more about, okay, well,
7 why is it less forgiving? What's occurring?

8 286 Q. Why is it causing more
9 fatalities or serious injuries? Is that what you
10 were trying to understand?

11 A. Correct.

12 287 Q. I'm going to move a
13 little bit forward in time. Registrar, can you go
14 to page 86 of OD 8, please.

15 So, in March, you'll see at
16 the very top of the page you e-mailed Mr. White a
17 briefing note relating to questions that
18 Mr. McKinnon had raised about the increase of
19 proportion of severe collisions and that briefing
20 note was converted to a memorandum dated March 29,
21 2018.

22 Registrar, could you bring up
23 HAM1171, please, and can you bring up the next
24 image as well.

25 Mr. Ferguson, do you recall

1 the purpose of preparing a memorandum or a
2 briefing note for Mr. McKinnon?

3 A. I don't remember
4 specifically why we were requested to put it
5 together, no.

6 288 Q. Okay. The subject line
7 is "Summary from the Public Works Report," which I
8 think probably this seems to deal with a fair bit
9 of from that report. But do you recall if there
10 was discussions about to consider next steps
11 coming out of this report that led to this
12 briefing note?

13 A. I don't recall. Is there
14 another page to that?

15 289 Q. There is another page.
16 Registrar, can you keep up image 2 and bring up
17 image 3, please.

18 So, you'll see at the very
19 bottom it on image 2 it says "Additional action
20 items recommended by staff," and it says:

21 "An education and safety
22 messaging web page and a
23 dedicated section of the
24 annual collision report."

25 And then the third page is

1 just collisions by type for a longer period of
2 time than CIMA looked at in their memo.

3 Do you recall the discussions
4 that led to these action items recommended by
5 staff and, in particular, the dedicated section
6 for the annual collision report?

7 A. So, just in reading, so
8 this is looks like it's a summary memo based on
9 some of the questions that Mr. McKinnon had
10 brought up and we're trying to address those.
11 Again, the annual collision report, that goes back
12 obviously to the previous report that we had been
13 looking at.

14 290 Q. That was my question. It
15 wasn't clear to me just by the way this is drafted
16 whether with that was something you are now
17 suggesting in March of 2018 or if that was
18 something that had been contemplated that it would
19 be a new initiative and that you're just noting
20 that for Mr. McKinnon?

21 A. Yeah. We're just
22 identifying when it's going to be done. That's
23 what it is.

24 291 Q. So, we're in March of
25 2018. Had the analysis for the annual collision

1 report already started?

2 A. I believe we were just
3 either -- had just started or we were just about
4 to start working on it.

5 292 Q. Okay. Registrar, could
6 you close this and could you bring up HAM1449.

7 So, this is an information
8 report from September 17, 2018. This doesn't have
9 a public works ID number for this report. This
10 is, I understand, a draft version. It is prepared
11 by Bryan Purins and you. It's ten pages. It's
12 quite long. But it is, you'll see from
13 information on the first page under the council
14 direction, it appears to me to be primarily about
15 developing the annual collision report and then
16 reporting on its contents.

17 Do you recall being involved
18 in the preparation of this draft information
19 report?

20 A. Yes.

21 293 Q. So, that's by September
22 of 2018. Is it fair to say that the annual
23 collision report itself had been completed and
24 finalized by September of 2018?

25 A. Yes.

1 294 Q. Registrar, can you go to
2 page 8 of this document.

3 So, there's a lot in this
4 document. So, I'm not going to take you through
5 all of it. It deals with collision results
6 generally in the City and then it does have some
7 particular things about the LINC and the Red Hill
8 and I'll go into that in a moment.

9 But just starting with a more
10 general question, here there is a reference to the
11 network screening process of studying safety
12 concerns on the entire road network and the
13 network screening results that have a number of
14 locations where the network risk indicator is, I
15 think, the highest.

16 And the inquiry has received
17 some information about the network screening
18 program, but could you clarify how this program
19 was used over the period of time that you were at
20 the City?

21 A. So, from this point, the
22 plan was to identify the top locations and then we
23 would, as staff, go and do a more detailed
24 investigation of those locations to identify
25 potential countermeasures for implementation to

1 reduce, obviously, collisions.

2 295 Q. Okay. The inquiry has
3 received some evidence to suggest that that very
4 practice was something that was conducted under
5 Hart Solomon before he retired in 2014. Am I
6 correct in my assumption that between 2014 and
7 2018, that process of identifying the next risk
8 hot spots, for lack of a better term, had not been
9 undertaken?

10 A. Correct.

11 296 Q. So, you were
12 reinstituting using the network screening results
13 to dive in and suggest countermeasures in
14 particular locations?

15 A. Correct.

16 297 Q. Okay. More generally,
17 the network screening results, the network
18 screening, was that data that did continue to be
19 obtained for the entire period from 2013 to 2018?

20 A. There was occasional
21 reports that were put together, not formal
22 reports, just internal reports, that staff would
23 put together. I don't believe we were doing it on
24 a yearly basis, but every once in a while we would
25 pull up the data.

1 298 Q. Okay. And let me ask my
2 question again because I think I asked it not in a
3 helpful way.

4 The network screening, is that
5 the data that comes from collision reports that
6 the City receives from the police?

7 A. Correct. It's an
8 evaluation of the data and using a complicated
9 mathematical formula creates the network risk
10 indicator.

11 299 Q. Okay. And my question
12 put poorly before was: Over the period of time
13 between 2014, after Mr. Solomon left, and 2018
14 here, that data was still being collected by the
15 City?

16 A. Correct.

17 300 Q. It just wasn't being
18 analyzed as part of a program to identify the
19 highest risk locations?

20 A. Correct. Yeah. We
21 weren't structured at that time to be able to do
22 that. We were growing the traffic group in terms
23 of staffing, so we didn't have the staff in the
24 early years of my time at City of Hamilton to be
25 able to do anything with it.

1 301 Q. Okay. And here, there's
2 a list of screening results and several of them
3 relate to either the Red Hill or to -- I think
4 actually all the ramps related to the Red Hill
5 rather than the mainline. Number 1, number 4,
6 number 5, number 10 and I can't tell but maybe
7 number 11. I'm not sure about that one. Are
8 those all related, ramps related to the Red Hill?

9 A. Correct. There's the
10 three of them.

11 302 Q. All right. And can
12 you --

13 A. Four of them, sorry.

14 303 Q. On 11 it says urban road
15 and it's entirely possible that that might be the
16 case, but is that a Red Hill segment?

17 A. Number 11?

18 304 Q. Yeah.

19 A. No. So, that's referring
20 to Stone Church between Upper Ottawa and
21 Pritchard.

22 305 Q. Thank you. Okay. That's
23 helpful. But those four off-ramps, they're all
24 off-ramps coming from the Red Hill. Is that
25 right?

1 A. Yeah. So, the first two
2 are on-ramps and 5 and 10 are off-ramps.

3 306 Q. Thank you for the
4 clarity. When this information was pulled to
5 prepare this report, which I presume happened
6 sometime in the fall of 2018, were you surprised
7 that the on or off-ramps of the Red Hill were in
8 four of the top 14 hot spots?

9 A. No, not based obviously.
10 We have already done the studies with CIMA, so
11 they were identified in there as locations, so not
12 surprised.

13 307 Q. Thank you.
14 Mr. Commissioner, I note the time. It is two
15 minutes to 1:00 and I'm about to open up the
16 annual collision report, which may take a little
17 bit of time to get through, so my suggestion is
18 that we take lunch now and return at our usual
19 time.

20 JUSTICE WILTON-SIEGEL: Good.
21 Then let's take a break. We'll stand adjourned
22 until 2:15.

23 --- Luncheon recess taken at 12:58 p.m.

24 --- Upon resuming at 2:15 p.m.

25 MS. LAWRENCE: Commissioner,

1 may I proceed?

2 JUSTICE WILTON-SIEGEL: Yes.

3 By all means, please proceed.

4 MS. LAWRENCE: Thank you.

5 BY MS. LAWRENCE:

6 308 Q. Mr. Ferguson, just before
7 our lunch break we were talking in generalities
8 about the annual collision report and I would like
9 to take you to that now. I'm going to take you to
10 first to the actual document, but then I may go
11 back to the overview document just because it's a
12 little easier to read.

13 Can you go to HAM1448, please.

14 So, Mr. Ferguson, I'm not sure
15 that this is the final draft. I think it actually
16 looks different on the cover page than in the
17 final draft, but this is one that you were putting
18 together in September of 2018.

19 Registrar, can you go to the
20 next image, please.

21 I'm going to, sort of, come
22 back to this, but there is this disclaiming and
23 explanation about self-reporting. Can you
24 describe for me as you're going through the annual
25 collision report, are self-reporting collisions

1 included in this information in contrast to
2 police-reported collisions?

3 A. So, you're referring to
4 this specific report?

5 309 Q. I am. At this point,
6 this is in respect of the data from 2017 and I'm
7 trying to understand the difference between
8 police-reported collisions and self-reported
9 collisions and how that's reflected in this
10 report.

11 A. So, the report itself is
12 based strictly on police-reported collisions.

13 310 Q. Okay. And is it a fair
14 assumption that police-reported collisions are a
15 smaller number than self-reported collisions or
16 are they just completely different reporting
17 types?

18 A. Yeah. So, a
19 self-reported collisions is where there's no major
20 injuries or damage that has occurred and, you
21 know, the motorist will drive to the police centre
22 themselves and create their on police reports,
23 which often don't provide a lot of information and
24 they're very difficult to actually assess.

25 311 Q. Okay. Registrar, can you

1 go to image 41, please.

2 So, I've skipped over the
3 first five sections. We're in section 6 now,
4 which is LINC and Red Hill specific collision
5 trends, but just for the record, the five first
6 sections deal with broader collisions trends
7 within the City. Is that fair to say?

8 A. Correct.

9 312 Q. Okay. So, looking now to
10 the collision trends for the LINC and the Red
11 Hill, this is for the period of 2013 to 2017 and
12 in this slide in respect of the LINC it says:

13 "The total number of
14 collisions on the LINC
15 have increased 18 percent
16 since 2013, however, the
17 number of police-reported
18 collisions have decreased
19 16 percent and collisions
20 resulting in injuries
21 have decreased
22 28 percent. There were
23 21 crossover collisions
24 and two fatal
25 collisions."

1 So, on this point, having just
2 had that discussion about police-reported versus
3 self-reported, are these figures in this part of
4 the annual report different than that disclaimer
5 that we were just looking at that said it was only
6 police-reported collisions?

7 A. Can I just read it? No.
8 It's the same.

9 313 Q. So, where it says total
10 collisions in the chart right under Collision Type
11 and it says 711 is the total and then it says
12 police reported is 332, I guess I'm trying to
13 understand the total number of collisions
14 increased by 18 percent but the number of
15 police-reported collisions decreased by
16 16 percent, so what is the difference between your
17 total number of collisions versus police-reported
18 collisions?

19 A. Sorry, you are correct.
20 So, the total collisions are all collisions. This
21 section does include self-reported collisions.

22 314 Q. Okay. Thank you.

23 A. My apologies.

24 315 Q. No, that's okay. And
25 then under the Red Hill collision chart, it says:

1 "Total collisions on the
2 Red Hill have increased
3 by 51 percent in the past
4 five years.
5 Police-reported
6 collisions have increased
7 by 29 percent and injury
8 collisions have increased
9 by 17 percent. There's
10 been 26 crossover
11 collisions and four fatal
12 collisions."

13 What did you attribute the
14 increase of collisions overall on the Red Hill to
15 be in contrast to the decrease in the collisions
16 on the LINC for police-reported collisions and
17 collisions involving injuries?

18 A. Again, we go back to
19 essentially the collision reports, the analysis
20 done in the 2015 reports for the Red Hill and the
21 LINC by CIMA. And the LINC collisions, they
22 identified a speed differential issue between the
23 two lanes, middle lane and we'll call it curb lane
24 or exit lane or on-ramp lane. And then the Red
25 Hill, again, it's attributed to a higher number

1 of, obviously, wet weather collisions and driver
2 behaviour. And it's driver behaviour on both
3 facilities.

4 316 Q. Okay. Well, leaving
5 aside the total number of collisions, because I
6 think we know that's the reported collisions,
7 self-reported and police-reported, but the number
8 of police-reported collisions decreases by
9 16 percent on the LINC and, in the same period of
10 time, police-reported collisions increased by
11 29 percent on the Red Hill. What do you attribute
12 that difference? How did you attribute, if at
13 all, that difference between those two sets of
14 data?

15 A. I don't think we define
16 within the report what the contributing factors
17 are. The primary purpose of the annual collision
18 report is just to provide a high-level
19 information. I don't believe we dive into looking
20 at specific reasonings or anything like that. We
21 just provide the information.

22 317 Q. I understand. I asked
23 that question with too much generality. Leaving
24 aside what you're reporting to the public in this
25 report, within your team, having analyzed this

1 data, what did you attribute the difference
2 between a decrease in police-reported collisions
3 on the LINC to an increase in police-reported
4 collisions on the Red Hill?

5 A. I would say we didn't
6 have that. We didn't look at that type of
7 information. We weren't looking at that.

8 318 Q. Traffic operations and
9 engineering wasn't looking at the distinction
10 between these two facilities and the data around
11 collisions?

12 A. In 2017, no. No, we were
13 not.

14 319 Q. So, you're --

15 A. Sorry.

16 320 Q. No, I'm sorry I
17 interrupted you.

18 A. We've already done the
19 2015 report, we've identified what the types of
20 issues are, we've identified the various types of
21 countermeasures for both facilities, we've been
22 implementing those measures. We're now into 2018
23 and we're talking about, you know, repaving the
24 facilities, so we're not doing detailed
25 investigation into the question you're asking.

1 321 Q. Okay. Registrar, can you
2 go to the next image, please.

3 So, this is a reference to
4 monthly collision trends. I'm just refreshing
5 your memory. I don't have any questions about
6 this one.

7 Registrar, can you go to the
8 next image, please.

9 Here, you look at different
10 collision severity. Again, I don't have any
11 questions. I'm just trying to refresh your memory
12 about what's included in this report.

13 Registrar, can you go to the
14 next image, please.

15 You look at lighting
16 conditions. Why did you elect to include in the
17 public report collisions by lighting condition?

18 A. It's a common attribute
19 to look at.

20 322 Q. Okay. Registrar, can you
21 go to the next image, please.

22 So, this is collision by road
23 surface, whether it's dry/ice, snow or wet, and
24 the distinction between the LINC and the Red Hill
25 is that 80 percent of collisions on the LINC occur

1 when the road surface is dry and 65 percent of
2 collisions on the Red Hill occur when the road
3 surface is wet.

4 Was this information new to
5 you in contrast to the collision reviews that you
6 had done in the past?

7 A. No.

8 323 Q. I took you before the
9 break to the staff report, the September 2018
10 draft staff report that we were looking that sort
11 of summarized this. We didn't go into a lot of
12 detail, but you recall I brought you to that staff
13 report.

14 When did the annual collision
15 report, when was that presented to public works
16 committee and made public?

17 A. I'm not sure. I don't
18 remember the exact date. I think it was, I want
19 to say, late 2018.

20 324 Q. Okay. I'm going to close
21 this document and, Registrar, can you bring up
22 HAM1223 and HAM12236. I'm sorry, the first image
23 on the left, I think I must have misspoke. It's
24 HAM12234. There we go.

25 So, this is an e-mail from

1 you, so the left-hand side, January 16, 2019, and
2 it's to a number of people, collision report, and
3 if says:

4 "Good afternoon. Please
5 find the collision report
6 that will be going to the
7 PWC in February. Credit
8 goes to Brian and Rob G
9 for this."

10 And then the annual report
11 that we were just looking at, although it looks
12 like it's with a different cover page, and this
13 staff report are attached and this is February 4,
14 2019. Does that refresh your memory?

15 A. Yeah.

16 325 Q. Why was it that the 2017
17 collision report, which looks like it is in final
18 form in September 2018, why was it not submitted
19 until February 2019?

20 A. I believe at that time, I
21 want to say, Mr. Soldo started in 2018 and he had
22 some comments and revisions to the final report
23 which would have pushed it back.

24 326 Q. Okay. Were those
25 comments and revisions related to the section that

1 dealt with the Red Hill and the LINC?

2 A. I'm not sure

3 specifically. I think a lot of it was just layout

4 and...

5 327 Q. Okay. Registrar, you can

6 close these down and if you can go to OD 9,

7 page 49, please. Thank you.

8 So, I'm moving away now from

9 the annual collision report. In August of 2018,

10 you did an update to Mr. McKinnon dated August 2,

11 2018.

12 Registrar, can you bring up a

13 copy of that. It's HAM47334.

14 THE REGISTRAR: Sorry,

15 counsel. Do you mind repeating the document ID

16 for me?

17 MS. LAWRENCE: Of course.

18 HAM47334.

19 THE REGISTRAR: Thank you.

20 BY MS. LAWRENCE:

21 328 Q. You can actually close

22 out page 49 of OD 9 and if you can bring up the

23 next image as well, please. Thank you.

24 So, this is August 2, 2018 and

25 you'll see on the first page it's a number of sort

1 of status updates on various initiatives that your
2 team is working on. Is that a fair summary of the
3 points 1 through 9?

4 A. Correct.

5 329 Q. What was the purpose of
6 preparing this memo for Mr. McKinnon in August of
7 2018?

8 A. I believe just to provide
9 an update on current status.

10 330 Q. Was this part of the
11 regular meetings that Mr. McKinnon had instituted
12 in respect of the LINC and the Red Hill?

13 A. I believe so, yes.

14 331 Q. Okay. And you have some
15 discussion information in addition to the
16 initiatives that you listing in 1 through 9. It
17 says Addition Information:

18 "Traffic engineering are
19 beginning to receive
20 notices of impending
21 legal action into the
22 collisions on the LINC or
23 the Red Hill. It should
24 be noted that some of
25 these claims are a result

1 of poor design or poor
2 pavement conditions."
3 Just stopping there, where it
4 says it should be noted that some of the claims
5 are a result of poor design or poor pavement
6 conditions, what are you trying to express there
7 in terms of your personal conclusion, if anything?

8 A. I believe there was an
9 edit to this document, I believe, so what I'm
10 trying to say is that the claims that are being
11 made by --

12 332 Q. Plaintiffs?

13 A. Yes, are identifying or
14 making note that they're claiming poor design and
15 poor pavement condition.

16 333 Q. You reference the poor
17 pavement condition, but I note that you don't
18 reference anything about friction testing or the
19 status of friction testing. Why is that, given
20 that there's a reference here to poor pavement
21 conditions?

22 A. Because those are the
23 comments from the Plaintiffs, did you say?

24 334 Q. Plaintiffs, yeah, the
25 people who are bringing the claims.

1 A. Right, so I'm just
2 regurgitating what the claim is.

3 335 Q. Okay. Registrar, could
4 you close out of this and go back into OD 9 to
5 page 63, please. Actually, apologies. I'm going
6 to take you somewhere else first. Registrar, can
7 you leave up OD 9 but turn to page 62. On the
8 right-hand side, can you bring up HAM55560. If
9 you can go to image 5 of that document and if you
10 can call out the top third of that document.
11 That's perfect. Thank you.

12 I hope you can see that,
13 Mr. Ferguson. So, this is a chronology that
14 public works staff put together about a number of
15 things related to the Red Hill and the LINC, and
16 one of the references is for the 30th of
17 August 2018. I'm looking at the second reference,
18 the 30th of August 2018, so three lines down or
19 four lines down, and it says:

20 "Key players meeting with
21 Dave Ferguson,
22 Edward Soldo, Gord
23 McGuire, Dan McKinnon
24 discussing wet weather
25 issues on the Red Hill

1 Valley Parkway."

2 Then on the very, very far

3 side of this page, it says:

4 "Does DF have any notes
5 from this meeting?"

6 So, first question: Do you
7 remember attending a meeting with Mr. Soldo,
8 Mr. McGuire and Mr. McKinnon about wet weather
9 issues on the Red Hill on August 30?

10 A. Not specifically, no.

11 336 Q. Do you have any general
12 recollections of that meeting?

13 A. No, I don't.

14 337 Q. What about any general
15 recollections about a meeting, maybe you don't
16 know the date, but with this group of people,
17 Mr. Soldo, Mr. McGuire and Mr. McKinnon?

18 A. I remember a meeting
19 taking place. I don't remember much of the
20 discussion.

21 338 Q. Do you remember anything
22 about the discussion?

23 A. No, I don't.

24 339 Q. Okay. It was discussing
25 wet weather issues on the Red Hill. Does that

1 assist you at all?

2 A. Not really.

3 340 Q. You said that there was a
4 correction that was made to that memo I was just
5 showing you to Mr. McKinnon.

6 Registrar, you can close out
7 the call out.

8 If you look at paragraph 141
9 on the left-hand side, it says:

10 "On August 30,
11 Mr. Ferguson e-mailed
12 Mr. McKinnon, Mr. Soldo,
13 Mr. White and Mr. McGuire
14 regarding the August 21
15 memo. Please find the
16 attached status update
17 memo per discussion."

18 And the one change, you'll
19 see, is in track changes and I'll come back to
20 that, but it does refer to that same part of that
21 we were just looking at, the legal information?

22 A. Mm-hmm.

23 341 Q. So, do you recall if
24 there was a meeting with Mr. Soldo, Mr. McKinnon,
25 Mr. White and Mr. McGuire in which that request

1 for you to make this correction occurred? Do you
2 remember --

3 A. Yes.

4 342 Q. -- that happening in a
5 meeting?

6 A. Yes. I remember that,
7 yes.

8 343 Q. And who directed you to
9 make the revision?

10 A. Mr. Soldo.

11 344 Q. And was there anything
12 else that happened at that meeting that you can
13 tell the inquiry about?

14 A. No, I can't. Sorry.

15 345 Q. Registrar, you can close
16 down the image on the right-hand side and if you
17 can bring up page 63 along with 62.

18 And so, the change that you
19 made is:

20 "Traffic engineering have
21 received notices of
22 impending legal actions
23 as a result of collisions
24 on either LINC or Red
25 Hill. Some questions may

1 require comments,
2 response or attendance by
3 engineering staff."

4 I heard you earlier when you
5 said it seemed like you wanted to express what the
6 Plaintiffs were saying. Why did you delete
7 references to the substance of the claims by the
8 Plaintiffs?

9 A. That was the direction I
10 was given.

11 346 Q. Do you know why that
12 direction was given?

13 A. The way it was previously
14 written made it sound like we were saying there
15 was issues and there was no definitive information
16 that said there was issues, so I was asked to
17 change it accordingly.

18 347 Q. Okay. You'll see
19 Mr. McGuire responded to the e-mail where you
20 included that revision to the memo and asked you
21 if you had the 2015 CIMA report on the RHVP
22 available. I would like to review it if possible.
23 And you said:

24 "Yes, I do. I'm going to
25 work to set up a common

1 file folder that everyone
2 can access."

3 And Mr. McGuire said:

4 "We will put all the
5 results of our studies in
6 there once it is set up."

7 What studies did you
8 understand Mr. McGuire was talking about there?

9 A. Just whatever information
10 they had is what I expected. Nothing specific.

11 348 Q. Do you recall having any
12 discussions with Mr. McGuire in particular about
13 wet weather collisions on the Red Hill?

14 A. No, I don't.

15 349 Q. Did this level of
16 collaboration with Mr. McGuire, setting up a
17 common file folder where both your team and his
18 team would drop materials for common access, did
19 that level of collaboration feel different than
20 your experiences with engineering services under
21 Mr. Moore?

22 A. Yes.

23 350 Q. How so?

24 A. Well, one, we obviously
25 never had a file before that had shared documents.

1 It was actually Mr. Soldo who had requested that
2 the file be created and that documents that were
3 in possession of staff were to be added into that
4 network folder.

5 351 Q. Okay, so Mr. Soldo asked
6 you and your team to do that?

7 A. Create the file, yes.

8 352 Q. Okay. And Mr. McGuire
9 also agreed to put in his team's materials into
10 there as well?

11 A. That was my understanding
12 of it.

13 353 Q. Okay. Prior to this, you
14 had not had access to engineering services'
15 documents. Is that fair to say? Is that
16 accurate?

17 A. Correct.

18 354 Q. Did you ask Mr. McGuire
19 for a copy of any friction tests that he had in
20 engineering services?

21 A. No, I did not.

22 355 Q. Did you have any
23 discussions with Mr. McGuire in which he
24 referenced friction test results?

25 A. No, I did not.

1 356 Q. Did Mr. McGuire tell you
2 that he had contacted CIMA to assist with an
3 assessment of friction on the Red Hill?

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

5 357 Q. Okay. Did he at any
6 point tell you that he had reviewed results of
7 friction tests that had been conducted in 2013?

8 A. No.

9 358 Q. Did you have any
10 discussions with Mr. McGuire about conducting a
11 roadside safety assessment or, pardon me,
12 retaining CIMA to conduct a roadside safety
13 assessment?

14 A. No. That direction -- I
15 mean, Mr. McGuire might have been in the room at
16 the time, but that direction came from Mr. Soldo
17 in preparation for the upcoming works on the
18 parkways.

19 359 Q. Okay. Registrar, can you
20 go to page 86 and 87, please, and can you call
21 out -- actually, no. Hopefully we can do it
22 without a call out.

23 Mr. Ferguson, at the bottom of
24 page 86, paragraph 216, you forwarded to
25 Mr. Malone and Dr. Hadayeghi an e-mail that you

1 had sent to Mr. Soldo and Mr. White the same day
2 outlining the purposes of a roadside safety
3 assessment. And on the very bottom, you say:

4 "To investigate the
5 current roadside design
6 of the mainline of the
7 LINC and the Red Hill as
8 well as the on and
9 off-ramps of both
10 facilities."

11 And then, Registrar, can you
12 call out the rest of this that's on page 87.
13 Thank you.

14 So, this is from your e-mail:

15 "The consultant shall
16 identify collision
17 patterns and current
18 roadside hazards on the
19 mainline and geometric
20 design issues, signing
21 review, roadside hazard
22 review and development of
23 is solutions for hazards
24 identified in the
25 report."

1 So, I think your evidence just
2 now was that this was in advance of the upcoming
3 resurfacing. Is that right?

4 A. That's correct.

5 360 Q. At this point, so this is
6 in October of 2018, were you aware of any concerns
7 from any city staff members about the friction
8 levels on the Red Hill?

9 A. No.

10 361 Q. After the 2013 and the
11 2020 CIMA reports and the collision memo that you
12 had received and your internal assessments, why
13 are you asking CIMA to do another assessment of
14 collision patterns?

15 A. So, Mr. Soldo just wanted
16 to make sure that we were covering all bases and
17 that any scope could be included for the upcoming
18 project and in terms of sort of an update looking
19 at collision trend locations to see if any
20 additional countermeasures needed to be included.

21 362 Q. Okay. And you say at the
22 bottom:

23 "The timeline for the
24 assignment is the Red
25 Hill will be completed by

1 December 15, 2018 and the
2 LINC by August 15, 2019."

3 Why did you chose those dates?

4 A. They would have been
5 based on information we had received from
6 engineering services on when they were expecting
7 work to begin.

8 363 Q. And earlier today we went
9 through there was the timeline in 2016 that
10 resurfacing would start in 2017, and then 2017,
11 there was a timeline that the resurfacing was
12 going to be in 2018 and 2019 for the Red Hill.

13 By this point, October 2018,
14 what did you understand about the timeline for
15 resurfacing on the Red Hill?

16 A. That it was going forward
17 and there was a tight timeline obviously to get
18 the information that we need to include in the
19 scope. That's about all I can say to it.

20 364 Q. You don't have any more
21 specifics about when you understood that they were
22 going forward?

23 A. No.

24 365 Q. Okay.

25 A. I knew the Red Hill was

1 going to be first and then the parkway was to --
2 or the LINC was to follow. That's all I can
3 remember.

4 366 Q. Thank you. Registrar,
5 you can close out this call out and can you go to
6 page 207 of OD 9, please.

7 So, on December 14, this is in
8 paragraph 507, CIMA sent you an advanced draft
9 report of the roadside safety assessment and it
10 identified a few different things, including about
11 the updated collision review that CIMA had done.

12 Registrar, can you call out
13 507 to 509, please.

14 And so, the updated collision
15 review noted that -- and this is in 507:

16 "A proportion of wet
17 surface conditions is
18 noticeably higher than
19 what was found in the
20 2015 review, 50 percent,
21 which, on that study, had
22 already been found to be
23 significantly higher than
24 the provincial and City
25 averages of 17.6 and

1 2 percent respectively."

2 Was the fact that the
3 proportion of wet surface conditions causing
4 collisions was 50 percent higher than it had been
5 in the 2015 review, was that a surprising piece of
6 information to you when you received this report?

7 A. I think overall we were
8 surprised by it. That's a 14 percent increase.
9 There had been a lot of obviously information in
10 the public about the parkways. You always have a
11 hope that -- and we have completed a number of
12 countermeasures and you're always hoping that
13 people will adjust their driving behaviour
14 accordingly, but clearly that wasn't the case.

15 MS. CONTRACTOR: Sorry, I want
16 to clarify a point, Mr. Commissioner. I think
17 that might be referring to the percentage of the
18 wet weather collisions in the 2015 review and not
19 the increase since the 2015 review.

20 MS. LAWRENCE: Sorry, I think
21 the next page might actually be a more clear
22 statement. I certainly would rather use CIMA's
23 statement than my paraphrasing.

24 BY MS. LAWRENCE:

25 367 Q. Registrar, can you close

1 this and go to the next page. This is just an
2 excerpt from CIMA. If you can call out the first
3 three paragraphs.

4 So, here, I think this is a
5 more -- a different way of putting what CIMA has
6 said:

7 "Wet surface collisions
8 were found to represent
9 64 of the mainline
10 collisions and 73 of the
11 ramp collisions. The
12 proportion of wet surface
13 collisions on the
14 mainline presented an
15 increase compared to the
16 2015 study."

17 Then it says in brackets,
18 50 percent.

19 MS. CONTRACTOR: Again, I
20 don't think that that is saying that it's
21 increased by 50 percent. I think it's saying that
22 that's the percentage in the 2015 study, but happy
23 to go to the 2015 study to compare if that would
24 assist.

25 MS. LAWRENCE: No. I don't

1 want to leave Mr. Ferguson with an incomplete
2 impression. I'm happy to have the Commissioner
3 look at the 2015 report rather than spend time
4 doing that. I don't think I need Mr. Ferguson's
5 evidence on that point.

6 MS. CONTRACTOR: Okay.

7 BY MS. LAWRENCE:

8 368 Q. You can close this out,
9 Registrar, and if you can go into the draft
10 advance -- sorry, the advanced draft of this
11 document. It's CIM19285.0001. And if you could
12 go to image 24, please.

13 So, this is just the draft,
14 but here are some of the recommendations that CIMA
15 has put in this draft. I'm taking you first to
16 the first one, the first bullet point:

17 "Ensure the pavement
18 design for the upcoming
19 resurfacing considers the
20 history of wet surface
21 collisions and
22 investigates the need for
23 a higher friction
24 surface."

25 Did you understand that this

1 was in respect of a concern around friction, this
2 reference to ensuring pavement design, or how did
3 you interpret it, if you interpreted it
4 differently?

5 A. I interpreted it just
6 based on what it says, that obviously there's a
7 history of wet weather collisions and, as a
8 result, there should be a use of higher friction
9 type pavement.

10 369 Q. Okay. You can close this
11 down, Registrar, and can you bring up OD 9,
12 page 259.

13 This is just to keep you in
14 the chronology, Mr. Ferguson. On January 17,
15 2019, CIMA sent you the final version of the
16 roadside safety assessment report and those
17 included some formatting changes and some
18 revisions, but I don't feel I need to take you
19 through those. I just want to give you the
20 timing. So, January 17, 2019 is the final report.
21 Does that accord with your memory?

22 A. Yeah. Sure.

23 370 Q. Registrar, can you go to
24 page 255, please.

25 So, in addition to this

1 roadside safety assessment, there's some exchanges
2 that suggest that you had CIMA also do an update
3 to the collision comparison memorandum that you
4 had had them do in 2018 on January 15, 2019. Do
5 you see that in paragraph 619?

6 A. Yes.

7 371 Q. Why did you have CIMA
8 update the collision memorandum that compared the
9 other highways? Why did you ask for an update on
10 that?

11 A. I don't recall why we
12 undertook a followup.

13 372 Q. Okay. Registrar, can you
14 go to the next page, please.

15 So, just in terms of -- before
16 we actually go into the document, at 620, we've
17 summarized in the OD that the MTO collision data
18 was only available to 2016. The provincial
19 collision data average is comprised of data from
20 2012 to 2016 and the LINC and the Red Hill were
21 from 2013 to 2017?

22 A. Right.

23 373 Q. Registrar, can you go
24 into this document, CIM10338.0001, and if you can
25 pull up the next image as well, please. If you

1 can pull up images 3 and 4, please. Thank you.

2 So, this is a table that looks
3 a lot like that table we were looking at in the
4 2018 report. You'll see here for the LINC, the
5 average weighted collision rate is 0.44 and for
6 the Red Hill it is 1.01 and that is in respect of
7 the period of time from 2013 to 2017.

8 Just stopping there, is this
9 data the same data that was used to populate the
10 annual collision report that we were just looking
11 at?

12 A. Yes, it would have been.
13 And reading it and looking at the dates, I suspect
14 maybe that's why we had a follow-up report,
15 because we now had the 2017 data.

16 374 Q. I think you had said
17 earlier that you knew that the MTO data lagged in
18 time and here we're looking at the 2012 to 2016
19 collision data from the comparator highways?

20 A. Correct.

21 375 Q. Registrar, can you move
22 image 4 to the left and add image 5, please.
23 Thank you.

24 So, at the bottom of image 4,
25 it says:

1 "We note that the
2 collision rates reported
3 in the 2018 memo were
4 considerably lower."

5 Registrar, can you pull up
6 that paragraph. That's great. Thank you:

7 "The collisions rates
8 reported in the 2018 memo
9 were considerably lower.
10 Our understanding is that
11 the data provided for the
12 previous analysis did not
13 include self-reported
14 collisions, while the
15 data provided for the
16 current analysis
17 includes these
18 collisions. When the
19 self-reported collisions
20 are excluded, the
21 resulting collision rates
22 are 0.2 for the LINC and
23 0.69 for the Red Hill,
24 which are consistent with
25 the rates in the previous

1 memo."

2 Just stopping there, am I
3 correct to interpret this as the 2009 to 2013 LINC
4 and Red Hill data that you provided and that CIMA
5 used in the 2018 report, that that data excluded
6 self reports?

7 A. Correct.

8 376 Q. But the 2013 to 2017 data
9 includes self reports?

10 A. Correct. So, we had a
11 database system change, so the previous process
12 for staff under the old system was they did not
13 include the self-reportable collision information
14 into the database, and then we made that change as
15 we converted over to the new system to include all
16 collisions.

17 377 Q. Registrar. You can take
18 that down.

19 And at the top of image 5, it
20 says:

21 "The MTO collision data
22 includes all types of
23 collisions, including
24 non-reportable and
25 other."

1 So, is that to say that if you
2 want to compare apples to apples, this is a fair
3 comparison than the 2018 report that excluded the
4 self-reported collisions for the Red Hill and the
5 LINC?

6 A. Yes.

7 378 Q. And as a result, the
8 rates for the LINC are lower than the MTO weighted
9 rates and the rates for the Red Hill are higher
10 than the MTO weighted rates. Is that right? I'm
11 just reading from the middle of page 5.

12 Registrar, you can call that out, rates for the
13 LINC, rates for the RHVP. No, not there. You can
14 close that out. It's the next paragraph after,
15 the one you just called out.

16 A. You're okay. You're
17 good. You are correct.

18 379 Q. Okay. And so, adding in
19 the self-reported collisions actually changed that
20 sort of overall conclusion from the 2018 collision
21 memo that you said gave you some comfort, which
22 was that the Red Hill collision rate was less or
23 was similar to some of the comparator highways?

24 A. Correct.

25 380 Q. And that's no longer the

1 case. Is that fair?

2 A. I don't know if I would
3 say that.

4 381 Q. Just on the math. Just
5 on the math, recognizing there's probably some new
6 ones.

7 A. Correct, yes.

8 382 Q. Okay. Now, what about
9 the new ones? Go ahead.

10 A. Again, when you look at
11 the breakdown, you have, sorry, these
12 sections that pop up that are higher than other
13 sections. So, again, regardless, it's collisions
14 that are occurring that are involving injuries in
15 some way or another, so regardless of what the
16 rate says, it's still a concern based on how we
17 are reacting or working under the Vision Zero
18 principles.

19 383 Q. Okay. Registrar, you can
20 close this down and if you could bring up OD 9,
21 page 246, and can you call out 595, please.

22 So, this is January 14, so
23 this is, I believe, just the day before that you
24 ask CIMA for the updated collision analysis. I
25 just want to make sure I've got that time right.

1 I believe that's right. So, this is all sort of
2 happening mid-January, getting the final version
3 of the roadside safety assessment, the 2019
4 collision information and also this e-mail.

5 So, January 14, Mr. Soldo
6 e-mailed you and Mr. White under the subject line
7 Report and he says:

8 "As you know, there are
9 some issues relating to
10 the RHVP reporting. I
11 need written confirmation
12 from both of you on the
13 following: That the 2013
14 Tradewind consulting
15 report was not shared
16 with you or any of your
17 staff regarding the
18 friction testing. The
19 table in the staff
20 report, 1808, from
21 January 2018 states that
22 friction testing was
23 completed. How did you
24 know it was completed?"

25 So, just stopping there before

1 we get to your response, this e-mail, the subject
2 line is Report, and then he says:

3 "As you know, there are
4 some issues relating to
5 the Red Hill reporting."

6 And then he references the
7 word Tradewind and the reference to friction
8 testing. What did you know, if anything, about
9 issues relating to Red Hill reporting and/or
10 friction testing issues before Mr. Soldo sent you
11 this e-mail?

12 A. Nothing, to be honest
13 with you. From the RHVP reporting, I mean, we
14 were always questioned about our reports and
15 obviously we talked about, you know, the questions
16 about the speeding data and things like that. So,
17 to be honest with you, I probably thought that's
18 what he was referring to --

19 384 Q. I don't mean to interrupt
20 you, but it says:

21 "As you know, there are
22 some issues relating to
23 the RHVP reporting. I
24 need written confirmation
25 from both of you on the

1 following."

2 That seems like he's assuming
3 that you have more information than you today are
4 remembering that you had. Can you square that for
5 me?

6 A. I guess you would have to
7 ask him. I don't know if that was what he was
8 thinking. Maybe he thought we did and that's why
9 he was asking the question. I don't know.

10 385 Q. Okay. But your evidence
11 is you didn't have any information about any
12 issues relating to Red Hill reporting or the
13 Tradewind consulting report or friction testing?

14 A. Correct.

15 386 Q. Okay. Registrar, you can
16 close this down and if you can go to the next
17 page, please. Sorry, you won't be able to see
18 that. If you can keep up 246 for a moment.

19 At the very bottom, it says:

20 "Mr. Ferguson responded
21 the same day writing -- "

22 And then your e-mail is at the
23 top:

24 " -- I have never seen
25 the report. I asked Gary

1 previously but never
2 received a response. It
3 is listed as completed as
4 Gary has verbally stated
5 it was completed on
6 numerous occasions."

7 Just stopping there, when you
8 say "I have never seen the report," did you
9 understand that you were responding in respect of
10 a report, the reference to the report was a
11 friction testing report?

12 A. I was going based upon
13 his comment, the 2013 Tradewind consulting report,
14 regarding the friction testing.

15 387 Q. So, you took from
16 Mr. Soldo's e-mail that the 2013 Tradewind
17 consulting report was a report about friction
18 testing?

19 A. Based on the writing,
20 yes.

21 388 Q. And did you receive
22 clarity about that from Mr. Soldo before you
23 responded?

24 A. No.

25 389 Q. Registrar, can you pull

1 out 597, please.

2 So, Mr. White also responded

3 and he copied you:

4 "Edward, I can confirm
5 I've never seen the
6 report. I did ask for it
7 several times. I can
8 also state that Gary did
9 admit it was done at one
10 point, but he discounted
11 the results and minimized
12 the value of the tests.
13 At a meeting with
14 Mr. Mater and Dan and
15 Dave and myself, I
16 recollect him saying
17 something about it being
18 an English test or a
19 standard or something
20 similar and then he
21 declined to share the
22 results with Dan and John
23 Mater. He also stated
24 that the asphalt was
25 filled with rubber from

1 tires. I never saw the
2 test results or any
3 reports from anybody."

4 Stopping there, do you recall
5 a meeting with Mr. White, Mr. Mater, Mr. McKinnon
6 and yourself and Mr. Moore in which Mr. Moore made
7 the comments that Mr. White attributes to him
8 here?

9 A. I recall a meeting where
10 he was asked. I believe Mr. McKinnon asked for an
11 update on the friction testing. I don't remember
12 exactly the way Mr. White explained it. I do know
13 that Mr. Moore stated that they had done the
14 testing, they were evaluating the numbers, there
15 was no standard in Canada and they were trying to
16 figure out what it meant.

17 390 Q. Okay. Do you remember
18 any reference to an English test?

19 A. I don't remember that at
20 all, no.

21 391 Q. And do you remember any
22 reference to asphalt was filled with rubber from
23 tires?

24 A. No, I don't.

25 392 Q. You said earlier today

1 that at the May 1, 2017 meeting where these
2 individuals plus Mr. Kirkpatrick and Mr. Worrton
3 and Ms. Matthews-Malone, that Mr. Moore had stated
4 they had done testing, they were evaluating
5 numbers and there was no standard in Canada, so
6 what you just told me about the meeting you
7 remember.

8 Having this information now
9 and Mr. White's recollection, is it still your
10 evidence that this information was provided at the
11 May 1, 2017 meeting or did it happen at some other
12 meeting?

13 A. No. The best of my
14 recollection was it was that May 1 meeting. It
15 was one of the first meetings that we had with
16 Mr. McKinnon to talk about the parkways.

17 393 Q. And so, the reference --
18 this meeting here that Mr. White remembers doesn't
19 reference that Mr. Worrton was there or that
20 Ms. Matthews-Malone was there. Do you recall two
21 different meetings in which Mr. Moore conveyed to
22 you and others the information about the no
23 standard in Canada and that he was trying to
24 figure out what the results meant? Was it two
25 different times that he said that?

1 A. I mean, over the years I
2 had heard it multiple times in various meetings.

3 394 Q. From Mr. Moore?

4 A. Yes.

5 395 Q. How many meetings?

6 A. Oh, geez. I don't know.

7 396 Q. Two? Ten?

8 A. I can't be specific and
9 give you a specific number. All I can say is that
10 I know it was said multiple times.

11 397 Q. When you say it was said,
12 Mr. Moore said it or you heard it from --

13 A. Mr. Moore.

14 398 Q. Okay. Registrar, you can
15 close the call out. Thank you.

16 Did you provide any
17 information to CIMA as they were finalizing the
18 roadside safety assessment about the fact that you
19 understood that there was a report that was
20 relating to friction testing that Mr. Soldo was
21 asking you about?

22 A. I don't believe so.

23 399 Q. Okay. Did you attempt to
24 obtain copies of friction results that Mr. Moore
25 had over time said he had in order to provide them

1 to CIMA so that they could do the roadside safety
2 assessment?

3 A. No.

4 400 Q. Did anyone at CIMA tell
5 you that they had any information about friction
6 testing results --

7 A. No.

8 401 Q. -- that the City had
9 conducted?

10 A. No.

11 402 Q. Did anyone from CIMA ask
12 you to go obtain friction testing results if the
13 City had any?

14 A. No.

15 403 Q. Okay. Did you attend the
16 general issues committee meeting on February 6,
17 2019?

18 A. Is that the meeting where
19 everything came out?

20 404 Q. That's the meeting where
21 a significant amount of it was in camera and
22 following from there there was public disclosure.
23 That meeting.

24 A. So, we were at city hall.
25 We were not in the council's chambers.

1 405 Q. Why were you at city
2 hall?

3 A. Mr. Soldo had asked
4 myself and Mr. White to attend.

5 406 Q. To attend and sit
6 outside?

7 A. Yes.

8 407 Q. For what purpose?

9 A. I suspect maybe to
10 provide any information that he may require.

11 408 Q. Okay. Mr. Commissioner,
12 it is 12 minutes after 3:00. I would like to take
13 a minute to look at my notes and make sure that
14 there's nothing else I would like to ask
15 Mr. Ferguson. I'm certainly at the end of or
16 close to the end of my questions for him. I would
17 also like to talk to counsel about how we use the
18 remainder of the day, so I propose we take our
19 break a few minutes early.

20 JUSTICE WILTON-SIEGEL: Okay.

21 Let's take our break and we'll return at, we'll
22 say, 3:30.

23 --- Recess taken at 3:12 p.m.

24 --- Upon resuming at 3:31 p.m.

25 MS. LAWRENCE:

1 Mr. Commissioner, I have no further questions for
2 Mr. Ferguson.

3 Mr. Ferguson, thank you for
4 your attention.

5 I understand that Dufferin,
6 the MTO and Golder do not have questions for
7 Mr. Ferguson, but that Ms. Contractor will have
8 questions for him.

9 JUSTICE WILTON-SIEGEL: Okay.
10 Over to you, Ms. Contractor.

11 MS. CONTRACTOR: Thank you,
12 sir.

13 EXAMINATION BY MS. CONTRACTOR:

14 409 Q. Good afternoon,
15 Mr. Ferguson.

16 A. Good afternoon.

17 410 Q. I'm going to ask you a
18 number of questions with respect to the evidence
19 you provided way back in June and earlier today.
20 If you have any questions or need clarification
21 regarding the specific documents that I'm going to
22 take you to, just let me know and I can spend some
23 time refreshing your memory on some of these
24 topics.

25 I would like to start by

1 understanding the difference between traffic
2 engineering, which of course was in the traffic
3 group, and asset management, which was in
4 engineering services. Generally speaking, is it
5 fair to say that traffic engineering looked after
6 the safety of the roadway and asset management
7 looked at the durability of the roadway?

8 A. Correct. Asset
9 management was responsible for infrastructure.
10 Traffic was responsible for evaluating obviously
11 existing traffic conditions.

12 411 Q. Thank you.

13 Mr. Registrar, could we please go to OD 6,
14 image 48.

15 Mr. Ferguson, in June you were
16 asked about your interactions with the councillors
17 whose wards the Red Hill fell in in the context of
18 the 2013 CIMA report. You'll recall that you
19 forwarded a draft copy of the 2013 CIMA report to
20 Councillors Collins, Jackson and Clark and
21 subsequently met with Councillors Collins and
22 Jackson to review the report.

23 Did you have any concerns at
24 that point about sharing the report with these
25 particular councillors or having a meeting with

1 these particular councillors to discuss the
2 report?

3 A. No, I didn't.

4 412 Q. Why not?

5 A. One, it was -- we were
6 directed to connect with the councillors and to
7 provide them with an opportunity to review the
8 report. They had brought the request forward.
9 The whole study was based on a motion of council
10 brought forward by Councillor Collins and we just
11 wanted to make sure that everything had been
12 covered that they were hoping to see.

13 413 Q. Registrar, could we go to
14 RHV986. The document that we're about to pull up
15 is a transcription from the November 18, 2013 PWC
16 meeting during which staff discussed the report
17 flowing from Councillor Collins' motion with
18 respect to the Red Hill. And I think your
19 evidence in June was that you suspected that you
20 were present at this meeting, considering that you
21 penned the report with Mr. Cooper. Is that right?

22 A. That's correct.

23 414 Q. I want to take you
24 through a few portions of the transcript. So,
25 paragraph 1 here or paragraph 2, I suppose, where

1 Councillor Collins is stated as saying:

2 "I just want to thank
3 staff for the
4 recommendations and Steve
5 and Dave, who were the
6 authors of the report,
7 were kind enough to sit
8 down with me and go over
9 the recommendations."

10 Steve and Dave, do you
11 understand that to be yourself and Mr. Cooper?

12 A. Yes.

13 415 Q. And so, here, Councillor
14 Collins is acknowledging that he met with you and
15 Mr. Cooper and thanking you for the work that you
16 did.

17 Can we go, please,
18 Mr. Registrar, to image 2 and the bottom paragraph
19 with Councillor Collins or under the heading
20 Councillor Collins again, he notes:

21 "I think the open lines
22 of communication that you
23 have had on this one for
24 me have been tremendous."

25 Again, did you understand that

1 to refer to the discussions and meetings that you
2 had with Councillor Collins and Jackson, along
3 with Mr. Cooper?

4 A. Yes.

5 416 Q. Okay. And image 3, if
6 you would, please, Mr. Registrar.

7 And Councillor Jackson at the
8 top similarly notes that he was in the meeting
9 with Councillor Collins, Stephen Cooper and David
10 Ferguson and thanks you for their leadership in
11 the traffic department and their availability.

12 Do you recall at this meeting
13 or following this meeting, Mr. Ferguson, if anyone
14 raised any concerns with you and specifically the
15 other councillors raised any concerns that staff
16 were discussing these reports with certain council
17 members whose wards were directly affected by
18 them?

19 A. No. I didn't receive any
20 comments from councillors or senior management.

21 417 Q. In fact, fair to say that
22 this practice was encouraged by council?

23 A. It was encouraged by
24 council and senior management. When I first
25 arrived at the City, it was my understanding that

1 within traffic we were trying to rebuild
2 relationships with councillors. I guess in the
3 past things had gone somewhat sour with those
4 relationships, and so it was common practice to
5 engage with councillors.

6 418 Q. Thank you. And do you
7 recall whether, during this committee meeting or,
8 again, afterwards, if Councillor Collins or
9 Jackson or Clark suggested that staff provide the
10 rest of council or PWC rather with a copy of the
11 CIMA report to the other committee members?

12 A. Not that I recall, no.

13 419 Q. And, of course, the staff
14 report itself references the study that was
15 completed by CIMA. If members of the PWC
16 requested a copy of that, the underlying
17 consultant report, would staff be required to
18 provide it?

19 A. I believe we would have
20 provided it. I'm not sure there was a requirement
21 to provide it.

22 420 Q. Fair enough, but that
23 would have been the practice. If councillors
24 asked you for the report, you would have given it
25 to them?

1 A. Yes.

2 421 Q. And commission counsel
3 back in June asked how a member of the public
4 could go about getting a copy of the consultant
5 report that's not appended to the staff report,
6 and I believe you indicated that the most common
7 practice would be to go through the FOI process.
8 Is that right?

9 A. That's correct.

10 422 Q. Could members of the
11 public also contact their council member for a
12 copy of that consultant report?

13 A. Yes, they can contact
14 their councillors. Yes.

15 423 Q. And at that point, the
16 councillor could direct staff to provide a copy to
17 the member of the public?

18 A. They could make a
19 request, yes.

20 424 Q. Okay. Mr. Registrar, we
21 can take that down.

22 During your evidence in June,
23 Mr. Ferguson, you gave us an example of
24 discussions you would have had with consultants
25 regarding railway safety audits, noting that in

1 that case, consultants would clearly identify
2 countermeasures that were required or should be
3 completed and measures that could be considered
4 and clearly delineated between those and provided
5 clear timelines for implementation.

6 Can you tell us, Mr. Ferguson,
7 why is it important for consultants to do that?

8 A. Well, it's part of their
9 job, you know. Municipalities hire consultants to
10 undertake various types of studies and, you know,
11 through that process, if something is a
12 requirement, they should be bringing that
13 information forward to the municipality so they're
14 able to act on it appropriately.

15 425 Q. Okay. And we know from
16 the 2013 and 2015 CIMA reports that CIMA uses the
17 language "should be considered" or "could be
18 considered." In 2013, what was your understanding
19 of the significance of those terms?

20 A. Yeah. I mean, could is
21 something you can consider. Should is somewhat
22 stronger in that you should be moving forward with
23 this and getting this done. They do provide
24 timelines within the reports. Again, sort of
25 similar to what we just talked about, if they have

1 identified something that is urgent, then the
2 expectation is they would have provided that
3 information.

4 426 Q. Thank you. I want to ask
5 you about council motions more generally. Is it
6 fair to say that when council brings a motion,
7 councillors are looking for staff's recommendation
8 and response to that motion?

9 A. Yeah. Depending on what
10 the motion is, yes.

11 427 Q. Right. So, unless it
12 expressly says, identifies, the source of the
13 opinion that they're looking for, fair to say that
14 they're looking for staff's opinion and staff's
15 judgment. Is that right?

16 A. Yes. You know, when they
17 bring motions forward, they'll primarily say, you
18 know, requesting, just for example, operational
19 services, conduct a study at such and such a
20 location and report back to committee by a certain
21 timeline.

22 428 Q. Right. So, that's an
23 example of where council specifically is asking
24 staff to go out and obtain a study and then report
25 back on the findings of that study. Correct?

1 A. Correct.

2 429 Q. Mr. Registrar, if we
3 could please go to OD 6, image 8, and also pull up
4 OD 7, image 10.

5 And so, the language of the
6 2013 and 2015 motions, and with respect to the Red
7 Hill you'll see the 2013 on the left-hand side and
8 the 2015 on the right-hand side, and the way that
9 I read the language of that motion is not -- it
10 doesn't suggest that council is asking staff to go
11 out and get a report, but asking staff to
12 investigate the specific issues detailed in the
13 motion. Is that right?

14 A. That's correct.

15 430 Q. Okay. And in responding
16 to a motion, staff may -- motions such as this
17 where it's not specified that staff need to get a
18 consultant report, I take it staff are still
19 entitled to go out and obtain a report to advise
20 them on the motion. Is that right?

21 A. Sorry, I'm not
22 understanding your question. Sorry.

23 431 Q. So, for motions such as
24 these where council has not directed staff to go
25 out and get a report but, rather, is asking for

1 staff's opinion on the specific issues detailed in
2 these motions, I take it staff are still able to
3 go out and, on their own accord, get an opinion
4 from a consultant to inform their views. Is that
5 right?

6 A. That's correct, yes.

7 432 Q. Okay. And fair to say
8 that when staff ask for advice from a consultant,
9 they rely on the consultant's expertise?

10 A. That's right. Usually
11 you retain a consultant, one, because it's a
12 larger project and you don't have the internal
13 resources to conduct the work yourselves, or
14 there's specialty works involved and you require a
15 consultant who has experience in that area.

16 433 Q. And fair to say that
17 staff may also have their own technical expertise
18 or may be aware of additional factors that should
19 be considered that a consultant might not be aware
20 of?

21 A. Right. And we work with
22 the consultant, so if situations like that arose,
23 you would have those discussions with the
24 consultant.

25 434 Q. Okay. Commission counsel

1 back in June asked you if a council report is
2 summarizing but not attaching a consultant's
3 report, whether you agreed that the council report
4 should accurately and completely summarize the
5 consultant's report, and you said yes, that you
6 agreed with that.

7 I would like to give you a
8 chance just to elaborate on that, because it
9 wasn't clear to me what you or commission counsel,
10 I suppose, meant by completely summarize. Can you
11 tell us the general practice at the City in 2013
12 and your experience with respect to how detailed
13 of a summary of a consultant's report was provided
14 to council in instances where you're responding to
15 a motion such as the 2013 and 2015 motions where
16 council is looking for staff's opinion as opposed
17 to asking staff to go out and get a report?

18 A. I mean, overall the
19 process is that the committee report is a summary
20 of whatever report is created, whether it's
21 internal or external. It's a summary of what was
22 undertaken, a summary of the results, what the
23 recommendations may be. In some instances, you
24 include the specific details right in the report
25 or you just summarize it as an appendix.

1 435 Q. And to what extent would
2 the significance of the concerns raised by the
3 consultant impact staff's discretion in
4 determining whether to summarize those concerns in
5 the staff report?

6 A. Again, it would be based
7 on urgency really. If a consultant comes back and
8 says that this is something that's urgent and must
9 be completed within a year or immediately or even
10 a longer timeline, then you're obviously going to
11 identify that in your specific reports.

12 436 Q. Okay. And I can take you
13 to it if you need to, but do you recall whether
14 you understood the 2013 CIMA report to be
15 identifying any urgent issues?

16 A. No. Again, as I sort of
17 mentioned before, I've just sort of started with
18 the City. The report and the study was, at that
19 time, in my opinion, seemed very straightforward
20 based on what I understood of the motion and what
21 works had to be done to complete the study. I
22 don't recall anything within those reports that
23 made it sound urgent or critical. Again, they
24 provided a timeline which I thought was acceptable
25 for works to be done and identified what those

1 works were.

2 437 Q. I can take you to the
3 specific countermeasures in the 2013 report, but
4 in the interest of time, let me try doing it this
5 way.

6 In the 2013 and the 2015
7 report where CIMA used the "could consider"
8 language or -- well, let's do it one at a time.
9 When they used the "could consider" language, how
10 did you interpret those recommendations?

11 A. Those were works that,
12 you know, if in the interest of the City we wanted
13 to undertake, we could undertake those. I believe
14 they still identified them as per the work plan
15 and I believe, correct me if I'm wrong, but the
16 ones with coulds were probably medium or long-term
17 type things, so that's kind of how I looked at
18 that.

19 438 Q. So, some of the coulds
20 were short-term. Why don't we go to one.

21 If we could please go to
22 CIM8082.0001, image 50, please. If we could pull
23 up 6.11. Thank you. Including the cost-benefit
24 ratio if you would, please, Mr. Registrar. Thank
25 you.

1 So, this is the section
2 regarding friction testing in the 2013 CIMA report
3 and here of course we see CIMA using the "could
4 consider" language, and you've told us how you
5 understood that. I can take you to it, but this
6 recommendation is listed as a short-term and I
7 think you've told us before the timeline for that
8 is zero to five years. Is that right?

9 A. That's correct.

10 439 Q. And what did that
11 timeline tell you about CIMA's recommendation
12 regarding friction testing?

13 A. Again, it's not something
14 that's identified as urgent. You should look at
15 this and obviously could consider it be done
16 within that zero to five-year mark.

17 440 Q. Right. And below under
18 cost-benefit ratio, what is a cost-benefit ratio
19 or the BC analysis?

20 A. It's the cost benefit
21 based on the works to what the advantage of doing
22 those works will be.

23 441 Q. And what does it tell you
24 as the client receiving the report?

25 A. It sort of puts a weight

1 on the works and, you know, what's most beneficial
2 to move forward with that will have the better or
3 biggest benefit to implement or complete.

4 442 Q. Right. And here the BC
5 is listed as -- well, they don't list one. They
6 leave it up to the City to determine if further
7 action is required. So, again, what does that
8 tell you as the client with respect to CIMA's
9 recommendation regarding friction testing?

10 A. Again, it's not
11 identified as urgent. Any time you have
12 collisions where there's obviously a pattern
13 related to wet weather, that's something you're
14 going to look at.

15 443 Q. Thank you. And if we
16 could please go to image 66.

17 So, this section that we're
18 about to go to, if you could pull out the ramp 6
19 section, please. This recommendation for
20 installing or implementing high-friction pavement
21 on ramp 6, I can take you to it, but it's also a
22 could consider and it's a short timeline.

23 And so, fair to say that what
24 CIMA is recommending here is that the City could
25 consider installing high-friction pavement on

1 ramp 6 sometime between zero to five years, so
2 November 2014 to November 2018. Does that sound
3 right?

4 A. Correct.

5 444 Q. Or 2019, I suppose. Five
6 years.

7 Then if we could go, please,
8 to OD 6, image 140, paragraph 410. Sorry,
9 actually, if we could go to the attachment that's
10 referenced at paragraph 410, so that would be
11 HAM24142. And the next image, please. Okay.

12 This is a draft report which
13 you send to Mr. Moore and Mr. Field to report on
14 the OBL item coming out of the 2013 staff report
15 regarding the Red Hill and to provide an update on
16 the countermeasures that were implemented. And we
17 see -- image 3, actually. Apologies. We see on
18 page 3 here:

19 "Install high-friction
20 pavement approaching and
21 through curve."

22 Do you see that in the third
23 column, third row, under Recommended and then look
24 down to the third row?

25 A. Sorry. Yes. Okay.

1 Yeah.

2 445 Q. And it says:
3 "To be reviewed and
4 completed during future
5 repaving."

6 A. Correct.

7 446 Q. So, what was the plan
8 here with respect to installing high-friction
9 pavement on ramp 6?

10 A. Well, there were other
11 items identified that obviously may address the
12 collision pattern, such as the chevrons and the
13 warning signs. And of course it's always much
14 more cost effective to complete paving works like
15 that when you're doing a bigger size project, so
16 it was identified that that would be the best
17 approach to go forward with it.

18 447 Q. And in your view, was it
19 consistent with the direction or recommendation
20 from CIMA to consider implementing high-friction
21 pavement in the next five years?

22 A. Yes.

23 448 Q. Thank you. You can bring
24 that down, Mr. Registrar.

25 Mr. Ferguson, you've told us

1 before that you joined the City after the 2013
2 CIMA project was already underway. Is that right?

3 A. Correct.

4 449 Q. And so, you were not
5 involved with setting the scope of that project.
6 Is that correct?

7 A. That's correct.

8 450 Q. Are you aware of any
9 written directions from the City to CIMA in which
10 CIMA was directed not to review continuous
11 illumination in the study area of the 2013 report?

12 A. Not that I'm aware of.

13 451 Q. Are you aware of any
14 verbal directions from the City in which the City
15 directed, provided such direction, to CIMA?

16 A. No.

17 452 Q. Okay. If we could please
18 go to OD 6, image 54. Okay. And HAM41728. All
19 right.

20 This is the e-mail from roads
21 and specifically Mr. McCleary to Mr. White and
22 then Mr. White responds and copies you, and this
23 is with respect to the heavy rainfall that took
24 place in September 2013 which prompted one of the
25 road staff members to note that the Red Hill and

1 the LINC appear to be slippery during heavy
2 rainfall. Commission counsel took you to this
3 e-mail in the overview document, but I just wanted
4 you to look at the subject of this e-mail and ask
5 whether you understood Mr. McCleary's comments to
6 apply to the LINC and the Red Hill?

7 A. Based on what I'm looking
8 at, yes.

9 453 Q. And we know from
10 Mr. White's e-mail that he asked you to conduct a
11 collision review to justify road's request to put
12 down slippery when wet signs. And your evidence
13 in June to commission counsel was that you don't
14 recall doing the analysis, but that your practice
15 would have been to complete the analysis or to
16 have staff complete the analysis and provide you
17 with that information. And I think commission
18 counsel said that they haven't seen any
19 documentation to suggest that that was done.

20 I want to take you to OD 6,
21 image 62, paragraph 159. That's not right.
22 Excuse me. Oh, no, it is. Sorry. And if we
23 could also go to image 63.

24 So, this is an e-mail exchange
25 between October 11 and 2013 between Mr. Lupton,

1 yourself and Mr. White and it is about a month
2 before the 2013 CIMA report and the consultant
3 report is presented to council. And you'll note
4 Mr. Lupton says:

5 "Can you summarize for me
6 the actions we want to do
7 on the Red Hill from the
8 safety report and how we
9 propose to proceed?"

10 You respond talking about the
11 phased approach that you intend to take. And then
12 the last paragraph in your e-mail, you state:

13 "Councillor Collins would
14 also like to see a review
15 of the entire LINC and
16 remaining portions of the
17 Red Hill. I was going to
18 add it to the traffic
19 safety report, but now
20 looking at it, I'm
21 thinking we should keep
22 it separate and have him
23 bring a motion forward."

24 Mr. White responds saying:

25 "Thanks, Dave. I prefer

1 we keep the next safety
2 review separate,
3 especially in light of
4 the recent collision
5 statistics. We
6 determined for what
7 conditions. We have to
8 resolve that matter too
9 now."

10 And then says:

11 "Jeff, basically there
12 are a statistically
13 significant number of
14 collisions in wet
15 conditions identified
16 that tells me we may need
17 to do something."

18 So, I just wanted to confirm
19 whether this helps you clarify whether you would
20 have -- let me put it another way.

21 Do you recall whether the
22 collision analysis that Mr. White is referring to
23 was in response to the e-mail we saw moments ago
24 resulting from the request from roads?

25 A. Yes, it would have been.

1 454 Q. And there also seems to
2 be a reference that Councillor Collins wants to do
3 an additional report for the remaining section of
4 the Red Hill as well as the LINC. Do you recall
5 when you would have first learned that Councillor
6 Collins was looking for a review of the remaining
7 portions of the Red Hill?

8 A. I can't say specifically.
9 I suspect it was around the time that we had
10 talked to him.

11 455 Q. Fair enough. Could we
12 please go to image 127, paragraphs 361 to 364.
13 Okay.

14 We're now in November 2014,
15 about a year later, and there's correspondence
16 that I would like to take you through between
17 Mr. Mater and Mr. Davis. You'll note he says:

18 "As per our conversation,
19 staff have been reviewing
20 the collision history on
21 the Red Hill and LINC.
22 While I don't have the
23 final picture yet, there
24 is enough of a concern
25 that's I believe we need

1 to do a more in-depth
2 review. As per your
3 direction, I've directed
4 staff to begin the
5 process by scoping out
6 what we would like to do
7 in terms of a safety
8 review and began the
9 process of selecting
10 third-party expertise to
11 complete the work."

12 So, is this in response to the
13 e-mail that we just saw where Mr. White notes that
14 there is some action that may need to be taken in
15 light of the collision review that was done?

16 A. It would have been part
17 of it. I know in 2014 I was doing -- I did a more
18 extensive review of the collisions on both
19 roadways. I know at that time there were
20 concerns. There may have been a recent fatal
21 collision that had occurred that was a crossover
22 collision, and so I personally pulled all the
23 collisions for both roadways and identified that
24 there were some patterns there that seemed
25 somewhat abnormal and I had made the

1 recommendation that we should retain a consultant
2 to do a more in-depth study of the roadway.

3 456 Q. Okay. And if we could --
4 and I take it the 2015 CIMA report was that
5 in-depth study?

6 A. Correct.

7 457 Q. And if we could go to
8 that report, HAM702, please, Mr. Registrar,
9 image 33, and pull out figure 21.

10 Mr. Ferguson, can you tell us
11 what the chart shows?

12 A. That's the collisions,
13 collision frequency, based on year and based on
14 type. Obviously dry is the blue bar and red is
15 the wet collisions.

16 458 Q. And am I reading this
17 graph correctly? If I'm reading this graph
18 correctly, does it mean that wet weather
19 collisions between 2013 and 2015 decreased?
20 That's that red line going down?

21 A. Correct.

22 459 Q. And I take it you would
23 have reviewed this figure in 2015?

24 A. Correct.

25 460 Q. In your evidence today,

1 Mr. Ferguson, you stated that the average daily
2 traffic count on the Red Hill was roughly 70,000
3 and if the Red Hill pavement was truly the issue,
4 you would expect a high level of collisions,
5 essentially pile-ups, occurring under wet
6 conditions, but that's not what you were seeing.

7 In light of that and what this
8 graph showed in 2015, I would like to
9 understand -- sorry. In light of that, I would
10 like to understand if the information in this
11 figure would have impacted your understanding at
12 the time regarding whether there was an issue with
13 the Red Hill pavement?

14 A. No.

15 461 Q. It would not have
16 impacted your understanding?

17 A. Correct, it would not
18 have impacted.

19 462 Q. Sorry, I just want to be
20 clear. Is your evidence that what this graph
21 shows, which is that wet weather collisions are
22 decreasing, that that would not impact your
23 understanding of whether the Red Hill pavement,
24 whether there was an issue with the Red Hill
25 pavement in terms of wet weather collisions?

1 A. That's correct, yes.
2 And, again, the report itself is looking at what
3 the results are of the collision, what's causing
4 the collision, and they have identified driver
5 behaviour. And, as we've talked before, there's
6 so many factors involved in a collision. A
7 collision doesn't just happen, so...

8 463 Q. Okay. Can we go to
9 page 17 of the report. I'm sorry, Mr. Registrar,
10 I don't have the image number offhand, but nine
11 pages before whatever we're at now. Sorry,
12 page 17. Okay. Thank you very much. And also
13 pull out, please, OD 9, image 260. Okay.

14 So, on the left-hand side, we
15 have the 2015 CIMA report and if we call out,
16 please, section 4.3, you'll see that it states
17 that:

18 "Wet surface collisions
19 were found to represent
20 50 percent of all
21 collisions in the study
22 area."

23 Do you see that?

24 A. Yes.

25 464 Q. And if we could call out

1 now on the right-hand side of the page
2 section 3.3. Okay.

3 So, under the first bullet
4 under Overall Findings, it says:

5 "Wet surface collisions
6 were found to represent
7 64 percent of mainline
8 collisions and 73 percent
9 of ramp collisions. The
10 proportion of wet surface
11 collisions on the
12 mainline presented an
13 increase compared with
14 the 2015 study."

15 So, commission counsel
16 suggested that what the 2019 report is saying
17 here, that the percentage of wet weather
18 collisions increased by 50 percent since the 2015
19 report as opposed to just noting that the 2015
20 report found that 50 percent of the collisions
21 were wet weather, as we see here on the left hand
22 side of the page.

23 Now that we've given you the
24 chance to look at both reports, can you tell us
25 how you interpret what CIMA is saying in the 2019

1 report?

2 A. Yeah. I'm reading it in
3 a similar fashion to yourself, I believe, in that
4 they're saying that in the 2015 study it was
5 50 percent --

6 465 Q. Right.

7 A. -- and that the wet
8 surface collisions represented 64 percent on the
9 mainline.

10 466 Q. Right. Because if
11 commission counsel's interpretation is correct,
12 would that mean that 100 percent of the collisions
13 on the Red Hill were in wet weather conditions?

14 A. Sorry, say that again.

15 JUSTICE WILTON-SIEGEL: Could
16 I just -- it's a long day. I have appreciated
17 from the start that your point is the numbers
18 represent a 28 percent increase rather than a
19 50 percent increase.

20 MS. CONTRACTOR: I'm happy to
21 move on.

22 JUSTICE WILTON-SIEGEL: Thank
23 you.

24 BY MS. CONTRACTOR:

25 467 Q. Okay. If we could go to

1 OD 8, image 46, please.

2 So, jumping ahead here,
3 commission counsel took you to these e-mails
4 between you and Mr. White regarding the collision
5 analysis done by CIMA using the 2009, 2013
6 collision data in which they concluded that more
7 than half of the collisions on the LINC and almost
8 half of the collisions on the Red Hill were either
9 fatal or injury collisions. And I think they
10 asked if you were trying to understand what was
11 causing more fatalities or serious injuries and
12 you confirmed that that was the case and that you
13 had some back and forth with CIMA to get clarity
14 on the causes.

15 And I just want to take you to
16 what I think is that explanation, OD 8, image 53,
17 paragraph 147.

18 So, this is the e-mail from
19 CIMA where I think they're providing you with the
20 clarification that you were referring to, but if
21 you could take a look and just confirm that.

22 A. That's correct, yes.

23 468 Q. And what is CIMA telling
24 you here?

25 A. Essentially that one of

1 the primary factors is the speed differentials
2 between the two lanes. So, they're attributing
3 obviously driver behaviour towards collisions and
4 injury types. Again, as I mentioned before,
5 there's obviously a correlation between injuries
6 based on vehicle speeds and essentially that is
7 what they're saying.

8 469 Q. Sorry, I'm just trying to
9 skip a few sections here. Commission counsel
10 asked about whether there was a process by which
11 traffic and engineering services had insight into
12 what the other was doing regarding implementing
13 the safety measures coming out of the 2015 report.

14 What are -- and I think you
15 said you weren't sure. What are DMT meetings?

16 A. That would have been -- I
17 believe that was either divisional management or
18 department management team meetings.

19 470 Q. Okay. To the extent that
20 traffic and engineering needed to collaborate,
21 could that be done at the DMT meeting?

22 A. It could have been. I
23 can't answer. I didn't attend these meetings.

24 471 Q. What about project
25 coordination meetings?

1 A. Project -- no, project --
2 well, not necessarily because we were primarily
3 dealing -- project coordination was more about
4 construction projects. You're more reviewing what
5 engineering services was up to in terms of
6 construction projects currently as well as in the
7 future.

8 472 Q. Okay. Could we go to
9 HAM25832 and HAM58666. And for the document on
10 the left, if you could go to the next image and
11 the one after that. Thanks.

12 Commission counsel asked you
13 what steps you took, if any, to confirm if
14 friction testing was completed. You referred back
15 to this e-mail from Mr. Moore from February 2016,
16 during which he stated that some friction testing
17 was done. Commission counsel in a followup asked
18 if you personally took any steps to confirm
19 whether the statement that friction testing was
20 complete was accurate, and you said, "I would say
21 no."

22 Did you have any reason to
23 question Mr. Moore's assertion in his 2016 e-mail
24 that friction testing was completed?

25 A. No, not at all. I mean,

1 he's the director, he's a professional engineer,
2 he's the City engineer and I had no reason to
3 question his comments.

4 473 Q. Okay. With respect to
5 how you would use friction testing results, you
6 stated that you would need to have specific
7 information as to whether something passed, failed
8 or is inconclusive and that you would not
9 understand what further investigation meant, if
10 that's what a report concluded.

11 Given your evidence on this
12 issue and here in light of Mr. Moore's comments
13 that he was still trying to get the analysis for
14 the friction testing results, would those results
15 have been helpful to you without the indication
16 regarding whether they were passed, failed or were
17 inconclusive?

18 A. The results of the
19 testing that he had completed at that point?

20 JUSTICE WILTON-SIEGEL: I
21 don't normally intervene, Ms. Contractor, but I do
22 think that's an extreme case of leading
23 Mr. Ferguson.

24 MS. CONTRACTOR: Okay.

25 BY MS. CONTRACTOR:

1 474 Q. Mr. Ferguson, you've
2 stated that -- you've told us about how you would
3 use or the manner in which friction testing
4 results could be useful, and I believe you said
5 you would need specific information about whether
6 something passed, failed or is inconclusive.

7 In light of that and in light
8 of the fact that Mr. Moore at this point, in
9 September 2016, has told you that the friction
10 test, that he was still trying to obtain an
11 analysis for friction testing results, what use
12 could you have made or could you have made any use
13 of the friction testing results?

14 A. If the results had been
15 made available to us, we would have handed those
16 over to the consultant to review and provide a
17 recommendation or comments related to that test.

18 475 Q. And is there a specific
19 consultant that you would have used?

20 A. Well, we were using
21 obviously CIMA at the time, so it would have been
22 handed over to them to undertake a review.

23 476 Q. Thank you. Your evidence
24 was that you believe you only asked Mr. Moore for
25 the friction testing results once as of May 2017.

1 Was there any urgency with which you needed the
2 results?

3 A. No.

4 477 Q. If we could go, please,
5 to HAM28108, image 2.

6 I want to take you back to the
7 2019 collision memo that commission counsel took
8 you to. Could you tell us generally the
9 difference between collision frequency and
10 collision rate?

11 A. Well, frequency is
12 obviously a number, number of collisions, a
13 frequency that occurs. The rate is a formula that
14 takes into consideration volumes, the length of a
15 section of roadway and of course obviously the
16 collisions themselves. And then that formula puts
17 it into a numerical ranking or number so that
18 you're essentially able to rank all the different
19 locations.

20 478 Q. And why is it -- let's
21 take a look at this formula here. The AADT, what
22 does that stand for?

23 A. Average annual daily
24 traffic.

25 479 Q. So, that's the volume.

1 Correct?

2 A. Correct. Volume, yes.

3 480 Q. And am I correct, just
4 based on the formula, that as the volume would
5 increase, the crash rate would decrease? Right?

6 A. If you're using the same
7 collision numbers and length of section, yes.

8 481 Q. Okay. And so, if your
9 volume data or your AADT value is lower than it
10 should be or it's not accurate, the crash rate
11 would seem higher. Is that right?

12 A. Yes.

13 482 Q. If we look at the memo,
14 it appears that CIMA only took volume data for one
15 segment of the Red Hill as opposed to three
16 segments for the LINC and then extrapolated based
17 on that one segment. Is that your understanding?

18 A. I'm sorry, I would have
19 to see that.

20 483 Q. If you look right above
21 the green bullet points, it says:

22 "The locations with
23 available AADT

24 information are -- "

25 And then it gives three

1 segments for the LINC and then one segment for the
2 Red Hill. Sorry, do you see that, Mr. Ferguson?

3 A. I see it, yes. So, what
4 they're saying is these are the locations where
5 they have volumes for.

6 484 Q. Right. And so, they took
7 volume data of the segment between Queenston and
8 Barton and then extrapolated that for the
9 remainder of the Red Hill. Is that right?

10 A. Yes. Yes, you're
11 correct.

12 485 Q. And the City has volume
13 data for the entire Red Hill facility. Is that
14 correct?

15 A. So, we undertake counts
16 at specific locations. It's obviously not a
17 continuous count number, so it will fall within a
18 segment somewhere.

19 486 Q. Right, but it has volume
20 data beyond just the one segment used by CIMA for
21 this calculation?

22 A. I believe so, but I can't
23 say yes or no specifically.

24 487 Q. Okay.

25 A. Sorry.

1 488 Q. No problem. Okay. Last
2 question. During your time at the City, do you
3 recall complaining to Mr. Lupton or anyone else
4 that you found Mr. Moore to be intimidating?

5 A. Did I raise a complaint?

6 489 Q. Yes.

7 A. I might have brought up
8 on some occasions that Mr. Moore might have been
9 aggressive in a meeting. I wouldn't say
10 intimidating. I was never intimidated by him.

11 490 Q. Thank you.

12 Mr. Commissioner, may I have a quick moment? I
13 just want to go through my notes and make sure I
14 got everything.

15 JUSTICE WILTON-SIEGEL:

16 Absolutely.

17 MS. CONTRACTOR: Thank you.

18 Thank you, Mr. Ferguson. Those are all my
19 questions. Thanks for your time today.

20 JUSTICE WILTON-SIEGEL: Okay.

21 Ms. Lawrence?

22 MS. LAWRENCE: Thank you. I
23 have some very brief questions in re-examination.

24 FURTHER EXAMINATION BY MS. LAWRENCE:

25 491 Q. Mr. Ferguson, just on the

1 last point that Ms. Contractor asked you about,
2 she asked you if you ever raised a complaint or,
3 pardon me, do you recall complaining to Mr. Lupton
4 or anyone else that you found Mr. Moore to be
5 intimidating. And you asked, "Did I raise a
6 complaint?" and Ms. Contractor said yes. And you
7 said, "I might have brought up on some occasions
8 that Mr. Moore might have been aggressive in a
9 meeting."

10 Just for clarity, when you say
11 you might have brought up on some occasions,
12 brought up to whom?

13 A. Mr. White. I would have
14 brought it up with Mr. White. I think that was
15 about the extent of it.

16 492 Q. Okay. And just for
17 clarity, did you ever file a formal complaint --

18 A. No.

19 493 Q. -- in respect of
20 Mr. Moore?

21 A. No.

22 494 Q. And the meetings that
23 you -- actually, stopping there, you said, "I
24 might have brought up on some occasions." That's
25 a little conditional. Did you bring up on some

1 occasions with Mr. White that Mr. Moore was
2 aggressive in a meeting?

3 A. Did I bring it up? Yes.

4 495 Q. Were the meetings that
5 you were referencing in your discussions with
6 Mr. White about Mr. Moore, were those meetings in
7 respect of Red Hill Valley related discussions?

8 A. No.

9 496 Q. Thank you. Those are my
10 questions.

11 JUSTICE WILTON-SIEGEL: Well,
12 first of all, thank you very much, Mr. Ferguson,
13 for returning. You're excused, if you want to
14 leave.

15 THE WITNESS: Thank you, sir.

16 JUSTICE WILTON-SIEGEL: My
17 understanding more generally is we have now
18 reached the point where it's necessary to have the
19 decision on the privilege motion and, accordingly,
20 I understand that the inquiry will now stand down
21 pending the receipt of the decision and, if
22 necessary, addressing any matters arising out of
23 that decision.

24 So, again, as I understand the
25 schedule, the next witness is scheduled to appear

1 on August 29. That said, if there is nothing
2 further that we have to do, the inquiry will
3 therefore be adjourned until 9:30 on August 29.
4 Thank you very much. Have a good evening, all.
5 --- Whereupon the proceedings adjourned at
6 4:26 p.m. until Monday, August 29, 2022 at
7 9:30 a.m.

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