

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS  
HEARD BEFORE THE HONOURABLE  
HERMAN J. WILTON-SIEGEL  
held via Arbitration Place Virtual  
on Friday, September 23, 2022 at 9:32 a.m.

VOLUME 58

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940-100 Queen Street      900-333 Bay Street  
Ottawa, Ontario K1P 1J9      Toronto, Ontario M5H 2R2  
(613) 564-2727      (416)861-8720



INDEX

	PAGE
PREVIOUSLY AFFIRMED: BRIAN MALONE	10613
EXAMINATION BY MS. LAWRENCE	10613

1 Arbitration Place Virtual

2 --- Upon resuming on Friday, September 23, 2022

3 at 9:32 a.m.

4 MS. LAWRENCE: Good morning,  
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good  
7 morning.

8 MS. LAWRENCE: Our witness  
9 today is Brian Malone. He is continuing an  
10 examination that commenced several months ago. He  
11 was affirmed at the time and there's no need to  
12 reaffirm him today. He remains under oath.

13 Commissioner, as a reminder,  
14 before I begin with the examination, commission  
15 counsel and all participants limited the scope of  
16 their questions in Mr. Malone's last attendance to  
17 the period of time from 2013 to the beginning of  
18 2016, with a brief reference to some events in  
19 2018. In this examination, counsel will not  
20 retread the same ground as the earlier testimony,  
21 but may refer to earlier periods of time for  
22 information as part of their questioning for the  
23 post-2016 period.

24 PREVIOUSLY AFFIRMED: BRIAN MALONE

25 EXAMINATION BY MS. LAWRENCE:

1 Q. Mr. Malone, can you hear  
2 and see me okay?

3 A. Yes. Thanks.

4 Q. Great. Good morning to  
5 you.

6 A. Good morning.

7 Q. At your last examination  
8 we ended at the attendance at the public works  
9 committee meeting in December 2015 and then some  
10 discussions about the speed data that was listed  
11 in that 2015 report. We are going to pick up from  
12 there.

13 Once CIMA submitted its final  
14 2015 CIMA report, did CIMA have any role in the  
15 implementation of countermeasures set out in that  
16 report?

17 A. No.

18 Q. Thank you. Like last  
19 time, we're going to screen share documents.

20 Registrar, could you bring up  
21 OD 8, page 7, please. Thank you.

22 So, Mr. Malone, before we get  
23 started, how is the size of this page? Can you  
24 see the entirety of it?

25 A. That's good. I have a

1 larger monitor on the side, so if you see me  
2 turning, that's what I'm looking at.

3 Q. Great. Thank you.  
4 Registrar, could you call out paragraph 13,  
5 please.

6 So, Mr. Malone, we're going  
7 now into 2017 and you'll see in this paragraph  
8 Mr. Cooper from the City of Hamilton e-mailed you,  
9 copying one of his colleagues, regarding a  
10 retainer for a new study and he wrote that the  
11 City would like to retain CIMA as a continuation  
12 of one of the recommendations provided in the  
13 previous safety report that identified the need to  
14 study roadways for a speed limit reduction, and he  
15 also noted that one of our councillors had put  
16 forward a motion for same. Mr. Cooper also notes  
17 included in the study is some VMS information,  
18 which was recommended in previous CIMA reports.

19 So, just to remind all of us  
20 and so we're all using the same acronyms, what  
21 does VMS mean?

22 A. Variable message signs.

23 Q. And are those signs that  
24 have the ability to broadcast different  
25 information on them?

1                   A.    Yeah.  They're the kind  
2   of signs you would see at the side of the road or  
3   in the median of the highway displaying typically  
4   a worded message.  The message can change.  
5   They're often used in construction activities.  
6   The signs and sails tend to be construction orange  
7   in colour and a black screen essentially on them  
8   and the message can be programmed and changed by  
9   the road authority as they desire.

10                  Q.    Thank you.  Registrar,  
11   you can close this call out and leaving up OD 8,  
12   on the other page, can you pull up OD 7, page 106,  
13   please.

14                  So, Mr. Malone, just to  
15   confirm, can you see both of these screens up at  
16   the same time?  Depending on your setup, one may  
17   be obscured by our video screens, so I want to  
18   make sure you can see.

19                  A.    I can see both, yes.  The  
20   very bottom is cut off, but they're legible.

21                  Q.    Okay.  Is the very bottom  
22   cut off because of our videos?

23                  A.    Yes.

24                  Q.    Okay.  Well, we'll do  
25   some call outs and if it becomes an issue, we can

1 certainly try to change your setup.

2                               So, this is from OD 7, so  
3 we're actually going back in time. You'll see in  
4 the e-mail that we were just looking at,  
5 Mr. Cooper references that one of our councillors  
6 brought forward a motion. And on the very bottom  
7 of this page, 106 on the right-hand side, is the  
8 beginning of the reference to the motion that  
9 Mr. Cooper is speaking about and it's from  
10 August 18, 2017. Is that part cut off on your  
11 screen?

12                               A. I can read the very  
13 bottom, what starts number 12, speed limit  
14 reduction.

15                               Q. That's the very end of it  
16 except for the footnotes.

17                               A. Yes.

18                               Q. Registrar, can you go to  
19 the next page, 107, of OD 7 and can you call out  
20 the top of page 107, please. Thank you.

21                               So, this is the October 2017  
22 motion and you'll see that the motion is that  
23 staff from traffic operations and engineering be  
24 directed to study the feasibility and safety  
25 benefits of reducing the speed limit on the LINC



1 and the Red Hill from 90 to 80 kilometres an hour  
2 and to report back in one year's time.

3 And so, if you want to close  
4 that out. Mr. Malone, did Mr. Cooper share the  
5 text of this motion with you at the commencement  
6 of CIMA's retainer on the speed limit study?

7 A. Not to my recollection.

8 The --

9 Q. Do you recall -- I didn't  
10 mean to interrupt. Go ahead.

11 A. The e-mail or the request  
12 to do a study came to me, but I want to clarify I  
13 wasn't the author and CIMA partner that signed off  
14 on the study. So, I had involvement at the  
15 initial phases and certainly I'm aware of it, so I  
16 don't believe it was provided to me. I can't  
17 speak to others.

18 Q. Thank you. Registrar,  
19 you can close down page 107 and please keep up  
20 page 7.

21 In paragraph 14, Mr. Izadpanah  
22 replied to Mr. Cooper's e-mail, suggesting a  
23 meeting to clarify the proposed objectives of the  
24 project. And was he the CIMA partner who did sign  
25 off on this project at the end of the day?

1                   A.    No, I don't think so.  I  
2    thought it was Chris Philp.

3                   Q.    Okay.  Maybe I'll put it  
4    differently.  Was he one of the primary contacts  
5    for the City on this project?

6                   A.    It appears so, yeah.

7                   Q.    Okay.  You'll that see  
8    goes on to say in the OD, which is summarizing an  
9    e-mail, that he's suggesting a meeting especially  
10   in relation to the queue-end warning system  
11   project which CIMA was doing for Rob, which I  
12   believe is a reference to Mr. Declair.  Were you  
13   involved in the queue-end warning system project  
14   that CIMA was doing for the City?

15                  A.    I was aware of it.  The  
16   project was led by Chris Philp, who is another  
17   partner at CIMA.

18                  Q.    Okay.  But you didn't  
19   have direct involvement in the queue-end warning  
20   system project?

21                  A.    I would have to check  
22   notes and see if I attended meetings and was  
23   involved in input, but it wasn't my project to  
24   lead.  It was Chris'.  Chris, Mr. Philp, has  
25   expertise in intelligent transportation systems,

1 which things like the VMS signing come into play  
2 and queue-end warning is also part of that.

3 Q. Okay. Registrar, could  
4 you bring up the next page, please, page 8.

5 Recognizing that your evidence  
6 just now is you weren't directly involved in this  
7 project, I'm going to take you through just a few  
8 more documents relating to it. At paragraph 15,  
9 Mr. Izadpanah e-mailed Mr. Cooper and copied you  
10 regarding the speed data on the LINC and the Red  
11 Hill and this is in the context of preparing a  
12 proposal for the project that Mr. Cooper has  
13 raised with CIMA. And he notes that CIMA had  
14 certain speed data on the LINC and on the Red  
15 Hill, but noted for the Red Hill the data was not  
16 usable because the speed limits only went up to 85  
17 plus kilometres an hour, and so he says we need  
18 speed data at more locations?

19 A. To clarify, he was  
20 speaking specifically about what was called the  
21 permanent count station, which was one of the data  
22 sources that the City had available. Not all the  
23 data was restricted in that way, but he's talking  
24 about the speed data provided by the City and one  
25 portion of it was the permanent count station

1 data, and that had this speed bin limitation  
2 issue.

3 Q. Thank you. And we had,  
4 in your last day of evidence, we spoke at the end  
5 of your examination about speed data collection by  
6 Pyramid, a contractor. And just to reorient  
7 ourselves to that, that is a different collection  
8 of speed data than the permanent count station  
9 data that's referenced here. Is that right?

10 A. Correct.

11 Q. To your knowledge, apart  
12 from retaining Pyramid to do speed data collection  
13 and this permanent count station, did the City  
14 have any other source of speed data that it could  
15 provide to CIMA?

16 A. I couldn't speculate, no.

17 Q. Okay. Registrar, if you  
18 could close this out and go to page 33 of OD 8,  
19 please, and if you could call out paragraph 85,  
20 please.

21 So, we're now into December.  
22 You're still copied on these e-mails, you'll see.  
23 So, Mr. Cooper sent an e-mail and noted that the  
24 City would not be able to provide any other speed  
25 data and that the proposal that CIMA was making

1 should reflect the need to collect data.

2 And, just stopping there, does  
3 CIMA have any internal process or person to  
4 actually do that data collection, or would you too  
5 be contracting a third party to collect speed  
6 data?

7 A. We have internal  
8 capabilities of collecting data using handheld  
9 radar units, but that would only be for very  
10 limited quantities. So, for the amount of  
11 information required for a study like this, which  
12 would be continuous through long periods of time,  
13 it would need to be done by an external  
14 contractor.

15 Q. Thank you. Registrar,  
16 you can close this.

17 CIMA did put in a proposal in  
18 respect of the initial e-mail from Mr. Cooper.

19 Registrar, can you bring up  
20 HAM46131, please, and if you could scroll down to  
21 the last image of this page, which I believe is  
22 image 11. Thank you.

23 We'll go through the proposal  
24 in a moment, Mr. Malone, but just for your  
25 knowledge, I think you had said before that you

1 thought Chris -- I want to make sure I get his --  
2 Philp, I think, was the primary project person?

3 A. It's Philp, P-H-I-L-P.  
4 Philp.

5 Q. Philp, thank you. That  
6 will assist the court reporter. That he was the  
7 primary person. Looking at this now, it looks  
8 like he was not. Does that refresh your memory or  
9 assist you in your recollection of the primary  
10 partner responsible for this project?

11 A. I think Dr. Izadpanah  
12 completed the proposal and my understanding is  
13 Mr. Philp signed the completed report.

14 Q. Okay. Registrar, if you  
15 can go back up to the first image of this  
16 document, please, and if you could call up the  
17 second image as well.

18 So, you'll see in the very  
19 first paragraph, Mr. Malone, that it says:

20 "CIMA is pleased to  
21 provide the following  
22 work plan to perform a  
23 speed study and  
24 intelligent  
25 transportation system

1 strategic plan for the  
2 LINC and the Red Hill."

3 And it goes on to have some  
4 background that references the current queue-end  
5 warning system. And, in the second full  
6 paragraph, in the middle of that paragraph:

7 "It is recommended to  
8 initiate the development  
9 of this ITS strategic  
10 plan in order to ensure  
11 that all projects are  
12 undertaken in a cost  
13 effective and justified  
14 manner."

15 A. I would add I think you  
16 said there wasn't a queue-end warning system. One  
17 didn't exist at this point. It was study or  
18 review that had been initiated by the City, as I  
19 understood.

20 Q. Thank you. And CIMA was  
21 helping with the project to determine and  
22 implement the queue-end warning system?

23 A. That's correct, through  
24 Mr. Philp's group, yes.

25 Q. I see. On the

1 intelligent strategic plan, were you involved with  
2 discussions with your colleagues at CIMA to  
3 prepare this proposal?

4 A. This proposal here?

5 Q. Yes.

6 A. I don't have a strong  
7 recollection. I was certainly aware of it, but  
8 the ITS area is more Chris', Chris Philp, not  
9 mine, so the proposal is written as it is, but I  
10 wasn't -- the ITS portion would not be one that I  
11 had a significant involvement in.

12 Q. Okay. Registrar, can you  
13 go to image -- actually, just stopping here before  
14 we go forward, at your last examination we went  
15 through some CIMA proposals and they seemed to  
16 follow the same formula where there's an  
17 introduction and then there's the work plan that  
18 has a number of tasks, and this one seems to  
19 follow that same formula as well, so I'm going to  
20 go into a few of the tasks briefly.

21 Registrar, can you go to  
22 image 6, please, and if you could bring up 7 as  
23 well, please. Actually, sorry, can you bring up 5  
24 and 6, please. Thank you.

25 So, you'll see that amongst



1 the tasks were a best practices review about the  
2 methodologies, the best practices, for setting a  
3 proper speed limit, including reference to  
4 particular standards and looking at collision  
5 histories. That's under task 2.1.

6 Then under task 2.2 there's  
7 data collection, which is listed in the next page,  
8 page 6, as being selected from certain locations.

9 Do you recall being involved  
10 in the discussion about what locations it would be  
11 useful to have data from?

12 A. Not specifically, no.

13 Q. Okay. I ask because I  
14 note, and you'll see on the bottom of page 6, that  
15 there's reference to the justification for  
16 choosing particular locations, and some of those  
17 seem to relate to higher collision frequencies at  
18 various locations. Does that refresh your memory?

19 A. I can't see the bottom of  
20 page 6. Are you able to --

21 Q. So, I can't move it, but  
22 I can help you move your video screen. In fact,  
23 we can pop it up. Thank you, Registrar.

24 A. Sorry, you were referring  
25 to the table? I could see the table. I thought

1 you said there was something below that.

2 Q. No, I was referring to  
3 the table.

4 A. Okay.

5 Q. You'll see the last two  
6 justifications in particular reference high  
7 collision frequencies.

8 A. Yeah.

9 Q. And my question, you  
10 might have missed it, was: Does it refresh your  
11 memory about whether you were involved in the  
12 selection of the locations from which data would  
13 be collected by looking at this chart?

14 A. No. My answer is the  
15 same. I don't have any recollection of being  
16 involved in the selection of locations or  
17 identification of the justification.

18 Q. Thank you. Registrar,  
19 you can close this call out and, Registrar, if you  
20 can bring up 7 and 8. So, just for clarity on the  
21 project team, Registrar, could you bring up 8 and  
22 9 now.

23 Just scrolling through the  
24 project team members, I don't see Chris Philp  
25 listed there?

1 A. No, nor do I.

2 Q. Okay. Is it possible  
3 that you're misremembering the queue-end warning  
4 system project, which had already been started,  
5 with this project?

6 A. I would have to look at  
7 the speed report. It's in the documents, but I  
8 don't have it right in front of me at this moment.  
9 But I believe his name is on it. Maybe I'm mixing  
10 it up.

11 Q. Okay. Or is it possible  
12 there were some changes within CIMA's employees  
13 that may have led to Chris taking on that project  
14 late in the day?

15 A. Well, Mr. Izadpanah left  
16 CIMA in, I think it was the end of July 2018, so I  
17 believe the speed report wasn't finished until,  
18 I'm guessing, October, so that could be the reason  
19 why Mr. Philp was the partner signing off on the  
20 report.

21 Q. Okay. But, again, you  
22 were not so closely involved in this project that  
23 this is, sort of, fresh in your memory sitting  
24 here today?

25 A. Correct.

1 Q. Registrar, could you go  
2 back to page 7 just for a moment. Thank you. You  
3 can close page 8. At the top of page 7,  
4 Registrar, could you pull it out, 2.3. Thank you.

5 One of the tasks was going to  
6 be to review speed limit methodology to consider,  
7 assess and consider, alternative speed limits.

8 Registrar, you can close that  
9 out.

10 Do you recall during the  
11 course of the initial commencement of this, this  
12 project, when you're still copied on e-mails,  
13 whether there was any discussion about the  
14 preferred way to approach speed limit review  
15 methodology?

16 A. No, I don't recall and I  
17 don't think there is a preferred way, if that's  
18 the suggestion that you're making.

19 Q. Just in terms of it says  
20 here there's going to be a review of the  
21 methodology for this and I just wondered if there  
22 was any discussion about how CIMA was going to  
23 approach the review of speed limit selection  
24 methodology that you were involved in?

25 A. My involvement was

1 limited, but I think the proposal speaks for  
2 itself. It talks about identifying methodologies  
3 and then selecting a preferred methodology.  
4 Obviously at the time of the proposal, you  
5 wouldn't have determined what the selected method  
6 would be because you haven't gone through that  
7 process.

8 Q. Okay. Registrar, you can  
9 close this down. Thank you.

10 So, this project, the speed  
11 limit study project, slowed somewhat after those  
12 initial discussions in October through December of  
13 2017. It wasn't really started in earnest until  
14 the spring and we'll get back to that.

15 Before that, though,  
16 Mr. Ferguson made another request of CIMA for a  
17 document that the inquiry calls the 2018 collision  
18 memo. I'm going to go to that now.

19 Registrar, could you bring up  
20 OD 8, page 43, please. Registrar, could you bring  
21 up 42, just so that we have the complete part of  
22 114. Thank you.

23 So, you'll see on the bottom  
24 of page 42 in early January, January 9, 2018,  
25 Mr. Ferguson e-mailed three of you at CIMA and at

1 the top of page 43 said:

2 "Wondering if you could  
3 assist me with this.  
4 We're heading back to  
5 committee with an update  
6 on the Red Hill and the  
7 LINC and the GM asked how  
8 these numbers compare to  
9 other locations. Are we  
10 on par with others?"

11 And then Mr. Ferguson goes  
12 through how to -- a couple of questions that  
13 Mr. Mater had. And then at the bottom he says:

14 "If there's some work  
15 involved on putting any  
16 of this together, please  
17 send me an invoice."

18 So, this is January 9 and as  
19 we go through you'll see that the turn around on  
20 this is quite quick and it's done on January 15.  
21 Were you in the office and working on this project  
22 between January 9 and 15, 2018?

23 A. I would have to go back  
24 and check my calendar. I know I'm not the author  
25 of the memo, having prepared for this testimony.

1 Mr. Izadpanah is.

2 Q. Okay. Sitting here  
3 today, you can't confirm if you were in the office  
4 or if you were on vacation?

5 A. I could if I could check  
6 my calendar.

7 Q. Okay. We don't see that  
8 you provide any input into this memo. Given the  
9 way that you worked with your colleagues, would it  
10 be unusual if you were in the office for you to  
11 hand this project off to others completely?

12 A. No. A project like this,  
13 Dr. Izadpanah was perfectly capable of  
14 undertaking. He's a professional engineer and  
15 Ph.D. in engineering, a partner at CIMA, so no, it  
16 would not be unusual.

17 Q. Okay. So, you'll see in  
18 paragraph 115, Mr. Izadpanah indicated that he  
19 would prepare a brief memorandum and proposed a  
20 \$5,000 limit. And then on January 10,  
21 Mr. Ferguson said he needed it back by January 15.

22 A. It was a relatively small  
23 study. It was essentially analysis of existing  
24 data.

25 Q. Right. And that being

1 data that had been collected for the 2015 CIMA  
2 study. Is that right?

3 A. No, not necessarily. It  
4 was data that the municipality had. I would have  
5 to check the document to see up to what actual  
6 years were used. Portions of it would be the same  
7 data that was used in the earlier CIMA studies  
8 because that information, collision information,  
9 reflected collisions in given years and we would  
10 typically look at five-year history, so there  
11 would be overlap at the very least.

12 Q. Okay. Why don't we go  
13 into the document on that point. Registrar, could  
14 you bring up HAM1095, please, and if you can bring  
15 up the next page as well, please. Thank you. If  
16 you could pull up the text under the line on the  
17 left page, so this is the bottom half of that  
18 page. Thank you.

19 So, you'll see at the top the  
20 purpose of the memorandum was to respond to the  
21 City's inquiry about collision rates on the LINC  
22 and the parkway and, in particular, how they  
23 compared to other similar type roadways, what the  
24 collision rates are concerning only collisions  
25 that completely cross the median, what the



1 collision rates by direction are, if a collision  
2 rate of 1.0 is a fair threshold to indicate that a  
3 high incidence of collision, and is there a  
4 provincial highway collision rate that can be used  
5 for comparison. And you'll see that the  
6 comparison that starts on the first page of this  
7 memo, at the very bottom it says:

8 "The comparison was  
9 completed for an average  
10 of five years between  
11 2009 and 2013."

12 And it references the LINC and  
13 the Red Hill and also Highway 406, Highway 78 and  
14 Highway 8.

15 Registrar, if you could close  
16 that down and if you could call out the fourth  
17 paragraph on page 2, four segments.

18 I'm just taking you,  
19 Mr. Malone, to a couple of references about the  
20 time frame. So, you'll see that they had AADT  
21 data for the RHVP only from 2014 and 2015. I'm  
22 just closing that down. I just want to take you  
23 to a few things before I ask a question.

24 And then if you can pull out  
25 the second paragraph from the bottom on the same

1 page.

2                                   So, here there's a reference  
3 to collision rates called from the 2009 to 2013  
4 collision and traffic volume for the LINC and it  
5 has the reference and for the Red Hill and it has  
6 the reference to the value as well.

7                                   So, just stopping there, I had  
8 asked you before in terms of the timeframes and  
9 whether this was based on data that CIMA had  
10 already analyzed as it related to the Red Hill and  
11 the LINC. Does this refresh your memory about the  
12 timeframe of collision data that was used for this  
13 memo?

14                                   A. I can read the years.  
15 Yes, 2009 to 2013.

16                                   Q. And that overlapped with  
17 the time period that CIMA had previously analyzed  
18 in the 2013 and then the 2015 CIMA reports?

19                                   A. Well, in the 2013 study,  
20 for example, the 2013 data would not have been  
21 available. The 2013 study would have finished in,  
22 I don't know, October of 2013, so the data,  
23 collision data, from 2013 would not have been  
24 included in that because it had not been completed  
25 at that point. So, there's typically a lag in the

1 available collision data, so, again, I would have  
2 to go back and look specifically at each of those  
3 other reports to determine and compare exactly  
4 which years were used.

5 Q. Thank you. You can close  
6 this down and if you could pull out the first two  
7 paragraphs of page 2, please. Thank you.

8 There's a reference to  
9 collision rate in the first paragraph and then a  
10 formula for the five-year average collision rate  
11 and its calculation. Briefly, can you explain  
12 what a collision rate is?

13 A. To clarify again, I'm not  
14 the author of this report but I -- if you're  
15 asking me to provide engineering information about  
16 what a collision rate is, I can do that. I'm  
17 hesitant, cautious, because I don't know if I'm  
18 being asked to provide expert opinion and maybe  
19 I'll clarify this is not expert opinion. This is  
20 my general knowledge of engineering which I'll  
21 relay. I understand I'm a fact witness here, so I  
22 want to be careful not to stray into that other  
23 zone.

24 Q. Thank you, Mr. Malone.  
25 You're entirely correct about that. I'm really

1 attempting to ensure that the inquiry and the  
2 Commissioner understand that the technical term  
3 that this memo produced by CIMA but not by you  
4 personally, what that means, so that as we go  
5 through this document and other documents that  
6 deal with collision rates, that we're all on the  
7 same page about what collision rates are. So, I'm  
8 not looking for expert evidence, but I'm looking  
9 to understand in a high level summary way if you  
10 can explain what collision rates are, and perhaps  
11 I'll give you second question so you can  
12 answer them together, how they're used in traffic  
13 safety?

14 MR. PROVOST:

15 Mr. Commissioner, this is Richard Provost. We  
16 know Mr. Izadpanah will be testifying on the 29th  
17 of September. It seems to me that it would be him  
18 that should be responding to these questions.

19 MS. LAWRENCE:

20 Mr. Commissioner, this is really just some  
21 background information. It's one question and one  
22 answer and I'm moving on.

23 JUSTICE WILTON-SIEGEL: Okay.

24 Are you still looking for an answer?

25 MS. LAWRENCE: I am. This

1 background information --

2 JUSTICE WILTON-SIEGEL: I

3 wonder whether, as a matter of general knowledge,

4 I think the question is probably put in the

5 context of this formula, what this formula

6 actually produces. Is that correct?

7 MS. LAWRENCE: Yes.

8 JUSTICE WILTON-SIEGEL: Maybe

9 I could go at this a little bit differently.

10 There are two parts to this  
11 formula, Mr. Malone. The first part is just the  
12 aggregate number of observed collisions over the  
13 aggregate usage of this highway -- I'm being  
14 general -- over the same five-year period. The  
15 first part just normalizes it. Is that an  
16 accurate way of looking at this formula?

17 THE WITNESS: Yeah. I think I  
18 understood the question to be essentially what is  
19 a rate, a collision rate in this case, and it's  
20 numbers of collisions assessed and compared over a  
21 common denominator. In this case, the denominator  
22 is a million vehicle kilometres. That's a common  
23 approach, so that's exactly what's being done.  
24 Just as you described, it's the same thing. It's  
25 numbers of collisions compared based on the volume

1 and the distance travelled.

2 BY MS. LAWRENCE:

3 Q. Thank you, Mr. Malone and  
4 Commissioner. Registrar, can you close this call  
5 out down and can you go to image 3, please, and  
6 bring up image 4 as well, please.

7 So, you'll see that in this  
8 memo, Mr. Malone, there is a table of average  
9 collision rates based on sections of the LINC, the  
10 Red Hill and also sections of comparator sites,  
11 Highway 406, Highway 78 and Highway 8.

12 So, recognizing that the  
13 didn't author this and you don't recall  
14 involvement in this, just to summarize what this  
15 says, there's average weighted collision rates for  
16 the LINC, the Red Hill and the comparators in that  
17 table. And then on the next page, there is a  
18 discussion about collision rates, cross median  
19 collision rates, collision rates by direction,  
20 collision rate threshold and provincial collision  
21 rates.

22 And I understand, and ask if  
23 you share this understanding, that the purpose was  
24 to look at the LINC and the Red Hill collision  
25 rates on an average weighted collision rate basis

1 and then compare it to other highways that were as  
2 similar as can be between roads and look at the  
3 difference in collision rates to see if the LINC  
4 and the Red Hill were performing better, worse or  
5 the same as other highways. Is that your  
6 understanding of the purpose of this?

7 A. Yes. I think that was  
8 the intention, comparing the LINC, the Red Hill  
9 and three other locations on the premise that the  
10 other sites have some similarities in  
11 characteristics geometrically and so on and so  
12 forth.

13 Q. Okay. This memo in 2019  
14 was updated, and we'll come to that over the  
15 course of your examination, but --

16 A. A new memo was completed  
17 in 2019.

18 Q. Fair enough. Thank you  
19 for the clarification. A similar request was made  
20 in 2019, I think is probably a better way to put  
21 it.

22 At the time, in 2018, one, do  
23 you recall reviewing this at some point in January  
24 or February of 2018?

25 A. I don't recall, no.

1 Q. Okay. Do you recall  
2 having an awareness that the City had requested  
3 this information and that it had been provided?

4 A. The original request, I  
5 was included in it, so I was aware that it had  
6 been requested. I don't know whether I was aware,  
7 you know, of the actual delivery, when it  
8 occurred.

9 Q. Okay. Jumping forward in  
10 time -- and really this is just a yes or no  
11 question because we will come back to this -- did  
12 you later come to learn that the data that the  
13 City provided for this memo did not include  
14 self-reported collisions for the LINC and the Red  
15 Hill?

16 A. I would word that just  
17 slightly differently. I later came to understand  
18 that there was a difference in the data  
19 provided -- the City data, which was provided by  
20 the City, and the data that was available for the  
21 comparator sites. There were differences in the  
22 numbers of collisions or the types of collisions.  
23 That's not really the right word, but there were  
24 differences between the two data sets, the City  
25 data set and the comparator data set.



1 Q. Okay. So, recognizing  
2 that the roads are different and so we can't  
3 actually compare them apples to apples, but in  
4 fact the data sets were not even apples to apples.  
5 Is that what you came to learn in 2019?

6 A. Yeah. I'm assuming  
7 you're going to ask me or raise the details of  
8 what that difference is in the 2019 report.

9 Q. I am.

10 A. Yes, there were  
11 differences between the types of data set, types  
12 of data that were in the data sets.

13 Q. Okay. Thank you. When  
14 we get to that, we will go through that.

15 Registrar, you can close this  
16 down. Can you go back into OD 8, page 45, please,  
17 and if you can bring up 46 as well.

18 After CIMA provided the 2018  
19 CIMA collision memo, there's some back and forth  
20 with Mr. Ferguson about fatal and injury  
21 collisions, and that starts at paragraph 124 on  
22 page 45. You'll see that there's a chart that  
23 references a number of severe collisions. You can  
24 just review that chart briefly.

25 Registrar, you don't need to

1 call it out, I don't think.

2 A. I can read it.

3 Q. Registrar, if you can now  
4 go to page 52 and 53, please.

5 And this picks up in February,  
6 you'll see at paragraph 145, about the proportion  
7 of severe collisions, which that chart identified  
8 were greater for the LINC and the Red Hill than  
9 the comparator highways. And I looked through and  
10 I don't see you copied on any of these. Do you  
11 recall having any discussions in which you were  
12 made aware of the back and forth with Mr. Ferguson  
13 on these issues?

14 A. I don't really recall,  
15 no.

16 Q. Okay. Registrar, if you  
17 can now go to page 54 and 55, please. In fact,  
18 Registrar, could you call out paragraph 151,  
19 please.

20 So, this is all within about a  
21 course of a month from the initiation of this  
22 project to where we are now, in February. There's  
23 some -- thank you, Registrar. There continues to  
24 be some back and forth and at the end of the back  
25 and forth, it's very clear that there had been

1 some miscommunication about what severe collisions  
2 meant. And you'll see Mr. Ferguson forwards an  
3 e-mail exchange to Mr. White and, in that first  
4 paragraph, he says:

5 "No differential in the  
6 severity of the injuries.  
7 It's just that some level  
8 of injury has been  
9 identified or a  
10 fatality."

11 So, there's a bit of back and  
12 forth and I just sort of jumped through that, but,  
13 at the end of the day, it seems clear that  
14 Mr. Ferguson now understands that injury or  
15 fatality, which is what was in that chart, is,  
16 sort of, any injury at all. Do you remember  
17 having any discussions with any of your colleagues  
18 at all about this miscommunication?

19 A. I'm sorry, what  
20 miscommunication?

21 Q. That Mr. Ferguson was not  
22 clear initially that injury or severe collisions  
23 is really any injury and not severe injury.

24 A. No, I'm not aware of any  
25 discussion about it. I mean, I would have thought

1 Mr. Ferguson understood that, but...

2 Q. It doesn't take very long  
3 for the miscommunication, I think, to be  
4 confirmed, but want to understand if there were  
5 any discussions within CIMA about that, and it  
6 sounds like you don't have any recollection about  
7 anything like that?

8 A. I have no specific  
9 recollections, no. There's a clear understanding  
10 with respect to collision information in the  
11 industry that collisions are primarily grouped in  
12 three categories: Fatal, injury and property  
13 damage only. And injury would encompass any type  
14 of injury. You're correct, the complete spectrum.  
15 By law in Ontario, if there's an injury in a  
16 collision, it's required to be reported, so that  
17 provides some stratification between types of  
18 collisions as well as opposed to a minor fender  
19 bender.

20 Q. Okay. Mr. Ferguson, in  
21 this e-mail that he sends to Mr. White at the very  
22 bottom of the second call out, Mr. Ferguson says:

23 "As you can see, Pedram  
24 is of the position that  
25 vehicle speeds are a

1 direct reflection of the  
2 resulting injury and I  
3 would even add the  
4 addition of distracted  
5 and aggressive driving."

6 In 2018, had you had any  
7 interactions with anyone at the City that caused  
8 you to have -- let me try that again.

9 Between 2015, when CIMA  
10 completed the 2015 CIMA report, and 2018, were you  
11 aware of the efforts of the City to attempt to  
12 curb speeding?

13 A. Only anecdotally as a  
14 driver on the Red Hill and the LINC. I wasn't --  
15 I had no specific details of the program or the  
16 activities of the police.

17 Q. Okay. And did you have  
18 any specific details or involvement with any  
19 projects between 2015 and 2018 about speeding or  
20 speed being a contributor to collisions?

21 A. I think the 2015 report  
22 was very clear that speed was a potential  
23 contributing factor to collisions. As was  
24 included in the previous testimony, there was some  
25 question about the speed data that had been

1 reported in our 2015 report and we had recommended  
2 speed enforcement as a countermeasure to be  
3 implemented.

4 Q. You didn't have any  
5 knowledge, anecdotal or otherwise, that would have  
6 changed your view of the collisions in 2015 that  
7 speed was a factor in collisions on the Red Hill,  
8 as of 2018?

9 A. As a driver on the  
10 facility, I certainly had anecdotal knowledge of  
11 speeds of traffic and, to some degree, enforcement  
12 that was or was not taking place. And so, as a  
13 layperson, I could observe what traffic speeds  
14 were taking place in that time period in between,  
15 separate from our formal assessment as a company.

16 Q. Right. And my question  
17 was: There was nothing in that period of time  
18 that changed your view that speed was a  
19 contributing factor to collisions between 2015 and  
20 2018?

21 A. I guess you asked me the  
22 question anecdotally or otherwise. I think  
23 they're two different things.

24 Q. Okay.

25 A. From the anecdotal

1 perspective, you know, I was still observing speed  
2 behaviour on the roadways, both Red Hill and LINC,  
3 but I didn't have formal information, so I can't  
4 comment from a professional perspective.

5 Q. Okay. But none of the  
6 information you had changed your view that speed  
7 was on issue on the Red Hill?

8 A. I didn't have new  
9 information.

10 Q. Okay. I think we're  
11 saying the same thing. I'm going to move on.

12 Registrar, you can close these  
13 call outs.

14 In early 2018 -- thank you,  
15 and if you can go to page 60, please.

16 A. Can I raise a point with  
17 respect to the thread of e-mails that you had just  
18 presented?

19 Q. Sure.

20 A. There was some  
21 clarification, as you highlighted, which occurred  
22 shortly after it was done, and this is coming from  
23 me reading the materials here, where there's  
24 discussion of percentage of fatal and injury  
25 collisions or -- yeah, sorry, fatal and injury

1 collision on those roads in comparison to fatal  
2 and injury collisions on the comparator roads.  
3 And I just wanted to be clear that as I read the  
4 memo, the memo is talking about collision rates,  
5 which is numbers of collisions divided by distance  
6 travelled by cars, numbers of cars on the roadway,  
7 collisions per million vehicle kilometre. The  
8 percentage is not a rate. The percentage, the  
9 information that was provided that discussed  
10 differences in percentages between the two types  
11 of roads or the City roads and the comparator  
12 roads is only talking about collision frequency,  
13 and so there -- and it appears in at least one of  
14 the e-mail threads that there's a misunderstanding  
15 within the City as to percentage collisions and  
16 collision rates. I thought that was important to  
17 highlight.

18 Q. Thank you. It's  
19 certainly helpful to have your understanding about  
20 what collision rates are to understand that  
21 question.

22 Registrar, can you go to  
23 page 46 and if you can call out 126.

24 Mr. Malone, is that the e-mail  
25 that you're talking about where you think there's



1 some misunderstanding about percentage collisions  
2 and collision rates?

3 A. That's correct, yeah.

4 Mr. White is e-mailing Mr. Ferguson and  
5 Ms. Matthews-Malone and he highlights or he  
6 states -- sorry, let me just read it here:

7 "The LINC and RHVP has a  
8 much higher injury and  
9 fatality rate."

10 That's an incorrect  
11 interpretation. From my perspective, it's much  
12 more than semantics. As we just discussed,  
13 collision rate is numbers of collisions per  
14 million vehicle kilometres, and the discussion,  
15 the response that he's giving here, is with  
16 respect to information that he was provided about  
17 collision percentages, which is pure frequency of  
18 collisions. That distinction is important to  
19 understand.

20 Q. Okay. Registrar, could  
21 you close this down and if you can go back one  
22 page and if you can call out 124.

23 So, Mr. Malone, just so that  
24 we're very clear before we move away from this  
25 point, this is going back to that chart that I

1 took you to initially and the highways are listed  
2 and it says percent severe collisions and it has  
3 the percentage there. And is it correct that this  
4 is the proportion of fatal or injury collisions,  
5 so not property damage only, but fatal and injury  
6 in the total number of collisions? So, in other  
7 words, on the LINC, 58 percent of all the  
8 collisions on the LINC are fatal or injury  
9 collisions?

10 A. No. It's 58 percent of  
11 the data set for which information was provided.  
12 And, for example, Highway 406 is 19 percent of the  
13 data set for which collisions were provided.

14 What becomes clear in the 2019  
15 report, which is why I identified this in my  
16 preparation, is that if you look at the collision  
17 rates for severe collisions, being injury and  
18 fatal, they're almost the same amongst all of  
19 these roads.

20 Q. Okay. So, maybe put  
21 differently, where you have a data set that has a  
22 lower number of property damage only collisions  
23 contained in it, given the way the reporting is  
24 structured for the LINC and the Red Hill, and a  
25 higher number for the other comparator highways,

1 you're going to get percentages that are higher  
2 for the LINC and the Red Hill than the others,  
3 because the denominator is just bigger and  
4 different. Is that right?

5 A. The proportion is  
6 different, not the denominator.

7 Q. Fair enough. I mean the  
8 data set is a broader data set in terms of what it  
9 includes?

10 A. Yeah. Back to the  
11 original comment, the data sets are different.  
12 There are the comparator sites, the Highway 406, 7  
13 and 8, those data sets had more collisions in them  
14 and the Hamilton data sets had fewer collisions in  
15 that they did not have self-reported collisions.  
16 The three on the bottom all had self-reported  
17 collisions included, and that raises the quantity  
18 and therefore the percentage of severe goes down.  
19 But, in fact, the rates of severe are very similar  
20 between the two groups if you just look at the  
21 severe as a rate.

22 Q. Thank you. One last  
23 question of clarity, just to ensure that it's  
24 clear, self-reported collisions, that would be  
25 contained in the data set for the comparator

1 highways, those are more likely to include  
2 property only collisions just because of the  
3 nature of being self-reported. Is that fair?

4 A. Yeah, far more likely.

5 An injury and/or a fatal collision is much more  
6 likely to be investigated by the police and to  
7 have a formal full, complete collision report. A  
8 self-reported collision is just that, reported by  
9 the individuals. There's a notorious amount of  
10 error with self-reported collisions. For example,  
11 because it's self-reported, if two parties are  
12 involved in a crash, it's quite possible that each  
13 of them separately go to the police station or the  
14 reporting centre and fill out a police report and  
15 there may not be a rationalization of those two  
16 reports as being one collision, and so the data  
17 set tends to have lots of errors in it when  
18 there's self-reported collisions.

19 So, the typical process in the  
20 industry has been not to include self-reported  
21 collisions because of the amount of error that  
22 could potentially occur. And the Hamilton data,  
23 to be concluded here, the Hamilton data did not  
24 have self-reported collisions in this 2018 memo  
25 and the other comparator sites did have

1 self-reported and, therefore, the quantity of  
2 collisions in total was significantly higher than  
3 the other roads.

4 Q. Thank you. Registrar, if  
5 you can close this down and go to page 60, please.

6 So, in early 2018 CIMA is  
7 doing proposals for the speed limit study and that  
8 collision memo we were just looking at, but you're  
9 not directly involved in either of those projects,  
10 but you do become directly involved in a third  
11 project, the lighting study, as we have defined  
12 it.

13 Registrar, can you pull up 161  
14 and 162.

15 I'm just looking at 162. You  
16 don't have to worry about 161. Mr. Field e-mailed  
17 you that the City was looking to engage CIMA to  
18 conduct a lighting study. And you recall that  
19 first reach out from Mr. Field to commence the  
20 study that eventually became the lighting study?

21 A. Reading the e-mails to  
22 refresh my memory, yes.

23 Q. You can close this call  
24 out and go to page 84 of OD 8 and bring up 85 as  
25 well, please.

1                   Mr. Malone, on the bottom of  
2 page 84 at paragraph 230, in March of 2018  
3 Mr. Field e-mailed you a staff information report  
4 from September 19, 2016 and he wrote:

5                   "Ahead of this week's  
6 meeting -- "

7                   And I didn't take you through  
8 it, but there are some e-mails to set up a meeting  
9 on this between you and him:

10                   " -- attached is a  
11 previous report that we  
12 brought forward to the  
13 public works, which could  
14 the necessity for a  
15 further report, a  
16 recommendation was  
17 approved."

18                   And then, Registrar, can you  
19 call out the top of 85. So, Mr. Field says that:

20                   "We received further  
21 direction this past  
22 December."

23                   And then has the lighting  
24 item from the public works committee that staff be  
25 directed to report back on the cost of installing

1 brighter lights on the southern portion of the Red  
2 Hill and address what, if any, impact further  
3 lighting may have on an environmental assessment  
4 currently in place. And Mr. Field says this is an  
5 OBL item, outstanding business list item, with a  
6 response date of December 10.

7 You can close this down,  
8 Registrar.

9 Do you recall reviewing the  
10 staff report that Mr. Field appended to this  
11 e-mail?

12 A. I don't have a  
13 recollection of it, no.

14 Q. Okay. I'm going to bring  
15 it up just to refresh your memory. It is  
16 CIM17450.0001. And you can close out 84.

17 This is it. Just to refresh  
18 your memory, it's quite short, but I won't take  
19 you read the whole thing. At the bottom of the  
20 first page it says:

21 "The original EA  
22 assessment included a  
23 review of lighting and  
24 identified that lighting  
25 would have a detrimental

1 environmental impact and  
2 lighting restrictions  
3 were imposed."

4 Do you see that at the bottom?

5 I can pull out the paragraph if you need. It's  
6 the last paragraph on the left-hand side. This is  
7 just to try to refresh your memory, Mr. Malone.  
8 I'm not sure if you have seen this document  
9 recently?

10 A. I only passed through it  
11 in preparation for testimony, but I don't have a  
12 recollection of --

13 Q. Okay.

14 A. -- when I first read it.

15 Q. Okay. Registrar, you can  
16 close this down and if you could call out the  
17 second to last paragraph and the last paragraph of  
18 the right-hand page, yeah.

19 I reference this just because  
20 it speaks to the last CIMA report:

21 "The consultant  
22 review -- "

23 This is in the second  
24 paragraph:

25 " -- included a



1 high-level discussion  
2 related to lighting. The  
3 high-level review was not  
4 comprehensive enough to  
5 guide any staff  
6 recommendations. In  
7 order to fully understand  
8 risks and challenges of  
9 adding continuous  
10 lighting, a more fulsome  
11 review and business  
12 analysis would be  
13 required to be  
14 undertaken."

15 So, just closing that down,  
16 Mr. Field sends it to you in advance of a meeting.  
17 Would it be your normal practice to review a staff  
18 report like this before you met with him?

19 A. If I was provided  
20 something by a client in advance of a meeting,  
21 yes, I would normally try to review it.

22 Q. Okay. And I know we  
23 haven't spoken much about the 2015 CIMA report  
24 today, but do you agree with the comment in that  
25 last paragraph of the staff report that the

1 high-level review, being the 2015 CIMA review, was  
2 not comprehensive enough to guide any staff  
3 recommendations in respect of continuous lighting?

4 A. Yeah. Yes. I think the  
5 wording in the 2015 report was something to that  
6 effect, you know, that a more detailed  
7 investigation would be required. We were aware  
8 that it was our understanding at the time that the  
9 environmental assessment for the approvals for the  
10 roadway had, I think I used the word prohibited,  
11 I'm not sure that's the right term or not, and so  
12 further assessment would be required and I think  
13 this is the followup to that.

14 Q. Okay. Thank you.  
15 Registrar, you can close this down and if you can  
16 go back to OD page 81, please.

17 And so, you'll see in the very  
18 bottom of this page at paragraph 225 that there  
19 was a meeting scheduled for March 14 to discuss  
20 the scope of work. And we have some notes from  
21 you, which I believe are from this meeting.

22 Registrar, if you could close  
23 this down and open up CIM22413, image 3 and 4.

24 And I think these continue,  
25 but we'll show you the first two pages to start.

1 Mr. Malone, these are your notes?

2 A. They are.

3 Q. I just have a question

4 before we get into the substance that I don't

5 think we addressed last time, and it's your

6 highlighting practice. I note there are parts of

7 your notes that are highlighted, sometimes in pink

8 and sometimes in yellow. What do those -- what do

9 you use highlighting and highlighted colours for?

10 Do you have a particular practice about when you

11 use one and the other and the purpose for them?

12 A. I have a practice. I'll

13 fully admit I'm not necessarily fully diligent

14 with it, but the practice is the notebook is a

15 blank binder, a lined pages with no dates, so I

16 simply write continuously day after day. Each new

17 day, the date and the day of the week and perhaps

18 weather and such, are highlighted in the pink or

19 the red colour, and then specific activities

20 throughout the day are listed, typically

21 underlined, and then the highlighting in my coding

22 reflects the fact that this is something that I

23 have probably charged time to. So, as I go back

24 as a consultant, my hourly efforts are charged to

25 a client or to business promotion or whatever, and

1 so the existence of the yellow marking would  
2 reflect that I have made notation on my timesheet  
3 with respect to the time spent on this effort so  
4 as I go back through the week I can verify what I  
5 recorded or not. And there's all sorts of  
6 exceptions through it and, you know, whatever, but  
7 that's the general trend that I try to keep up  
8 with.

9 Q. Thank you.

10 A. Sorry, just to extend the  
11 discussion, the notebook is just that, it's my --  
12 it's not so much a diary of, you know, everything  
13 that happened through the day. It's my diary of  
14 my activities as a consultant for the most part  
15 and the notations themselves are made primarily so  
16 that I can recall and make sure that time is  
17 charged to the appropriate account. And where  
18 there's written text, as is the case here for the  
19 second grouping, Hamilton RHVP LINC lighting, this  
20 is a meeting. I'm transcribing writing down  
21 primarily what others are saying as opposed to,  
22 you know, my thoughts. There may be bits and  
23 pieces that I have, but these are my efforts to  
24 make a note to recall later if need be. You know,  
25 in this case, there was a meeting. There was

1 going to be meeting minutes. My notation of the  
2 content would be to assist meeting -- review the  
3 minutes subsequently.

4 Q. Thank you. Just one last  
5 followup on that. You'll see on the left-hand  
6 side there's a reference to, under Hamilton, I  
7 think that says RHP LINC lighting. Right  
8 underneath it says BP18043. Is it also your  
9 practice to reference the CIMA matter number or  
10 the CIMA code for the particular projects for a  
11 matter of timekeeping?

12 A. If I can remember it  
13 and/or if there's a number there, you know,  
14 there's an internal coding numbering system. BP  
15 represents business promotion, so at this point  
16 it's still a proposal. We haven't got an  
17 assignment yet. That gets charged to an account.  
18 Once it becomes an assignment and a number gets  
19 assigned to it, then you'll see, you know, B920,  
20 which is what the lighting project became. And  
21 half the time I can't remember the numbers, so  
22 you'll see no number on the thing. You'll just  
23 see a vague reference that gets correlated  
24 elsewhere.

25 Q. Thank you. So, looking

1 at these notes and recognizing they are notes that  
2 you're taking as you're meeting with people, so  
3 maybe a little harder for you to read in  
4 hindsight, what did you understand the purpose of  
5 this project was at this time, in this early  
6 stage, on March 14, 2018?

7 A. I think consistent with  
8 what was provided by Mr. Field, it was going to be  
9 a more comprehensive review of the Red Hill Valley  
10 Parkway and the LINC with respect to the potential  
11 provision of continuous illumination and what  
12 would be required in order to do that; everything  
13 from the physical aspects of installation or at  
14 least an overview of that to approvals and such.

15 Q. Okay. And did you  
16 understand that the City was seriously considering  
17 adding continuous lighting?

18 A. I understood the City was  
19 seriously considering reviewing adding lighting.  
20 Again, you know, this would be input that would be  
21 provided to the City, so I can't speak on their  
22 behalf whether or not they were seriously  
23 considering it or not.

24 Q. Okay. If you look at the  
25 right-hand side, there's a reference to four

1 points and, as I read it -- Registrar, could you  
2 pull this out, this, sort of, second half of the  
3 right-hand side page -- there's a reference to EA  
4 restrict, there's a reference -- I can't read the  
5 second one all that well, but I think it says  
6 different addresses?

7 A. It says where, how to  
8 address.

9 Q. Okay. There is a  
10 reference to comparators, looking at others like  
11 the DVP and others. I think that comparator in  
12 terms of their illumination status. And then  
13 looking at EA factors, human factors,  
14 environmental factors, those sorts of things, I  
15 think.

16 Is that, sort of, roughly in  
17 keeping with the aspects of the project that you  
18 understood CIMA to be proposing to undertake?

19 A. Yeah. Again, I think  
20 this is my transcription of something that's being  
21 spoken at the meeting. I don't write and speak at  
22 the same time, you know, but these are being  
23 articulated in the course of the meeting.

24 Q. Okay. And so, to the  
25 extent that part of this project would be to

1 review the prior environmental assessment  
2 approvals, CIMA had not undertaken a review of  
3 prior assessment approvals for its past projects  
4 on the Red Hill. Is that correct?

5 A. But we had some access  
6 to -- I don't recall. Not in the context of what  
7 we're talking about here. With respect to --

8 Q. Not actually pulling out  
9 the documents themselves and doing a confirmatory  
10 review of what the environmental assessments  
11 actually said. That hadn't been done before?

12 A. Correct. That hadn't  
13 been done, not by us.

14 Q. Okay. Now, at this  
15 meeting, did anyone from the City tell you why the  
16 City was now considering reviewing the  
17 installation of continuous lighting?

18 A. I don't have a  
19 recollection of that in the way you've termed it,  
20 no. The purpose of the meeting was to do that,  
21 but the why, other than that perhaps the  
22 background document provided by Mr. Field, I can't  
23 speak to.

24 Q. Okay. Did anyone from  
25 the City at this meeting tell you why they thought



1 checking the EAs, doing the review of the prior  
2 EAs, was an important step?

3 A. I don't recall  
4 specifically. I think it would be common  
5 knowledge that if you're contemplating a project  
6 that would proceed with lighting on the Red Hill  
7 and the LINC, the magnitude of that project would,  
8 by default, require an environmental assessment.  
9 And because there had been extensive environmental  
10 assessment reviews of the facility, a review,  
11 checking of the previous, would be a necessary  
12 step. I mean, I knew, I had been told by  
13 representatives from the City, that the lighting  
14 had been prohibited, you know, quote, unquote, in  
15 the EA or from the EA previously, so, you know, my  
16 understanding was that there was restrictions in  
17 the environmental assessment to lighting. And  
18 even some of the, you know, notes here, as I read  
19 them, the one close to the bottom says Colorado  
20 example, lighting in barrier wall is a reflection  
21 of something that's being relayed to us about an  
22 example of, you know, how lighting was achieved in  
23 another jurisdiction, in Colorado, using the  
24 lighting in the barrier wall as opposed to with a  
25 high light standard, so clearly it was something

1 that was on the minds of the municipality.

2 Q. Okay. These notes go on  
3 but I'm going to move from them to the proposal  
4 that you prepared, but, of course, as I ask my  
5 questions and you answer them, if you want to go  
6 back to these notes for this initial discussion,  
7 we can.

8 Registrar, you can close this  
9 down and if you could open up HAM53037 and you can  
10 have the two pages up at the same time, please.

11 And, Mr. Malone, I'm not going  
12 to take you to it right this moment, but you  
13 signed this proposal. Did you draft it yourself?

14 A. No, probably not. I  
15 would have had input on the draft, but I don't  
16 usually do the starting point work.

17 Q. Okay. Registrar, could  
18 you bring up 2 and 3.

19 So, this, like other CIMA  
20 proposals, has the work plan which has a number of  
21 tasks. And you'll see that there's going to a  
22 startup meeting, then a data review, then the EA  
23 review study, then a progress meeting, then an  
24 operational safety analysis update.

25 So, the first real step, and

1 we'll get to the rest of it, but the first real  
2 step is the EA review, and that would be what  
3 we've just been talking about actually, going back  
4 and looking at the EA documents and the approvals  
5 process for the EA over time. Is that right?

6 A. Getting the materials and  
7 reviewing them, yes.

8 Q. Okay. Registrar, can you  
9 leave up the right-hand side and on the left-hand  
10 side, if you could bring up image 7, please.

11 So, this is the list of  
12 project professionals and you'll see Ms. Haslett  
13 is listed as a senior environmental professional  
14 and project manager and that she has comprehensive  
15 knowledge of environmental approvals process. Was  
16 she going to be the person to do that first EA  
17 review, along with some of the other more junior  
18 professionals at CIMA?

19 A. Yes. She had specific  
20 expertise in environmental assessment, the  
21 process, and, in our view, was best suited to  
22 carry out the task.

23 Q. Thank you. Registrar,  
24 for the left-hand page, you can go back to page 2,  
25 please.

1                   Looking to image 3, which is  
2   on the right-hand page, the operational safety  
3   analysis update, Registrar, can you pull out that  
4   task, task number 5. So, this was to happen after  
5   the EA had been done and after a progress meeting.  
6   Why was the proposal to complete a collision  
7   analysis at this point, in 2018, it says, using  
8   the most recent data when you had already done a  
9   collision analysis in 2015 and you had done an  
10  analysis or your colleague had in 2018?

11                   A. Well, I think you  
12  answered the question already, which is that it  
13  was to use the most recent data. The 2015 study  
14  was three years or more before. The 2018 study  
15  did not look specifically at individual collision  
16  types. It was a very, very broad overview looking  
17  at collision rates. The overall study is to  
18  investigate lighting. And, for example, the 2018  
19  study didn't, did not, provide a breakdown of  
20  collisions that occurred during daylight or  
21  darkness. And so, there's no new input that is  
22  available to come from that particular work, so  
23  you've got to go back and, again, typically  
24  looking at a most recent available five-year  
25  collision history, and so that's the purpose of

1 redoing it.

2 Q. Thank you. Registrar,  
3 could you close that down.

4 A. And I should add the  
5 obvious, but the purpose of using lighting is  
6 not -- is to illuminate the roadway during periods  
7 of darkness primarily with the intent of allowing,  
8 assisting, road operation, and that includes safe  
9 operation, and so knowing which collisions occur,  
10 whether collisions occur, during hours of darkness  
11 and how many and of what types is a factor that's  
12 used in the assessment of illumination.

13 Q. Okay. So, is it fair to  
14 say then one of the things CIMA would be looking  
15 at was whether there was a disproportionate number  
16 of non-daylight collisions, which might suggest  
17 that the lack of lighting actually was an issue  
18 contributing to collisions? Is that the type of  
19 analysis that you expected would be undertaken?

20 A. I disagree with your  
21 interpretation. I would word it that you want to  
22 assess the numbers of collisions, including those  
23 that are occurring during hours of darkness, so  
24 you can determine whether there's any potential  
25 benefit that can be achieved by the provision of

1 lighting from a safety perspective. You can  
2 illuminate the road if you wish to. There's no  
3 harm to that. Maybe there is environmentally.  
4 But if the purpose is to reduce crashes, then you  
5 need to know how many are occurring, and so you  
6 have to do that assessment.

7 Q. And, in particular, you  
8 should know how many are occurring in non-daylight  
9 conditions?

10 A. The quantities, yes. You  
11 said proportion. Proportion is important, but  
12 it's the quantities that makes the determination.  
13 If there's two collisions on a roadway and one of  
14 them is at night, you know, it's not likely to  
15 provide a cost benefit for the provision of  
16 lighting. So, the quantities become very  
17 important and that proportion is a part of your  
18 analysis, but I'm quibbling over the terminology.

19 Q. Okay. Thank you. Thank  
20 you for the clarification on terminology.

21 I have a similar question  
22 about task 6, which is the illumination warrants,  
23 as I did for task 5. This is to check the  
24 warrants, the TAC warrants, and the MTO warrants.  
25 Hadn't that already a been done in the 2015 CIMA

1 report?

2 A. Yeah.

3 Q. So, this was just to have  
4 the same information compiled into a new study?

5 A. No. It's to do it again,  
6 because you have new inputs, being the updated  
7 collision information and, you know, whatever  
8 other operational characteristics may have changed  
9 on the roadway.

10 Q. I see. Thank you.  
11 Registrar, you can close this down and go back  
12 into OD 8, page 93, please.

13 So, Mr. Field approved the  
14 study proposal -- that's at paragraph 256 -- and  
15 you started on that or CIMA started on the process  
16 of this project.

17 Registrar, if you could now go  
18 to page 95. If you could call out the paragraph  
19 at 260.

20 Sorry, I might want to give  
21 you a bit more context for this. So, this is  
22 April 30 and Mr. Field has agreed to the proposal  
23 that you have put together. And, as I understand  
24 this internal note -- in fact, Registrar, can you  
25 go to the underlying document. It is CIM16261.

1 I don't know whether that's  
2 more helpful. This isn't an e-mail; it's a Word  
3 document. But, as I understand it, it reflects a  
4 summary provided to Ms. Haslett of a meeting that  
5 you and a colleague had with the City to kick off  
6 the discussions about the lighting study. Have  
7 you reviewed this document before?

8 A. I thought I had. Who is  
9 it?

10 Q. It's not particularly  
11 clear, which is why it's not particularly helpful,  
12 but we understand it's meeting minutes from  
13 April 30, which is the day of the kickoff meeting.  
14 I think I can probably take you to a -- this is a  
15 nice summary, but I can take you to a different  
16 document, your notes, which may be a different way  
17 to get at the same questions.

18 A. I don't think this is  
19 from the City. I think this is internal to CIMA.

20 Q. Yes, it is internal to  
21 CIMA, but I think it's about a meeting between you  
22 and -- the document is internal to CIMA, but I  
23 think that this is not just a meeting that's  
24 internal.

25 A. The opening sentence



1 says, you know, "provided with an update of the  
2 additional information provided by Reza and Brian  
3 of today's meeting," so I think there's additional  
4 input that's come from that meeting, but this memo  
5 is internal to CIMA. I don't see the author.

6 Q. Sure. So, maybe I can  
7 just orient you a little bit better to why I think  
8 that this is the kickoff meeting.

9 Registrar, can you bring up  
10 CIM17047, please, and if you could put it on the  
11 left-hand side.

12 So, this might assist. So,  
13 this is -- oh, and here might be the confusion.  
14 So, this is your notes. This is notes, April 24,  
15 2018, and you send these rough notes, typewritten  
16 notes this is time, to Reza Omrani, one of your  
17 colleagues, and it references Hamilton civic  
18 centre, third floor. And, as I read it, it  
19 appears to be your notes of your kickoff meeting  
20 with the City, which, apologies, I confused the  
21 date. That's April 24 that you send to your  
22 colleague on April 26?

23 A. Yeah. The meeting takes  
24 place on the 24th. It is the kickoff meeting, the  
25 starting meeting, with the client for the project

1    which has now been approved.  I'm, instead of  
2    writing in my diary, I'm typing on the computer  
3    some, as noted, very rough notes of the meeting,  
4    trying to keep track because I can probably type  
5    faster and neater than I can write, and these were  
6    provided to Reza in order to facilitate his  
7    completion of the minutes of the meeting which he  
8    was preparing.  And the minutes of meeting and  
9    potentially these notes, they would have been in  
10   our shared e-mail folder for the project, you  
11   know, have been available to Ms. Haslett and her  
12   staff to ultimately get to the April 30 document  
13   that's on the right-hand side.

14                   Q.    Okay.  So, the reason  
15   that I was referencing the document on the  
16   right-hand side is because I believe it says  
17   summary and it was just an easier way, I think, to  
18   have a concise view of this meeting rather than  
19   going through the notes.  I think the author of  
20   this document is Lauren Cymbaly, I think I might  
21   be saying her name incorrectly, another CIMA staff  
22   member who is involved in the EA review.  And what  
23   I understand is this is these internal notes on  
24   the right-hand side that summarize the meeting  
25   that you and Reza had with City staff.  And you

1 can see perhaps in the second bullet point, they  
2 say:

3 "They mentioned that the  
4 number of collisions is  
5 high throughout the  
6 corridors. The City  
7 would like to pursue  
8 lighting at the corridors  
9 if possible."

10 And then it goes through some  
11 internal deadlines and what would be done. So, as  
12 I understand it, and perhaps I'm incorrect, that  
13 this is just an easier summary of the output from  
14 the kickoff meeting?

15 A. I --

16 Q. Taking a look at it, do  
17 you read that differently?

18 A. I do.

19 Q. Okay.

20 A. The document out on the  
21 left is my notes taken at the time of the meeting,  
22 on April 24. There would have been minutes from  
23 the meeting and I think that's the document that  
24 would be the better reflection, the formal  
25 reflection, the one ultimately shared with the

1 City for the minutes of the meeting on the 24th.  
2 I think this document on the right, there are  
3 certainly elements that are overlapping and  
4 consistent, but it would appear to me the author  
5 has availed themselves of the minutes of the  
6 meeting and incorporated that into their  
7 description of the activities that they're going  
8 to conduct, reporting to Ms. Haslett, who is their  
9 supervisor. So, someone, the person you just  
10 mentioned, is describing, you know, I've read the  
11 minutes and I've started my process and here is  
12 what I'm going to do and go through, and so I  
13 simply take slight exception to the fact that the  
14 right-hand part of the screen is a direct  
15 reflection of the meeting on the 24th. There's  
16 obviously a connection, but it's not the same  
17 thing.

18 Q. Thank you. That's very  
19 helpful for clarity.

20 Registrar, if you can call out  
21 the first bullet on the right-hand side.

22 And, Mr. Malone, recognizing  
23 these are not your notes, these are someone else  
24 summarizing minutes of a meeting that you went to,  
25 but just for brevity, you'll see the reference.

1 The first bullet point here is:

2 "There is uncertainty  
3 regarding whether the EA  
4 strictly prohibits the  
5 inclusion of lighting in  
6 the road design in the  
7 official EA documents."

8 Starting there, and certainly  
9 we can go to the notes of the meeting with the  
10 City as well, but coming out of the kickoff  
11 meeting with the City, was it your understanding  
12 that the City had some uncertainty about whether  
13 the EA strictly prohibited the inclusion of  
14 lighting?

15 A. I can't speak to the  
16 City's frame of mind. I know that a comprehensive  
17 review of the various EA documents was part of our  
18 study. So, you know, that can be interpreted the  
19 way you just described, but I couldn't speculate  
20 what their position was.

21 Q. Okay. Then I don't want  
22 you to speculate, but I do think there are  
23 documents, there's information within your notes,  
24 that might assist on that.

25 I do note, though, that it is

1 just four minutes past 11:00 and we take our usual  
2 break at 11:00. Would now be an appropriate time  
3 to take our break, Commissioner?

4 JUSTICE WILTON-SIEGEL: Yes,  
5 it would. Let's stand adjourned until 20 past  
6 11:00.

7 --- Recess taken at 11:04 a.m.

8 --- Upon resuming at 11:20 a.m.

9 MS. LAWRENCE: Commissioner, I  
10 don't see Mr. Provost on the screen. He may be  
11 here. Good. I just wanted to make sure. May I  
12 proceed?

13 JUSTICE WILTON-SIEGEL: Yes,  
14 please proceed.

15 MS. LAWRENCE: Thank you.

16 BY MS. LAWRENCE:

17 Q. Mr. Malone, before the  
18 break we were looking at OD 8, page 95.

19 Registrar, if you could bring  
20 that back up. And, Registrar, if you could also  
21 bring up on the other page CIM17047.

22 So, Mr. Malone, just very  
23 quickly going through your notes on the right-hand  
24 side, you'll see there's the work plan review.  
25 Then there's inputs review that talks about

1 documents, and this is in the bottom half of this  
2 page.

3 Registrar, if you could go to  
4 the next page and if you could call out the first  
5 third of that page, please. Thank you.

6 So, Mr. Malone, you'll see at  
7 the very top, the third line down, it says:

8 "MF commented that he  
9 believes decision for  
10 lighting, continuous  
11 versus interchange, was a  
12 cost-based decision  
13 likely carried forward  
14 for the RHVP to do the  
15 very same as LINC.  
16 Expects that there will  
17 not be a prohibitive  
18 statement about lighting  
19 in the documents  
20 reviewed."

21 So, Mr. Malone, earlier I  
22 asked you if you -- sorry, I just want to get back  
23 to the question that I asked and make sure I don't  
24 misstate myself. Whether the City had some sort  
25 of uncertainty about whether the EA strictly

1 prohibited continuous lighting. Does this refresh  
2 your memory about information that the City  
3 provided to you about potential uncertainty about  
4 what the EAs actually said?

5 A. This is me transcribing  
6 what I'm hearing at the meeting. Yes.

7 Q. Yes. And so, these notes  
8 reflect that Mr. Field told you that he believed  
9 that it was a cost-based decision and that there  
10 would not be a prohibitive statement in the  
11 lighting. Is that how you, sitting here today,  
12 interpret your own notes?

13 A. That he stated it at the  
14 meeting, yes.

15 Q. And do you recall him  
16 stating that?

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

18 Q. Okay. Coming out of this  
19 meeting, and on that point in particular, sort of,  
20 the potential for what an EA would say from the  
21 City's perspective, was that different than what  
22 you had previously understood about the City's  
23 understanding of the EA?

24 A. I think that's an  
25 accurate statement, yes.



1 Q. Okay. Registrar, you can  
2 close this call out and you can close both of  
3 these documents, in fact, and go into OD 9A,  
4 page 19, please, and if you can bring up 20 as  
5 well.

6 So, on May 14 you receive an  
7 e-mail from Ms. Haslett, copying Mr., or is it  
8 Dr. Omrani?

9 A. Doctor.

10 Q. Dr. Omrani and Lauren  
11 Cymbaly, who is the name I mentioned before. And:

12 "Ms. Haslett advised that  
13 she completed a  
14 preliminary review of the  
15 environmental assessment  
16 documents which CIMA had  
17 received from the City  
18 and she could not find  
19 any evidence that the  
20 lighting was considered  
21 in the impact assessment  
22 of the original EA or the  
23 subsequent impact  
24 assessment documents. My  
25 initial review is

1 attached. And then she  
2 added that this is not a  
3 problem in terms of the  
4 EA going forward, but it  
5 was inconsistent with  
6 what the City had put in  
7 its staff report.

8 Do you remember receiving  
9 this e-mail from  
10 Ms. Haslett?

11 A. I have reread it. I  
12 don't recall it actually. The date of arrival, I  
13 don't have a recollection of that specific, but I  
14 do remember it was a bit of a surprise to me.

15 Q. Okay. Do you remember  
16 having discussions with Ms. Haslett before she  
17 sent that e-mail?

18 A. I can't remember the  
19 timeline exactly. I know we had an internal  
20 meeting before we met with the City. I think it  
21 was after this e-mail, but I would have to check.

22 Q. Okay. So, if we assume  
23 it that this e-mail is the first time you're  
24 learning about this, you said it was a bit of a  
25 surprise. Why was that?

1                   A.     Because I had been told  
2     fairly explicitly with inputs from Mr. Moore that  
3     the EA had prohibited lighting.

4                   Q.     We went through that in  
5     your last examination. I won't go through that  
6     again. Ms. Haslett includes her initial review,  
7     the one that is attached.

8                   Registrar, can you close this  
9     out and go to CIM17004.0001.

10                  This is a draft that  
11     Ms. Haslett put together and you review it. We'll  
12     get into the comments on this. But you recall  
13     reviewing this lengthy history that Ms. Haslett  
14     set out about the environmental assessment review  
15     process and the court proceedings as well?

16                  A.     I know I reviewed it. I  
17     don't recall precisely the action.

18                  Q.     Okay. Registrar, could  
19     you keep up page 2 and also bring up page 3,  
20     please.

21                  So, you'll see there's a very  
22     lengthy history but we're only on the two of the  
23     five pages of this document. At the bottom of the  
24     first page, there is a reference to the mountain  
25     east-west and north-south transportation corridor

1 project preliminary design investigation. Do you  
2 see that at the very bottom of the left-hand page?

3 A. I do.

4 Q. And, at the bottom in the  
5 second bullet point, there's reference to:

6 "The preliminary design  
7 recommendations for  
8 illumination, to provide  
9 conventional roadway  
10 lighting at the  
11 interchange ramps and  
12 crossroads, which -- "

13 And I think this is commentary  
14 from Ms. Haslett:

15 " -- was intended to  
16 reduce impact to  
17 residential areas, not  
18 natural environment."

19 And then the second bulletin  
20 point is:

21 "Full illumination of the  
22 RHVP section was  
23 recommended with high  
24 mast lighting located  
25 within the median."

1                   A.    I think the only comment  
2    I made is I don't think there's much of her  
3    personal comment in here.  I think this is summary  
4    of the findings.

5                   Q.    I understand.  It's the  
6    reference it was intended to reduce impact on  
7    residential areas, not the environment.  We can  
8    look at the underlying documents, I don't think we  
9    have to speculate, but I just didn't want to leave  
10   you with the impression that I was quoting from  
11   something other than the information here.

12                  A.    Yeah.  Okay.

13                  Q.    Okay.  So, on that  
14   particular 1990 point, just holding that in your  
15   mind for the moment and then if you look through,  
16   which you did at the time, I think, the reminder  
17   from 1990 through to 1999.  And then it continues  
18   on.

19                  Registrar, can you go to --  
20   thank you -- the 2003 report.

21                  You'll see in the 2003, at the  
22   very, very last bullet point, roadway illumination  
23   was not mentioned in this later report, the July  
24   report.  Ms. Haslett goes on to say that --  
25   Registrar, could you pull up the two paragraphs at

1 the bottom of page 4, that:

2 "Roadway illumination was  
3 only given a cursory  
4 examination in the  
5 technical report in 2003  
6 and the conclusion that  
7 illumination would have a  
8 negligible impact on  
9 wildlife because it would  
10 be limited to low levels  
11 at ramps and  
12 interchanges. It doesn't  
13 appear that any element  
14 of road design or  
15 corridor alignment was  
16 predicated on reducing  
17 impacts from illumination  
18 on the natural  
19 environment. It appeared  
20 that the illumination  
21 plan was based on MTO  
22 standards and municipal  
23 requirements only.  
24 Therefore, there's no  
25 documentation that

1 continuous illumination  
2 would be precluded."

3 And then she notes going  
4 forward that it's likely that a municipal class  
5 environmental assessment would be required and it  
6 would be a Schedule B type because of the nature  
7 of the quantum of the capital cost of  
8 construction.

9 Registrar, you can close that  
10 down and you can go to the last page.

11 Ms. Haslett also notes that  
12 the EA, sorry, the MCEA would also require an  
13 in-depth environmental impact statement  
14 assessment, an ES study, and scientific literature  
15 review. So, that was her initial review and  
16 conclusions and recommendations about the usual  
17 next steps for this kind of process.

18 Registrar, you can close these  
19 down and if you can go back into OD 9A, page 21,  
20 please.

21 Mr. Malone, this is more just  
22 to orient you. You responded the same day.

23 Registrar, can you pull out  
24 paragraph 44, please.

25 In respect of that 1990

1 reference to full illumination, your comment is:

2 "Where does this get  
3 dropped? Do we know?"

4 Registrar, you can close that  
5 out.

6 And then Ms. Haslett responds  
7 in paragraph 25 of OD 9A:

8 "I don't have an answer  
9 to your question. It was  
10 the only one that I found  
11 that had a recommendation  
12 for continuous lighting."

13 And you say:

14 "So mast head median  
15 lighting was recommended  
16 in the 1990, but in the  
17 end no lighting, other  
18 than interchanges, was in  
19 the final installation.

20 And the Crombie report  
21 never touched on it?"

22 Ms. Haslett says:

23 "We actually don't have a  
24 copy of that report."

25 And you say:



1 "Hmmm...that is likely a  
2 point to raise."

3 What was your interest in  
4 trying to determine when full illumination was  
5 dropped from the final approvals for the Red Hill?

6 A. The --

7 Q. Out of curiosity or  
8 something else?

9 A. No. The scope of the  
10 assignment was to do an assessment of the  
11 potential appropriateness of lighting. Assessment  
12 of the prior approvals was part of that. This  
13 work was a very comprehensive assessment of  
14 significantly more background materials than we  
15 had been provided and, you know, to be  
16 comprehensive these types of questions should be  
17 asked. It says lighting is recommended and  
18 there's no lighting on the roadway, so where did  
19 it go?

20 Q. Fair enough. Okay.

21 Registrar, can you go to page 22, please.

22 So, on May 22 Dr. Omrani  
23 e-mailed Ms. Haslett's summary to Mr. Field and  
24 mentioned that there would be a discussion of the  
25 content of the document after our meeting

1 tomorrow, and there was a meeting scheduled the  
2 next day, for which an agenda was included. And,  
3 as I understand it, was the progress meeting  
4 number 1 given the way the task list from the  
5 proposal was structured. Is that correct?

6 A. I believe so, yes.

7 Q. Registrar, could you  
8 close this and bring up CIM16997.0001.

9 This, I believe, is the  
10 pre-agenda. It's the agenda rather than the  
11 minutes, but it has invitees as Mr. Field and  
12 Mr. McGuire and Mr. Sharma from the City and you  
13 are listed also as a attendee. Do you recall  
14 attending this meeting?

15 A. It says I was there. I  
16 don't have a --

17 Q. It says you were invited.

18 A. Oh, sorry. I believe I  
19 was.

20 Q. Okay. Do you recall were  
21 Mr. Field, Mr. McGuire and Mr. Sharma all there as  
22 well?

23 A. I think so, yes. Yeah.  
24 I would have to check the minutes of the meeting  
25 and/or my notes.

1 Q. Do you recall what the  
2 reaction of Mr. Field was to Ms. Haslett's  
3 findings about the EA?

4 A. I would say I thought she  
5 was surprised, but that may be too strong a word.

6 Q. Okay. And what about  
7 Mr. McGuire? Did you perceive him to have any  
8 particular reaction to Ms. Haslett's findings?

9 A. Again, you know, similar  
10 sort of -- I think the information relayed  
11 differed from the understanding that they had.

12 Q. Okay. So, from this  
13 point, just casting your mind back to the  
14 proposal, the next step after progress meeting one  
15 would be to do the collision analysis, warrants  
16 and eventually a human factors analysis,  
17 environmental assessment and a final report. I  
18 think I've summarized them at least briefly.

19 Coming out of this meeting,  
20 was the plan to continue to do the remainder of  
21 this tasks set out in CIMA's initial proposal?

22 A. That was certainly our  
23 plan. We had a work plan that showed that. It  
24 would be up to the City to decide whether or not  
25 to terminate the project, if they felt they wanted

1 to.

2 Q. Thank you. Mr. Malone,  
3 I'm just going to stop for a moment because I  
4 don't see the Commissioner on the screen.

5 Registrar? There we go.  
6 Mr. Commissioner, did you catch all of that? Was  
7 it just a video issue?

8 JUSTICE WILTON-SIEGEL: Yes, I  
9 did. We had a technical issue at my end.

10 MS. LAWRENCE: Okay. I don't  
11 need to repeat any of that or --

12 JUSTICE WILTON-SIEGEL: No. I  
13 got it. Thanks.

14 MS. LAWRENCE: Thank you.  
15 Okay.

16 BY MS. LAWRENCE:

17 Q. So, then the next step  
18 would have been the operational -- the collision  
19 analysis, the operational safety review, and I'm  
20 going to come back to that.

21 But before I do -- Registrar,  
22 you can take this down -- just moving  
23 chronologically, at the same time or at least in  
24 the same season as this is happening, some of your  
25 colleagues are dealing with the speed limit study.

1 Registrar, can you bring up  
2 9A, page 43. Sorry, I think I might be having an  
3 error between our old OD 9 and this new 9A. I'll  
4 take you instead to the underlying document,  
5 HAM47326.

6 So, Mr. Malone, I'll just  
7 orient you to time before I ask you questions  
8 about this. The progress meeting on the lighting  
9 study that we were just looking at was in May of  
10 2018. In July of 2018, some of your colleagues  
11 meet with City staff about the speed limit and ITS  
12 strategic plan and you're not involved in that.  
13 You're not listed as an attendee.

14 And then, just to give you a  
15 little bit more orientation about where we're  
16 going to go next, in August there is a second  
17 progress meeting on the lighting study where  
18 collision review analyses are presented.

19 So, turning to this particular  
20 progress meeting, Registrar, can you pull out the  
21 last row of this document. I'm sorry, I was not  
22 clear. I mean the last complete table under ITS  
23 prioritization plan. Yes. Thank you.

24 So, Mr. Malone, if you look at  
25 the fifth bullet down, it says:

1 "The overrepresentation  
2 of the wet pavement  
3 related collisions may be  
4 alleviated by the  
5 upcoming pavement  
6 rehabilitation project.  
7 It's anticipated to focus  
8 at one direction per  
9 highway per year over a  
10 four-year period  
11 commencing in possibly  
12 2019."

13 So, stopping at that first  
14 part of this, the overrepresentation of wet  
15 pavement related collisions, did the team that was  
16 working on the lighting study interact with the  
17 team that was working on the speed limit study in  
18 terms of sharing collision analysis, to your  
19 knowledge?

20 A. I don't know. I can't  
21 speak to that.

22 Q. Okay. Taking the second  
23 part, the minutes reflect the provision of  
24 information at this meeting that there was going  
25 to be an upcoming pavement rehabilitation project

1 possibly in 2019. Did any of the attendees at  
2 this meeting tell you that the City was planning  
3 an upcoming pavement rehabilitation meeting in or  
4 about July of 2018?

5 A. Not to my recollection,  
6 no.

7 Q. Okay. Registrar, you can  
8 close this down and if you can go back into 9A,  
9 please, and page 59. If you could call out 143,  
10 please.

11 So, on August 27 was the  
12 second progress meeting, the one that I just  
13 referenced earlier. Mr. McGuire, Mr. Field,  
14 Mr. Lamont, Mr. Parma from the City and you,  
15 Dr. Omrani, Patrice Brouillette are listed as  
16 attendees. Did I mispronounce his last name?

17 A. Brouillette and he  
18 attended by teleconference.

19 Q. Thank you. So, you have  
20 enough of a recollection of that meeting that you  
21 remember that Patrice attended by teleconference.  
22 Do you actually recall this meeting?

23 A. Well, I remember that  
24 because he's based in Montreal and I've never met  
25 him face to face.

1 Q. Fair enough. Registrar,  
2 you can close this down.

3 There are some minutes that  
4 will be able to help you refresh your memory of  
5 this meeting.

6 Registrar, can you go to  
7 page 60.

8 So, the bottom of page 59 had  
9 the intro, but this is actually the content of the  
10 minutes?

11 Registrar, could you pull up  
12 the first half of this page, please.

13 So, the first topic on the  
14 minutes is the EA review. We've already focused  
15 on that, I think, and that was the subject of  
16 progress meeting number 1. The second task, 2.2,  
17 is the operational safety analysis update.

18 So, just stopping there, is it  
19 fair that between May and this progress meeting in  
20 August, CIMA did as it had proposed to do and  
21 completed an updated collision analysis for the  
22 Red Hill and the LINC?

23 A. I think we were in the  
24 process of it. I don't think the speed limit  
25 report had been completed, if that's what you're



1 referring to.

2 Q. I'm not. I'm referring  
3 to the lighting study and the task of doing the  
4 operational safety analysis. So, the first  
5 progress meeting in May was talking about the EA,  
6 and then the next step would be to complete the  
7 collision analysis, the operational safety  
8 analysis update. And my question is: By August,  
9 I interpret these minutes as CIMA had undertaken  
10 that collision analysis, the updated collision  
11 analysis, and was presenting it at this meeting.  
12 Is that correct?

13 A. Yes, I think that's  
14 correct.

15 Q. Okay. And so, you'll see  
16 that the current operational safety review is  
17 noted as using historical collision data from 2008  
18 to 2018 and it says:

19 "The update did not  
20 reveal any major changes  
21 in the predominant  
22 collision types. It  
23 revealed -- "

24 There's a reference to the  
25 speed study and a speed differential on the LINC.

1 And then the next bullet is:

2 "On the RHVP, wet surface  
3 collisions continue to be  
4 a factor."

5 It also says:

6 "Illumination was not  
7 identified as a  
8 contributing factor."

9 So, just stopping on that  
10 first point, the wet surface collisions, CIMA,  
11 having completed its collision analysis, can you  
12 give me a brief summary, and we'll come to the  
13 report, of what that analysis showed compared to  
14 the last analysis that CIMA had completed?

15 A. No, I'm not sure I can  
16 off the top of my head.

17 Q. Okay.

18 A. I would highlight that  
19 maybe the last sentence, the illumination was not  
20 identified as a contributing factor, is different  
21 than the analysis of whether what portion of  
22 collisions were occurring during nighttime hours.  
23 The contributor factor is a different descriptor  
24 being, you know, there's a direct linkage between  
25 light or absence of light and a crash. Just

1 because a crash occurs at night doesn't mean that  
2 lighting is or is not a factor.

3 Q. Okay. So, is that -- are  
4 you taking issue with the phrasing of this, that  
5 bullet point --

6 A. No. I'm clarifying it.

7 Q. Okay. And so, when it  
8 says illumination is not identified as a  
9 contributing factor, what does that mean and how  
10 is it different from looking at non-daylight  
11 collision analysis?

12 A. Well, there's --  
13 collision analysis would look at the breakdown of  
14 what is occurring and when it's occurring. So,  
15 for example, if a crash occurs on a wet road, what  
16 would be a potential contributing factor to that?  
17 And if a collision occurs at night, there are also  
18 potential contributing factors. But just because  
19 a collision occurs at night doesn't mean that  
20 illumination or lack of lighting or absence of  
21 lighting is a contributing factor to the crash  
22 itself. You know, if it's a snowy day and the  
23 loss of control takes place in snow and ice, then  
24 the contributing factor to that crash would be  
25 snow and ice and not illumination, as an example.

1 Q. Okay. Am I understanding  
2 you correctly that non-daylight collisions at  
3 large quantities may suggest that illumination is  
4 contributing, but that that's not what was found  
5 here, or is there something else? I think I  
6 understand what you're saying, but I'm not  
7 understanding the reference to this particular  
8 statement in the minutes.

9 A. I think you just worded  
10 it correctly. I'm just highlighting the  
11 difference between a contributing factor and  
12 environmental condition at the time of an  
13 incident.

14 Q. Okay. And so, where it  
15 says illumination was not identified as a  
16 contributing factor, we can go into the report,  
17 but I just don't understand what that means in  
18 terms of the collision analysis?

19 A. I don't recall precisely  
20 why this sentence is here, but I'm extrapolating  
21 it to understand to me that there is not a  
22 confirmation that illumination or absence of  
23 illumination was identified as a contributing  
24 factor to crashes, which is a different thing than  
25 determining the proportion of collisions that

1 occurred during hours of darkness.

2 Q. Okay. And I think that's  
3 where I'm getting stuck. It is a different thing,  
4 but how would one determine that illumination was  
5 or was not a contributing factor?

6 A. For example, the  
7 collision report may indicate the driver couldn't  
8 see the, whatever, something that they hit,  
9 because it was dark. You know, that would be a  
10 contributing factor, determination of a  
11 contributing factor or identification of a  
12 contributing factor.

13 Q. I understand, but here it  
14 says illumination was not identified as a  
15 contributing factor. How does one get to that  
16 conclusion?

17 A. Assessing the data that  
18 is available to you and determining whether it  
19 provides a linkage between the lighting condition  
20 and the outcome of the crash.

21 Q. Okay. Why don't we go  
22 into the report because I'm not sure I fully  
23 understand the connection between those two  
24 things.

25 Registrar, if you could bring

1 up HAM11581.

2 So, this is the draft that  
3 comes out about two months after this meeting in  
4 August that we're looking at.

5 Registrar, if you could go to  
6 image 19.

7 So, this is the beginning of  
8 the -- I'm not going to take you through the LINC,  
9 although maybe we do need to go through the LINC.  
10 Do you recall if the illumination concerns when it  
11 came to the collision analysis were different as  
12 between the LINC and the Red Hill?

13 A. I don't recall.

14 Q. Fair enough. I'm going  
15 to stick with just looking at the Red Hill for  
16 now, as I think that may refresh your memory.

17 So, this is the very bottom,  
18 the beginning of this discussion at the bottom of  
19 this page.

20 Registrar, if you can go to  
21 images 20 and 21 now, please. Thank you.

22 So, this sets out the  
23 collision summary by roadway surface collision, by  
24 impact type, and then there's a reference on  
25 image 21 to locations that are within or in the

1 approach to leaving a horizontal curve where  
2 sometimes there's a large curve radius. Do you  
3 see that at the second to last paragraph on  
4 page 13, image 21?

5 A. I do, yes.

6 Q. Then, Registrar, if you  
7 can bring up the next two pages, please. Those  
8 are a little difficult to read, but they are  
9 different -- I'm not sure what these kind of  
10 graphs are called -- demographic representations.  
11 And I don't think I'm going to ask some questions  
12 about them, so I'm not going to make them larger,  
13 but I just wanted to show you that just to refresh  
14 your memory about what's included.

15 Then, Registrar, if you can go  
16 to page 24, 25. I'm sorry, I misspoke. I meant  
17 to say 26 and 27. Thank you.

18 So, just stopping here, and  
19 maybe this will assist with the exchange we were  
20 just having about illumination, Registrar, if you  
21 could pull up image 26, please. If you could call  
22 that out. No, the whole thing, not just the  
23 table. Thank you.

24 So, the findings, Mr. Malone,  
25 were that most collisions occurred under daylight

1 artificial conditions, 61.9 percent, with 38.1  
2 percent of collisions occurring during  
3 non-daylight conditions. And it says:

4 "When compared to the  
5 provincial highways with  
6 partial illumination and  
7 based on a Chi-Square  
8 statistical test, the  
9 proportion of collisions  
10 under non-daylight  
11 condition were found  
12 consistent with other  
13 facilities in Ontario."

14 So, how, if at all, does that  
15 relate to the statement in the minutes that  
16 illumination was not a contributing factor?  
17 Pardon me, not identified as a contributing  
18 factor?

19 A. So, the table lists the  
20 environmental conditions, the lighting conditions,  
21 and shows the numbers of crashes that occur, and  
22 the analysis is looking at the proportions,  
23 percentages, of crashes that are occurring during  
24 different lighting conditions.

25 So, there's a -- you're able



1 to make a correlation between numbers of crashes  
2 and lighting conditions at whatever lighting  
3 condition you're interested in looking at. That  
4 correlation was assessed in comparison to  
5 correlations that are in other facilities in  
6 Ontario and found to be consistent, so there's not  
7 an unusual pattern based on the way this is  
8 worded.

9 Q. Okay. And from that,  
10 CIMA expressed to the City that illumination was  
11 not identified as a contributing factor. Is that  
12 right?

13 A. It would appear so, yes.

14 Q. Okay. So, that's the  
15 connection, that there was no high proportion of  
16 non-daylight conditions, and so illumination was  
17 not identified as a contributing factor as a  
18 result of that collision basis?

19 A. I think that  
20 determination has been put forward based on the  
21 analysis, including the analysis for the other  
22 facilities, yes.

23 Q. Thank you. All right.  
24 You can close that call out down and if you can go  
25 to 27 and 28, please.

1                   So, at the bottom of 27 is the  
2     summary of the RHVP collision analysis and it  
3     starts with 38 percent of total collisions  
4     occurring during non-daylight conditions. We were  
5     just looking at that.

6                   Then if you can call out,  
7     Registrar, the four bullet points at the top of  
8     page 28. Thank you.

9                   So, wet surface collisions  
10    were found to represent approximately 57 percent  
11    of all collisions in the study area, which is  
12    significantly high compared to typical  
13    proportions. So, at this time, had CIMA gone back  
14    and compared the wet surface collisions that it  
15    was finding in 2018 with those it had found in  
16    2015?

17                  A. I can't recall whether  
18    that was done. We're most interested in looking  
19    at the current data set because the old data set  
20    is not as valid, but I can't tell you if it was  
21    done or not.

22                  Q. Okay. Eventually it is  
23    done and we'll get to that. I just want to  
24    pinpoint the timing. Recognizing the old data  
25    set, you said the old data set is not as valid.

1 Do you mean that it's dated now?

2 A. I don't think I said it  
3 was invalid. What I'm saying is that you want to  
4 use the most current data, because that's  
5 potentially what you are able to influence with  
6 possible countermeasures, more likely to influence  
7 with possible countermeasures than data that is  
8 older and not as current. It's still factual  
9 data; it's just not the current data, so it's not  
10 something you pay as much attention to when you're  
11 doing an analysis.

12 Q. Fair enough. It is  
13 relevant, though, if you have a, you know,  
14 five-year period that is early in time and then  
15 you're comparing it to five-year period that's  
16 later in time. You might be able to see some  
17 trends in terms of types of collisions and that  
18 might be use couple. Right?

19 A. As does the five-year  
20 that you're looking at in the current analysis,  
21 because that's a history as well. So, yes. You  
22 can do ten years of data as well. That's another  
23 approach that you're describing. I'm not  
24 disagreeing with you. I'm just stating the fact  
25 as to how we're looking at it, which is the most

1 current five years.

2 Q. Sure. Thank you. In  
3 looking at the result of this updated current  
4 collision analysis, was there anything you took  
5 from it or you saw in it that was new or  
6 significant as compared to the 2015 analysis?

7 A. I think it would be  
8 almost the other way around, that there was, sort  
9 of, more of the same. The wet surface collisions  
10 continued to be significantly high in their  
11 proportions.

12 Q. Okay. And I think you  
13 said earlier that you were at least anecdotally  
14 aware that the City had implemented increased  
15 police enforcement since the 2015 CIMA report,  
16 which I'm going to suggest to you would  
17 theoretically should have reduced the collision  
18 rates over time. Did you find the fact that it  
19 was more of the same, at least at this point, as  
20 you're looking at this draft? Was that  
21 problematic or concerning to you?

22 A. I didn't have any -- I  
23 didn't have sufficient information with respect to  
24 the level, degree, of enforcement that had taken  
25 place to be able to comment on that. You know, I

1 had seen some enforcement, but I couldn't speak  
2 to, you know, what proportion that was, so no, I  
3 can't go further on that answer.

4 Q. Okay. By 2018, you  
5 understood that the City had implemented at least  
6 some of the recommendations in the 2015 CIMA  
7 report. Is that right?

8 A. Yes. It was my  
9 understanding that some had been recommended, yes.

10 Q. Okay. So, given that you  
11 knew that CIMA had made recommendations in 2015,  
12 some of them had been implemented, you had  
13 anecdotal information about increased police  
14 enforcement, did the fact that there was  
15 continuing to be a significantly high proportions  
16 of wet surface collisions compared to typical  
17 proportions, was that concerning to you, that  
18 trend?

19 A. It was indicative that  
20 the actions implemented did not appear to have an  
21 impact on driver behaviour because collisions were  
22 continuing to occur.

23 Q. Okay. And did that lead  
24 you to consider whether the pavement surface could  
25 be a contributing factor that had not been --

1 because it had not been changed over between 2018  
2 and 2018 when all those other countermeasures were  
3 being conducted?

4 A. Well, again, I wasn't  
5 fully sure exactly what countermeasures had been  
6 implemented, including police enforcement and  
7 specifically the degree of police enforcement, so  
8 to my understanding, to my knowledge, there had  
9 been no change to the pavement surface. I will  
10 certainly accept that. But I -- you're asking me  
11 if I believe that all the actions taken have  
12 failed and things have reduced down to the  
13 pavement surface, I'm boiling down what I think  
14 you're asking, and I still don't have enough  
15 information to be able to make that conclusion.  
16 What would appear to be occurring is there's no  
17 change in driver behaviour, and that driver  
18 behaviour is a critical piece in terms of the  
19 occurrence of collisions.

20 Q. Okay. Picking up on part  
21 of your last answer, by August of 2018, when this  
22 updated collision analysis had been done, would  
23 you agree that the pavement surface skid  
24 resistance was coming more clearly into focus as a  
25 causal factor for wet road collisions in your

1 mind?

2                                   A. I think that's probably  
3 correct. It had always been a potential  
4 contributing factor, with there being correlation.  
5 Wet roads, friction decreases on wet roads, and so  
6 we've got a potential issue when friction is  
7 reduced during wet weather as being possibly a  
8 contributing factor and, therefore, maybe a causal  
9 factor in crashes. So, I think you're correct in  
10 that it's getting closer to that conclusion. I  
11 still don't have any friction information with  
12 respect to the friction properties or the surface  
13 of the road, other than knowledge that friction  
14 reduces when the road gets wet.

15                               Q. Okay. Did you express  
16 the evidence that you just gave just now, yes,  
17 it's, sort of, coming into focus or getting closer  
18 to that conclusion, did you express that to the  
19 attendees at the August 27 meeting?

20                               A. I don't recall  
21 specifically that discussion of that nature. I  
22 think the report and the content that we're  
23 looking at right here, wet surface collisions  
24 found to represent 57 percent of all collisions,  
25 is relaying precisely that information.

1 Q. Okay. Given that the  
2 City was considering installing expensive  
3 continuous illumination, is the potential that  
4 pavement surface was a contributing factor  
5 relevant to the cost-benefit analysis about  
6 whether to do continuous illumination?

7 A. Can you repeat that  
8 question?

9 Q. Sure. And maybe I'll  
10 rephrase it.

11 The City is considering doing  
12 an expensive, undoubtedly expensive, installation  
13 of continuous illumination. They have asked you  
14 to do a benefit-cost analysis. Does the potential  
15 that the pavement surface is a contributing factor  
16 to wet weather collisions, is that a factor that  
17 gets built into the cost-benefit analysis?

18 A. The cost-benefit analysis  
19 of lighting?

20 Q. Yes.

21 A. Well, the collision  
22 pattern, the collision behaviour, factors in in  
23 whole with a particular focus on collisions that  
24 occurred during hours of darkness, and so some of  
25 those wet surface collisions could have occurred



1 during hours of darkness. There's overlap between  
2 the two data fields, so there's an interaction  
3 between the two components. So it's considered,  
4 yes, if that's your question.

5 Q. Okay. Is the potential  
6 that illumination -- I think illumination is not a  
7 contributing factor, but something else is a  
8 contributing factor, how does that play into a  
9 cost-benefit analysis about whether to do  
10 illumination, if at all?

11 A. Well, illumination, if  
12 you're contemplating it as a treatment  
13 countermeasure to reduce collisions, is effective  
14 potentially for certain types of collisions,  
15 collisions that occur during hours of darkness.

16 Q. Yes.

17 A. Whatever those collisions  
18 might be and whatever other characteristics may be  
19 with them, there can also potentially be a  
20 connection. So -- I think I've lost the thread of  
21 your question.

22 Q. I can ask my next  
23 question. Maybe we'll pick up the same thread.  
24 If illumination is at least in part intended to  
25 solve for -- to reduce collisions, wouldn't it be

1 relevant to the City to know that there may be a  
2 contributing factor that has nothing to do with  
3 darkness or illumination?

4 A. There's an infinite  
5 number of factors that contribute to collisions  
6 other than darkness, so I don't see how it can be  
7 parsed out the way I guess I'm thinking you're  
8 suggesting.

9 Q. Okay. But this is one  
10 you said that was coming closer to being in focus  
11 for you as an important contributing factor.  
12 Right?

13 A. It clearly is an  
14 important contributing factor. Wet road, wet  
15 surface collisions.

16 Q. Okay. I'll move on.

17 Mr. McGuire attended this  
18 meeting. Right? The August 27 meeting?

19 A. I would have to check the  
20 minutes, but I think so, yes.

21 Q. We can go back. I think  
22 I may have asked you and you may have answered  
23 that already.

24 Registrar, you can close this  
25 call out and this document. Thank you.

1                   Do you recall having any  
2 conversation with Mr. McGuire in the days before  
3 the August 27 meeting?

4                   A.    I would have to check my  
5 notes.  I don't think anything -- no, I don't have  
6 any recollection of it.

7                   Q.    Okay.  Do you recall  
8 meeting with or having a discussion with  
9 Mr. McGuire on August 27, separate and apart from  
10 the meeting that is minuted and that we were just  
11 looking at?

12                  A.    Yes.  I think Mr. McGuire  
13 asked to speak to me following the meeting.  He  
14 basically said, hey, step into my office.

15                  Q.    Okay.  So, the lighting  
16 study meeting was at the City?

17                  A.    It was at the City  
18 centre, yeah, the offices of Mr. McGuire and  
19 others, yes.

20                  Q.    Okay.  So, you went to  
21 Mr. McGuire's office?

22                  A.    I was in the -- on the  
23 floor of the building where his office is and  
24 he -- my recollection is I went into his office  
25 for this post-meeting discussion.

1 Q. Okay. And what can you  
2 tell me about this post-meeting discussion?

3 A. He engaged or began a  
4 discussion about considerations or reviews that  
5 him and his group are doing regarding the roadway,  
6 paving of the roadway, and specifically different  
7 types of options for paving and resurfacing.

8 Q. Okay. And just harking  
9 back to your last examination, at this point, in  
10 2018, were you aware that the Red Hill was paved  
11 with SMA? I think you were. I just want --

12 A. Yeah. I believe I had  
13 been told that by Mr. Moore in 2015.

14 Q. Okay. And at this point,  
15 this is August 27, did you understand that the  
16 City was proceeding with a resurfacing of the Red  
17 Hill?

18 A. I'm not sure I understood  
19 that it was a definitive yes or go. The  
20 discussion with Mr. McGuire was regarding  
21 resurfacing of the roadway, but I believe my  
22 impression at the time was that that had not been  
23 concluded as of the time of the discussion. So,  
24 it was something that was being thought or  
25 discussed or proposed or was in the plan but, you

1 know, no hard detail as to exactly when or what or  
2 how.

3 Q. Okay. You said that the  
4 discussion was about what he and his group were  
5 doing regarding the roadway paving and  
6 specifically different types of options for paving  
7 and resurfacing. Did Mr. McGuire advise you that  
8 the City was considering hot in-place recycling of  
9 the existing pavement surface as part of the  
10 resurfacing plan?

11 A. Yes. I do think -- I  
12 recall that terminology and, you know, the  
13 discussion was, sort of, broadly around options  
14 for resurfacing, hot in-place being one of those,  
15 and -- sorry, yes.

16 Q. Okay. So, you're not a  
17 pavement expert or a hot in-place recycling  
18 expert. Why did Mr. McGuire reach out to you?  
19 Did he convey that? Or what was it he wanted to  
20 talk to you about?

21 A. Well, I was there. He  
22 was familiar with CIMA. My interpretation of what  
23 he wanted to convey to me was, hey, I'm looking at  
24 this project. I knew Mr. McGuire was relatively  
25 new in his position because Mr. Moore had recently

1 retired and the impression I got was that he was  
2 trying to determine where he could get some  
3 potential technical input. CIMA, as a company  
4 overall, is a consulting engineering firm that  
5 does a lot of different things, one of which is  
6 road design and pavement design, and so that  
7 potentially is a service that we could provide and  
8 I think he was exploring what CIMA, the company,  
9 could do, because I was a conduit for that  
10 information.

11 Q. Okay. Did Mr. Moore  
12 express any concerns about the pavement surface on  
13 the Red Hill to you?

14 A. Mr. Moore was retired at  
15 this point --

16 Q. I'm sorry. I misspoke.  
17 Mr. McGuire. Did Mr. McGuire express any  
18 concerns?

19 A. I don't have a direct  
20 recollection of him, you know, being that  
21 explicit. I think that there was a recognition  
22 that the proportion of collisions in wet road  
23 conditions continued to be high and I think I made  
24 the connection between that and his telling me  
25 that they were planning on repaving, but I

1 honestly don't remember him saying that to me.

2 Q. Okay. Did you have the  
3 impression that the information that you and your  
4 team had conveyed at the meeting about the wet  
5 weather collisions on the Red Hill was new  
6 information to Mr. McGuire?

7 A. No. I don't think that  
8 information was new and a surprise to him in the  
9 meeting, you know, we had had an hour before. It  
10 was consistent information. I don't know how  
11 comprehensive he had reviewed previous materials  
12 that had been provided to the City, but no, I  
13 can't say I came away with that impression.

14 Q. Okay. I ask because, of  
15 course, your contacts on earlier CIMA projects  
16 were people in the safety engineering office,  
17 operations and engineering, and Mr. McGuire is  
18 engineering services. But you were left with the  
19 impression that this was not new information to  
20 him, that the Red Hill had wet weather collision  
21 issues?

22 A. I'll try to be clear.  
23 That would have been my interpretation. I can't  
24 speculate what Mr. McGuire would have thought.

25 Q. Of course. I'm just

1 asking for your observations and interpretation of  
2 his body language or words.

3 Did you discuss with  
4 Mr. McGuire during this meeting, this post-meeting  
5 meeting with him, any discussion about friction  
6 testing as a general concept?

7 A. I do not, no.

8 Q. Did you say, "I don't  
9 recall"? I think I might have misheard you.

10 A. No. I said, "I do not,  
11 no."

12 Q. You do not know, okay.

13 A. "I do not," comma, "no."  
14 N-O, not K-N-O-W.

15 Q. I said, "Did you discuss  
16 with him the issue of friction testing as a  
17 concept?" and you said, "I did not"?

18 A. I do not recall having  
19 that discussion with him.

20 Q. Okay. Thank you.

21 A. So my answer would be no.

22 Q. Okay. Thank you. Thank  
23 you for your clarity for the record.

24 Did you have any discussions  
25 about friction testing on the Red Hill that had



1    been done?

2                            A.    None that I recall, no.

3                            Q.    Were you left with the  
4    impression coming out of this conversation that  
5    Mr. McGuire was considering conducting friction  
6    testing on the Red Hill?

7                            A.    No.  It didn't come up in  
8    the discussion, so I don't see how I would have  
9    had that impression, no.

10                          Q.    Do you recall any  
11   discussions about skid resistance generally or  
12   specifically regarding the Red Hill with  
13   Mr. McGuire on August 27?

14                          A.    No.  No was my answer.

15                          Q.    Yeah, I heard you.  Thank  
16   you.  I'm going to take you through some  
17   additional documents in a moment, one of which  
18   references a conversation that you had with  
19   Mr. McGuire and you said it was last Thursday, and  
20   we'll get there in a moment.  But I would ask you  
21   to search your recollection about that meeting on  
22   August 27 and, if there's any other information  
23   you can provide to the inquiry about the content  
24   of that meeting, if you could provide it now?

25                          A.    I'm not sure I understand

1 where you're going, so perhaps it would be of  
2 assistance to see the documents you're talking  
3 about.

4 Q. Sure. I'm not asking  
5 about the meetings later. I'm trying to -- I'm  
6 going to say I'm going to take you through some  
7 documents that reference conversations, but I'm  
8 trying to understand if there's any other  
9 information you can provide to the inquiry about  
10 the content of the conversation with Mr. McGuire  
11 on August 27?

12 MR. PROVOST: Well, this is  
13 Mr. Provost. The witness is asking not to play  
14 hide and seek game. He would like to see the  
15 document that you are seemingly have in your  
16 sleeve and before you ask him can you recall more  
17 things about the August meeting, we went through  
18 about six questions. Did you discuss this? Did  
19 you discuss that? It would have been more simple  
20 to say what was discussed? But anyway, now he  
21 expressed his desire to see the document.

22 MS. LAWRENCE: Commissioner, I  
23 asked a number of questions just now about  
24 Mr. Malone's recollection on August 27 in hopes of  
25 avoiding having to seek leave from you to refer

1 Mr. Malone to his statement of anticipated  
2 evidence. I'm happy to take one more attempt at  
3 trying to refresh Mr. Malone's recollection before  
4 I do so and I'm happy to follow Mr. Provost's  
5 request to provide some additional context to  
6 Mr. Malone. Does that -- so, that's what I'll do  
7 subject to your views, Commissioner.

8 JUSTICE WILTON-SIEGEL: Sorry,  
9 I was muted there. I think we're in your hands  
10 whether you want to go to the statement of  
11 anticipated evidence immediately or provide  
12 Mr. Malone with another document.

13 MS. LAWRENCE: I'll provide  
14 him with another document.

15 BY MS. LAWRENCE:

16 Q. Mr. Malone -- actually,  
17 Mr. Registrar, if you can go into OD 9A, thank  
18 you, page 72, please. Pardon me, page 73, please.  
19 And if you can pull out the paragraph that's under  
20 the table.

21 So, Mr. Malone, this is an  
22 e-mail from September 4 that you send to  
23 Mr. McGuire in response to an e-mail that he sends  
24 you on August 30. We're going to go through all  
25 of those documents in a moment, but I'm hoping to

1 attempt to refresh your memory about anything else  
2 you would like to tell us about the August 27  
3 meeting and this may assist. It may not, but  
4 there is a reference here where you say:

5 "I thought you said  
6 additional testing had  
7 been done either in 2014  
8 or subsequent to the  
9 November 2015 CIMA  
10 report, which recommended  
11 friction testing."

12 So, perhaps I'll ask a narrow  
13 question first. Do you recall, on August 27, if  
14 Mr. McGuire left you with any impression that  
15 there was friction testing done in 2014 or 2015  
16 that he was going to provide to you?

17 A. My recollection is that  
18 at the meeting on the 27th, Mr. McGuire said he  
19 was going to send me additional material. And on  
20 the 30th, he sent me additional material and it  
21 was essentially the same -- not essentially. Was  
22 the same information relating to the friction  
23 testing done in 2007 and 2013, the one authored by  
24 Dr. Uzarowski.

25 And this note, which is now on

1 September 4, is relaying to that. I realize it's  
2 saying last Thursday. I don't have a clear  
3 recollection of him talking about friction at that  
4 meeting. Perhaps he did and I didn't note it. He  
5 did subsequently send me the information I just  
6 described, so he provided me with friction  
7 information on the 30th --

8 Q. Okay.

9 A. I'll check my dates for  
10 the Thursday as to when Thursday was, but if  
11 that's the 27th, then obviously there's a  
12 disconnect between the two.

13 Q. Okay. I'm going to come  
14 back to this when we go through the chronology  
15 from August 30 to September 4, but I think the  
16 information and the evidence that you just  
17 provided was that in the conversation on  
18 August 27, he said, Mr. McGuire said, he was going  
19 to provide you with some documents or materials.  
20 Is that right?

21 A. More information was --  
22 some information was, you know, I think what I  
23 wrote in my note, I don't have it in front of me.

24 Q. Your note of what? Which  
25 note are you referring to?

1                   A.    If I made notes of it, I  
2    would have recorded that.

3                   Q.    I don't think you made  
4    notes of this call with Mr. McGuire.  Do you  
5    recall making notes or was it more informal?  It  
6    was just a discussion?

7                   A.    No.  I think there's a  
8    note that reflects I had a discussion with him  
9    post the lighting meeting, but, again, I would  
10   have to look at --

11                  Q.    I think because we've  
12   jumped a little ahead in time, the chronology  
13   might be off.  Focusing just on the August 27  
14   meeting -- and, Registrar, you can close this call  
15   out and close this document.

16                  So, you just gave evidence  
17   that Mr. McGuire was going to send you some  
18   materials or some documents.  Can you provide more  
19   detail about the conversation which led to him  
20   saying he was going to provide more detail or more  
21   materials?

22                  A.    I don't recall the  
23   conversation, you know, precisely.  There was  
24   discussion around repaving of the roadway,  
25   including techniques, technologies, to repave, and

1 my impression was that he was seeking input from  
2 CIMA potentially regarding a project for  
3 resurfacing and he was going to provide additional  
4 information to assist CIMA possibly to -- I  
5 understood this to potentially be an opportunity,  
6 a project for CIMA to undertake, and this was  
7 initial preliminary discussions of something that  
8 might be happening.

9 Q. Okay. So, your evidence  
10 is it was a general discussion about potential  
11 business opportunities around resurfacing, but  
12 there was no discussion at the August 27 meeting  
13 about friction testing in particular. Is that  
14 right?

15 A. I don't have a clear  
16 recollection of friction being discussed clearly  
17 at the meeting. I didn't get the Tradewind report  
18 at that meeting, for example. I can't say with  
19 certainty that, you know, the subject of the  
20 friction of the pavement on the roadway was not  
21 included in the discussion because he was talking  
22 about pavement and resurfacing, but I just don't  
23 have a clear recollection of this. It was quite  
24 some time ago.

25 Q. I'm sorry, Mr. Malone, I

1 think it might have been our screen is unstable.  
2 I'm getting an "internet connection is unstable"  
3 and I missed that last little bit of your answer.  
4 Could you please repeat it, and apologies?

5 Oh, no.

6 A. I can still --

7 Q. Can you still see and  
8 hear me? I got a notification from Zoom that  
9 there was an issue.

10 A. I can still see and hear  
11 everyone. I have a hardwired connection on my  
12 end.

13 Q. So do we. Please  
14 interrupt me if I do freeze.

15 A. Perhaps if you could read  
16 back to me what I had said and I can fill in any  
17 blanks if they're there.

18 Q. I don't think there were.  
19 I think that the court reporter got it, I just did  
20 not, which was you:

21 "Can't say with certainty  
22 that the subject of the  
23 friction of the pavement  
24 on the roadway was not  
25 included in the



1 discussion because he was  
2 talking about pavement  
3 and resurfacing, but I  
4 just don't have a clear  
5 recollection of this. It  
6 was quite some time ago."

7 Is that --

8 A. I think that's all of it.

9 Q. Okay. Did you have any  
10 discussions about MTO friction testing back from  
11 2007, that testing that Mr. Moore had previously  
12 provided to you in 2015?

13 A. Not to my recollection,  
14 no.

15 Q. Okay. And did  
16 Mr. McGuire leave you with the impression that he  
17 had any kind of additional testing that had been  
18 completed since 2014?

19 A. I don't have a clear  
20 recollection of that. He was going to send me  
21 more material, so I think, you know, that may be  
22 what the connection was and perhaps his  
23 recollection is different that he was more  
24 explicit with respect to friction and testing, but  
25 my recollection doesn't include that precisely in

1 those terms.

2 Q. You said I don't have a  
3 clear recollection and your recollection doesn't  
4 precisely include that. I'm really just trying to  
5 understand was there a discussion about friction  
6 and friction testing at this meeting or not, and  
7 I'm not understanding exactly the conditions  
8 you're putting in your words. Could you assist  
9 with that?

10 A. I'm saying I don't have a  
11 clear recollection of friction testing being  
12 discussed in this meeting.

13 Q. Okay. Is that to say  
14 that your recollection is that conversation did  
15 not occur at this meeting?

16 A. I don't understand the  
17 difference in that question to the previous one.

18 Q. Sure. So, there's the  
19 issue of whether you -- sometimes you just don't  
20 have a memory either way and sometimes you have a  
21 distinct memory that something didn't happen, and  
22 many times people say "I don't recall" to mean  
23 both of those things. So, do you have a  
24 recollection that there was no discussion about  
25 friction testing?

1                   A.    No.  I think it would be  
2    the descriptor you just put, which is that I don't  
3    have a clear memory either way.

4                   Q.    Okay.  But do you have  
5    any memory?

6                   A.    I recall the meeting  
7    being -- sitting in the chair opposite his desk.  
8    I don't recall the exact wording and I don't have  
9    a clear recollection of friction testing being  
10   discussed or not discussed.

11                  Q.    Okay.  Thank you.  On  
12   August 30, you received an e-mail from him.

13                               Registrar, if you could bring  
14   up OD 9A, page 61 and 62.

15                               So, you'll see at 146 at the  
16   bottom -- and I actually think it would be useful  
17   to go into the actual document just so you can see  
18   it all in one place.  It is CIM16163.  So, this is  
19   August 30, 7:11 p.m. and there's attachments to  
20   this document, but what Mr. McGuire says to you  
21   is:

22                               "Hi, Brian.  This is a  
23                               study of the RHVP prior  
24                               to opening.  FN is around  
25                               mid 30s."

1                   So, this is just a couple of  
2    days after the discussion. August 27 is a Monday.  
3    August 30 is a Thursday. Did these materials  
4    about friction testing come out of the blue when  
5    you received them, given your conversation on  
6    August 27, or were you expecting something about  
7    friction testing from Mr. McGuire?

8                   A. My recollection is  
9    Mr. McGuire said he was going to send me some  
10   materials, so I'm assuming this is it --

11                  Q. Okay. And were you  
12    expecting friction-related materials to come?

13                  A. I'm not sure I was, no.

14                  Q. Okay. So, looking below  
15    Mr. McGuire's e-mail to you is an e-mail from  
16    Dr. Uzarowski to Mr. Moore on January 21, 2014.  
17    And when you received this e-mail from  
18    Mr. McGuire, did you recognize the underlying  
19    e-mail from Dr. Uzarowski to Mr. Moore?

20                  A. Not immediately. Fairly  
21    quickly after but -- you know, I, shortly after  
22    receiving it and reviewing it, concluded or  
23    realized it was the same e-mail that Mr. Moore had  
24    sent me back in August of 2015.

25                  Q. That's right. Registrar,

1 can you bring up OD 7, page 36, I was going to say  
2 side by side. Thank you.

3 So, you'll see this was from  
4 your past evidence, August 7, 2015, Mr. Moore  
5 forwarded you an e-mail and that e-mail was an  
6 e-mail from Dr. Uzarowski to Mr. Moore on  
7 January 24, 2014 and it had two spreadsheets and a  
8 paper, and Mr. McGuire's e-mail had two  
9 spreadsheets and a paper.

10 Was that part of the  
11 triggering that you had already seen these  
12 documents? Sorry, I can rephrase that if that  
13 wasn't clear.

14 A. They appear to be exactly  
15 the same, yes. It's from the same author, same  
16 date, same time, same from and to, the content is  
17 the same.

18 Q. Yes. Okay.

19 A. I was going to say it  
20 took me a minute to realize it.

21 Q. Right. Registrar, you  
22 can close down the right-hand side and you can  
23 leave up the left-hand side. Actually, no. You  
24 can close this down as well and if you can go back  
25 into OD 9A, page 61 and 62.

1                   At the bottom of page 62,  
2     there is reference to a different document,  
3     Dr. Uzarowski's December 17, 2015 to Mr. Moore,  
4     which attached the Tradewind report.

5                   Registrar, could you bring up  
6     62 and 63, please, together. Thank you.

7                   So, Mr. Malone, the e-mail  
8     that we were just looking at from Mr. McGuire is  
9     from 7:11 p.m. on August 30. This other document,  
10    in its native format, has a banner that says you  
11    forwarded this message on August 30.

12                  Registrar, can you call out  
13    the snip, the screenshot at the top of page 63.

14                  And you see in between  
15    Dr. Uzarowski and Mr. Moore's name and the  
16    attachment there's a reference to you forwarded  
17    this message on 2018/08/30. Do you see that?

18                  A. I do, yeah.

19                  Q. And it says the forward  
20    time was at 7:13 p.m. Looking at this document,  
21    it's the same to and from as the other document  
22    but it's different content. Did you receive a  
23    copy of this document from anyone at the City on  
24    August 30 at 7:13 p.m.?

25                  A. No. I don't believe I've

1 ever received this. And please assist me and make  
2 sure I'm understanding your question correctly.

3 There's an e-mail from Mr. McGuire at 7:11.

4 Q. That's right.

5 A. 19:11 hours on my e-mail.

6 Q. Yes.

7 A. Which includes the  
8 Dr. Uzarowski e-mail to Mr. Moore from 2014 and  
9 this is another or different version of that  
10 e-mail being forwarded on the same day?

11 Q. Perhaps, Registrar, if  
12 you could leave up this call out and if you could  
13 just go back to page 61. Actually, no. If you  
14 could go back to CIM16163 and just open that up so  
15 that Mr. Malone -- no, Registrar. Thank you,  
16 Registrar. If you could call out Dr. Uzarowski,  
17 his e-mail, the bottom half of the left-hand page.  
18 Thank you. And then if you could call out the top  
19 of page 63.

20 So, Mr. Malone, just so that  
21 it's very clear for you, the e-mail on the left  
22 side is the one that Mr. McGuire forwarded to you  
23 at 7:11 on August 30. The other e-mail, which has  
24 different content and a different attachment, was  
25 forwarded on August 30 at 7:13 p.m., and the

1 information the inquiry has about this document is  
2 that it was provided to you inquiry by the City  
3 and that it has this native format. That is the  
4 totality of information we have, and so you can't  
5 be the person who forwarded it because it's a City  
6 document and I'm asking if you received it?

7 A. No.

8 Q. Okay. Thank you. I just  
9 wanted to make sure that you have all of the  
10 information to be able to provide that answer.

11 I also understand that there  
12 may be an issue with the YouTube feed or the  
13 connection. And, Commissioner, I know it's a  
14 little early for lunch, but given what I  
15 understand to be a potential technical issue, I'm  
16 wondering if this might be an appropriate time for  
17 lunch?

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

20 MS. LAWRENCE: I'm also happy  
21 to take five minutes now and see if we can fix the  
22 technical thing and come back, but it is 20 --

23 JUSTICE WILTON-SIEGEL: It  
24 might be just as efficient if we took the break  
25 now and let's return at 2:00 instead of 2:15.



1 --- Luncheon recess taken at 12:40 p.m.

2 --- Upon resuming at 2:06 p.m.

3 THE WITNESS: Ms. Lawrence?

4 BY MS. LAWRENCE:

5 Q. Yes.

6 A. Over the lunch hour I was  
7 recalling the discussion just previously and was  
8 concerned that you would appear to believe that I  
9 was not consistent with my statement of  
10 anticipated evidence. And I welcome the  
11 opportunity to provide a brief explanation as to  
12 why I think I am consistent with it and perhaps to  
13 clarify how and what I had responded.

14 Q. Certainly. I was going  
15 to move on to the September 4 e-mail, but before  
16 the break I did ask you about September 27 and if  
17 there's additional information you would like to  
18 provide to the inquiry, please go ahead.

19 A. Thank you. So, on  
20 September 27, there was discussion of a range of  
21 things in this conversation with Mr. McGuire. I  
22 did state in my statement of anticipated evidence  
23 and I agree that there was some discussion about  
24 wet road collisions and the potential link between  
25 surface friction values and wet road collisions,

1 so there was discussion of friction in that  
2 context.

3 I also stated in my statement  
4 of anticipated evidence that I did not think, I  
5 did not recall, any discussion of Mr. McGuire  
6 mentioning reports that analyzed friction data.  
7 And my response to the question when put to me,  
8 which I understood to be whether Mr. McGuire had,  
9 at the discussion, had included context of  
10 friction testing values and such, potentially  
11 including the Tradewind report, and my answer was  
12 no and it remains no. I don't have a recollection  
13 of that from the meeting of the 27th. It's clear  
14 from the memo, the e-mail rather, of September 4,  
15 that I make reference to a conversation that  
16 occurred at the meeting on the 27th, and so I  
17 fully accept that there's some, was some  
18 discussion that took place, which I reference on  
19 September 4. I just don't recall that discussion  
20 when you asked me about the meeting on the 27th of  
21 August. So, I'm hoping that clarifies it and  
22 perhaps it's just me being too literal in the  
23 connection between the specific dates and the  
24 overall context of input. And if we're moving to  
25 September 4, maybe that will provide

1 clarification.

2 Q. It may. Before we get  
3 there, you said that you agree that you had some  
4 discussion with Mr. McGuire about wet road  
5 collisions and the potential link between surface  
6 friction values and wet road collisions and there  
7 was discussion of friction in that context. Can  
8 you please explain in a little more detail what  
9 exactly that discussion entailed?

10 A. I think Mr. McGuire had  
11 asked for, sort of, a summary of some of the  
12 previous work that CIMA had done, and I guess I'm  
13 not sure how familiar he was with the 2013 report,  
14 the 2015 report and so on, so I had given him some  
15 summary of those previous findings and I had also,  
16 to my recollection, you know, given the overview  
17 of the potential connection between wet road  
18 collisions, which were noted in the proportions  
19 we've discussed, and friction values on the road  
20 surface, the potential linkage.

21 What I'm saying is I think I  
22 gave him some context to the previous work that  
23 had been done by CIMA prior to, which, in my view,  
24 my understanding, is quite different than  
25 discussion of was there friction testing, is there

1 additional friction testing information. I don't  
2 have recollection of that component of  
3 conversation. I know the meeting took place, I  
4 recall it, I remember elements of it, I just don't  
5 remember all of the aspects and I did not recall  
6 precisely what you were asking or what I  
7 understood you to be asking with respect to  
8 friction testing and that information.

9 Q. Okay. So, just as  
10 another matter of clarity, do you recall  
11 Mr. McGuire providing you with any information  
12 that left you with the impression that the City  
13 had undertaken friction testing that you at the  
14 time were not aware of?

15 A. I don't have recollection  
16 of that occurring at the meeting. My recollection  
17 is that it concluded with him saying he was going  
18 to provide me with some additional information,  
19 which was delivered on the 30th and I responded to  
20 on the 4th. And the e-mail on the 4th would  
21 appear to reflect that, you know, he had discussed  
22 additional testing, which I think I had  
23 understood, as I say in the memo on the 4th, to be  
24 additional testing by the City, but I don't have  
25 the recollection of that occurring on the 27th. I

1 have the acknowledgement of it in the e-mail on  
2 the 4th, but I realize that's splitting hairs  
3 perhaps.

4 Q. No. Your recollection  
5 versus what your contemporaneous notes say, those  
6 are different things and I think it's important to  
7 understand what your recollection is. Let's go to  
8 that document, though, to see if we can perhaps  
9 provide some additional context that may assist  
10 you.

11 A. Thank you.

12 Q. Let's go to OD 9A,  
13 page 72 and 73, please. Registrar, if you could  
14 pull out paragraph 175, please. Thank you.

15 So, Mr. Malone, this is the  
16 e-mail that we were just speaking about. So, you  
17 received the e-mail from Mr. McGuire on August 30  
18 at 7:11 p.m., which is a Thursday, and you respond  
19 on September 4, which is a Tuesday, and it is the  
20 Tuesday after Labour Day, if that assists you with  
21 your potential recollection.

22 A. Not really, but...

23 Q. You never know what might  
24 trigger a memory. You say:

25 "These appear to be test

1 results from 2007 that  
2 were done by the MTO at  
3 the time when the RHVP  
4 was being finished  
5 pre-opening."

6 So, certainly, and we won't go  
7 back and look at them, but I think it's undisputed  
8 that the two attachments to the e-mail that  
9 Mr. McGuire sent you were the MTO tests. Is that  
10 what you're referring to?

11 A. It is the same content as  
12 what had been sent by Mr. Moore, so that was my  
13 understanding, yes.

14 Q. Okay. And you go on to  
15 say to Mr. McGuire:

16 "Mr. Moore provided these  
17 to me in August of 2015  
18 before we completed the  
19 two safety report in  
20 2015. Unfortunately they  
21 failed to offer an  
22 ability to quantify any  
23 friction problem that may  
24 be the source of the  
25 collision performance."

1                   So, just stopping there, you  
2    have this reference to this source of the  
3    collision performance. Is that the context of the  
4    conversation that you believe you had on  
5    August 27, collision performance and its  
6    relationship to friction?

7                   A. I think it probably  
8    should have been clearer that the -- relating to  
9    wet road collisions.

10                  Q. Okay. But that was  
11   the -- you discussed that concept of the  
12   relationship between wet weather collision  
13   performance and friction with Mr. McGuire on the  
14   27th?

15                  A. It appears so, yes.

16                  Q. Okay. You then reference  
17   the ASTM, the 274 testing protocol and you  
18   reference FHWA guidance, so those are both about,  
19   sort of, friction testing methodologies, put  
20   broadly. Then you have the next paragraph, which  
21   is on the right-hand side, where you say:

22                                "What is missing when we  
23                                reviewed these figures  
24                                back in 2015 is an  
25                                identification of a

1 threshold or relative  
2 comparison?"  
3 So, just stopping there, as  
4 you're preparing this on the Tuesday morning after  
5 Labour Day, do you go and fish out the e-mails  
6 that you exchange with Mr. Moore back in 2015 when  
7 you were trying to get clarity about what exactly  
8 he was giving you?

9 A. I'm pretty sure I must  
10 have because I don't know if it's taken from the  
11 previous e-mail, but I think elements of it are  
12 the same question. I guess I was trying to relay  
13 to him how I had and what question I had posed to  
14 Mr. Moore.

15 Q. Yes. I'm going to  
16 suggest to you it's fairly detailed to just to be  
17 pulled from your memory, I think.

18 I'm going to come back to that  
19 and what you say in that paragraph in a moment,  
20 but just going down -- actually, I'm going to pull  
21 up -- Registrar, if you wouldn't mind, I'm going  
22 to pull up the exchange you had with Mr. Moore  
23 back in 2015.

24 Registrar, if you can go to  
25 OD 7, page 39. I'm sorry, I wasn't clear. If you



1 could also keep up OD 9A, page 73. Perfect.

2 Thank you.

3 So, Mr. Malone, we went  
4 through this in some detail in your last  
5 examination. So, the top half of page 39, this is  
6 the back and forth that you had with Mr. Moore in  
7 which you had posed questions to him in the black  
8 text and then he responded in the red text. Do  
9 you remember that exchange with Mr. Moore back in  
10 2015?

11 A. I remember the e-mail and  
12 vaguely the interaction, yes.

13 Q. Okay. And it would have  
14 been this set of e-mails that you would have  
15 pulled up in order to respond to Mr. McGuire in  
16 2018?

17 A. Yes. I'm sure I pulled  
18 out the e-mail that Mr. Moore had provided with  
19 the attachments from Dr. Uzarowski, the attached  
20 e-mail, and this would have been in that thread,  
21 yes.

22 Q. Okay. So, looking at --  
23 Registrar, can you actually call out the e-mail in  
24 paragraph 116, just so it's a little bit bigger  
25 for us. Thank you.

1                   So, back in 2015 you reference  
2    and you ask if you're correct that FN numbers less  
3    than 30 are below a desired level.

4                   And, Registrar, sorry, can you  
5    also call out page 73 just so we can  
6    cross-reference and if you can call out the  
7    paragraph that is what is missing. Yes, exactly,  
8    so we have those beside each other. Thank you.

9                   So, you say:

10                   "Am I correct the FN  
11                   numbers of less than 30  
12                   are below desired level?"

13                   And Mr. Moore responded:

14                   "Only MTO can tell you  
15                   that. They keep this  
16                   info close. Seems to be  
17                   the case."

18                   And then in 2018 you say:

19                   "The paper does make  
20                   brief mention to expected  
21                   FN values of 30. Gary  
22                   may have had the view  
23                   that because the RHVP  
24                   values were higher than  
25                   that, that they were

1 acceptable, however, when  
2 I asked what values MTO  
3 use as acceptable, he  
4 said he did not know."

5 And that reflection of  
6 Mr. Moore not knowing is in the first full  
7 paragraph back in 2015, so it does look like  
8 there's a fair bit of back and forth between the  
9 2015 and then what you are saying in 2018?

10 A. Yeah. As I had stated  
11 previously, the e-mail I received from Mr. McGuire  
12 in 2018, took me a moment to recognize it, but I  
13 realized it was the same content that I had  
14 received from Mr. Moore.

15 Q. Okay. So, back in 2015  
16 with Mr. Moore, one of the things that you were  
17 trying to understand from him is the 2013 testing  
18 values that are in the e-mail compared to the 2007  
19 testing values that were in the spreadsheet, and  
20 you'll see in this e-mail that we have up, in 2015  
21 you said:

22 "The 2013 testing values  
23 certainly look higher.  
24 Are they done using the  
25 same methodology and tool

1 as the MTO work and thus  
2 could be directly  
3 compared?"

4 And Mr. Moore responds:

5 "The testing was done by  
6 MTO both times, so I  
7 would say they are  
8 comparable."

9 We had a long discussion about  
10 this in your last examination that you understood  
11 from Mr. Moore's response that the MTO had  
12 completed testing in 2007 and then testing in  
13 2013, which was referenced in the chart in the  
14 e-mail. Do you remember that?

15 A. Yes, and that the 2013  
16 testing, he confirmed, was also done by MTO.

17 Q. Yes. And so, here with  
18 Mr. McGuire, you've gone through. Did you turn  
19 your mind back to the fact that was 2013 testing  
20 referenced in the e-mail Mr. McGuire had just sent  
21 you?

22 A. I was aware of it because  
23 it was the same stuff that Mr. Moore had sent me,  
24 so my understanding of it was, as was concluded in  
25 2015 from Mr. -- the back and forth with

1 Mr. Moore, that they were -- both of the sets of  
2 tests from 2007 and 2013 reflected testing done by  
3 MTO.

4 Q. Okay. Registrar, can you  
5 close out the left side call out and call out the  
6 next full paragraph on page 73. Perhaps I  
7 misunderstood. And can you close the call out on  
8 39 and close 39 and, on the right-hand side, if  
9 you could bring up OD 9, page 61. I'm sorry,  
10 OD 9A, page 61. And if you could pull out 146,  
11 please.

12 So, Mr. Malone, just so we  
13 have all this in the same place, you know, when  
14 you get this e-mail from Mr. McGuire that there  
15 are two sets of friction data in the e-mail. One  
16 is in the spreadsheets from 2007 and referenced in  
17 the e-mail, and the other is the 2013 testing,  
18 which you understand from Mr. Moore was conducted  
19 by MTO?

20 A. Yes. I think that's  
21 correct.

22 Q. And, Mr. McGuire, when he  
23 sent it to you, says:

24 "This is a study of the  
25 RHVP prior to opening.

1 FN is around mid 30s."  
2 And in your response, you say:  
3 "Perhaps I misunderstood.  
4 I thought you said that  
5 additional testing had  
6 been done either in 2014  
7 and subsequent to the  
8 November 2015 CIMA report  
9 that recommended friction  
10 testing. If those exist,  
11 then a comparison of the  
12 two can be done.  
13 Additionally, if LINC  
14 testing is available from  
15 2007 or more recently,  
16 there's also a possible  
17 means of comparison."

18 So, I'm confused as why you  
19 would be referencing additional testing that had  
20 been done in 2014 or 2015 without also noting for  
21 Mr. McGuire that there was testing done in 2013  
22 that's contained in the body of the e-mail. Can  
23 you explain that?

24 A. As I say, I don't recall  
25 precisely the discussion at the meeting. The way

1 the e-mail is worded, it would appear that I had  
2 an impression that Mr. McGuire was going to be  
3 sending me something new. And upon seeing it and  
4 realizing what it was, I realized it was the same  
5 as what I had received before, so there was  
6 nothing new provided to me.

7 I don't know where I came to  
8 the conclusion or determination that either in  
9 2014 or subsequent to the 2015, but perhaps I was  
10 asking it in the context of the knowledge that we  
11 had recommended friction testing in 2013 but again  
12 in 2015.

13 Q. Okay. But you also had  
14 the knowledge that test had been conducted in 2013  
15 and you don't note that in your e-mail back to  
16 Mr. McGuire. You say:

17 "If those exist -- "  
18 That is, if additional testing  
19 exist:

20 " -- then a comparison of  
21 the two can be done."

22 But you already know that  
23 there's two sets of data?

24 A. No, but the two sets of  
25 data are MTO data. They're not City data, so

1 there's nothing new in what's been provided to me  
2 in this e-mail.

3 Q. How do you know that  
4 Mr. McGuire knows that if he only references a  
5 study on the RHVP prior to opening?

6 A. Because the e-mail that  
7 he forwarded to me had the two components in it.

8 Q. Did you have any  
9 discussions with Mr. McGuire at any point before  
10 sending the e-mail on September 4 about 2013  
11 testing data?

12 A. Not to my recollection,  
13 no. I mean, the e-mail I received on August 30  
14 was Mr. McGuire forwarding the e-mail from  
15 Dr. Uzarowski, the same one I got from Mr. Moore,  
16 so presumably he knew and understood and had read  
17 the content of that e-mail and recognized that it  
18 contained the 2007 and the 2013 testing. My  
19 understanding of those two testing components done  
20 were both done by MTO. I'm not sure Mr. McGuire  
21 understood that, but -- and perhaps these notes  
22 are not clear in articulating that, but yeah, it  
23 appeared obvious to me that he knew there was two  
24 sets of testing that he sent in the e-mail that he  
25 sent to me.



1 Q. Thank you. Turning now  
2 to the very first part of the call out on page 73:  
3 "Perhaps I misunderstood  
4 you last Thursday when we  
5 talked."

6 So, again, looking at these  
7 two documents, I think you have said that you're  
8 sure that you had a meeting in Mr. McGuire's  
9 office on the 27th after the lighting study  
10 meeting, and on August 30 at 7:11 p.m.,  
11 Mr. McGuire sends you a very sparse e-mail that I  
12 think you said earlier was out of the blue.

13 Is it possible that you spoke  
14 to Mr. McGuire on the afternoon of August 30  
15 before he sent the e-mail to you with Mr. Moore  
16 and Dr. Uzarowski's exchange?

17 A. Anything is possible. I  
18 don't have a recollection of that. The conclusion  
19 of the meeting on the 27th, as I stated in my  
20 earlier interview, was that I understood  
21 Mr. McGuire going to send me something, send me  
22 more material or something to that effect was his  
23 wording. So, the receipt of the e-mail on the  
24 30th with the attachment that we're talking about  
25 was not a surprise, other than the content was --

1 like, getting an e-mail was not a surprise. The  
2 content of the e-mail being the same as what I had  
3 received in 2015 from Mr. Moore was not obviously  
4 what I expected based on my response back to him.

5 Q. Okay. So, I'm going to  
6 suggest to you that there was some discussion on  
7 the 27th and that Mr. McGuire contacted you on  
8 August 30 before he sent the 7:11 p.m. e-mail, and  
9 in that e-mail you understood him to say that  
10 additional testing had been done either in 2014 or  
11 subsequent to the 2015 CIMA report that  
12 recommended friction testing. Do you think that  
13 is likely, that that is actually the chronology  
14 here, that there was two calls with Mr. McGuire  
15 or, sorry, one meeting with Mr. McGuire, one call  
16 with Mr. McGuire and then an e-mail from  
17 Mr. McGuire?

18 A. I'm not sure. I could  
19 agree that it's likely. It's possible. But my  
20 recollection was a physical meeting after the  
21 lighting committee or discussion meeting, progress  
22 meeting, on the 27th. The reference in this  
23 e-mail on the box on the top is "last Thursday  
24 when we talked," so that would appear to be the  
25 reference to the communication as opposed to the

1 30th. It's possible. You know, anything is  
2 possible, but I don't have a recollection of it,  
3 if it occurred.

4 Q. Okay. So, you would  
5 agree with me that on Tuesday, September 4, you're  
6 not likely to misremember the date that you spoke  
7 to someone the week before. Is that fair? You  
8 seem pretty diligent with your notebooks and with  
9 the way you presented evidence that, you know, you  
10 don't make mistakes like that. Would you agree  
11 with that?

12 A. I'm not sure I'm  
13 understanding the question first. So, you're  
14 saying the box on the top says understand I spoke  
15 to you last Thursday, which --

16 Q. Yeah.

17 A. -- if I've got my dates  
18 right, is the 27th.

19 Q. No, it's the 30thth.

20 A. I'm sorry. Okay.

21 Q. Sorry, just taking a step  
22 back, on Tuesday, September 4, you write to  
23 Mr. Moore that last Thursday, which is August 30  
24 in the calendar, that's the reference, it's  
25 August -- it's last Thursday, which would be

1 August 30. You met with Mr. McGuire on August 27  
2 at his office, and that's why I'm suggesting to  
3 you that on the Tuesday after, five days later,  
4 you wouldn't have miswrote the date that you spoke  
5 to Mr. McGuire. It's just four or five days  
6 later. Given how diligent you are with your  
7 notebooks, you would have remembered which day you  
8 spoke to him. Right?

9 A. Probably. So, if the  
10 Thursday was the 30th, that's potentially the date  
11 when the communication took place.

12 Q. Okay. And does that  
13 assist you in refreshing your memory about whether  
14 you spoke to Mr. McGuire before he sent you the  
15 e-mail at 7:11 p.m.?

16 A. I would have to check my  
17 diary and see if I made any note that would  
18 refresh me. I don't have a specific recollection  
19 of that date at this time.

20 Q. Okay.

21 A. But, you know,  
22 potentially if there was a communication, there  
23 would be a note and I would have relayed that, if  
24 I had had it already. I can't recall every page  
25 that's been forwarded to the inquiry, but if it's

1     there --

2                             Q.     You've been very  
3     cooperative in providing your notes and if I had a  
4     note to provide to you to help you refresh your  
5     memory, I would.

6                             A.     So, you know, not  
7     everything gets recorded. I'm not nearly as  
8     diligent as you would suggest. But anyways, I'll  
9     accept that Thursday was the 30th and if that  
10    indicates when we talked, then I'll accept that's  
11    an indication when we likely had a conversation.

12                            Q.     Okay. And I'm just going  
13    to ask this for comprehensiveness. Did that  
14    conversation immediately precede receiving this  
15    relatively sparse e-mail from Mr. McGuire?

16                            A.     I still think the receipt  
17    of the e-mail was understood by me to occur at the  
18    post-meeting meeting, which occurred on Tuesday,  
19    whatever day that was. If it was in fact on the  
20    Thursday, the 30th, that it was indicated it was  
21    going to be coming, then so be it. I don't have a  
22    recollection of a discussion on the 30th and I  
23    have limited recollection of the discussions that  
24    took place only a couple of days before that.

25                            Q.     Okay. I'm going to close

1 this out, both of these, and if you can go,  
2 Registrar, to page 71, please. Can you bring up  
3 72 as well, please.

4 So, just before you respond to  
5 Mr. McGuire, the e-mail that we just spent a fair  
6 bit of time on, on September 4, prior, earlier in  
7 the day on September 4, you wrote to several  
8 colleagues, I think not all of them in your office  
9 at CIMA, with the subject line pavement friction  
10 testing and pavement design. And you say to them:

11 "City of Hamilton is  
12 asking us for assistance  
13 in interpreting pavement  
14 friction testing results  
15 they have received. Does  
16 anyone at CIMA have  
17 expertise in this subject  
18 area?"

19 I'm sorry, I jumped over a  
20 line:

21 "The issue may expand to  
22 discussions about  
23 pavement design as well."

24 And then you say:

25 "Does CIMA have anyone

1 with expertise in this  
2 area?"

3 Just stopping there, you did  
4 not personally have expertise with interpreting  
5 pavement friction testing results in  
6 September 2018, did you?

7 A. No.

8 Q. You say in this e-mail --  
9 so, you've received the August 30 e-mail from  
10 Mr. McGuire and you say:

11 "The City of Hamilton is  
12 asking us for assistance  
13 in interpreting pavement  
14 friction testing results  
15 that they have received."

16 We were just looking at that  
17 very sparse e-mail from Mr. McGuire that says here  
18 is the study from 2007, FN in the 30s. What led  
19 you to tell your colleagues that the City of  
20 Hamilton was asking for assistance in interpreting  
21 pavement friction testing results?

22 A. I think I was still of  
23 the understanding that Mr. McGuire was asking  
24 questions in the realm of a potential repaving of  
25 the roadway and pavement design and inputs that

1 would be utilized in that, including things like  
2 friction values. So, the discussion, the reaching  
3 out to the colleagues, was essentially for me to  
4 trying to understand what expertise we had within  
5 the company in that subject matter area.

6 Q. Thank you. I understand  
7 the reach out to your colleagues. My question was  
8 different. You say:

9 "The City of Hamilton is  
10 asking us for assistance  
11 in interpreting pavement  
12 friction testing  
13 results."

14 How did you come to  
15 characterize Mr. McGuire's e-mail of August 30,  
16 which is a two line e-mail, as the City of  
17 Hamilton asking CIMA for assistance in  
18 interpreting pavement friction testing results?

19 A. I think I made the leap  
20 that by sending it to me, Mr. McGuire was seeking  
21 input as to what to do with it, how to use it.  
22 And I've interpreted, stated it, that way to my  
23 colleagues, in the way that I did to my  
24 colleagues.

25 Q. There was no express



1 request from Mr. McGuire in either your meeting on  
2 August 27 or any subsequent discussions you may  
3 have had on, quote, unquote, last Thursday?

4 A. Last Thursday being  
5 August 30. I don't have a recollection of a  
6 discussion on August 30 and I have that limited  
7 recollection on the 27th. I don't think it  
8 occurred in the way you're describing on the 27th,  
9 based on what I do recall of that meeting. But on  
10 the 30th, you know, that's a potential. I don't  
11 have a recollection of that discussion, if it did  
12 occur.

13 Q. Okay.

14 A. Obviously I would add  
15 that Mr. McGuire hopefully can shed some light on  
16 it.

17 Q. You get some responses  
18 from your colleagues at the top of 72:

19 "Justen and Dan should be  
20 able to help. They have  
21 some decent experience  
22 with these parameters."

23 And you say:

24 "We may need to have a  
25 quick discussion on the

1 scope of the issue."  
2 Mr. Lalach responds and says  
3 in respect of another colleague, Dan Dmytryshyn,  
4 that he is, Dan is, away, but would set up a call  
5 with Justen and have an initial discussion. And  
6 then Mr. Lalach also notes that Geoff Petzold from  
7 Edmonton has some -- it says "payment" but I think  
8 it's supposed to be "pavement," background as  
9 well.

10 Sitting here today, what  
11 exactly did you think at the time the scope of the  
12 issue would be that would lead to a call?

13 A. Essentially what I just  
14 stated, that there's a potential project here for  
15 CIMA in dealing with pavement resurfacing of the  
16 Red Hill Valley Parkway as an assignment. CIMA,  
17 the question in my mind at this point, is does  
18 CIMA have expertise to be able to assist and/or  
19 obtain that assignment. And my counterparts in  
20 the western provinces have done much more work in  
21 this area, and therefore they're the types of  
22 folks. Highway design, highway pavement design  
23 work is something that they had much more  
24 familiarity with.

25 Q. Okay. Mr. Petzold

1 reaches out to you on September 10, so we're still  
2 at September 4, so about a week later, and I'll  
3 come to that in a moment, but just before I do,  
4 between September 4 and September 10, did you have  
5 discussions with anyone at CIMA about this  
6 potential business opportunity?

7 A. I don't think so. I  
8 would have to double check my notes and, if I  
9 stated so in my statement of anticipated evidence,  
10 please let me know. I don't recall, so no.

11 Q. Okay. Registrar, can you  
12 go to page 74, please.

13 At the top of this page is the  
14 reference to the e-mail I was just mentioning. It  
15 was from Mr. Petzold. Do you recall having one or  
16 more phone calls with Mr. Petzold about this issue  
17 after he reached out to you on September 10?

18 A. I'm pretty sure I did. I  
19 can't recall exactly when they were, unless  
20 they're noted, but yeah, I believe we spoke at  
21 some point.

22 Q. Did you ask him to  
23 prepare -- sorry, I'll start with this question.

24 Did you give him any materials  
25 to review for your calls?

1                   A.    I may have relayed the  
2    e-mail that Mr. McGuire sent to me.  If I did, it  
3    would be in the e-mail folder, all of which has  
4    been provided to the inquiry.

5                   Q.    We don't have any  
6    indication that you did.  What do you recall about  
7    the discussion that you had with Mr. Petzold, if  
8    anything?

9                   A.    I think, sort of, two  
10   realms.  One is the friction sort of pavement  
11   design elements, potential project with respect to  
12   repaving of the roadway.  And the second one was  
13   the provision of information relating to friction  
14   testing and how possibly that comes into play in  
15   use either in that assignment or in assisting  
16   Mr. McGuire in understanding what that information  
17   means?

18                  Q.    Okay.  Were you seeking  
19   to better understand friction issues from  
20   Mr. Petzold or were you trying to tell him I may  
21   come to you with an assignment in the future?

22                  A.    I think maybe a little  
23   bit of both.  The assignment in the future was  
24   certainly something that I was thinking about, but  
25   I hadn't met or spoken to Mr. Petzold before this

1 series of interchanges. And so, I was trying to  
2 understand what his knowledge was and how he could  
3 potentially be of assistance in matters of this  
4 nature.

5 Q. Okay. Did you have any  
6 discussions with him about whether FN30 was indeed  
7 a threshold that had some relevance or usefulness?

8 A. I don't think at this  
9 point. Maybe there is some subsequent discussion  
10 that takes place, but not at this stage, I do not  
11 believe.

12 Q. Registrar, can you go to  
13 page 70, please.

14 On August 31, Dr. Omrani  
15 e-mailed Mr. Cooper about the speed limit study  
16 and included an OneDrive link to the draft report.  
17 Did you review this report before it was sent to  
18 the City?

19 A. I didn't review it. I  
20 wasn't an author, verifier or reviewer. I didn't  
21 sign off on it --

22 Q. Okay. Did you have --

23 A. I have seen it and I did  
24 read it, but I wasn't a reviewer in terms of  
25 review and approval.

1 Q. Is that to say that you  
2 read it in draft before August 31, 2018, before it  
3 was delivered to the City?

4 A. I don't know. I can't  
5 say whether I did or not prior to the delivery.  
6 I'm pretty sure I did not.

7 Q. Do you recall having any  
8 conversations with Dr. Omrani about the collision  
9 analysis in the lighting study that was starting  
10 to come together and its potential impact on the  
11 speed limit on the Red Hill?

12 A. Sorry, I'm not sure I  
13 understood a single question. I heard a couple of  
14 different things in there. Can you clarify the  
15 question, please?

16 Q. Sure. I said: Do you  
17 recall having any discussions with Dr. Omrani  
18 about the collision analysis in the lighting  
19 study?

20 A. Yes, I did.

21 Q. Before he sent the speed  
22 limit study?

23 A. That, I can't answer. I  
24 don't know that. So, the first part was certainly  
25 to discuss the collision analysis that was done as

1 part of the lighting study. I don't know if I had  
2 a discussion with him regarding the collision  
3 analysis done in the speed limit study and  
4 certainly don't know whether -- if that took  
5 place, whether or not it took place before it was  
6 delivered.

7 Q. Okay. Did that  
8 discussion include a discussion about whether the  
9 speed limit should be reduced as a result of the  
10 collision history that CIMA was seeing in the  
11 lighting study?

12 A. That's got a couple of  
13 turns in it.

14 Q. I can break it down if  
15 you're confused.

16 A. If you could, please.

17 Q. Sure. So, by this point,  
18 the lighting study, just a couple of days before  
19 Dr. Omrani sends this to the City, sends the speed  
20 limit study to the City, you report at the  
21 presentation that the collision analysis on the  
22 lighting study is done and it has a continued high  
23 proportion of wet weather collisions.

24 Before Dr. Omrani sent the  
25 speed limit study, did you have any discussions

1 with him about the collision analysis that you're  
2 seeing and whether that collision analysis should  
3 impact whether the speed limit should be reduced?

4 A. I don't recall having  
5 that discussion. He and I did discuss the  
6 collision information that was in the lighting  
7 study and I know there's collision information in  
8 the speed limit study. I don't have a  
9 recollection of discussing with him what you just  
10 asked, whether or not collision information in the  
11 lighting study should be used in the speed limit  
12 study. The speed limit study had its own input  
13 and it had access to the analysis that had been  
14 done for collisions.

15 Q. Okay. And what did you  
16 discuss with Dr. Omrani about the collision  
17 analysis in the lighting study?

18 A. What the results were. I  
19 was more intimately involved in the lighting  
20 study, and so I believe we reviewed and discussed  
21 the findings from the collision analysis that was  
22 included in that.

23 Q. Okay. Registrar, can you  
24 call up CIM22413, please, and if you can go to  
25 image 25, please.



1                               So, these are your --  
2     actually, can you go to image 24, please.

3                               These are notes that occur in  
4     September. This is September 20 and it says  
5     preparation meeting, and I think that this is a  
6     preparation meeting for a meeting that CIMA  
7     colleagues are going to have with the City about  
8     the lighting study. It's the lighting study code  
9     at the top. Is that right? Am I understanding  
10    the way that you organize your notes correctly?

11                              A.     That's my recollection.  
12    This is an internal or a preparation meeting that  
13    CIMA staff are going to have prior to an upcoming  
14    meeting, confirming the agenda, so on and so  
15    forth.

16                              Q.     Thank you. Can you go to  
17    image 25 now, please.

18                              This is from September 4. Do  
19    you have any recollection about what the reference  
20    to December 10 is?

21                              A.     I think it's a notation  
22    that it was going to be or was being asked or had  
23    been asked to attend a committee meeting where the  
24    contents of CIMA's report, the lighting report in  
25    particular, was going to be presented, I think.

1 Q. Okay. Registrar, could  
2 you close this out and go to OD 9A, page 77,  
3 paragraph 186, please.

4 So, on September 25 is the  
5 third progress meeting on the lighting study.  
6 Mr. McGuire, Mr. Field, Mr. Parma, Mr. Lamont,  
7 you, Ms. Haslett, Dr. Omrani and  
8 Mr. Brouillette -- I can't remember how you told  
9 me to pronounce his name -- were all present?

10 A. Brouillette.

11 Q. Brouillette. Is  
12 Mr. Brouillette present by phone?

13 A. Skype, yes.

14 Q. Okay. You can close this  
15 out, Registrar, and if you could bring up  
16 CIM16848, please.

17 So, these are your notes. So,  
18 it seems you're moving your practice when you  
19 attend meetings to taking typewritten notes rather  
20 than your notebook. Is that a practice change  
21 that you made?

22 A. I was trying to it out.

23 Q. So, not consistently?

24 A. No, not consistently. It  
25 was -- it worked on some occasions, not on others.

1 Q. Okay. Registrar, can you  
2 bring up the next page of this as well, please, so  
3 two pages up. Thank you.

4 Do you recall any discussion  
5 of friction at this meeting?

6 A. I would have to go  
7 through what I have noted --

8 Q. I would direct you to  
9 something if I thought it would assist. I'm  
10 speaking, sort of, more generally.

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

12 Q. Okay. Registrar, could  
13 you bring up the left-hand side between  
14 presentation and environmental impacts. Yes,  
15 exactly there. Thank you.

16 In the middle of this about  
17 halfway in between, it says:

18 "Also noted that  
19 potential income is  
20 impacted if other  
21 treatments are applied,  
22 i.e., pavement changes."

23 Registrar, can you find that.  
24 Thank you. Do you see that?

25 A. I do.

1 Q. Was there discussion at  
2 this meeting that the potential outcome of going  
3 through with an EA and pushing through to  
4 illumination might be impacted by the resurfacing  
5 of the Red Hill?

6 A. I think it's broader than  
7 that, although pavement changes is listed, so if  
8 there are other treatments applied, everything  
9 from enforcement to signing to change to the  
10 pavement, that could possibly change the  
11 operational performance, numbers of collisions,  
12 and therefore, you know, the performance, which is  
13 talking about collision performance, is something  
14 that would possibly be altered not by installation  
15 of lighting but by another treatment.

16 Q. Okay. Registrar, you can  
17 close this call out and if you can call out the  
18 bottom third of the right-hand page, please.  
19 Thank you.

20 So, in the discussion:  
21 "City is likely to bundle  
22 this with other potential  
23 improvements, widening,  
24 median barrier."

25 And then it says:

1 "Attendance at  
2 committee."

3 At this meeting, was it  
4 conveyed to you that the City intended to address  
5 various safety-related initiatives on the Red Hill  
6 with lighting?

7 A. I'm not sure it was  
8 precisely relayed at this meeting. I think what  
9 was -- it had either come at this meeting or  
10 before was a recognition that there's, sort of, a  
11 bunch of different things all happening at the  
12 same time. Speed limit, we were reviewing.  
13 Lighting, we were reviewing. Repaving was being  
14 reviewed by the City and apparently planned to  
15 take place. Median barriers had been discussed at  
16 some point, so there are a whole bunch of things  
17 that are all, sort of, converging as potential  
18 actions, so bundling the improvements would make  
19 sense. You can go in and do lighting and then  
20 come back and do something else, like a median  
21 barrier, because that would possibly impact your  
22 lighting positioning and so on and so forth.

23 Q. I see.

24 A. I'm not sure exactly who  
25 stated this. I suspect it's probably Mr. McGuire.

1 Q. Okay. I think I had  
2 completed two things. The bundling of the actual  
3 implementation and then the bundling of the report  
4 about all of these various things going to council  
5 or going to a committee. Did you understand  
6 coming out of this meeting that there was going to  
7 be, sort of, one report that dealt with a number  
8 of the issues that CIMA was dealing with?

9 A. I'm not sure that was  
10 clear coming out of this meeting. I think it  
11 crystallized fairly soon thereafter, but I'm not  
12 precisely sure when. I think there was a call  
13 from either Gord McGuire or Ed Soldo or perhaps  
14 both, but I think that is later in the game. I  
15 think this is Mr. McGuire realizing that, you  
16 know, wait a minute, there's a bunch of things  
17 going on here. It would make sense to bundle them  
18 together. Maybe they've already concluded that  
19 and I didn't understand it at this point, but --

20 Q. Thank you. That's  
21 helpful. There is a reference to a joint report.  
22 I'm just trying to understand when you first  
23 learned of that and that reference is later.

24 Registrar, you can close this  
25 down.

1                                   Did you have any other  
2 meetings with Mr. McGuire on September 25 to what  
3 you had on August 27?

4                                   A.    If my diary says I did, I  
5 did.

6                                   Q.    Well, your diary didn't  
7 say anything about August 27 either, the meeting  
8 with Mr. McGuire, so --

9                                   A.    Well, the diary would  
10 provide some confirmation if in fact it's there.  
11 As you're asking me the question, I don't recall.  
12 So, if you have that information, you know, please  
13 let me know.

14                                  Q.    Okay.  At the end of  
15 September, the inquiry has received information  
16 that Mr. McGuire opened a copy of, electronic copy  
17 of, the Tradewind report.  At the end of  
18 September, did Mr. McGuire advise you that he  
19 found a copy of the Tradewind report, either by  
20 name or in content?

21                                  A.    No.

22                                  Q.    Registrar, can you go to  
23 page 92 of 9A, please, and if you can bring up 93  
24 as well, please.

25                                  Mr. Malone, this is the

1 initiation of what becomes the roadside safety  
2 assessment. It's by an e-mail from Mr. Ferguson  
3 on October 2 and you'll see that he sends you an  
4 e-mail where he's, sort of, flipping an e-mail  
5 that he's send to Mr. Soldo and Mr. White the same  
6 day outlining the purpose of the study. I'll just  
7 give you a moment to look at this.

8 By this point, given this  
9 e-mail, was it clear to you that the City was  
10 intending to go ahead with repaving on the Red  
11 Hill in short order?

12 A. I think some point  
13 between the August, late August, discussions with  
14 Mr. McGuire and the September discussions which  
15 Mr. McGuire was at where bundling is talked about,  
16 I think it's clear to me that paving, repaving,  
17 and going to take place --

18 Q. Okay. And do you --

19 A. Sorry, I didn't know  
20 timelines at this point.

21 Q. Did you understand there  
22 was some urgency to complete this assessment  
23 that -- maybe I'll stop there. Did you understand  
24 there was some urgency, relatively quick turn  
25 around?



1                   A.    Yeah.  I recall urgency  
2    being, you know, part of the discussion, but that  
3    urgency was connected in my mind to the fact they  
4    were in the process of preparing a contract and if  
5    the -- this is October of 2018, so the paving is  
6    not going to occur in the winter.  It would have  
7    been occur in the summer of the following year,  
8    2019.  But it's a long process to complete the  
9    contracts, the tender, the drawings, and so they  
10   were seeking input from CIMA to go into the  
11   contract to do the repaving, and so that's the  
12   time pressure is, you know, we need this done.  
13   I'm going off the top of my head, but I think they  
14   wanted it done by December 1.  It's quite quick,  
15   was the request.

16                   Q.    It's at the top.  They  
17    wanted it by December 15.

18                   A.    Okay.

19                   Q.    The tasks outline in the  
20    proposal are set out at 235, Registrar, can you  
21    pull up those bullet points.  Does that generally  
22    accord at least at a broad level with the tasks  
23    that you anticipated would be completed by CIMA in  
24    the roadside safety assessment?

25                   A.    Yes, I think so.  Yeah.

1 Q. Okay. Can you explain  
2 briefly how the roadside safety assessment  
3 differed in terms of scope compared to the 2013 or  
4 2015 safety reviews?

5 A. The roadside safety  
6 assessment was a specific task asking for a review  
7 of elements relating to safety, particularly  
8 safety on the roadside, not on the drivable road  
9 surface but on the edges of the road on both  
10 sides, for potential safety improvements because  
11 the road is scheduled to be repaved. And so, the  
12 primary difference in a roadside safety analysis  
13 that was done here as compared to the other  
14 broader road safety audits that were completed is  
15 that you're looking specifically for types of  
16 collisions that involve the roadside, a vehicle  
17 losing control and leaving the roadway, a vehicle  
18 crossing over from one side to the other, as  
19 opposed to, for example, a rear-end collision  
20 where one car drives into the back of another  
21 within the operating lanes. So, your focus is  
22 narrower and specific to types of collisions and  
23 the potential treatments that would be applied to  
24 reduce types of collisions that relate to the  
25 roadside environment, not the roadway environment.

1 Q. Thank you. Did you  
2 anticipate that there might be some necessary  
3 changes to the roadside devices that would arise  
4 out of the RSA? I say necessary for design  
5 compliance purposes.

6 A. Well, yes is the answer.  
7 We knew that the roadway had been constructed in  
8 2007, designed sometime before that. There is  
9 technical guidance available in Ontario and  
10 through others as well, but specifically in  
11 Ontario a guideline published by the Ministry of  
12 Transportation called the roadside safety manual  
13 that was published in 1993 and we knew it had been  
14 updated in 2017 to what's now called the roadside  
15 design manual, instead of the roadside safety  
16 manual. So, anyways, we knew there was an update  
17 in the design guidance and given that the paving  
18 was going to take place after 2017, it would be  
19 imperative to review the existing conditions,  
20 situation, in comparison to the new standard  
21 because you're in there doing work and you  
22 wouldn't want to just leave or replace things  
23 using an old standard.

24 Q. Thank you. So, you  
25 touched on looking at collisions that would

1 involve roadsides, so not rear-ends but, you know,  
2 crossovers or going off the road. What kinds of  
3 collision patterns are associated with roadside  
4 hazards? Perhaps you can provide a bit more  
5 insight into that.

6 A. Well, if a -- a roadside  
7 environment is the area beyond the travel portion  
8 of the road. If a vehicle leaves the road, then  
9 technically that's the collision. The vehicle has  
10 departed the road. And if they encounter an  
11 object that creates a more severe collision, like  
12 a tree as an example, then that's a roadside  
13 environment issue and potentially something that  
14 could be mitigated by the removal of the tree.

15 So, a collision that occurs  
16 where a vehicle leaves the road is part of what  
17 you're looking at in the roadside environment  
18 analysis to see if there are roadway departures  
19 that could potentially be either eliminated or  
20 usually the effort in the roadside environment is  
21 mitigated, reduce the consequences of, by making  
22 the outcome of the collision less severe. So, it  
23 involves things like removing objects that could  
24 be hit and cause greater harm based on their  
25 proximity to the road and/or the degree of slope

1 on the edge of the roadway so the vehicle, you  
2 know, potentially doesn't roll over, it just goes  
3 down into the ditch. So, it's looking at the  
4 specific type of crashes and, as I said, usually  
5 would not focus on collisions that are occurring  
6 on the roadway, like a rear-ender, because that's  
7 not the roadside environment. It's also not  
8 something that's going to be modified normally in  
9 conjunction with the activity that was proposed.  
10 So, we were asked to look at the roadside  
11 environment because the decision had been made  
12 with respect to the road surface itself.

13 Q. Okay. So, the kind of  
14 collisions you're looking at are cars going off  
15 the road, but you're also looking at the inventory  
16 of the roadside safety devices currently on the  
17 road and those are also, to upgrade those, there  
18 would be safety benefits there, too. Is that  
19 right?

20 A. Yes. I mean, some of it  
21 is reactive, so looking at collision history  
22 that's taken place in the past. And so, if  
23 vehicles had hit that theoretical tree that I'm  
24 talking about, then the roadside safety assessment  
25 would potentially say that tree should be removed.

1 But it's also proactive by looking at either  
2 existing devices that are in place, like guide  
3 rail and such, and determining whether those are  
4 consistent with current standards, or provision of  
5 additional things like roadside barrier or median  
6 barrier to prevent future collisions, potential  
7 collisions, by mitigating the consequence. So, a  
8 median barrier is a typical example of a roadside  
9 treatment and if, you know, you put in a median  
10 barrier, the one person hits the barrier but they  
11 don't hit the car in the opposing direction.

12 Q. Thank you. There is also  
13 a reference to review of geometric design issues.  
14 What did you understand the scope of this project  
15 to be as it related to geometric design issues?

16 A. Similarly to what I just  
17 said, that some elements of the roadside  
18 environment include the geometry of the road, in  
19 particular the angle of the grass slope going down  
20 to the ditch. If it's steeper as opposed to less  
21 steep, then it may be more hazardous as opposed to  
22 less hazardous. So, the geometric design would  
23 examine things like the slope of the roadside  
24 environment to potentially suggest modifications  
25 to mitigate, reduce, the severity of the

1 condition.

2 Q. Okay. We'll come to  
3 this, I think, but CIMA also did look at some  
4 geometric design on the roadway itself, like  
5 curvature or curve radii. Right?

6 A. We assessed the curve  
7 radii that were there, yes.

8 Q. Okay. And so, was that  
9 necessarily part of the scope of the roadside  
10 safety assessment? Was that your expectation  
11 going in?

12 A. Well, it was part of the  
13 assessment. I guess the difference is, you know,  
14 what's the limit of what potentially would be  
15 capable of being adjusted or modified. So, the  
16 roadway, the Red Hill has curvilinear alignment,  
17 so it has horizontal curves and vertical curves.  
18 It was my understanding there was no specific  
19 intent to significantly change or change at all  
20 the horizontal or the vertical alignment. The  
21 cross-sectional alignment is much more potentially  
22 to be adjusted, but we did examine the entire  
23 condition as best we could based on the  
24 information we had.

25 Q. Thank you. And was that

1 examination for the purposes of trying to better  
2 understand collision patterns?

3 A. Well, I think the better  
4 example would be things like curve warning  
5 signing. So, there's an existing geometry that's  
6 present. There are curve warning signs that are  
7 in place at those various locations or potentially  
8 not in place and need to be in place, so we're  
9 examining the geometry, curves, in order to assess  
10 whether or not there would be a need for something  
11 like a curve warning sign and/or an advisory speed  
12 tab on a curve warning sign by determining what  
13 mitigating treatment is necessary and the geometry  
14 is one element of input to that, to identify  
15 potential locations where that mitigating  
16 treatments might be appropriate.

17 Q. Thank you. Did you  
18 connect this e-mail from Mr. McGuire initiating  
19 the roadside safety assessment with the  
20 discussions you had had with Mr. McGuire and the  
21 e-mail about friction testing?

22 A. Just to be clear, this  
23 e-mail, this request came from Mr. Ferguson.

24 Q. No, sorry. This e-mail  
25 from Mr. Ferguson on the roadside safety



1 assessment, did you connect that with the  
2 conversation and the e-mail from Mr. McGuire about  
3 friction testing?

4 A. The e-mail on August 30?

5 Q. August 30.

6 A. No, I don't think I made  
7 a direct connection. What's clear at this point  
8 is that there's a plan to repave the road surface,  
9 remove the existing pavement and repave, so I've  
10 got some clarity as to what's going to be done in  
11 this project, the resurfacing project. I'm sure  
12 there's a connection, but I didn't go back and  
13 assess that.

14 Q. Okay. Did you consider  
15 following up with Mr. McGuire as part of the  
16 roadside safety assessment to obtain additional  
17 possible friction testing that you thought he had  
18 told you about?

19 A. No. Not at this point,  
20 no.

21 Q. Okay. In fact, did you  
22 ever have a followup up until, you know, October  
23 with Mr. McGuire to that September 4 e-mail?

24 A. Not that I know of, but  
25 I, again --

1 Q. I would provide you with  
2 an e-mail if there was one. I'm asking a phone  
3 call, a further discussion?

4 A. No. I mean, there's the  
5 discussions that took place August 30,  
6 September 4. There's this request for the  
7 roadside safety assessment, October 2. At that  
8 point, it's clear that paving is occurring. I  
9 think I had some understanding that it was coming  
10 in the end of August, but it's obviously clear  
11 here. And no, I didn't have any further follow  
12 up.

13 Q. Okay. Did you consider  
14 including reference to the friction testing  
15 information you had received in the roadside  
16 safety assessment?

17 A. No. First of all, the  
18 information came from the City, so it wasn't mine  
19 to give to them to use. And secondly, we weren't  
20 involved in the pavement aspects themselves. We  
21 were specifically being asked to deal with the  
22 roadside safety assessment, roadside, and so  
23 others were dealing with the decisions, the  
24 determinations, about the pavement surface itself.

25 Q. Okay. Having now,

1 sitting here today, reviewed the Golder and the  
2 Tradewind report, would you have expected the City  
3 to provide the Tradewind or Golder report as part  
4 of the data inputs for this project?

5 A. I don't know. It's a  
6 hypothetical question. I would have expected it  
7 in the 2015 report. This project was very  
8 specific for the roadside safety assessment as  
9 opposed to the roadway surface, so, you know, I'm  
10 not sure I would see a need or a reason why it  
11 would be included. And, again, it's something the  
12 City has, and so presumably the City -- assuming  
13 the City has it and they're utilizing it, then  
14 they would make determinations as to how it would  
15 be used. I would think it would be much more  
16 relevant to the parties that were involved in the  
17 decisions regarding the paving itself. We had no  
18 involvement in that.

19 Q. Okay. So, just as the  
20 roadside safety assessment is getting started, you  
21 are putting to bed the lighting study.

22 Registrar, can you close this  
23 out and go to OD 9A, page 115, please.

24 And you'll see at 286  
25 Mr. Field requested a change in terms of the

1 timing. It says:

2 "We're actually not going  
3 in December, December  
4 10."

5 Just like that reference in  
6 your notebook:

7 "Now it's going to be in  
8 February."

9 And Dr. Omrani says:

10 "Okay. We actually have  
11 the report ready to go."

12 And then he sends it by  
13 OneDrive. Do you recall if you reviewed the draft  
14 or drafts of the lighting study between the draft  
15 that we looked at before and this point?

16 A. I would have. I'm listed  
17 as a verifier for it, so I would have.

18 Q. Okay. I can bring up the  
19 document if it would be helpful, but I'll ask the  
20 question first without doing so. I've read  
21 through the lighting study and there's no  
22 reference to friction testing in it. Why is that?

23 A. I don't think it was a  
24 relevant component of the study. I think the  
25 study, by the title itself, is illumination and I

1 don't think it was dealing with friction issues.

2 Q. Okay. The lighting study  
3 doesn't specifically talk about the design speed  
4 of the Red Hill and there had been some debate,  
5 you may recall from your last examination, about  
6 design speed. As you're going into the roadside  
7 safety assessment, do you have clarity about what  
8 the design speed on the Red Hill is?

9 A. I thought we did.

10 Q. Okay. I can take you to  
11 some notes which may assist. I'll get there in a  
12 moment.

13 Let's turn, then, to  
14 November 1, to the kickoff meeting, on the RSA.  
15 Registrar, can you go to the  
16 next page. You'll see at the bottom of this is  
17 the -- at paragraph 290 is a reference to an  
18 agenda for the kickoff meeting. Thank you. And  
19 you'll see that the invitees include you,  
20 Dr. Salek, Dr. Hadayeghi and then from the City  
21 Mr. White, Mr. Ferguson and Ms. Jacob.

22 Registrar, can you bring up  
23 HAM6019 and to the next page.

24 Do you remember attending this  
25 kickoff meeting?

1 A. No, not really. No.

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

4 A. Maybe I do. Yeah. It  
5 was at Upper Ottawa, so yeah, perhaps I do.

6 Q. Okay. Well, no. If you  
7 do remember it, then I'm going to ask you some  
8 questions about it.

9 A. Well, I remember a  
10 meeting regarding this subject at the traffic  
11 operations centre, but it may have been one of the  
12 progress meetings later on as opposed to the kick  
13 off that I'm remembering.

14 Q. Thank you. I do have  
15 just one question on this. In the third bullet  
16 point down, it says:

17 "CIMA to prepare the  
18 required design drawings  
19 for select locations.  
20 There are drainage  
21 concerns."

22 I'm just trying to understand.  
23 So, there's the RSA and then you said earlier  
24 you're also helping with tender, sort of assisting  
25 the City with tender. Is that what those design

1 drawings are referencing there?

2 A. There's two parts of the  
3 design piece. So, the City had another engineer  
4 who was responsible for preparing the design  
5 drawings for the paving itself. We were initially  
6 asked to do the roadside safety assessment. That  
7 would incorporate potentially the provision of  
8 design drawings, which comes later, for things  
9 like updated guide rail and such. And then this  
10 is referring to a request that Mr. Ferguson gave  
11 to us to provide designs for locations along the  
12 Red Hill where police could sit to do enforcement,  
13 so in the median or elsewhere. And so, the bullet  
14 refers to CIMA's preparation of the design of  
15 those locations in terms of how wide they should  
16 be to fit the vehicle and how long an acceleration  
17 area should be if they're moving into traffic and  
18 things like that.

19 Q. Thank you. That's very  
20 helpful and also very helpful that you were  
21 doing -- CIMA did do eventually design drawings  
22 for things like updated guide rails and, sort of,  
23 fabricated devices as well?

24 A. Yeah. The assignment of  
25 that task only came at the later date. So, we did

1 the design, the review and the recommendations  
2 first, and then subsequently we were requested to  
3 provide detailed drawings that would go as part of  
4 the package to show the installation of the  
5 devices, which was included in the contract issued  
6 to the contractor and used to ensure installation  
7 was done properly.

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

10 Commissioner, I see it is  
11 3:19. We usually take our break somewhere between  
12 3:15 and 3:30 and I propose this might be a good  
13 time to take a break.

14 JUSTICE WILTON-SIEGEL: Fine.  
15 Let's take a break. We stand adjourned until 25  
16 to 4:00. Thank you.

17 --- Recess taken at 3:19 p.m.

18 --- Upon resuming at 3:35 p.m.

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

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

23 MS. LAWRENCE: Thank you.

24 BY MS. LAWRENCE:

25 Q. Mr. Malone, just before



1 the break we were talking about the kickoff  
2 meeting on November 1. You have some notes from  
3 that kickoff meeting.

4 Registrar, can you bring up  
5 CIM22413, image 29, please. Thank you.

6 Mr. Malone, my first question:  
7 The very first part of the statement is two words.  
8 It's on the left-hand side and it looks like it  
9 says "Dave FE" or maybe "pave FE." And then a  
10 little bit right of that it says "Dave Ferguson."  
11 Can you help decipher what those two words are?

12 A. I think it's "Dave FE"  
13 and then I listed the participants on the other  
14 side instead of the body of it. I don't know.

15 Q. That's helpful. That's  
16 what I assumed. Skipping down a few lines, it  
17 says "roadside safety assessment." Actually,  
18 sorry. Stopping there, the attendees, Martin  
19 White, Dave Ferguson, Susan Jacobs, Ed Swieting  
20 [ph]?

21 A. Switenky.

22 Q. And Mike B-E-R?

23 A. I don't know.

24 Q. I'm not sure. There  
25 isn't a Mike listed on the invitees. It's not

1 Mike Field. Right?

2 A. I don't think so.

3 Q. Okay. Maybe it could be  
4 a short form for Mike Becke?

5 A. Could be. You know, it  
6 says "design" beside it, so potentially.

7 Q. So, just below that,  
8 roadside safety assessment, it says, I think it  
9 says, "add paving" or maybe it says "ADO paving."  
10 Can you decipher what that is?

11 A. I think it's "ADV," but  
12 I -- or maybe "ADD," being additional, but I --

13 Q. What does that mean?

14 A. I don't know.

15 Q. Okay. It says below  
16 "shoulders - adds, access to CSO tank - additional  
17 scope coming." And so, really, this is my  
18 question: Was there some discussion about adding  
19 some sort of task to the scope that dealt with  
20 paving?

21 A. Yeah. I know what this  
22 is now. This is for the addition of the police  
23 enforcement locations, so additional paving, any  
24 shoulder additions, access to the CSO tank are all  
25 relating to those additional elements that were

1 modifying, adding, to the scope of the assignment.  
2 They were asking us to examine, because there was  
3 not so much a design issue in terms of the  
4 pavement for those facilities but their  
5 configuration from a safety perspective to allow  
6 vehicles to enter and exit the high speed roadway.

7 Q. Understood. Thank you.  
8 You can close this down, Registrar. If you can go  
9 to OD 9A, page 124 and 125, please. Thank you.

10 So, about a week later, on  
11 November 7, you sent an e-mail to some colleagues  
12 about a voicemail you received from Mr. McGuire  
13 and he was asking for assistance on their strategy  
14 to bring this item, that is the lighting item, and  
15 other safety issues that Edward Soldo will be  
16 reporting to their committee. And you note an  
17 interesting comment he makes is getting funding  
18 for a functional study.

19 And then you followed up the  
20 next day and said that you had spoken to  
21 Mr. McGuire the day before. He was very happy  
22 with lighting and he summarizes four things from  
23 the lighting report.

24 Do you think those are fair  
25 conclusions as a summary of the lighting report?

1                   A.    Yeah, I think so.  I  
2    mean, it's correct.

3                   Q.    Okay.  He then goes on to  
4    state:

5                               "Gord has concluded that  
6                               it makes no sense to  
7                               proceed with recommending  
8                               an EA for only lighting  
9                               when Hamilton is  
10                              examining a number of  
11                              other major improvements  
12                              on the roads."

13                   Is that the bundling that we  
14    were talking about before?

15                   A.    Yes, I think so.  He had  
16    left a voicemail and I had spoken to him.  This is  
17    the description of the discussion.  And he had  
18    been clearer on the bundling of the reports, as  
19    you describe them.

20                   Q.    Okay.  In the next  
21    paragraph down, there is a reference to the  
22    direction they are taking will be a joint report  
23    to council.  We talked about that before the  
24    break.  Is this the first time you learned clearly  
25    that there was going to be a joint report to

1 council about both lighting and the roadside  
2 safety issues?

3 A. Yeah. I think this is --  
4 at this point, it had been clarified that that is  
5 going to occur. I may have had some inclination  
6 of that previously, but it's now clear.

7 Q. Okay:

8 "Gord asked CIMA to  
9 provide a two-page  
10 summary from the lighting  
11 report."

12 Was that something that the  
13 City had asked you to do in the past?

14 A. On occasion, yeah.

15 Q. Okay. They hadn't asked  
16 you for the 2013 or 2015 report, which is why I  
17 was asking.

18 A. Yeah. I don't remember  
19 precisely with those reports, but, you know, often  
20 the reports will include an executive summary,  
21 which may serve the function. I don't think the  
22 lighting report had that or at least it wasn't  
23 concise enough for his desire, so he had  
24 specifically asked for this two page summary.

25 Q. Okay. Registrar, can you

1 call out the last paragraph, please.

2 A. I'm moving your image to  
3 the bottom of my screen.

4 Q. Can you see okay?

5 A. Yeah. Thanks.

6 Q. You reference that  
7 Mr. McGuire had said the intent was to get a  
8 recommendation for funding to undertake a  
9 comprehensive review and complete a functional  
10 evaluation. What other information, if any, did  
11 Mr. McGuire give you about what that functional  
12 evaluation would look like?

13 A. There's -- I'm pretty  
14 sure I had notes in my notebook. He basically  
15 had, sort of, highlighted that -- and these are my  
16 words, not his -- there was a lot going on in  
17 terms of studies and reports and analysis and  
18 changes and other things, such as he -- I think I  
19 made a note in my diary that he mentioned  
20 something about transit wishing to use the roadway  
21 for part of their operations. And so, this  
22 functional evaluation was a long term planning  
23 effort exercise that would potentially be  
24 something that would come along. There had been  
25 discussions particularly about the LINC about

1 widening the roadway to three lanes to alleviate  
2 capacity issues and potentially on the Red Hill as  
3 well, so I think that was all, sort of, thrown  
4 into the mix.

5 Q. We do have notes from you  
6 and I was going to take you to them, but if you  
7 like, I can have them up to refresh your memory if  
8 you would prefer.

9 A. I don't think it changes  
10 much. There's a scribble of what he would have  
11 said during the discussion, but functional  
12 evaluation was my conclusion from one of the  
13 elements that he was describing, yes.

14 Q. Okay. So, you say here  
15 at the bottom of this paragraph -- well, actually,  
16 no. I'll say the last two lines:

17 "The recommendation will  
18 recognize that they need  
19 to do close monitoring of  
20 changes being made so  
21 that future actions are  
22 adjusted to optimize the  
23 original infrastructure,  
24 the improvements that  
25 being completed and the

1 improvements already  
2 planned. Bluntly, this  
3 is code for seeing if the  
4 collision issues on the  
5 RHVP are resolved with  
6 the new pavement."

7 What do you remember about the  
8 discussion around close monitoring of changes?  
9 Did Mr. McGuire go into particular detail about  
10 what that close monitoring would mean?

11 A. I'm not sure I remember  
12 precisely. My interpretation would have been  
13 ongoing continued monitoring of speed, ongoing  
14 continued monitoring of collision performance,  
15 which are valuable inputs to help understand how  
16 the roadway is operating.

17 Q. Okay. Registrar, you can  
18 close that down, if you can bring up CIM22413,  
19 image 34 and 35, please. Sorry, I should have  
20 started with 33 and 34.

21 So, there's the voicemail and  
22 then it looks like the notes start at the bottom  
23 of page 33 and then they track for several pages.  
24 Is that the notes you were referring to before,  
25 Mr. Malone?



1                   A.    Yeah.  I was in Winnipeg,  
2    I think, and didn't receive or pick up the  
3    voicemail until the 7th and transcribed it to  
4    myself.  It had been delivered on the 6th and then  
5    called Gord McGuire back and the notes reflect the  
6    conversations.

7                   Q.    Okay.  In these notes  
8    there's some additional information that's not in  
9    the summary that you provide to your colleagues.  
10   In particular, in the middle of this page there's  
11   a reference to, I think it says, "report, collect  
12   to unified report on lighting."  I think that's  
13   what it says right in the middle.  Is that right?

14                  A.    "Collect to unified  
15    effort," and then next line, "lighting,  
16    significant dollars."

17                  Q.    And jumping down from  
18    there --

19                  A.    Excuse me, or maybe  
20    "collect to unified report."

21                  Q.    That's how I read it, but  
22    moving down to the next group of lines, it says:

23                                "Glaring issue.  No  
24                                correlation with  
25                                lighting.  Is correlated

1 with wet road. Need the  
2 data resurf, hand  
3 grenade."

4 Have I deciphered that  
5 correctly?

6 A. I think so, yes.

7 Q. What was the glaring  
8 issue that you and Mr. McGuire were discussing?

9 A. I don't recall if it was  
10 something Mr. McGuire told me or I relayed to him.  
11 Usually in these notes it's me writing down what  
12 the other person is saying, but I suspect that it  
13 was the overrepresentation of wet road crashes.

14 Q. Okay. What in particular  
15 was glaring about that issue?

16 A. Just two aspects. The  
17 number of wet road crashes was significantly more  
18 than would typically be expected, and that issue  
19 had been persistent.

20 Q. Okay. Three lines down  
21 it says:

22 "Need data, resurf, hand  
23 grenade."

24 So, in terms of need data,  
25 what was the reference to data there, if you

1 recall?

2 A. I really don't recall.

3 Q. Okay. Was there any  
4 discussion about the need for friction value data  
5 via friction testing?

6 A. I don't recall it  
7 specifically, if it did take place. You know, it  
8 would make sense in the context of the writing,  
9 but I don't have a recollection of that.

10 Q. Do you recall having  
11 discussions with Mr. McGuire on this call about  
12 friction or friction testing?

13 A. I don't, no.

14 Q. And is that because you  
15 just don't have a good recollection of this  
16 meeting or you're quite confident that that didn't  
17 happen?

18 A. Well, the recollection, I  
19 recall the meeting because I was sitting in the  
20 lobby of the hotel, but I don't recall the, you  
21 know, precise wording. The notes are my best  
22 recollection of -- best record of what was  
23 discussed and I don't see any reference to  
24 friction in them.

25 Q. Okay. There's a

1 reference to hand grenade, which is a phrase that  
2 was attributed to you back in 2013. Was that your  
3 language or was that Mr. McGuire's language?

4 A. Seeing it, I'm assuming  
5 it was mine, but my notes typically don't reflect  
6 my words, so -- yeah. I don't know.

7 Q. And what was the hand  
8 grenade?

9 A. I don't know exactly.

10 Q. Okay. Did Mr. McGuire  
11 convey to you that he had additional friction  
12 testing that had not yet been provided to CIMA,  
13 during this call?

14 A. No.

15 Q. Did he reference  
16 Tradewind or Golder by name during this call?

17 A. Not that I recall, no.

18 Q. Okay. Were you left with  
19 the impression that Mr. McGuire believed that wet  
20 road issues were the cause of collisions and not  
21 lighting, that he was, sort of, balancing those  
22 two issues?

23 A. I'm not sure he thought  
24 lighting was an issue at any point. There was a  
25 request for lighting, but the data wasn't really

1 showing that lighting was something overly  
2 unusual. Wet road crashes were unusual in their  
3 performance.

4 Q. Okay. In 2013 or in the  
5 discussions around lighting in 2013, the reference  
6 to hand grenade was to giving a report that had  
7 illumination as part of it. You may recall. I'm  
8 paraphrasing. But the hand grenade was about  
9 illumination. Do you recall if the hand grenade  
10 here was about the recommendation for illumination  
11 or, pardon me, a recommendation for illumination?

12 A. I don't think so. I  
13 mean, it was -- the context had changed quite a  
14 bit by the time the lighting study is completed,  
15 particularly with the clarity regarding the EA  
16 approvals, and the analysis has been done. The  
17 recommendations are put forward. I don't think  
18 it's a hand grenade. I mean, I don't know how  
19 this got in the text. But it's certainly a big  
20 expenditure and I think, you know, the -- I  
21 shouldn't allege contribution to him. But, you  
22 know, it's a potential reference to the  
23 significant cost that would come from installation  
24 of lighting, which is recommended in the report.

25 Q. Okay. But you're just

1 speculating at this point. You're really not sure  
2 sitting here today what that is in reference to?

3 A. That is a speculation,  
4 certainly. I don't have sufficient recollection  
5 of the meeting to be able to provide you a firm  
6 answer.

7 Q. Registrar, can you go to  
8 page 35 and 36, please.

9 At the top of 35 there's a  
10 reference to transit wanting to use as a corridor.  
11 I think you mentioned that already. It then says:

12 "Good report. Not submit  
13 to council. Want to  
14 submit summary."

15 Are those three lines related?

16 A. I think so, yes.

17 Q. What was the good report  
18 that was being referenced there? Was it CIMA's  
19 lighting study?

20 A. Yes, that's my  
21 recollection.

22 Q. Okay. And when it says  
23 "not submit to council," what was that in  
24 reference to?

25 A. I think it was him

1 telling me that he was not going to be submitting  
2 the report, the full content of the report, to  
3 council in conjunction with his committee report,  
4 but that he wanted to submit a summary as the  
5 means of relaying the findings from the report.

6 Q. Okay. Understood.

7 Registrar, you can close this and if you could  
8 open up OD 9A, page 161, please. If you could  
9 also call out 162, please.

10 So, Mr. Malone, I'm going to  
11 take you into the roadside safety assessment draft  
12 report that Dr. Salek provided to Mr. Ferguson on  
13 November 23 that's referenced here. But just  
14 before I do -- no, I'm just looking at the time we  
15 have left. I think I'm actually going to go right  
16 into the roadside safety assessment report and  
17 I'll come back to this.

18 Registrar, can you bring up  
19 HAM3556. Sorry, I misspoke. HAM35556. Thank  
20 you.

21 Mr. Malone, did you review the  
22 draft of the roadside safety assessment before it  
23 was delivered in draft to the City?

24 A. I should have, yes.

25 Q. Do you remember either

1 way if you did or not?

2 A. I don't.

3 Q. Okay. Registrar, can you  
4 go to image 10, please.

5 So, I jumped over the  
6 introduction and I'm just going into some of the  
7 details. The geometric design review, in the  
8 first paragraph it says:

9 "The City provided design  
10 drawings for the Red Hill  
11 mainline and ramps  
12 between the north end of  
13 the facility and  
14 Greenhill Avenue."

15 Were you involved -- did you  
16 actually, you personally, review the design  
17 drawings that are referenced here?

18 A. No.

19 Q. Do you know if they were  
20 design drawings or as-constructed drawings?

21 A. No, I don't know. I  
22 couldn't answer that.

23 Q. Okay. The report then  
24 says:

25 "The remaining locations



1                                   were reviewed by  
2                                   satellite imagery and  
3                                   approximate curve radii  
4                                   were measured. And the  
5                                   review, the geometric  
6                                   design review, included  
7                                   curve radii and  
8                                   compatible design speed  
9                                   and a subsequent  
10                                  comparison of operation  
11                                  speed versus the posted  
12                                  speed."

13                                 By this point, are you aware  
14                                 of what the design speed is on the Red Hill  
15                                 mainline?

16                                 A.     It depends whether you're  
17                                 comparing it to the standards that were in place  
18                                 at the time it was designed or the standards that  
19                                 were in place in 2017.

20                                 Q.     Okay. Why don't we start  
21                                 with the first. Were you aware of the design  
22                                 speed that was set out in the design documents?

23                                 A.     We had an understanding  
24                                 of a design speed at --

25                                 Q.     Which was?

1                   A.    I would have to check my  
2 notes.

3                   Q.    Sorry.  It's late in the  
4 day to do a memory test.

5                   And then in terms of the  
6 design speed -- sorry, I'm just looking for your  
7 exact language -- based on the standards in place  
8 in 2017, how is that called?

9                   A.    Well, the standards, as  
10 is indicated on the table, the standards indicate  
11 a design speed associated with a radius and an  
12 assumption of a superelevation.  And there's an  
13 equivalent table to this in the previous design  
14 guidance, whether that be MTO or the previous TAC  
15 design guidance, and they're somewhat different.  
16 So, if you reverse -- you are reverse engineering  
17 it, so you're determining the radius, knowing or  
18 making an assumption of the superelevation and  
19 then going backwards in the table to figure out  
20 what the design speed is, you get different  
21 results depending which book you look at.

22                  Q.    Okay.  Thank you.  And  
23 those would be different that the design speed  
24 that would actually be set out in design drawings  
25 or design manuals for the design of the road.  Is

1 that right?

2 A. Sorry, could you repeat  
3 that and make sure I understand you correctly?

4 Q. The design speed that can  
5 be calculated from the manuals either in place at  
6 the time or in place in 2017, those might be  
7 different than the design speed that was actually  
8 in the design drawings for the road before  
9 construction. Is that right?

10 A. Yes, although maybe I'll  
11 supplement that a little bit with we're going in  
12 reverse. We're saying was the radius that we  
13 understand it to be and what does that turn into?  
14 What design speed is appropriate or connected with  
15 that radius? If you're designing the highway in  
16 the beginning, you start the other way around.  
17 You say I have a design speed. What radius and  
18 the outcome? So, it's an inverse of the process.  
19 We're looking backwards to try to figure out what  
20 the selected design speed may have been at the  
21 time.

22 Q. Okay. Thank you. You  
23 note that the Red Hill was designed with maximum  
24 superelevations of 6 percent and that was the  
25 assumed superelevation that you used for your

1 calculations?

2 A. As highlighted in the  
3 table, yes.

4 Q. Okay. You didn't have  
5 any information to be able to confirm the  
6 constructed superelevations. Right?

7 A. Correct.

8 Q. Can you go to the next  
9 image, please, Registrar, and if you can call out  
10 the text above the chart.

11 So, I just jumped past some of  
12 the sections that are referenced to the first full  
13 paragraph:

14 "The curve radii  
15 compatible with a design  
16 speed lower than the  
17 operational speed,  
18 particularly around the  
19 King Street interchange,  
20 can be a contributing  
21 factor to collisions,  
22 especially when wet  
23 surface conditions are  
24 present."

25 So, just unpacking that, was

1 CIMA suggesting that a -- let me try that again.  
2 Was CIMA making a statement of potential causation  
3 around collisions or a suggestion to change the  
4 operation speed or something else?

5 A. The former.

6 Q. Why did you view it  
7 important to provide that context to the City in  
8 the roadside safety assessment?

9 A. I think the key word here  
10 is operational speed.

11 Q. Mm-hmm.

12 A. And operational in  
13 particular as opposed to design speed or posted  
14 speed. And the information we were aware of  
15 certainly from previous work was that operational  
16 speeds were -- varied significantly from posted  
17 speed in some cases.

18 Q. Okay. So, was it  
19 important to reference operational speed plus  
20 adding on curve radii and wet surface conditions  
21 to be able to understand a confluence of  
22 circumstances? Is that the gist of this finding?

23 A. I'm not sure I understood  
24 your question properly.

25 Q. That's fair. That's

1 fair. I'm sorry. Let me try to rephrase.

2 Here you reference three  
3 things: The curve radii, that the nature of the  
4 curve would be compatible with a lower design  
5 speed, a high operational speed and wet surface  
6 conditions. You reference those three things.

7 Why did you want to provide an understanding of  
8 the confluence of those three things to the City?

9 A. I think it gives some  
10 clarity from an understanding the safety aspects  
11 of the geometric design. So, the curve radii will  
12 correspond with the design speed, as was discussed  
13 previously, and if the design speed is lower than  
14 the operational speed, then potentially drivers  
15 are exceeding the design speed, I'm not stating  
16 that drivers are exceeding design speed, and that  
17 potentially puts you into a realm where there are  
18 safety issues. It's recognized in geometric  
19 design that not all drivers drive precisely at the  
20 design speed, and the design speed can be equal to  
21 the posted speed. It's often higher than the  
22 posted speed and the operational speed, what cars  
23 actually travel at, is something different yet  
24 again.

25 So, as you have a design

1 speed, which is a theoretical concept, compared to  
2 an operational speed, which is a reality that  
3 exists on the road, and if the difference between  
4 those two begins to increase, then you potentially  
5 are getting -- you're losing some of your safety  
6 factor in your design operation.

7 Q. Okay. And if you add in  
8 wet weather conditions, you lose a little bit more  
9 of your safety factor. Is that fair?

10 A. No, not --

11 Q. In the circumstance?

12 A. Normally wet weather,  
13 normal wet weather, I'll put it in quotations, you  
14 know, there's a recognition that roads get wet,  
15 and so design speeds take into account the fact  
16 that roads are wet, and that is included with  
17 assumptions of available friction on the surface  
18 in a wet surface condition. So, wet roads by  
19 themselves are not necessarily of concern or the  
20 problem. I'm not wording it very well, but you  
21 don't design a road only for dry conditions and  
22 then, you know, recognize there could be problems  
23 when it rains. So, the wet road is incorporated  
24 into the design speed component.

25 There are exceptions to that.

1 You know, an extreme weather event, you know, a  
2 deluge of water that the drainage facilities are  
3 unable to take control of, can certainly result in  
4 flooding and a road design does not consider a  
5 flooded road surface to be part of the normal  
6 operation, just as an icy road surface is also not  
7 part of the design consideration. The expectation  
8 in those examples of environmental conditions are  
9 that drivers would adjust their behaviour, slow  
10 down, but normal wet roads are included in design.

11 Q. Okay. If you have that  
12 safety factor as you're getting the difference  
13 between the design speed and the operational speed  
14 and you lose some of your safety factor, if you  
15 add on to that inadequate skid resistance, you  
16 further lose some of your safety factor. Is that  
17 right?

18 A. Yes. Design, road  
19 design, include, including the determination of  
20 the curve radii based on a design speed, includes  
21 an assumption of available friction. You know, to  
22 be clear, that's a multipart equation. Right?  
23 Friction comes from the road surface but it also  
24 comes from the vehicle, so the vehicle tire is a  
25 contributing factor to the available friction and



1 the road surface is a contributing factor to the  
2 available friction.

3 So, there's an assumption with  
4 respect to what friction the road is providing  
5 under standardized testing that is built into the  
6 design manual and those numbers, the road surface  
7 friction values, are included in the geometric  
8 design guide information.

9 Q. Thank you. Registrar,  
10 can you close this down and go to image 11,  
11 please. Pardon me, we're on image 11. Image 12,  
12 please.

13 The roadside safety assessment  
14 includes the collision history review as CIMA  
15 proposed it would complete and there's several  
16 different tables and figures that deal with  
17 various graphs around the collisions either by  
18 year or by road condition and other things.

19 So, starting with this one,  
20 figure 2 and figure 3 summarizes collisions by  
21 year on the Red Hill mainline and ramps  
22 respectively during the study period.

23 And I'm just going to ask the  
24 registrar to also leave this up but also bring up  
25 OD 9A, page 161.

1                               So, that's what we were  
2    looking at earlier.

3                               Then if you go to 162. I'm  
4    sorry, I think I misspoke.

5                               It's Dr. Salek who is asking  
6    these questions. So, you'll see this is the draft  
7    that he sends to the City and there's accompanying  
8    e-mail and he's asking for the next progress  
9    meeting. And you'll see about four paragraphs  
10   down, it's at section 1.3.1, this is something  
11   that Dr. Salek says that CIMA wants feedback on  
12   this discussion item, so this is it:

13                              "CIMA could not determine  
14                              the reason for the abrupt  
15                              increase in collisions  
16                              from 2013 to 2014 and  
17                              2015 to 2017. Both self  
18                              reported and other  
19                              collisions have a similar  
20                              increase in 2015. Would  
21                              the City have an  
22                              explanation?"

23                              Do you remember having  
24    discussions with any of your colleagues about this  
25    increase that Dr. Salek raises here?

1                   A.    No, I don't have a  
2    recollection of a discussion.

3                   Q.    Okay.  Registrar, you can  
4    close down page 162 and if you go to image 17,  
5    please.

6                   So, this is still on the  
7    discussion about collision history.  And just  
8    before the table, it says:

9                   "When wet surface  
10                   collisions conditions are  
11                   reviewed by location, the  
12                   sections between  
13                   Greenhill Avenue and  
14                   Queenston Road stand out  
15                   with a proportion of wet  
16                   surface collisions,  
17                   self-reported records  
18                   excluded, ranging between  
19                   69 and 88 percent of  
20                   total collisions and 69  
21                   and 83 percent for  
22                   FI -- "

23                   Which I think is fatal injury:

24                   " -- collisions."

25                   Is that right?

1 A. That's what it says, yes.

2 Q. Did that proportion of  
3 wet surface collisions surprise you in terms of  
4 how -- what those percentages were?

5 A. It's certainly a high  
6 percentage, yes. I mean, it's partly reflects --  
7 but all of this data reflects, I believe, the  
8 absence of the self-reported. So, the deviation  
9 from the outcome of the other locations clearly  
10 shows anomalies at some of those sites.

11 Q. Okay. And then after the  
12 table says:

13 "Although other sections  
14 also present a typically  
15 high proportions of wet  
16 surface collisions and  
17 it's possible this  
18 sequence of curves with  
19 relatively small radii as  
20 identified in the 2015  
21 review in the sections of  
22 Greenhill Road and  
23 Queenston Road  
24 contributes to these  
25 percentages."

1                   So, just on that point, does  
2    that relate back to the discussion that we were  
3    just having a moment ago about curve radii and  
4    their relationship, or can you help me interpret  
5    what that paragraph is referencing?

6                   A.    I think your intuition is  
7    correct.  A portion of roadway that has curves is  
8    potentially going to have more collisions than a  
9    roadway which is -- proportionate roadway which is  
10   straight.  The potential for driver error is  
11   greater if the driver fails to see the curve and  
12   continues straight, if they're texting away or  
13   something like that, and the necessity for  
14   appropriate correlation between selected operating  
15   speed and available friction becomes more critical  
16   at those locations.

17                  Q.    Can we go to image 23,  
18    please, Registrar.

19                  So, this is the overall  
20    summary and you'll see that wet surface collisions  
21    were found to represent 64 main line collisions,  
22    73 of ramp collisions, the proportion of wet  
23    surface collisions on the mainline presented an  
24    increase compared to the 2015 study, 50 percent.  
25    And it goes on to note the lost control and speed

1 too fast proportions, including the wet surface  
2 collisions that are related.

3 So, following from the 2013 to  
4 the 2015 reports and then into the lighting  
5 report, what are these findings in the roadside  
6 safety assessment in November of 2018, what are  
7 they telling you, if anything, that is new or  
8 different?

9 A. I think that the  
10 proportions of wet road crashes and the specific  
11 locations where they're occurring are not  
12 decreasing. If anything, they're increasing. We  
13 had recommended a series of mitigating treatments  
14 in previous studies. Our understanding was that a  
15 number of those had been undertaken. Our  
16 understanding was that there had been -- there was  
17 some speed enforcement, although we didn't know  
18 precisely at what level. So, the image, the  
19 information, is becoming clearer at this point  
20 that the link between not just crashes on roads  
21 that are wet but the available friction under  
22 those types of circumstances is becoming more  
23 clear as an issue.

24 Q. Okay. And there is a  
25 reference in the third bullet point under overall

1 findings:

2 "These findings suggest  
3 that inadequate skid  
4 resistance, surface  
5 polishing, bleeding,  
6 contamination and  
7 excessive speeds may be  
8 contributing factors to  
9 collisions."

10 At this point, didn't you have  
11 pretty significant data to suggest that one or  
12 both those were contributing factors reporting  
13 than may be contributing factors?

14 A. The only data we had on  
15 friction values was the information carried out by  
16 the Ministry in 2007 and 2013, a very limited  
17 amount of data. The numbers provided or the  
18 numbers that were there, and this is in hindsight  
19 because it wasn't presented as being City data, it  
20 was presented as being Ministry data, but the  
21 numbers provided indicated friction values as we  
22 understood them that were in excess of the values  
23 used in road design. But the issue is still there  
24 and the statement is made as it is because I think  
25 it's becoming clearer to us that friction is a

1 contributing factor.

2 Q. Okay. Registrar, can you  
3 go to image 24, please.

4 A. Sorry, I should be clear  
5 on my wording. Friction in combination with  
6 speed.

7 Q. Thank you. So, some  
8 recommendations to reduce collision  
9 frequency/severity and we could go through these,  
10 but as I read them, none of them appear to really  
11 relate to roadside hazards. Would you agree with  
12 that?

13 A. Yeah. I think it's --  
14 the roadside hazard aspect of the report is trying  
15 to deal with collisions that could result in  
16 greater harm in conjunction with leaving the road.  
17 So, if there's a crash as a result of a vehicle  
18 leaving the road and if that crash is connected  
19 with the friction on the surface, then you do --  
20 you are addressing a roadside hazard crash because  
21 you prevent a vehicle from leaving the road. So,  
22 there's a direct link between the two, so I would  
23 disagree that they're disconnected. There's a  
24 direct connection between them. A loss of control  
25 crash that goes into the roadside, you know,



1 originates on the road, and if it originates  
2 because of the pavement surface, then there is a  
3 connection.

4 Q. Okay. So, is that to say  
5 in other words the roadside safety assessment, to  
6 the extent that it's looking at roadside hazards,  
7 it's really looking at everything, including  
8 pavement?

9 A. It's not looking at the  
10 pavement itself. What we're trying to -- we're  
11 looking at two aspects of where are collisions  
12 originating from? Is it possible to potentially  
13 reduce those collisions from happening? And  
14 secondly, if collisions are occurring in the  
15 roadside environment, are we able to mitigate the  
16 consequences of those collisions by removing  
17 specific hazards. So, there's a connection  
18 between both and, if you can prevent a collision,  
19 a vehicle from leaving the road, then you've  
20 prevented what will become a roadside hazard  
21 issue.

22 Q. Okay. The  
23 recommendations, as I interpret them, relate  
24 either to pavement resistance, skid resistance,  
25 like the first one, or to dealing with speed or

1 wet weather conditions, like the next two.

2 It seems that there's quite a  
3 correlation between these recommendations and  
4 speed or pavement surface. Would you agree with  
5 that?

6 A. There's a connection  
7 between speed and pavement surface.

8 Q. That's a much better way  
9 to say it. A connection, not a correlation.

10 A. Yeah. So, the pavement  
11 surface, the vehicle interaction with the pavement  
12 surface, is directly correlated with the speed as  
13 which the vehicle is travelling. And, as you saw  
14 previous table, the TAC table, the assumption on  
15 all of those curve radii values is a constant  
16 friction value, and so your ability to traverse a  
17 given radius changes and you have to, should be,  
18 going at a lower speed at tighter curves because  
19 you're unable to traverse it at some point or it  
20 becomes more problematic. I'm not explaining  
21 myself very well, but --

22 Q. That's all right. The  
23 recommendations here, the very first one and the  
24 fourth one, both deal with pavement surface  
25 expressly. Why did this report not include

1 reference to CIMA's earlier recommendations for  
2 friction testing?

3 A. Well, I guess the first  
4 answer to that would be the pavement is about to  
5 be removed, so the relevance of friction testing  
6 that was done five years ago is -- doesn't connect  
7 with me. We had made recommendations for friction  
8 testing. We still didn't have knowledge as to  
9 whether or not friction testing had been done.  
10 Mr. McGuire didn't indicate that it had not been  
11 done. He didn't provide it to me, but he didn't  
12 indicate that it had not been done, so we didn't  
13 have any knowledge as to whether additional  
14 friction testing had been done by the City. But  
15 we had recommended it twice and it was my  
16 understanding that it was something that the City  
17 would make their decision as to whether or not  
18 they would do this. It's not our role to follow  
19 up on the City's actions post our recommendations.

20 Q. Registrar, you can take  
21 this down and could you call up CIM22413, please,  
22 image 40.

23 Mr. Malone, this is a note  
24 from your notebook from November 30, 2018 and the  
25 highlights at the top say Edward Soldo, B1014

1 update. Is that the RSA code that you use?

2 A. That's the project  
3 number for the roadside safety assessment, yes.

4 Q. Thank you. Do you  
5 remember having a discussion with Mr. Soldo on  
6 November 30?

7 A. I don't really have a  
8 recollection of the discussion, no.

9 Q. Okay. So, just a few  
10 lines down it says Red Hill underlined on one  
11 side, and then on the right side it says:

12 "Good report. Great  
13 written. Not how we  
14 look."

15 I think. Is that how you read  
16 that?

17 A. That's my interpretation,  
18 yes.

19 Q. Okay. And then the says:  
20 "History, median,  
21 upgrade, current."

22 I'm not sure what the reminder  
23 of those are. I'm not sure if you can read your  
24 own writing?

25 A. No.

1 Q. We tried to provide  
2 transcriptions, but some of it is a bit difficult  
3 to read.

4 A. That is extend and new.

5 Q. Thank you. So, down from  
6 there, and this is highlighted in your original,  
7 it says:

8 "Deal with pavement study  
9 from Edward."

10 What do you recall about the  
11 reference to that note that you have highlighted?

12 A. I just think that's the  
13 breakout between the two components of the joint  
14 report, so Mr. McGuire was going to bring forward  
15 the lighting piece and Mr. Soldo was going to  
16 bring forward the pavement piece.

17 Q. What pavement piece?

18 A. The roadside safety  
19 assessment, the aspects relating to roadside  
20 safety. So, they're the two different groups.  
21 Mr. McGuire is dealing with the lighting. I  
22 understood that Mr. Soldo is dealing with the  
23 traffic safety, and that includes the pavement  
24 discussions that we've just had.

25 Q. The pavement discussions

1 that who has just had? That you and I just had  
2 just now?

3 A. Well, my interpretation  
4 of this is that it's the description of the  
5 breakout between the two parts of this joint  
6 report that's going to come.

7 Q. Okay. I'm going to  
8 interrupt you here because we have very little  
9 time left, but I want to make sure I understand  
10 this.

11 You have the roadside safety  
12 assessment with Mr. Soldo in which you are really  
13 not dealing with pavement, because the pavement is  
14 going to be resurfaced, and then you have the  
15 lighting with Mr. McGuire, but this reference here  
16 is to deal with pavement study from Edward, so I'm  
17 confused about how that reference would be to the  
18 roadside safety assessment. Can you clarify that?

19 A. I hope so. The roadside  
20 safety assessment being done in conjunction with  
21 the pavement repaving activity, which is scheduled  
22 to take place now into 2019, so the report that's  
23 going forward was to summarize the stuff that's  
24 going on, the various -- this is my  
25 interpretation -- studies that were underway. One

1 of them was the roadside safety assessment, which  
2 connected to, was linked to, the pavement  
3 resurfacing.

4 Q. Okay. Did you discuss  
5 friction testing as a concept on this call with  
6 Mr. Soldo?

7 A. I don't have a  
8 recollection of doing that, no.

9 Q. What about friction  
10 values as a concept, not specifics?

11 A. I think we may have  
12 discussed, you know, issues of friction in the  
13 stopping sight distance, in the context of the  
14 speed limit. The speed limit study had also been  
15 concluded and I think Mr. Soldo was aware of that.  
16 It was something that fell or would have fallen  
17 into his category, and so I believe there was some  
18 communication about friction in the context of how  
19 friction is incorporated in road design concepts,  
20 so stopping sight distance, lateral friction, so  
21 on and so forth.

22 Q. Do you recall that  
23 conversation happening with Mr. Soldo during this  
24 call on November 30?

25 A. Only a vague

1 recollection. You know, I may have my dates mixed  
2 up, but I seem to recall some discussion about it.  
3 I don't see the rest of the note here, but I don't  
4 think I've made specific notation of it but it may  
5 have come up.

6 Q. Okay. Did Mr. Soldo  
7 convey to you that the City had a report that  
8 analyzed friction values on the Red Hill?

9 A. Not to my recollection,  
10 no.

11 Q. Did Mr. Soldo use the  
12 words Tradewind or Golder in this conversation on  
13 November 30?

14 A. Not to my recollection,  
15 no.

16 Q. Apart from the friction  
17 discussion around stopping, was there any other  
18 discussion about friction values with Mr. Soldo on  
19 this day?

20 A. Not that I recall, no.

21 Q. Okay. I anticipate that  
22 Mr. Soldo is going to testify that he recalls a  
23 high-level discussion with you on this day in  
24 which he advised you at that the City had friction  
25 values are below the investigatory level and asked



1 whether that impacted any speed limits. Do you  
2 remember any discussion of that nature?

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

4 Q. Okay. And when you say  
5 you don't recall that, are you confident that that  
6 conversation did not happen or you just can't  
7 remember either way?

8 A. I can't remember either  
9 way. As I said, I have a vague recollection that  
10 potentially there was some discussion of friction  
11 in the context of design, but this specific that  
12 you're describing of investigatory levels, I don't  
13 have a recollection of it. I guess I would say  
14 I'm fairly confident it didn't occur, but  
15 Mr. Soldo will provide his evidence, I'm sure.

16 Q. Okay. I anticipate that  
17 Mr. Soldo's evidence may be that he conveyed to  
18 you that there was a report that contained these  
19 friction values. Do you recall any discussion of  
20 that nature?

21 A. My response is somewhat  
22 tainted by having listened to Mr. Soldo a few days  
23 ago. I don't think that's what I heard him say,  
24 but I don't recall that occurring.

25 Q. Thank you. I just wanted

1 to try to paraphrase Mr. Soldo's evidence so that  
2 you had a chance to respond to it. That is  
3 helpful.

4 I see the time is 4:32. I  
5 think, Commissioner, this may be a good place to  
6 end Mr. Malone's evidence for the day. And just  
7 as a matter of logistics, next week is Rosh  
8 HaShanah on Monday and Tuesday, and so Mr. Malone  
9 will not be attending and we don't have witnesses  
10 on those days, and the continuation of his  
11 evidence will have to be scheduled for a date in  
12 October.

13 JUSTICE WILTON-SIEGEL: Okay.  
14 That's fine. Then we stand adjourned, as I  
15 understand it, until 9:30 on September 28. Is  
16 that correct?

17 MS. LAWRENCE: That's correct.

18 JUSTICE WILTON-SIEGEL: Okay.  
19 Good. Well, thank you very much. First of all, I  
20 was going to say thank you to Mr. Malone. I will  
21 say that anyway, although thank you with the  
22 qualification that we look forward to the  
23 rescheduled date to complete your evidence. And,  
24 in the meantime, I wish everyone a good weekend.  
25 Thank you.

1 --- Whereupon the proceedings adjourned at  
2 4:33 p.m. until Wednesday, September 28, 2022  
3 at 9:30 a.m.

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