

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Tuesday, July 19, 2022, at 9:31 a.m.

VOLUME 47

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1 Arbitration Place Virtual

2 --- Upon resuming on Tuesday, July 19, 2022,

3 at 9:31 a.m.

4 MS. LAWRENCE: Good morning,
5 Mr. Commissioner. May I proceed?

6 JUSTICE WILTON-SIEGEL: Yes,
7 please proceed.

8 GARY MOORE; PREVIOUSLY AFFIRMED

9 EXAMINATION BY MS. LAWRENCE (CONT'D):

10 Q. Good morning, Mr. Moore.
11 How are you?

12 A. Good morning, thank you.

13 Q. When we left last day we
14 were about to go into your comments on the 2015
15 CIMA report.

16 Registrar, can you bring up
17 HAM689 in the native version, please. Registrar,
18 if you are having issues it's because I think I
19 might have given you the wrong doc ID. It's
20 HAM690, Exhibit 64.

21 Mr. Moore, this is a native
22 version, so it's a PDF version which means we
23 can't -- the Registrar can't assist us with
24 calling out in the way that he can with other
25 documents. So if you need to scroll up or scroll

1 down just let me know.

2 Do you recall receiving and
3 reviewing this draft report?

4 A. I believe so.

5 Q. Registrar, can you scroll
6 down to the table of contents which is two pages
7 over. Thank you.

8 So you'll see it has review of
9 collisions, a field investigation, an illumination
10 review. Registrar, can you go the next page,
11 please.

12 Then it has potential
13 recommendations, benefit-cost analysis, and then
14 it has the recommendations and a number of
15 appendices.

16 Registrar, can you go to
17 image 8, please. You'll see on this page there
18 are strike-throughs in red and then there is a
19 quote "bubble" that when we click on it says
20 "gmoore October 29." Do you recall using in a PDF
21 format editing and commenting boxes as you were
22 reviewing this?

23 A. I had done that before
24 but I don't specifically recall this one. But
25 it's not something I was unfamiliar with doing.

1 Q. Thank you. Why did you
2 strike -- propose to strike out all the red
3 strike-out in the second, third and fourth
4 paragraphs of this page under "introduction"?

5 A. I believe they didn't
6 apply as necessary background, in my opinion.

7 Q. Okay. That was your
8 opinion, that you didn't think it was necessary to
9 enter that information in the CIMA report?

10 A. Right.

11 Q. Okay. Registrar, can you
12 go to the next page, please. You'll see at the
13 bottom -- Registrar, it's straining my eyes. Is
14 there a way to increase the font and just show the
15 second half of this page? Perfect. Thank you.

16 Mr. Moore, this is -- we're
17 still in the introduction section. The report
18 sets out the study area. So this is the map. And
19 you will see underneath it has a brief
20 backgrounder on the parkway, that it's a four-lane
21 divided highway. And it says the posted speed is
22 90 kilometres an hour and the design speed is
23 assumed to be 110 kilometres per hour. And you'll
24 see the comment box that is now on the right-hand
25 side you've said "not necessarily true."

1 What is the design speed on
2 the parkway?

3 A. In portions it's 110; in
4 other portions it's 100, I believe.

5 Q. Which portions are 110
6 and which portions are --

7 A. I couldn't be exact. I
8 know some of the curves, areas in the lower Valley
9 under the structures I knew were -- were some --
10 in the area of around 100 but I couldn't be exact
11 on where those were.

12 Q. So apart from the curved
13 areas on the lower Valley under a structure, did
14 you understand that the rest of the parkway had a
15 design speed of 110?

16 A. I couldn't say for sure.
17 I wasn't involved in -- at that time with the
18 geometrics. I just knew about certain areas. I
19 don't know what the actual ones are for all along;
20 I just knew that the assumption that it was
21 110 wasn't correct.

22 Q. Okay. Registrar, can you
23 go to image 26, please. Thank you.

24 In the third paragraph there's
25 another indication that high speeds may be

1 involved is the fact that some curves within the
2 study area appear to have a curve radii of
3 approximately 525 metres which is the minimum
4 provincial standards for a design speed of
5 110 kilometres per hour and a maximum
6 superelevation of 6 percent.

7 Did you notice as you were
8 reviewing this document that CIMA appears to
9 assume that the design speed in relation to the
10 curves was 110 kilometres an hour?

11 A. I don't know whether
12 that's necessarily what they are saying here. I
13 believe they said here is that the 525 is a
14 minimum for 110. So it was their understanding
15 based on that curvature that in that location it
16 was 110. So again, I don't know exactly where the
17 100 was.

18 Q. Okay. Did you take any
19 steps to confirm that so that CIMA would have the
20 correct information?

21 A. Well, they had all the
22 geometrics.

23 Q. That was your
24 understanding, they had all the geometrics?

25 A. Yes.

1 Q. So you didn't think it
2 was your role to correct them or to even raise the
3 issue that there might be an error with that?

4 A. Well, I did already in
5 the previous one.

6 Q. Okay. Turning to a
7 different issue, you have comments throughout this
8 issue in several areas. The first is slippery
9 when wet signs. Registrar, can you go to
10 image 34, please. Thank you, Registrar.
11 Your comment is longer -- bigger than the box.

12 Warning signs are a safety
13 operations responsibility, correct?

14 A. Right.

15 Q. You don't have any
16 expertise in signage?

17 A. No, I don't.

18 Q. You didn't have any data
19 to support the assertion that the Red Hill was not
20 slipperier when wet than any other road, as you
21 say in the comment box?

22 A. No, I didn't.

23 Q. Just your personal
24 perception?

25 A. Other than my experience

1 on the roadway and my own driving and the fact
2 that we had a premium pavement on this.

3 Q. Did you avert your mind
4 to the fact that the Tradewind report had said
5 that the LINC had significantly higher friction
6 values than the Red Hill when you made this
7 comment?

8 A. I don't believe so. I
9 don't -- I know they were concerned with the
10 accident rate on the LINC as they were on the Red
11 Hill, so the fact that the LINC had higher
12 friction than the Red Hill didn't really have
13 anything to do with anything I was thinking at
14 this time.

15 Q. Registrar, can you turn
16 to image 41, please.

17 Sorry, just before we get
18 here, just on the issue of design speed just so
19 that it's -- just that I'm very clear. Did you
20 know that any part had a design speed of 110 or
21 did you understand that the default was 100? I'm
22 not quite sure what your evidence is in respect of
23 your knowledge about the design speed.

24 A. I was involved in the
25 geometrics of the roadway, but just on the

1 periphery at the time as the manager, not -- or as
2 the senior project manager when this was taking
3 place for the design that was being negotiated and
4 put through the EA, so I don't -- I knew that
5 there was 100 -- sections that were 110 and
6 sections that were 100. That was my
7 understanding.

8 Q. Thank you. Turning to
9 the section under 7.1.2 pavement friction and
10 7.1.2.1, you had struck out the entire section
11 around perform friction testing. Were you
12 proposing that the discussion of friction testing
13 be deleted from CIMA's report entirely, like this
14 entire three paragraphs?

15 A. I don't believe the
16 discussion was in a correct context here.

17 Q. That wasn't my question.
18 My question was were you proposing by making these
19 strikeouts that these paragraphs should be deleted
20 from CIMA's report?

21 A. As they were here, yes.

22 Q. Okay. And I interrupted
23 you. You said there wasn't a correct context.
24 Did you think that they belonged somewhere else
25 within the report?

1 A. Well, I was hoping that
2 as I was making these comments that there would be
3 some opportunity for discussion of my comments
4 later on.

5 Q. With the view to removing
6 this recommendation from the report?

7 A. With the view to
8 discussing what was being discussed here.

9 Q. With your ultimate
10 intention to have CIMA remove the recommendation
11 from the report?

12 A. No, I wanted to have a
13 discussion on what was here and how it was going
14 to be used and how it was going to be taken. You
15 know, it was to initiate a discussion, meaning it
16 could very well have resulted in that, but these
17 are my comments for discussion.

18 Q. Okay. And this is on
19 October 29th you're making these comments. You've
20 already met with Mr. Malone and other CIMA
21 employees and some colleagues of yours from
22 traffic engineering and operation on October 20th,
23 so you were hoping to have another discussion
24 after the discussion you had on October 20th where
25 friction testing was discussed?

1 A. I thought those previous
2 meetings were discussing the staff report. I
3 don't know whether I -- I believe this is the
4 first time I seen the entire final draft with all
5 of the wording.

6 Q. I understand. But we
7 looked at those minutes last day and there was a
8 discussion about friction testing in particular
9 and the minutes reflect that you said that testing
10 had been done and results were -- resulted
11 satisfactory, that discussion. Even if you hadn't
12 seen this document you've already had a discussion
13 about friction testing with CIMA and with your
14 colleagues, correct?

15 A. Well, that discussion was
16 in reference to what we had done, not what they
17 were proposing to do. I don't believe there was
18 discussion at that time.

19 Q. Okay. Did you turn your
20 mind back to Golder's recommendation to do
21 microsurfacing which would improve skid resistance
22 as you were looking at this -- at the paragraphs
23 that you struck out?

24 A. I don't believe so.

25 Q. When you say in the

1 comment box nothing to compare to -- "there is no
2 basis, nothing to compare to," did you turn your
3 mind back to the fact the City had friction
4 testing results from 2007 and 2013 against which
5 new test results could be compared?

6 A. I'm sorry, what was the
7 question again? I want to be -- I want to address
8 your question.

9 Q. Thank you. So you say in
10 the comment box "there is no basis, nothing to
11 compare to." And just stopping there. Did you
12 turn your mind back to the fact the City had
13 friction testing results from 2007 and 2013
14 against which new test results, if they were
15 obtained, could be compared?

16 A. I knew that we had
17 previous test results. But if you simply take
18 these test results and compare them to them it
19 still doesn't tell you where you're going. If it
20 had been a little higher, is that good; if it had
21 been a little lower is that -- how much -- we had
22 no sensitivity, we had no line in the sand, so to
23 speak, to say here's how you test it and here's
24 how you do it and here's how you interpret those
25 results. Again, the only agency that had that was

1 MTO.

2 Q. So when you say we had no
3 sensitivity, we had no line in the sand, you mean
4 you didn't, right?

5 A. Municipalities.

6 Q. No, I mean --

7 A. The City.

8 Q. The City?

9 A. The City.

10 Q. I'm asking specifically
11 about you. Because you didn't talk to anybody
12 about the specifics of friction testing and how it
13 worked within the City --

14 A. To my knowledge there was
15 no other knowledge within the City on friction
16 testing.

17 Q. Okay. So you didn't have
18 any sensitivity, you didn't have a line in the
19 sand, you didn't have knowledge; is that fair?

20 A. These are my comments,
21 that's correct.

22 Q. If this recommendation --
23 and we're not in the recommendation part right
24 here but it is a recommendation later in the
25 report -- if this recommendation to perform

1 friction testing was approved by the public works
2 committee you understood that it would be
3 engineering services that would be the division
4 required to actually implement the friction
5 testing, to go find the appropriate person and
6 actually get it done, right?

7 A. No, I don't understand
8 that.

9 Q. You didn't understand
10 that?

11 A. No.

12 Q. You thought traffic
13 engineering and operations might take over getting
14 that --

15 A. Very well could have been
16 anyone. We had done it in the past, yes, but is
17 there somebody better, I guess that was yet to be
18 determined.

19 Q. Okay. Registrar, you can
20 close this down. Can you bring up OD7, page 56
21 and 57. And can you bring up the top of page 57
22 which is the e-mail that is excerpted in
23 paragraph 171. That one, thank you.

24 So this is an e-mail amongst
25 Mr. White, Mr. Lupton, Mr. Mater, Mr. Ferguson,

1 and this is Mr. White writing. And in the little
2 paragraph he says -- and this is in respect of the
3 staff report that is going to summarize the 2015
4 CIMA report. It says:

5 "Dave is making some changes
6 in the recs and we will send
7 it to you. After that I'm not
8 sure what to say. It recs the
9 guide rail and lighting review
10 and asphalt testing. All the
11 things Gary argues against."

12 So just stopping there. Last
13 day we went through -- I put to you several
14 circumstances where it appears that Mr. Lupton,
15 Mr. White, Mr. Ferguson, Mr. Mater and perhaps
16 Mr. Davis met with you, one or more, possibly even
17 four different meetings, and I think you said
18 yesterday you don't recall those meetings. But
19 given all those references, and Mr. White is now
20 suggesting you're arguing against the creation or
21 the installation of a guardrail, the lighting
22 review and asphalt testing, was that your -- did
23 you have opposition to those three things in late
24 October, early November 2015?

25 A. I don't believe I was in

1 opposition to them. I was simply in opposition to
2 the way they were being presented or not fully
3 being reviewed and presented in a in-depth
4 comprehensive fashion.

5 Q. Okay. It seems that
6 people in traffic engineering operations are doing
7 a fair bit of work to meet with you, to introduce
8 you and get you with Mr. Malone. Do you think you
9 were expressing your views in a manner that
10 suggested to them that they had to meet with you
11 repeatedly so that you would be comfortable with
12 the 2015 CIMA report?

13 MR. LEDERMAN: Sorry,
14 Mr. Commissioner, I don't understand that question
15 as something this witness can answer.

16 JUSTICE WILTON-SIEGEL: I
17 think question should be rephrased. It's a little
18 confusing.

19 MS. LAWRENCE: That's fair. I
20 agree and I'm actually going to just move on.

21 JUSTICE WILTON-SIEGEL: Okay.

22 BY MS. LAWRENCE:

23 Q. Registrar, you can close
24 that down. If you can go to page 57 and also
25 bring up 58, please.

1 In paragraph 172, which is on
2 the left-hand side, Mr. Ferguson is e-mailing with
3 Mr. Mater, Mr. Lupton and Mr. White about a draft
4 staff report, and he said I have modified it to
5 make it a bit more general, and have identified
6 long and short range game plan with a brief
7 explanation.

8 And then on 58, on November 4
9 Mr. White responds to Mr. Ferguson alone by
10 e-mail -- this is part of an e-mail chain -- and
11 says did Gerry, John and Gary approve the last
12 draft of the report.

13 Do you recall having an
14 opportunity to review a draft report in November,
15 early November 2015?

16 A. I can't say I
17 specifically recall.

18 Q. Okay. Maybe a more
19 general question. Do you recall reviewing any
20 draft of a draft staff report before it went to
21 PWC?

22 A. No, I don't recall any
23 report. I likely seen a report but I don't -- I
24 can't say that I recall seeing it specifically.

25 Q. I'll bring it up to help

1 try to refresh your memory. Registrar, can you
2 bring up HAM24539, please. And can you bring up
3 the first two pages. Thank you.

4 So this is a nine-page
5 document. It's not short. And it has
6 recommendations, including (b), which is directed
7 to implement the collision countermeasures
8 outlined in this report. Then it goes through the
9 LINC and it has some background the 2015 LINC
10 report.

11 Registrar, can you go to the
12 next two pages, please.

13 Then it has a summary of the
14 Red Hill. And you'll see in image 4 there's a
15 chart and it has a number of countermeasures
16 which -- I didn't take you to it but these are
17 reflected in the 2015 CIMA report and they include
18 conduct pavement friction testing medium and they
19 include illumination and end-to-end guide rail as
20 long. Does this refresh your memory about whether
21 you saw this report?

22 A. I don't know whether I
23 seen it before it went to committee or not. I
24 can't recall.

25 Q. Can you go to image 6

1 and 7, Registrar. At the bottom of image 6
2 there's a reference to the transportation -- the
3 master transportation plan where part of the
4 process will be to review additional lanes with a
5 view of potential widening.

6 And then on page 7, and,
7 Registrar, can you move page 7 and 8 up. If you
8 can pull out the relative -- relevant consultation
9 on the bottom of page 7, please.

10 Mr. Ferguson has inserted some
11 comments that he attributes to engineering
12 services in this draft. Rumble strips are
13 mentioned, lighting is mentioned, and it says
14 lighting for these -- it is the position of
15 engineering services that lighting is -- that
16 lighting these roadways is unaffordable and
17 unsustainable and unnecessary, and has some
18 costing.

19 And you'll recall that it's
20 the language that you used in the e-mail exchange
21 with Mr. Ferguson. Does this refresh your memory
22 whether you reviewed this draft of the draft staff
23 report?

24 A. It doesn't.

25 Q. Looking at it now, would

1 you have wanted comments in this form to be put in
2 a staff report to PWC?

3 A. I may have had a comment
4 or two on the wording here, but they were listing
5 what comments we provided them. That's -- that's
6 the comments we provided them. So they have
7 included friction testing and slippery when wet
8 signs. So we provide them with our comments.
9 They are free to make the decisions. They are the
10 lead. We're simply a commenting (ph) group to
11 provide them with the best information we can.

12 Q. Okay. Registrar, can you
13 close this down and bring up HAM24700. And on the
14 other image can you bring up HAM24702.

15 This is the final draft or
16 close to the final draft. This is the draft that
17 eventually goes to PWC and it's forwarded to you
18 on November 30th, not for review, just for FYI.

19 You'll see that the
20 recommendations had changed by this point from the
21 one that we were looking at before. It says the
22 general manager of public works be directed to
23 implement the short-term safety options identified
24 in appendix A, that it will be funded from the Red
25 Hill camera reserve, and that the design of the

1 medium and long term items in the report in
2 appendix B will be deferred pending the outcome of
3 the transportation master plan.

4 And I haven't brought up
5 appendix A but it is things like signage and
6 pavement markings, those sorts of things, from the
7 CIMA report.

8 And then appendix B has this
9 list and includes medium-term options -- conduct
10 friction testing and shield rock cuts and it has
11 long-term options, rumble strips, barrier (ph)
12 system on the LINC, the Red Hill, and
13 illumination.

14 Did you suggest that traffic
15 go back to CIMA to ensure that the
16 characterization of medium, long, and short-term
17 measures would be reflected in their report? Do
18 you remember any discussions about that?

19 A. At sometime I remember a
20 comment like that. I mean, I thought we looked at
21 it yesterday in some context that --

22 Q. We did.

23 A. I had made some -- which
24 was just good -- just good practice.

25 Q. That was in respect of

1 the 2013 report. So we're at the 2015 report. Do
2 you remember reiterating those same comments in
3 respect of the 2015 report?

4 A. I don't recall
5 specifically but it's not unlikely.

6 Q. Okay. And did you have
7 any view about whether friction testing should be
8 done in the zero to two-year range or the two to
9 five-year range or a long-term range?

10 A. No, I don't. I don't
11 believe I had any input into that.

12 Q. No, I was asking your
13 view. As the report is being prepared did you
14 think it would be preferable for friction testing
15 to occur in the short term, zero to two years, the
16 medium term, two to five years, or the long term
17 over 10 years? Or I'll give another option, not
18 at all?

19 A. I don't know that other
20 than the comments that I had provided whether I
21 had any other view.

22 Q. Well, you don't speak
23 about the timing of that so that's my question.
24 When did you think friction testing should occur,
25 if at all?

1 A. I don't know that I
2 turned my mind to it. I mean, other than -- they
3 knew we had done it in '13, so whether they had
4 assessed that it can be something that's two more
5 years from now or within the next two years, it
6 wasn't something that needed to be done -- I
7 didn't -- I don't know that I provided any comment
8 in that regard.

9 Q. Okay. Did you understand
10 in the lead up to the December 2015 meeting that
11 the recommendation in respect of the medium and
12 long-term items being deferred pending the outcome
13 of the transportation master plan, that that would
14 in effect mean that friction testing, shield rock
15 cuts, rumble strips, the barrier (ph) system, and
16 end-to-end illumination would be deferred for some
17 period of time?

18 A. At the time I thought
19 that the transportation master plan was imminent,
20 so no, I don't believe that I thought there was
21 any significant delay in that going to happen.

22 Q. Registrar, you can close
23 this down.

24 Mr. Moore, we're going to try
25 to stretch our technology and take you to the

1 public works committee meeting. You attended the
2 public works committee meeting on December 7,
3 2015, right?

4 A. If you say so. I
5 don't -- I don't specifically recall which
6 meetings I attended or did not.

7 Q. Okay. Registrar, do you
8 have a video link December 7th, 2015, public works
9 meeting? I believe we've sent it to you.

10 THE REGISTRAR: Was it in the
11 spreadsheet?

12 MS. LAWRENCE: I think so.
13 It's a link. It's pub-Hamilton.escribemeetings,
14 if that's helpful.

15 THE REGISTRAR: Thank you.
16 I'll put it on screen now and just let me know if
17 it's the right one.

18 MS. LAWRENCE: All right. So
19 this is the City of Hamilton's public facing
20 website that includes videos. Registrar, if you
21 can go down to the discussion items, 8.2 and click
22 on that. It looks like it's already clicked on.
23 That's good. If you can start the video playing,
24 and, Registrar, you can do this off-line or not.

25 (Video playing)

1 MS. LAWRENCE: I'm sorry,
2 Registrar, it's very loud on our screen. We
3 actually see your Excel spreadsheet rather than
4 the video. As I said, I thought this might strain
5 our technology. Perfect. Thank you. Registrar,
6 before you press play can you turn the volume down
7 a little. Can you go to -- 127:40, please.
8 Perfect. Thank you. Before you press -- thank
9 you.

10 Q. So just to orient you,
11 Mr. Moore, this is the public works committee
12 meeting, and Mr. Ferguson is presenting and there
13 are certain questions that are directed at you
14 that you answer.

15 Registrar, can you actually go
16 forward about 45 seconds. All right, you can
17 press play.

18 (Video playing)

19 BY MS. LAWRENCE:

20 Q. Could you turn it down to
21 just two bars on volume, please. Thank you.

22 So on that Mr. Ferguson says
23 the design speed is between 110 and 120. Did you
24 understand 120 was definitely not the design
25 speed?

1 A. I was aware of that, yes.

2 Q. You don't correct it in

3 the meeting itself. Did you correct

4 Mr. Ferguson's view of the design speed being

5 between 110 and 120 after this meeting?

6 A. I thought I took

7 Mr. Ferguson's statement as that a parkway is

8 typically 110 to 120. I really didn't understand

9 that he was referring to our parkway.

10 Q. Thank you. Registrar,

11 can you go forward one minute.

12 You make some comments about

13 friction testing and we're going to play that.

14 Registrar, can you press play.

15 (Video playing.)

16 BY MS. LAWRENCE:

17 Q. Mr. Moore, that was your

18 voice, right?

19 A. I believe so, yes.

20 Q. And the comments where

21 you said we did friction testing five years after,

22 your reference there is to the Tradewind testing?

23 A. Yes, that's correct.

24 Q. You didn't mention

25 anything about your view that the Tradewind report

1 was just wrong because of the reference to the UK
2 investigatory level?

3 A. I believe I was answering
4 a question from Councillor Merulla with regard to
5 the overall performance of the roadway. And as
6 far as I knew the numbers that we had got from
7 Tradewind were higher than what we got from MTO,
8 and then therefore the comment that it was holding
9 up extremely well is -- well, I felt was
10 appropriate at the time.

11 Q. Okay. And you knew that
12 councillors would rely on statements that you made
13 to them in a public works committee meeting?

14 A. Yes.

15 Q. Registrar, can you go
16 forward to 144:19. You may want to use the --
17 yeah, perfect. Thank you. Don't press play yet.

18 Lighting also came up at this
19 public works committee meeting. Both Councillor
20 Conley and Councillor Collins raised this with
21 you, and so first this is Councillor Conley.

22 (Video playing)

23 BY MS. LAWRENCE:

24 Q. Thank you. Councillor
25 Collins also brings up lighting.

1 Registrar, can you go to
2 203:07.

3 (Video playing)

4 BY MS. LAWRENCE:

5 Q. Stopping before we go on.
6 Mr. Moore, you hadn't done any investigation about
7 the EA process (interruption) opened up
8 communicated to Councillor Conley; is that right?

9 A. I believe that's what --
10 I wasn't sure on how exactly you would go about
11 that, no.

12 Q. Registrar, can you press
13 play. This is Councillor Conley.

14 (Video playing).

15 BY MS. LAWRENCE:

16 Q. Thank you. That second
17 speaking voice -- the first one was Mr. Ferguson.
18 He's referred to as Dave there. The second
19 speaking voice is yours; is that right?

20 A. I believe it was.

21 Q. So you understand --
22 understood coming out of this meeting that the
23 committee wanted a report back on the steps that
24 the committee could undertake to look at selective
25 lighting or full lighting on the Red Hill?

1 A. Yeah, I believe so. I
2 mean, at the time I don't -- that's first time I
3 recall hearing that but....

4 Q. Did you understand that
5 the committee didn't want a delay in doing -- in
6 starting the process to look at selective or full
7 lighting?

8 A. Well, I believe
9 Councillor Collins was looking for, okay, so
10 what's it's going to take if we do do it.

11 Q. Did you convey the events
12 of this meeting on lighting to Mr. Field and/or
13 Mr. McGuire?

14 A. No, I don't recall. It
15 wouldn't have been them that would have done EA
16 type stuff. It would have been our EA group that
17 would have investigated that, and any action would
18 have come from additional direction from council
19 as a result of the modification of the report. We
20 don't just take action from a verbal request from
21 councillors in a committee unless it's a direction
22 that is recorded in the minutes.

23 Q. Thank you. There was a
24 direction recorded in the minutes but we can go
25 there.

1 Registrar, you can close this
2 down and thank you for piloting the video.

3 Registrar, can you go to OD7 page 76.

4 So, Mr. Moore, this is just a
5 minor point of clarification. At 240 Councillor
6 Ferguson e-mailed Mr. Ferguson and asked about 500
7 vehicles a day travelling in speeds greater than a
8 140 kilometres per hour. Do you recall there
9 being some controversy in the media around whether
10 that figure was accurate?

11 A. I do recall some
12 discussion in that regard, yes.

13 Q. Registrar, can you bring
14 up at page 87, please. I misspoke. 97, please.
15 At paragraph 106 (sic), Rich Shebib, who we talked
16 about earlier in your evidence, that he was a
17 corridor management and staff member, he forwarded
18 an e-mail chain that was between Mr. Malone and
19 Mr. Ferguson about this controversy to you with
20 some Excel spreadsheets attached. Do you recall
21 how and why Mr. Shebib forwarded this information
22 to you?

23 A. I don't. Whether he just
24 thought that I should be aware of something, I'm
25 not sure.

1 Q. Thank you. Registrar,
2 can you go to 77 and 78, please. And if you can
3 call out all of paragraph 246.

4 So, Mr. Moore, a community
5 group, the Lakewood Beach Community, e-mailed to
6 mayor and council on December 9. So this is as
7 council reviewing the reports from PWC to ratify
8 them. And they request considering adding one
9 recommendation to the list of measures that are in
10 this staff report, and, in particular, they say
11 friction testing should be a short-term measure,
12 not a medium-term measure, and they reference a
13 number of the collision statistics that are in the
14 staff report. I'm going to take you through just
15 a bit of a chronology before I ask my questions.

16 Registrar, you can close this
17 down. And if you can go to page 79, please and
18 80, please.

19 In 250 you'll see that the
20 resolution coming out of that meeting was to defer
21 that communication from the Lakewood Beach
22 Community Council to the next public works
23 committee meeting for further discussion.

24 And in the next paragraph
25 down, 251, Mr. Mater, Mr. Lupton and Mr. White,

1 copying Mr. Ferguson, are all discussing this and
2 they say please coordinate with Gary so we can
3 send a message on this to the group.

4 Do you remember having
5 discussions with any of those individuals about
6 this request to move up the timing of the pavement
7 friction testing set out in the staff report at
8 this time?

9 A. I don't recall any
10 specific discussion with them, no.

11 Q. So this is December 13th.
12 The public works committee meeting is the 7th. On
13 December 17th you speak to Dr. Uzarowski. You see
14 that in paragraph 253. There's a few different
15 conversations. There's one on the 7th.

16 Registrar, can you go to the
17 next page, please. December 17th there's a
18 reference to some notes that appear to reflect a
19 discussion between you and Dr. Uzarowski. Do you
20 remember speaking to him on December 17th?

21 A. I can't say that I do,
22 no.

23 Q. On that same day --
24 perhaps if you can just pull this out, Registrar.
25 It is Golder 2681. You e-mail him at 8:47 that

1 morning. Here's the summary. And this looks to
2 be a cut and paste version of the e-mail that he
3 e-mailed to you back in January 2014.

4 And where did you go to get
5 this information? Was this e-mail still in your
6 RHVP folder on your M drive?

7 A. It's very likely, yes.

8 Q. Looking at the notes on
9 the left side image under paragraph 354, there's a
10 reference to LINC, Red Hill, Red Hill Valley.
11 Dr. Uzarowski testified that he believed that you
12 asked him to send you a copy of the Tradewind
13 report. Do you recall that?

14 A. I don't.

15 Q. Did you tell
16 Dr. Uzarowski at this -- during this call that a
17 community group was asking questions relating to
18 friction testing?

19 A. I don't believe so. I
20 don't know that I made any link between the two.
21 No.

22 Q. Sitting here today do you
23 recall what the impetus for you e-mailing him at
24 8:47 that morning with these results was if it
25 wasn't coming from the public works committee

1 meeting and then the LBCC request?

2 A. I cannot for the life of
3 me figure out why I would have sent him back the
4 exact information he sent to me without a
5 further -- without a further, you know, in regard
6 to our discussion or am I right, is this what we
7 were using. I have no idea why I would send his
8 information back to him.

9 Q. It looks like you spoke
10 to him on December 7th. I don't know what time of
11 day and if it was before or after the public works
12 committee meeting. And then you had a more
13 lengthy conversation it looks like on the 17th.
14 That doesn't assist with the impetus for this?
15 Because it seems to me that you could draw an
16 inference there's a connection.

17 A. I don't know what that
18 inference would be.

19 Q. Okay. Registrar, can you
20 close down Golder 2681 and bring up page 82 of
21 OD7. At the top of 82, just after noon he
22 responded to your e-mail attaching the Tradewind
23 report, and he says:

24 "Please find attached the
25 November 2013 report from

1 Tradewind. I will look at
2 some standards or anticipated
3 values and call you."

4 Did you have a copy of the
5 Tradewind report in your RHVP folder on
6 December 17th, 2015?

7 A. I don't know. I don't
8 know whether I asked him to send me another copy
9 or a copy, whether I couldn't find the hard copy
10 or I didn't have a -- I don't know.

11 Q. Okay. So he sends you
12 attached to that e-mail a copy of just the
13 Tradewind report, not the Golder report with the
14 Tradewind as an appendix.

15 Dr. Uzarowski testified that
16 this was the first time that you had any questions
17 about the UK investigatory standard and the first
18 time that you asked him to look into standards or
19 anticipated values. And I take it from your
20 evidence over the last couple of days you dispute
21 that; is that right?

22 A. I do. I know I had
23 questions the first time I read it. It made no
24 sense, and I asked Dr. Uzarowski to explain it
25 when we met the first time to review the document.

1 Q. Is it possible that the
2 first time that you reviewed it was when you
3 received it from him on December 17th, 2015?

4 A. No.

5 Q. On December 23rd
6 Dr. Uzarowski e-mailed internally. Registrar, can
7 you bring up 83, please. He says to his
8 colleagues that you have said go ahead with the
9 inertial profiler scan on the Red Hill, top of 83.
10 Why did you decide to have an inertial profile
11 scan done on the Red Hill on December 2015?

12 A. I don't know that I did.
13 We were looking for a profile indication to
14 identify the location of these depression or sumps
15 that were occurring along the freeway, but I
16 believe here he's -- he was confused on what I was
17 looking for. Or the inertial profiler scan was
18 the way that he was using and I was unaware that
19 that's how they were going to identify it. I
20 thought it was a profile run that would indicate
21 the depressions along the length of the freeway.

22 Q. Okay. And this I
23 think -- I've seen it referred to as dips and
24 bumps; is that right?

25 A. That's correct.

1 Q. And to identify where the
2 dips or bumps are so the depressions or slight
3 bumps, you need a -- and it's very precise word;
4 right? You need to know exactly the locations?

5 A. Yes.

6 Q. And is fixing dips and
7 bumps part of pavement maintenance as you
8 described it yesterday, or is it part of a
9 resurfacing project or would you characterize it
10 in some other way?

11 A. If you can get them early
12 and they are small and there's not very many of
13 them then you could do them as a maintenance
14 activity. If they are larger, my concern was with
15 the bumps and the trucks hitting them it would be
16 starting to have an impact on a lower (ph)
17 portions of the pavement, so that's why we needed
18 to know exactly where they were and whether there
19 was -- you know, resulted in (interruption).

20 Q. Okay. Registrar, can you
21 go to page 84, please. So on February 2nd he
22 comes back and says that they have done the IRI
23 analysis, and he says in the second paragraph,
24 could we meet and discuss the repair strategy we
25 initially recommend. And the timing of this, did

1 you also have an intention to assess whether to
2 implement Golder's recommendations for routing and
3 sealing or a mill and overlay?

4 A. I don't know at this
5 time. We were concerned with the sumps and bumps.
6 I mean, this is February so there's nothing else
7 you can really do. I mean, it's a little late to
8 begin doing anything out there. So I think we
9 were tackling one problem at a time, which is what
10 we usually did.

11 Q. So the dips and bumps, it
12 wouldn't make sense to tackle those if you're
13 going to be looking to resurfacing, or it wouldn't
14 make sense to tackle those and then try to do some
15 other measure. So how were you assessing the dips
16 and bumps versus Golder's recommendations for
17 routing and sealing the longitudinal cracks?

18 A. So we needed to know
19 where the dips and bumps were specifically, what
20 the extent was before we could identify a rehab
21 approach for them. It could have been -- I mean,
22 if they weren't within the zone that he had
23 originally recommended for resurfacing or if some
24 were in there then they could be included in other
25 areas. But typically a route and seal is not a

1 capital work, it's a maintenance item that's done
2 by the road operations group on an ongoing basis.

3 Q. And could a route and
4 seal deal with the dips and bumps if they were
5 mild or moderate?

6 A. No, not --

7 Q. It's a different thing?

8 A. It's a different thing.

9 It's like a little spinning router. You actually
10 clean out the crack and blow it out and dry it out
11 and then you pour hot sealant into it. So a sump
12 or a bump or a dip was a larger area of pavement
13 that had deformed down from a smooth surface.

14 Q. Okay. So if anything,
15 the order of operations would be that you would
16 fix dips and bumps and then you would route and
17 seal?

18 A. If they are not in the
19 same area. I mean, you could route and seal an
20 area first and then go in and do (interruption)
21 scale. It would depend on the time of year. It
22 would depend on the urgency of -- you know,
23 appended to each one of these issues.

24 Q. I want to make sure I
25 have the right reference for you. Just give me

1 one second. Okay. Page 109, please.

2 On January 28 Councillor
3 Jacobson e-mailed Mr. Ferguson about the agenda
4 and one of the issues was the LBCC. Registrar,
5 can you pull up the next two -- 110 and 111. You
6 see at the top of 111 Mr. Ferguson e-mailed them
7 and asked -- sorry, let me go back a little bit.

8 Mr. Ferguson says that this
9 was something that was being covered off by -- was
10 already being covered off, and that is in
11 paragraph 345. And Councillor Jackson says:

12 "If Director Moore concurs,
13 then I will remove this from
14 receiving the correspondence
15 only with the caveat that
16 staff provide a written
17 response to the LBCC outlining
18 and commenting on their
19 suggestions on how staff are
20 already or will be
21 implementing these measures
22 accordingly. Thoughts." (As
23 read)

24 And Mr. Ferguson says, "I
25 concur." And I don't believe that you do a

1 response back to Councillor Jackson.

2 But as I understand Councillor
3 Jackson's suggestion, it's that the deferral or
4 the referral to PWC to discuss the issue of LBCC's
5 request that friction testing be a short-term
6 measure was going to be basically taken off the
7 agenda if staff provided a response to them that
8 this was already in the works.

9 At 350 -- and, Registrar, can
10 you pull up 350 -- Mr. Ferguson responds to that
11 community group and in the second paragraph says:

12 "Through the support of the
13 public works committee I am
14 pleased to inform you that
15 this testing will be completed
16 by engineering services in
17 2016."

18 You see that?

19 A. I see that, yes.

20 Q. And you're copied on this
21 e-mail. Do you see that?

22 A. I believe so, yes.

23 Q. Thank you. You can close
24 that out, Registrar.

25 You then respond just to

1 Mr. Ferguson and say "Perfect." And it's not
2 here. I can bring it up if you need, but Mr.
3 Ferguson responds, "Thank you," you being
4 emphasized.

5 So is it fair to conclude from
6 this back and forth that you signed off on
7 Mr. Ferguson advising this community group that
8 engineering services would be doing friction
9 testing in 2016?

10 A. I don't know if signed
11 offs were -- my comment was from whatever amount
12 of attention I paid to that, it was perfect.

13 Q. Okay. So Mr. Moore,
14 Mr. Ferguson says this testing will be completed
15 by engineering services in 2016.

16 A. Right.

17 Q. You agree with me that
18 Mr. Ferguson would not make a commitment to a
19 community group on behalf of engineering services
20 to do something in that same calendar year unless
21 he discussed it with you and you had agreed; is
22 that fair?

23 A. No, that's not
24 necessarily so.

25 Q. Okay. You didn't direct

1 friction testing to be completed at any point in
2 2016, did you?

3 A. I don't recall, no.

4 Q. You don't recall doing it
5 and you don't have any evidence that it was done,
6 right?

7 A. That it was done, no.
8 Did I believe -- I've seen other e-mails that are
9 with Ludomir that are inconclusive that it looked
10 like we were talking about it but I don't recall
11 planning it at all.

12 Q. Okay. But nothing
13 occurred in 2016, right?

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

15 Q. Okay. So I'm going to
16 suggest to you that you and Mr. Ferguson had
17 discussion before he sent this e-mail back to the
18 LBCC. Do you recall having discussions with
19 Mr. Ferguson about this?

20 A. No, I don't. Sorry.

21 Q. Okay. If you had
22 received this e-mail and you hadn't had any
23 discussions with Mr. Ferguson and he had just gone
24 on his own and committed engineering services to
25 do this testing, I'm going to suggest to you you

1 would not have responded with the phrase
2 "perfect," would you?

3 A. If I read that -- I
4 believe I thought that that was correct at that
5 time. I don't have any other evidence to the
6 contrary.

7 Q. Registrar, can you go to
8 the next paragraph, please. Pardon me, the next
9 page, please, 112. And call out 355.

10 This is again in the back and
11 forth about friction testing, and Mr. White is
12 responding to Mr. Lupton, Mr. Ferguson and
13 Mr. Mater and says this looks like the RHP safety
14 stuff. The issue is the asphalt friction test
15 which Gary says is done and we've asked for a copy
16 of results but haven't seen it yet.

17 So this is at February
18 of 2016. At this point had anyone asked -- from
19 traffic asked you personally for a copy of the
20 friction test results at any point prior to this
21 time?

22 A. Not that I'm aware of or
23 can recall.

24 Q. And if they had asked for
25 a copy of the results what would you have said?

1 A. That I'm probably still
2 waiting for clarification on it. We got them
3 done, the results look good, and I'm just
4 asking -- I've asked the consultant for
5 clarification on -- with regard to the standard.

6 Q. Registrar, you can close
7 this down. And if you can call out 356. I should
8 have had this up when I asked this last question.

9 This is unrelated. That
10 e-mail we were just looking at was not asking you
11 for information, but on February 25 you respond to
12 Ms. Cameron's e-mail to Mr. Ferguson in respect of
13 the community group, and you copy Mr. Lupton and
14 you say some roughness/skid resistance friction
15 testing has been done, and you say I'm trying to
16 get some analysis and put it into context, like,
17 how does this compare to other highways of a
18 similar type.

19 Had you asked Dr. Uzarowski to
20 look into how Tradewind's test values compared to
21 highways of a similar type?

22 A. I don't recall that
23 discussion. It's something that would have been
24 valuable but I don't -- I don't recall asking
25 Dr. Uzarowski to -- that we were looking at that.

1 I was still trying to get the British standard
2 addressed.

3 Q. Can you close this out,
4 please. And so just as a matter of the way the
5 public works committee meeting works, Mr. Ferguson
6 has advised staff -- pardon me -- has advised the
7 community group that engineering services is going
8 to do friction testing, and so the correspondence
9 that they sent initially requesting the friction
10 testing be moved to a short-term measure, that
11 just gets received as -- received as
12 correspondence.

13 And am I correct -- and I'm
14 asking for your understanding the way PWC works --
15 that once that happens staff don't need to speak
16 to that issue. Any issue that is just received --
17 received by correspondence; is that right.

18 A. Yeah, if it's just
19 received it's just for information. There's no
20 action resulting.

21 Q. So the MTO had sent to
22 you the 2007 friction testing results. What was
23 the basis in the e-mail that was just called out
24 for you to say that the MTO was very guarded with
25 this information?

1 A. My discussions with
2 Ludomir and the, for lack of a better term, cloak
3 and dagger that we had to go through to get the
4 information in the first place. I mean, they
5 wanted to do the testing of our roadway. We said
6 yes but we want a copy of that information. But
7 there was no direct communication between myself
8 and the MTO; it was given to Ludomir and then
9 Ludomir gave it to me.

10 Q. Okay. Registrar, can you
11 go to page 107, please. I was asking about the
12 time period in February, just taking a step back
13 slightly in time. Registrar, can you bring up 108
14 as well.

15 So a reporter from the
16 Hamilton Spectator contacted the MTO asking
17 whether the MTO had ever conducted friction
18 testing. And there is some internal discussions
19 about this, and the MTO's response is MTO has
20 conducted friction testing on the pavement surface
21 of the Red Hill in order to evaluate the long term
22 performance of the stone used in the asphalt
23 pavement. You see at the top of 108?

24 A. Yes.

25 Q. And then on January 22

1 Ms. Lane e-mailed Dr. Uzarowski and said:

2 "I received a strange media
3 request about performance on
4 the parkway. Do you keep in
5 touch with Hamilton on that
6 project? Are you aware of any
7 performance issues? Perhaps
8 cracking issues. I'm in the
9 dark on this one." (As read)

10 And he forwards that e-mail to
11 you and says:

12 "Obviously she doesn't know
13 anything about any issues."

14 (As read)

15 What, if anything, did you
16 understand him to mean? Obviously she does not
17 know anything about any issues.

18 A. I don't know what he
19 would be -- what had been referring to.

20 Q. Okay. Did you contact
21 Ms. Lane to discuss the media request that she had
22 received that he had flipped to you?

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

24 Q. Registrar, can you go
25 page 84, please. That's page 85. If you can put

1 page 84 and 85 together. Thank you.

2 So back to those e-mails that
3 we were looking at where he had sent you the IRI
4 analysis. So you respond at the bottom of 84
5 this, "does nothing really for me. We do IRI for
6 our entire roads," which you and I talked about
7 yesterday, Mr. Moore. And you said:

8 "I'm only interested in
9 dealing with the settlements
10 along the Red Hill. Where are
11 they? Are they related to any
12 buried infrastructure, trench,
13 excavation, duct? That's what
14 I want to fix." (As read)

15 He says, "we're going to
16 finetune the analysis." And eventually you follow
17 up, in 286:

18 "I have asked twice now but
19 have not seen any proposal for
20 this work."

21 That's an example of the ways
22 that you have to chase Dr. Uzarowski occasionally;
23 is that fair?

24 A. It's fair. He was a busy
25 guy. Yup.

1 Q. And then he e-mailed you
2 on March 1st and said, "we have information ready
3 to go, suggest a meeting."

4 And Registrar, can you go to
5 86 and 87, please. He forwards you at 272 a Excel
6 spreadsheet that has the dip and bump analysis,
7 and then you forward that in 277 to Marco Oddi.
8 And Mr. Oddi is the construction manager, right?

9 A. Yes.

10 Q. And so at this point were
11 you and Mr. Oddi discussing pavement. I'm going
12 to call it rehabilitation. You can call it
13 maintenance -- measures?

14 A. No, I think we were
15 trying to determine what the cause of these were.
16 Mr. Oddi was intimately involved with the
17 construction in the field with pre-construction
18 conditions and what went in the ground as it went
19 in out there, so I think we were trying to
20 determine were these related to some
21 infrastructure that we had put in, was it related
22 to some infrastructure we had removed in order to
23 create the freeway, or were they unrelated and
24 simply random occurrences. So that's what we were
25 putting our minds to.

1 Q. Okay. But all of that
2 was with a view to fixing it at some point; is
3 that right?

4 A. Yes, that's correct.

5 Q. At this point was
6 Mr. Andoga or anyone from asset management
7 involved in that discussion?

8 A. It's possible. I mean,
9 any time we're going to work on the road out there
10 then you're going to involve asset management in
11 some fashion.

12 Q. In February and March
13 of 2016 Dr. Uzarowski corresponds with Tradewind
14 about the correlation of grip test and MTO
15 testing, further to his e-mail in December 2015
16 where he says I'll go get some analysis. And
17 Dr. Uzarowski has testified that he then met with
18 you on March 4, 2016, and there's a reference in
19 his notebook at the top of page 86, paragraph 271.
20 Do you recall that meeting?

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

23 Q. Dr. Uzarowski testified
24 that he told you about his correspondence with
25 Tradewind, that there was no clear correlation

1 between the friction values from the grip tester,
2 which Tradewind used, and the friction values from
3 the locked wheel, which MTO used, and that there
4 was no official Ontario friction standard. Do you
5 recall Dr. Uzarowski giving you that information?

6 A. I don't -- and I'm not --
7 I'm not sure I received that type of information
8 because that would have been very concerning to
9 me, in everything I had understood to date and the
10 results that they had provided it would have made
11 the report virtually useless without further
12 clarification on the standard or anything.

13 So that's why I'm not sure,
14 because I don't -- I don't think I've ever been
15 aware that, you know, that I was -- that that had
16 been explained to me at all.

17 Q. Okay. I'm just going to
18 break down the two things that he says he told
19 you.

20 So the first is the lack of a
21 clear correlation in friction values between the
22 grip test and the locked wheel test. Do you
23 recall Dr. Uzarowski explaining that distinction
24 between grip tester values and locked wheel
25 testers testing values to you?

1 A. I knew there was a
2 difference when we first met and it was explained
3 that Tradewind had used the grip tester. So back
4 in '13 when we first met, because that was again
5 part of my questions, you know, is this what MTO
6 used, how can we -- you know, is this the same,
7 and my understanding at the time was they were an
8 apples to apples comparison.

9 Q. Okay. And do you recall
10 Dr. Uzarowski telling you anything in this meeting
11 that would correct your understanding about these
12 being an apples to apples values?

13 A. I don't. I don't recall
14 that.

15 Q. Is that your evidence
16 then, that he did not to do that at this meeting?

17 A. I just don't recall. And
18 I don't -- I believe that I would have recalled
19 that type of occurrence, you know, that this is
20 when this was explained to me or that it was
21 explained. It's fairly significant in terms of
22 the report and I just -- I don't know if that was
23 ever explained in that -- in those terms.

24 Q. Okay. You don't think it
25 was ever explained in those terms?

1 A. Not that I recall.

2 Q. Okay. Did you understand
3 from this meeting or otherwise that grip tester
4 devices generally return values that are higher
5 than locked wheel values?

6 A. No, I don't. I don't
7 know that I ever knew that, so I don't believe --
8 I don't know if or when that was ever explained to
9 me.

10 Q. Okay. So not only are
11 they not apples to apples, but a grip tester value
12 of, say, 40 is not as good as a locked wheel value
13 of 40. Did you understand that from
14 Dr. Uzarowski?

15 A. No, absolutely not.

16 Q. Okay. He testified that
17 you and he discussed his recommendation from the
18 Golder report to do microsurfacing and blasting,
19 and do you recall discussions about that?

20 A. I do recall talking about
21 microsurfacing and shot blasting and skidabrading
22 with Ludomir, yes.

23 Q. Do you recall that
24 happening in March of 2016?

25 A. I can't say when that

1 was, no.

2 Q. Do you recall that
3 happening as a result of you going and asking him
4 to consider the friction testing issue, the
5 standards and how to interpret it, and then from
6 that discussion that you then turned to potential
7 recommendations. Is that how you remember that
8 unfolding?

9 A. No, I don't because I
10 wouldn't have turned to 'how are we going to fix
11 this' until I understood what the issue was or
12 what -- was there a problem at all and how to
13 explain discrepancies between what MTO was telling
14 us, the numbers we were getting, and what he had
15 previously said in his recommendations initially.

16 Q. Okay. I don't think I
17 understood your last answer. You said I wouldn't
18 have turned to fixing it until I could understand
19 if there was a problem at all and how to explain
20 discrepancies between what the MTO was telling us,
21 the numbers we were getting and what he had
22 previously said in his recommendations initially.
23 What was that last bit when --

24 A. Well, the initial
25 numbers, you know, that he had indicated, I

1 believe in 2013 in his report, at least they
2 inferred to me that they weren't apples to apples
3 and that numbers were increasing, because his
4 reference was that I believe is that although the
5 numbers are increasing, they are below a certain
6 standard.

7 So the inference there is, to
8 me, is that they are an apples and apples
9 comparison because they are increasing, but only
10 when you compare it against this standard there's
11 a problem. If you don't compare it against that
12 standard, if that standard is incorrect there's no
13 problem.

14 Q. I understand.

15 A. That's my understanding.

16 Q. And that view about the
17 apples to apples comparison, you held that during
18 your entire tenure as director of engineering; is
19 that --

20 A. I don't believe I had any
21 information provided that showed me any different.

22 Q. Okay. Dr. Uzarowski's
23 evidence was that his understanding, his
24 impression coming out of this meeting on
25 March 4th, was that you were interested in doing

1 something to remedy the friction condition of the
2 pavement and that you wanted him to give you a
3 plan to remedy the issues that he had identified
4 for you. And that he -- and then e-mailed a bunch
5 of people to get blasting and microsurfacing
6 information. Do you recall that part of the
7 conversation?

8 A. I do not.

9 Q. Okay. And did you at
10 this meeting ask Dr. Uzarowski to go out and get
11 information about microsurfacing or other kinds of
12 blasting?

13 A. I don't believe I did. I
14 believe we were still focused on the bump and dip
15 analysis.

16 Q. So you said earlier this
17 morning that you talked to him about
18 microsurfacing and skidabrading, but you didn't
19 give him any direction to actually go get you a
20 quote or anything like that. Just to be fair to
21 you, we are going to come back to a place where he
22 does provide you with some information.

23 A. You want to wait till
24 then, you know --

25 Q. Sure.

1 A. It's probably better
2 because I -- there is some indication there that
3 there was some confusion again of what was -- what
4 had been asked, similar to the -- you know, when
5 he came back with the profiler information is, you
6 know, again that's not what I was looking for. So
7 when you get to that we can talk about it if you
8 would like.

9 Q. Thank you. So just
10 before we get to that, really just coming out of
11 this March 4th meeting, I just want to make sure
12 that your evidence is clear. Did you ask Ludomir
13 to go out and do any other inquiries in respect of
14 shot blasting or microsurfacing?

15 A. I don't believe so.

16 Q. And did you ask him to go
17 out and do other inquiries about anything else
18 related to the friction values on the pavement?

19 A. No. I was still looking
20 for his explanation of the British standard.

21 Q. Okay. Registrar, can you
22 go to page 117, please. And if you can bring up
23 118 as well.

24 So Dr. Uzarowski obtains a
25 quote for skidabrading, and that was for \$301,888

1 and that's at paragraph 374 on 117. Had you and
2 Dr. Uzarowski talked about skidabrading as a
3 potential measure for the pavement?

4 A. I don't believe so. I
5 believe that when he came with this correspondence
6 was the first time I had ever heard of it.

7 Q. Okay. So he made an
8 entry in his notebook on March 14 and it says
9 "Gary Moore - spec, friction, proposals." And
10 then you send him an e-mail, and actually let's
11 bring up that e-mail. It is GOL2697.

12 So this isn't an e-mail
13 exchange. This is just you sending an e-mail
14 saying it's -- the subject line is skid testing,
15 and you say:

16 "300,000 is just a ridiculous
17 amount. I don't need the
18 whole road tested, I don't
19 need every wheel path of lane.
20 Four to six spots that would
21 be representative or worst
22 case is all I need at the
23 most. But I expect that is
24 still too expensive."
25 Just starting with the subject

1 line, did you ask Dr. Uzarowski to go out and try
2 to get new skid testing done, friction testing
3 done?

4 A. From my response here,
5 that appears to what I was asking him to do. I
6 don't recall -- I didn't recall, you know,
7 planning to do additional testing originally
8 before, you know, we got involved in the inquiry,
9 but from this e-mail it's pretty clear to me that
10 I was looking for skid testing. I wasn't
11 expecting anything to become \$300,000 and I said I
12 -- about the road tested. I wasn't -- I don't
13 believe I had asked him for anything else other
14 than that.

15 Q. Okay. But you do think
16 you asked him to go make inquiries about another
17 skid test?

18 A. From my -- from the
19 e-mail here that's the only way that I can
20 interpret what was happening at the time.

21 Q. And you say four to six
22 spots, that would be representative or worst cases
23 is all I need at most. So how were you going to
24 decide the four to six spots for friction testing?

25 A. I don't know what -- what

1 that was based on.

2 Q. Okay. Registrar, you can
3 close down the image 2 and just go back to the OD,
4 please. And if you can bring up the next page.
5 If you can call out 377 and 378.

6 So Dr. Uzarowski confirms that
7 this is for a big Skidabrader and that it's a
8 machine that restores texture and brings the skid
9 numbers high. And then you respond:

10 "Sorry, I thought you were
11 talking about more testing.
12 I've never heard of this
13 technology or what it does.
14 Besides, it doesn't address
15 the cracking and the need to
16 address the surface distresses
17 and deformations (humps and
18 sump) or dips and bumps."
19 That's the same thing, right?

20 A. Yes.

21 Q. "So I don't think we are
22 interested. Thanks."

23 So did you understand
24 Dr. Uzarowski to be suggesting that skidabrading
25 would be a measure to deal with skid numbers or

1 skid resistance but that it wouldn't be of use for
2 the other things that he had identified in 2014,
3 the cracking, and what you had identified, the
4 dips and bumps?

5 A. I don't know what he
6 understood. I mean, from here it's clear that
7 there was some sort of disconnect between what I
8 had asked him and what he was providing.

9 Q. Okay. Did you want at
10 this point to address dips and bumps?

11 A. Yes.

12 Q. And did you want to
13 address the cracking?

14 A. I believe so, yes.

15 Q. And --

16 A. That's what he
17 identified, yes.

18 Q. Did you want to address
19 his concerns that the friction levels were not
20 sufficient?

21 A. I don't know that that
22 was the case yet. I'm still -- it appears I'm
23 still talking about more testing.

24 Q. Let me put it
25 differently. Did you want some measure that would

1 increase the skid numbers on the Red Hill?

2 A. I don't believe I ever
3 asked him for that.

4 Q. I wasn't asking what you
5 asked him for. I was asking what you were looking
6 to do with the pavement.

7 A. I don't believe I was
8 looking to address any frictional characteristics
9 of the pavement because I -- I had no concern with
10 them.

11 Q. Registrar, can you close
12 this down and go to page 120, please. Can you
13 bring up 119 and 120.

14 So if you look at
15 paragraph 382, which goes into 120, Mr. Andoga
16 e-mails someone at Norjohn. We are going to look
17 at that in a moment. And he also copied you and
18 Mr. Sidawi, Mr. Hughes, and Mr. McShane, and he
19 says -- so this is the e-mail to Mr. Nunn:

20 "We are proposing to address
21 pavement rehabilitation needs
22 on the LINC and the Red Hill.
23 The objective to improve skid
24 resistance on the Red Hill,
25 seal the existing pavement for

1 the ramps on the LINC, and
2 extend pavement life, as well
3 as increase service levels."

4 (As read)

5 And then he invites Walker to
6 submit a proposal for a rehabilitation strategy
7 that would meet those objectives.

8 And then you'll see at 338 Mr.
9 Andoga also writes to Mr. Becke and Ms. Jacob and
10 Mr. Jazvac and Mr. McCafferty and Mr. Oddi saying
11 basically the same, we're going to do some
12 programming and the objective is skid resistance,
13 repair settlement areas, and that's it. And then
14 Miller Group and Norjohn have been invited. So
15 just giving you that bit of context.

16 Did you have discussions with
17 Mr. Andoga about undertaking pavement
18 rehabilitation needs on the LINC and the Red Hill
19 before these e-mails in April of 2016?

20 A. It's very possible but I
21 don't -- I mean, I don't recall specifically.
22 There was an ongoing everyday conversation with
23 asset management.

24 Q. Did you tell him that any
25 pavement rehabilitation measure should include as

1 an outcome, an increase in skid resistance?

2 A. I don't believe that's a
3 correct terminology. You want to provide a high
4 friction surface with whatever you do is a more
5 appropriate term, but I -- I mean, sealing the
6 pavement and improving -- I mean, if you repave it
7 it's an automatic outcome if you use the proper
8 high friction type mixes.

9 Q. Sure. But short of
10 repaving, if there's going to be pavement
11 rehabilitation measures put in place, did you tell
12 Mr. Andoga that one of the outcomes that you were
13 looking for with any pavement rehabilitation
14 measure was that it would improve friction?

15 A. I don't believe so.

16 Q. Okay. Did you convey to
17 him, that's Mr. Andoga, that the friction values
18 on the Red Hill needed to be improved?

19 A. I don't believe so. I
20 don't believe I was under the impression that they
21 needed to be improved.

22 Q. Did you provide
23 Mr. Andoga with a copy of the Golder report to
24 assist in his work?

25 A. I would have thought that

1 I would have provided the IRI section to him
2 but....

3 Q. Why wouldn't you provide
4 the whole thing to him?

5 A. Hmm?

6 Q. Why wouldn't you provide
7 the whole Golder report to him?

8 A. It's possible I did. I
9 just don't recall.

10 Q. So you said earlier that
11 the Golder report lived in your M drive. Was
12 there any place that Mr. Andoga could have
13 obtained a copy if he went looking for it?

14 A. I believe there was a
15 hard copy either on my shelf or on my desk. I
16 don't know that I had the soft copy in my file.

17 Q. Well, Dr. Uzarowski
18 delivered it to you by e-mail?

19 A. Which -- I'm sorry, which
20 time was that?

21 Q. On January 31, 2014.

22 A. When he came down he
23 brought hard copies. He may have sent me the
24 e-mail before that. I don't know whether I kept
25 that once I got the hard copies.

1 Q. Okay. So you didn't give
2 him a copy of the Golder report to your best
3 recollection, Mr. Andoga?

4 A. I don't know.

5 Q. And you didn't give him a
6 copy of the Tradewind report?

7 A. Well, it was appended
8 inside of the Golder report so if I gave him the
9 Golder report he had both.

10 Q. I understand. But if you
11 didn't give him the Golder did you give him the
12 Tradewind report?

13 A. It's unlikely, given my
14 mindset, that was incomplete or incorrect.

15 Q. Okay. Mr. Nunn provided
16 a presentation from Norjohn -- provided a
17 presentation that had to deal with a ultrathin
18 bonded wearing course. It doesn't appear you
19 attended that presentation, but do you recall
20 discussions within engineering services about the
21 potential of using an all ultrathin bonded wearing
22 course as a method to seal the pavement and
23 increase friction?

24 A. I'm sorry, where was that
25 again?

1 Q. I was hoping not to have
2 to take you there, but I can. I was just asking
3 if you had a recollection of that.

4 A. No, I don't.

5 Q. Registrar, can you go to
6 122. I think misspoke before. I think I
7 suggested that Mr. Nunn said that you weren't at
8 this presentation; in fact, I think you were at
9 the presentation. So I didn't mean to provide you
10 with the wrong information. So the meeting with
11 Mr. Nunn. Do you know Mr. Nunn?

12 A. Yes.

13 Q. Okay. And you don't
14 remember any presentation about an ultrathin
15 bonded wearing course?

16 A. I'm trying to remember
17 the -- what it exactly is, so I don't -- I can't
18 recall what it is so I don't know whether I
19 attended or not.

20 Q. It's an emulsification or
21 an emulsion that is put onto the surface with
22 brushes that push into the cracks and seal it and
23 provide high skid resistance. Is that helpful?

24 A. I remember seeing a field
25 presentation of that that the roads department was

1 doing on a rural road.

2 Q. There is also some
3 discussion with Miller Group about providing a
4 proposal that would meet those objectives from
5 Andoga's e-mail that improve skid resistance,
6 extend pavement life, seal cracks on the LINC
7 ramps. And an individual from Miller had an
8 exchange with Mr. Andoga about the Dartnall ramps
9 and I think Mr. Andoga's idea was to do some test
10 strips on Dartnall ramps. Does that ring a bell
11 to you?

12 A. I do recall there was
13 some -- that Mr. Andoga was trying to assess the
14 appropriateness of that.

15 Q. So it looks to me at this
16 point you've gone from dealing with Dr. Uzarowski,
17 who is suggesting a mill and overlay or some sort
18 of routing and sealing, and that you -- then
19 Mr. Andoga has taken on trying to assess
20 appropriate rehabilitation needs. Is that how you
21 recall it, that Mr. Andoga sort of took up this
22 mantle when you were unsatisfied with
23 Dr. Uzarowski's \$300,000 skidabrading quote?

24 A. I know asset management
25 and road ops was looking at different ways of

1 address road resurfacing for the regular roads
2 program, and when the need to resurface the LINC
3 came up I believe they did look at whether there
4 are any of these alternatives that were
5 appropriate for use out there.

6 Our previous experience with
7 the microsurfacing and those types of things had
8 not been successful on lesser volume and lesser
9 speed roads. They did provide an increased skid
10 resistance for a short period of time on those
11 types of roads, but I don't know how that
12 increased skid resistance compared in any way,
13 shape or form to what was out there now or whether
14 it indeed would have provided a higher level of
15 skid resistance.

16 Q. So it made more sense to
17 have your internal teams trying to figure out the
18 best approach rather than getting some
19 recommendations without context from
20 Dr. Uzarowski; is that fair?

21 A. Well, the things that
22 were being proposed weren't fulsome approaches to
23 address all of the issues.

24 Q. I understand. And so
25 having your colleagues, where it's part of their

1 job to figure out the next best thing, it made
2 more sense for them to be doing that rather than
3 Dr. Uzarowski, right?

4 A. Yes, but they were doing
5 it as part of their job anyways so...

6 Q. Registrar, can you go to
7 page 150, please. Fast forwarding to early 2017.
8 Registrar, can you pull out 454 to 457, please.

9 So in 2017 Mr. Ferguson
10 e-mails you and Mr. Sidawi and says I'm following
11 up on the plans for the LINC that you mentioned
12 last year you were planning on repaving the RHVP
13 and we should hold off installing reflective
14 markers until that time. And you recall you did
15 tell Mr. Ferguson in 2016 that the plan was to do
16 some pavement rehab work in 2017? Do you remember
17 that.

18 A. I believe that's what the
19 correspondence in early 2016 from Rick indicated,
20 yes.

21 Q. So Mr. Moore, you respond
22 to Mr. Ferguson and Mr. Sidawi and you said yes,
23 we need to do it soon, or at least start a program
24 a bit each year for five years. Sam, set up a
25 meeting with traffic and ops to discuss timing and

1 need. And that's in respect of the scope that I
2 think goes back to Mr. Ferguson saying to install
3 reflective markers, right?

4 A. They wanted to go out
5 there and install the markers, yes.

6 Q. Right. And Mr. Andoga
7 responds and says totally agree. Road ops will be
8 completing test trips in 2017, which will result
9 in the project program to address the surface
10 needs. The same will be reflected in the 2018
11 budget.

12 Just so that I'm clear, do you
13 know what test strips Mr. Andoga is talking about
14 in 2017?

15 A. I believe those were the
16 ones with Norjohn and Walker Industries or whoever
17 it was -- with -- on the Dartnall Road,
18 appropriateness of those other technologies that
19 he was looking at.

20 Q. And if it wasn't those
21 technologies what else would be the test strips
22 that would happen in 2017 in advance of -- and to
23 figure out a program to address the surface needs?

24 A. I don't know what other
25 test strips would....

1 Q. You don't have to do test
2 strips if you're just doing --

3 A. No, we're aware of the
4 other -- we were looking to try and do some
5 cost-effective work.

6 Q. Okay. Registrar, can you
7 bring up -- you can close this down and bring up
8 the next page.

9 And so it looks by early
10 February Betty Matthews-Malone is reporting to her
11 staff that asset management was looking to do a
12 shave and pave in 2018, 2019. Do you see that in
13 the indented paragraph at the bottom?

14 A. I do see that.

15 Q. And this is February 7.
16 She's talking about a meeting the day before which
17 is referenced in the paragraph immediately above.

18 So by February 6 the decision
19 was to do a shave and pave and not do any sort of
20 rehab through Norjohn or Miller; is that right?

21 A. I believe that's what
22 that indicates. At some point in time we come to
23 the conclusion that the only thing to do would be
24 the shave and pave.

25 Q. Okay. And there's only a

1 week in between those e-mails I was looking at
2 where it says the test trip and these e-mails, or
3 maybe two weeks, January 25 to December 6. Do you
4 remember what occurs during that period of time to
5 make that shift from potential rehabilitation
6 measures to shave and pave?

7 A. I don't.

8 Q. Shave and pave would be
9 planned as a project that goes for budgeting
10 through capital works; is that right?

11 A. That's correct, yes.

12 Q. And using and shave and
13 pave, I think you said earlier repaving would have
14 the benefit of increasing friction as long as you
15 use good pavement that has good frictional
16 qualities, right?

17 A. Well, you -- yes, I don't
18 know -- I don't -- I don't think the term
19 increasing friction is a proper term. It would
20 provide a renewed surface with a high friction --
21 with the benefit of a high friction mix. So I
22 don't know -- I don't know that it would be
23 higher.

24 Q. That's fine. I
25 appreciate the clarification. Was that a factor,

1 that is, the benefit to friction if you put down a
2 new surface, was that part -- was that a factor in
3 deciding to do the shave and pave over trying to
4 find some other rehabilitative options?

5 A. I don't believe so.

6 Q. Was Dr. Uzarowski's --
7 let me say that differently. Was the Tradewind
8 report values, was that a factor at all in the
9 decision to do a shave and pave in 2018 instead of
10 waiting until 2020, which you had several years
11 before said would be the next shave and pave?

12 A. I --

13 Q. An acceleration?

14 A. I don't believe so.

15 Q. And in your mind was it?

16 A. I don't -- I don't
17 believe so. No one had indicated with any
18 certainty there was any problem with the friction.

19 Q. Registrar, can you go to
20 page 108, please, at 341. In September of 2016
21 you are the submitter of a report prepared by
22 Mr. McGuire and Mr. Field on lighting.

23 And Registrar, can you bring
24 up 109 briefly, please. Thank you. I'm actually
25 going to go into the actual document. Can you

1 bring up HAM58680.

2 JUSTICE WILTON-SIEGEL: Just
3 before we do this. I notice we've reached 11:30.

4 MS. LAWRENCE: I suspect that
5 this is going to be a couple of questions and then
6 I thought we would take our break.

7 JUSTICE WILTON-SIEGEL: That's
8 fine, let's proceed.

9 BY MS. LAWRENCE:

10 Q. Registrar, can you bring
11 up the next image as well, please. Can you bring
12 up the image after that. There is different
13 formatting on this one.

14 So this is just a two-page
15 document, Mr. Moore. You'll see it's submitted by
16 you and I think I already said prepared by
17 Mr. McGuire and Mr. Field. And this says at the
18 meeting in December of 2015 the committee directed
19 staff to report back about the costs and process.
20 So we went through that, and Councillor Collins
21 had asked that and you said if there was a
22 direction, there was a direction.

23 A. Yup.

24 Q. There's reference to the
25 EA process. And at the end of the report --

1 Registrar, can you pull it out actually the last
2 paragraph. Actually the last two paragraphs,
3 please.

4 It references preliminary high
5 estimate costs. It says a consultant review
6 included -- it says in the second paragraph:

7 "The consultant review, which
8 I believe is the 2015 CIMA
9 report, included a high level
10 discussion relating to
11 lighting. The high level
12 review is not comprehensive
13 enough to guide any staff
14 recommendations. In order to
15 fully understand the benefits,
16 risks, and challenges a more
17 fulsome review and business
18 analysis would be undertaken.
19 The approximate cost would be
20 \$100,000." (As read)

21 So this is nine months after
22 the public works committee meeting where
23 Councillor Collins says I don't want to wait, I
24 want to refer it back. And this says we think
25 that we need a report, another consultant report.

1 Why did it take nine months to come to that
2 conclusion?

3 A. Why did it take nine
4 months. It took nine months to get the report
5 written and submitted. I mean, so it's really
6 only seven months because it takes two months to
7 get a report through the review process, or six
8 weeks. Why it took that long, what other things
9 were happening -- what was the date of this?

10 Q. September 2016. I'm just
11 trying to understand if you have any insight into
12 why, if coming out of the December public works
13 committee meeting, Councillor Collins is asking
14 for a report, saying he doesn't want to wait two
15 years. And you said you looked at this e-mail
16 report, you didn't think that it was sufficient,
17 you didn't like the context of it, it wasn't
18 comprehensive enough, why did it take let's say
19 seven months to develop a report that said let's
20 go get another report?

21 A. Staff was working on this
22 report. They brought it forward when they
23 finished it. I can't say now what other issues
24 were occupying staff's time or what they were more
25 appropriately working on.

1 Q. I don't think that you
2 were the primary drafter of this but you reviewed
3 it and signed off on it?

4 A. As director, whenever
5 report was done, that was typically what the
6 general manager wanted, was the general manager,
7 the directors' on signature on it that they were
8 okay with what was in it. I was okay what was in
9 it but I definitely wasn't -- appears I wasn't
10 chasing it down, and neither was the general
11 manager's admin or my admin with regard to
12 outstanding business. So I'm not sure on what the
13 expectation of how quickly this was going to be
14 brought forward was.

15 MS. LAWRENCE: Thank you.
16 Mr. Commissioner, those are my questions on this
17 topic and I'll be moving to something else so I
18 propose that this would be a good time to take a
19 15-minute break.

20 JUSTICE WILTON-SIEGEL: Okay.
21 Let's take our break and we'll return at 10 to
22 12:00.

23 MS. LAWRENCE: Thank you.

24 --- Recess taken at 11:35 a.m.

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

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

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

5 MS. LAWRENCE: Thank you.

6 BY MS. LAWRENCE:

7 Q. Registrar, can you bring
8 up OD7 page 177, please. And if you can bring up
9 178 as well, please.

10 Mr. Moore, in March of 2017
11 the traffic engineering and operations group
12 prepared an update for a report to council on
13 safety improvements on the LINC and the Red Hill,
14 and the report was relatively short and included
15 an appendix. Did you see any copies -- in fact,
16 maybe we should go to the report itself just to
17 refresh your memory.

18 Can you go, Registrar, to
19 25869. Pardon me, 25870. Can you bring up the
20 next image, please.

21 So this is submitted by
22 Mr. White, and you'll see it is quite short in
23 terms of the actual update. It's one paragraph on
24 the first page. Staff were requested to do an
25 update from the public works committee, and there

1 are two appendices. One is the short-term
2 improvements one is the medium and long-term
3 improvements.

4 Registrar, can you bring up
5 appendix B, which should be image 3. Thank you.

6 And do you recall if you saw
7 this report in draft before it was finalized and
8 sent to council?

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

11 Q. Okay. You'll see under
12 the medium-term options conduct pavement friction
13 testing was listed as completed. Did you have any
14 discussions with anyone about the status of that
15 improvement and whether it had been completed or
16 not?

17 A. Not that I recall.

18 Q. Okay. So to your
19 recollection no one contacted you and asked for a
20 status of the friction testing medium-term option?

21 A. I don't believe so.

22 Q. Okay. Did you review
23 this report when it was circulated?

24 And, Registrar --

25 I'm sorry to interrupt. Just

1 before you answer, Registrar, can you go back to
2 image 1 of this document.

3 Image 1 has a list of the
4 people this is copied to. I don't know if that
5 helps you.

6 A. Yeah. There's no one
7 there from engineering services that this was sent
8 to. I don't believe we did because there's a
9 couple of comments on the next page that I would
10 have -- I believe I would have responded to or had
11 a comment on had I seen it. So I would have to
12 say it's unlikely that I did.

13 Q. Okay. Registrar, can you
14 go -- can you have it so that image 1 and image 3
15 are up. Thank you.

16 And so when you said that
17 there's some things that you would have responded
18 or had a comment on, and I just want to make sure
19 that I had my question down, you mean if you
20 received a draft before it was finalized, you
21 would have had some comments on it?

22 A. I believe so.

23 Q. Okay. Some of the
24 traffic operations and engineering staff have
25 testified that they relied on an understanding

1 that friction testing had been completed because
2 you had told them verbally that friction testing
3 had been completed. Had you told traffic staff
4 that friction testing had been completed?

5 A. I don't know what this
6 "completed" is in reference to. If it's in
7 reference to the 2013 Tradewind testing, then it's
8 correct, but I don't believe we did any other
9 testing in that time period after this was
10 originally identified.

11 Q. Okay. So you didn't do
12 any testing from the December 7th PWC meeting,
13 December 7th, 2015 PWC meeting to the --

14 A. I --

15 Q. -- end March of 2017.

16 A. -- don't recall doing
17 any. No, I don't.

18 Q. So you said you would
19 have had other comments in respect of this
20 document. There's a number of references here,
21 some to engineering services. So the shield rock
22 cuts, it says "to be reviewed by engineering
23 services." So does end-to-end illumination. And
24 then the other three, the barrier on the both of
25 them and the rumble strips say:

1 "To be completed during
2 resurfacing or to be reviewed
3 and considered during
4 resurfacing." (As read)
5 And so can you tell me what
6 would your comments have been if you had reviewed
7 a draft of this?

8 A. I would have asked what
9 the shield rock cut reference was to and what we
10 were being expected to do and the -- I mean, the
11 end-to-end illumination, we had already -- we had
12 already taken that other report forward so that
13 could be -- I'm not sure on the timing between
14 this and that other report that you just showed me
15 on Gord's --

16 (Speaker overlap)

17 Q. -- 2016.

18 A. Then I would have said,
19 you know, that that's already underway, or being
20 addressed.

21 Q. Okay. And in terms of
22 the barrier system and the shoulder rumble strips
23 which are referenced in relation to resurfacing,
24 in March of 2017 were you aware of discussions
25 about the scope of the resurfacing as it related

1 to traffic-related improvements?

2 A. It seems I do recall that
3 there was -- traffic was asking for a number of
4 things to be included in the resurfacing project,
5 but I don't recall specifically what they were.

6 Q. Okay. I'm going to take
7 you there, so hopefully I can refresh your memory
8 when I do.

9 A. Sure.

10 Q. Registrar, you can --
11 Actually one more question on
12 this. I think I was asking if you'd received
13 these when they were in draft. I may be repeating
14 a question; apologies if I am. Did you take note
15 of this when it was circulated coming out of
16 council?

17 A. I can't say I did.

18 Q. Okay. I'm going to jump
19 ahead a little in time, and then I will return to
20 the issue of the scope discussions.

21 Registrar, can you close this
22 down and go back into OD7 and page 178, please.
23 178, 179. And if you can call out first 518.

24 So in March Mr. Mater
25 circulated a calendar invitation for a meeting

1 scheduled for May 1st, "LINC and RHV Plan" was the
2 title of the calendar invitation, and he attached
3 an agenda that had the following agenda items. He
4 sent this invitation to you and Mr. McKinnon, who
5 had taken on as general manager, to Betty
6 Matthews-Malone, to Mr. White, to Alan
7 Kirkpatrick, Dave Ferguson and Jason Worrone. Do
8 you recall receiving the calendar invitation for
9 this May 1st, 2017 meeting?

10 A. No, I can't say that I do
11 specifically.

12 Q. Do you remember having
13 any discussions with Mr. Mater either before or
14 after he circulated this calendar invitation about
15 what this meeting was to be for, what the purpose
16 was going to be?

17 A. Not specifically, no.

18 Q. Okay. You'll see that
19 under the agenda there's a "review of reports and
20 council direction." There's "status of
21 recommended improvements," short, medium and long,
22 and then there's "friction testing results" and
23 the "OBL directions," "strategy to address" and
24 "so what," which I think relates to the stars
25 under short, medium and long term.

1 Do you recall reviewing this
2 agenda before this meeting and seeing that there
3 was a reference to friction test results?

4 A. No, I don't. I don't
5 believe so.

6 Q. Okay. To prepare for
7 this meeting did you review the Golder report or
8 the Tradewind report?

9 A. Not that I can
10 specifically recall, no.

11 Q. Okay. Did you make
12 copies of those reports to hand out to people who
13 were there?

14 A. I don't believe so.

15 Q. Okay. And did you follow
16 up with Dr. Uzarowski at this point in respect of
17 what I think your evidence has been, your
18 continued confusion around the Tradewind report?

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

20 Q. Okay. Did you follow up
21 with Dr. Uzarowski on any other aspect of friction
22 testing between the time when you received this
23 calendar invitation, which is in late March and
24 May 1st?

25 A. No, I don't -- I don't

1 recall any urgency to provide any -- or to look at
2 anything like that.

3 Q. Okay. And it wasn't you
4 who asked for friction testing to be added to the
5 agenda, was it?

6 A. I don't believe so. It's
7 my sense that Dan and the new general manager's
8 position just wanted to get a handle on everything
9 that was occurring out there on the LINC and Red
10 Hill, and that this was more of a -- going to be
11 an update meeting. This is what is happening;
12 this is where we are; this is what is going on.

13 Q. Okay. Registrar, can you
14 close those call outs -- close out those call
15 outs, and can you pull up HAM25967. I think I
16 misspoke HAM25976. That's it. Thank you. And
17 can you bring up two pages at a time, please.

18 Mr. Moore, do you recall at
19 this meeting that this slide deck was presented?
20 We can go through it a little in a bit more
21 detail, but before we do, I -- just looking at the
22 first few pages. Do you recall this presentation?

23 A. I seem to recall that
24 John had a presentation, but I couldn't -- this
25 doesn't, you know, specifically remind me of

1 anything.

2 Q. Okay. Registrar, can you
3 bring up image 3 and 4, please.

4 So I know this is a little
5 hard to read, but this is basically a timeline.

6 Registrar, would you mind --
7 yeah, just the slide itself. Thank you. Thank
8 you.

9 So this is a timeline
10 basically from 2004, and it has reports in green,
11 and then it has third party information in gray.
12 Then it has the various motions from PWC, and then
13 it has the reports that relate to those motions,
14 and there's lines that connect those various
15 documents where they are related. And so this
16 takes us through the 2013 report, the 2014 report,
17 the December 20 -- pardon me, 2015 report, the
18 September 2016 lighting report that we just looked
19 at.

20 One we did not look at was the
21 expansion of the Red Hill and the LINC in October
22 of 2016. There's also a traffic feasibility
23 information report in 2017. There was a rumble
24 strips on the LINC report which we haven't taken
25 you to, and then there was the March 24, 2017

1 safety improvement update which we just looked at.
2 So that goes through both the reports and also the
3 corresponding motions and reports.

4 Registrar, can you go to
5 image 9, please.

6 So I'm going to jump forward.
7 But what I can tell you is that each of those
8 coloured boxes on the document we were just
9 looking at, they then are expanded in slides. So
10 this is the reference to the November 2013 report.
11 And it says the status of various countermeasures,
12 and it says the friction testing is complete.

13 Registrar, can you bring up
14 image 18.

15 And here this is the reference
16 to the 2015 report, and it has also friction
17 testing being listed as complete.

18 Mr. Worrton, Jason Worrton
19 prepared this presentation. Did he ask you to
20 confirm the accuracy of it before he -- before
21 May 1st?

22 A. I don't believe so.

23 Q. Okay. And so we just
24 looked at the 2013 report it, and it says friction
25 testing complete. And I think your evidence to

1 date is that it was complete because the Tradewind
2 report -- because of the Tradewind testing; is
3 that right?

4 A. Well, I don't know what
5 they're referring to. The only testing that was
6 done was the Tradewind report. So I'm not sure
7 what -- if they were referring to that, then it's
8 complete, but it wasn't \$40,000, and I don't think
9 the Tradewind report was even listed as one of the
10 reports on the summary.

11 Q. It wasn't, nor was the
12 Golder report.

13 A. So I don't think I was --
14 I think this was prepared in the absence of any --
15 any -- you know, asking me anything.

16 Q. Okay. And I think your
17 evidence just from looking at that March 2017
18 information update was that to your knowledge
19 there had been no friction testing completed
20 between 2015 and 2017 that would have been testing
21 that -- where you could actually mark off that the
22 testing had been complete on this document.

23 A. I don't know -- I don't
24 know what their understanding was.

25 Q. Okay. You're quite right

1 that the Golder report and the Tradewind report
2 are not listed on that timeline at the beginning.
3 Did you tell anyone in the meeting on May 1st
4 about the existence of the Golder report or the
5 Tradewind report?

6 A. Well, I don't -- I don't
7 recall any specific discussion, but traffic was
8 well aware that the report had been done.

9 Q. How so?

10 A. Well, we've already seen
11 previous correspondence that they asked me for the
12 results, so they knew it was done. I had
13 explained to them I was waiting for clarification,
14 so they knew that -- they knew the existence.
15 Martin and the other traffic person knew it was
16 done in '13 when I told them I couldn't get the
17 information on their -- we had done the work, but
18 we couldn't do their crosswalks. I had explained
19 the summary of the results with their consultant
20 on at least one if not two occasions, and
21 discussed it at another previous meeting. So they
22 are well aware that I had done the -- we had done
23 the work and done the investigation, that we were
24 simply still waiting for clarification. So it's
25 not like they didn't know that it existed.

1 Q. When you say "it," you
2 mean the fact that friction testing had been done?

3 A. That's correct.

4 Q. Okay. My question was
5 more specific. Did you tell anyone in the meeting
6 about the existence of the Golder report and the
7 Tradewind report? And I can just sort of clarify
8 what I mean by that.

9 Did you tell anyone, I have a
10 report that I got from my consultant Golder that
11 deals with pavement condition and also has a
12 summary of friction testing.

13 A. I don't recall
14 discussions during that.

15 Q. Okay. And did you tell
16 anyone at this meeting that you had a report from
17 a company that had gone and tested the friction
18 that included the friction values and some
19 language about what they had found?

20 A. I don't recall, but I
21 probably wouldn't have put it in those terms. It
22 would have been more likely, hey, what about the
23 Golder and Tradewind and the friction testing I
24 did in '13; I don't see any reference to it here.
25 But I -- I don't recall specifically whether there

1 was any discussion in that regard.

2 Q. Okay. So you just can't
3 remember either way whether you raised the Golder
4 report or the Tradewind report?

5 A. It's hard to believe that
6 I didn't given the inaccuracies of these things,
7 so....

8 Q. Okay. On the Tradewind
9 report. Is it your evidence that you told
10 Mr. Martin or Mr. White or Mr. Mater that you had
11 a written report that summarized testing that a
12 company had done for friction on the Red Hill. In
13 this meeting or otherwise; just sort of generally?

14 A. I don't know in this
15 meeting.

16 Q. Okay.

17 A. But I do believe that was
18 the discussion we had seen in previous
19 correspondence. I believe that it was a review
20 with traffic staff and their consultant. When,
21 you know, asked about the report, I believe I
22 explained that we had the results, they looked
23 good, and we were waiting for clarification
24 against standards, or words to that effect.

25 Q. Okay. The distinction

1 I'm trying to make is between friction results and
2 a report that summarizes and includes friction
3 values. Did you ever convey to anybody in traffic
4 that you had a written report from Tradewind? Not
5 using Tradewind's name, just the fact that it
6 existed in writing.

7 A. We discussed the results
8 of those, so I believe it was implied that I had a
9 report. If we're discussing results, I must've
10 had a report.

11 Q. My question was did you
12 convey to them that you had a report?

13 A. I don't know what -- I
14 don't know how to explain it any different.

15 Q. Did you use the words, I
16 have a report but --

17 A. I don't --

18 Q. -- I'm not sure if I am
19 confident about the content? Did you use
20 those kind of words?

21 A. I believe that was the
22 discussion with their consultant --

23 Q. Okay.

24 A. -- and traffic staff.

25 Q. Do you see the

1 distinction I'm trying to make between friction
2 test results for people who might not know what
3 friction test results look like, you know, what
4 they actually -- what they -- if it's just
5 numbers, if it's a chart, and I have a report from
6 a consultant that did this work. That's the
7 distinction I'm trying to make. And I'm asking if
8 you told anybody that you had a written report
9 that summarized the friction on the parkway?

10 A. I believe that's what the
11 previous correspondence indicated, that I had a
12 report and I was waiting for clarification. I
13 don't know that I said we had numbers, and I'm,
14 you know -- we've got a report, and I'm waiting
15 for context of the results that we achieved.

16 Q. I think you're referring
17 to the year before when you wrote to Mr. Ferguson
18 and Mr. Lupton, and what you said was some
19 roughness, skid resistance, friction testing has
20 been done. I'm still trying to get analysis for
21 it and put it into context. So you don't use the
22 word report there.

23 A. Okay.

24 Q. I don't mean to be
25 repetitive. I'm asking --

1 A. Results in a report don't
2 mean a difference to me.

3 Q. Okay. What do you recall
4 about what you conveyed to the attendees of this
5 meeting about friction testing on the Red Hill?

6 A. I don't know. Is
7 there -- I mean, I'd assume there would be minutes
8 from this that might indicate what I said, but....

9 Q. There's not.

10 A. Yeah.

11 Q. Did you take any notes at
12 this meeting?

13 A. Pardon? I'm sorry?

14 Q. Did you take any notes at
15 this meeting?

16 A. No, it's unlikely.

17 Q. And so you just can't
18 remember what you told them, if anything?

19 A. No. Typically at a
20 meeting like this there would be minutes taken and
21 then distributed. If, you know, people wanted to
22 understand what was happening, that would be a
23 normal thing, but I don't know why there wouldn't
24 have been minutes taken.

25 Q. And so you just -- you

1 can't remember, sitting here today, what you told
2 them, if anything, about friction testing?

3 A. I attended hundreds of
4 meetings.

5 Q. Okay. Registrar, can you
6 bring up image 10, please. And can you call that
7 out. It's a little bit hard to read this one.
8 This is again back in November 18, 2013 report.

9 And, Registrar, can you go to
10 the next image. Thank you. That's the one I was
11 looking for. Still a little hard to read.

12 Where it says "read," all of
13 those say "incomplete." Can you sort of decipher
14 that --

15 A. Yes.

16 Q. -- even though it's
17 blurry?

18 A. Yep.

19 Q. All right. So there's
20 several that are incomplete. "Re-stripe one lane
21 for each ramp"; that's not an engineering services
22 job, right?

23 A. No.

24 Q. And at the bottom,
25 "replace exit road sign diagrammatic sign."

1 That's also not an engineering services, right?

2 A. That's correct.

3 Q. And then there's the
4 "install pavement marking text." It's under --
5 it's kind of in the middle. That's also not an
6 engineering services?

7 A. Right.

8 Q. And then the two that I
9 think are where you may have had an interest, it
10 says "install lighting on ramp," and I think we've
11 had lots of discussions over the last few days
12 about lighting issues. That, by 2017, had not
13 been completed.

14 The next one is "install high
15 friction pavement," and it says "incomplete." And
16 I took you yesterday to an update that said
17 "consider during resurfacing." Do you remember
18 that?

19 A. I do.

20 Q. And so we're now in the
21 point in 2017 where you're just -- asset
22 management is just starting to think about the
23 resurfacing scope. Do you recall any discussions
24 about the installation of a high friction pavement
25 on the Mud Street ramp 6?

1 A. I don't.

2 Q. Okay. Did you understand
3 that the ramps were going to be repaved along with
4 the main line?

5 A. No, I'm not sure -- I'm
6 not sure what the total program had been, which
7 ramps or where it was going to start.

8 Q. Okay. To your knowledge
9 was anyone in asset management made aware of this
10 countermeasure to install a high friction pavement
11 on the Mud Street ramp as part of resurfacing?

12 A. I don't -- I don't know.
13 I don't know that I know what that meant. If we
14 had've paved with FC2 that would have been a high
15 friction pavement, and simply replacing the FC2
16 that was out there would have met that
17 requirement. There's nothing higher that I'm
18 aware of that -- other than the SMA that provides
19 a high friction pavement. MTO uses it on their
20 roadways. It's considered a high friction
21 pavement. So paving -- repaving it with the FC2
22 would have met that condition as far as -- without
23 any other direction from the consultant or anyone
24 else. I don't know what they were considering or
25 what they were looking at when they made that

1 recommendation. That's, you know, I think part of
2 my original comments where some of these weren't
3 thought out.

4 Q. Okay. Registrar, can you
5 go to page 31, please. And can you call that out.

6 So this is a list of the items
7 that are on the outstanding business list as of
8 May of -- well, I guess, let's say, April because
9 this was a May 1st meeting, as of April of 2017,
10 and this does not include all of the things that
11 had gone to council and then come off the
12 outstanding business list. This is just what
13 remains on it.

14 A. These are outstanding
15 reports.

16 Q. These are outstanding
17 reports that are being sought, yeah, that are on
18 the list --

19 A. Not outstanding actions,
20 they are outstanding reports.

21 Q. Sorry, I meant to say
22 outstanding items, but yes, reports.

23 Over the period from 2013 to
24 2017 was it your impression that the Red Hill
25 received a fair bit of attention from the public

1 works committee, and there's a fair bit of
2 requests coming out of that committee for public
3 works to take steps in respect of the parkway.

4 A. I don't know that I ever
5 turned my mind to that or made that conscious
6 notation. I mean, I think all of these are both
7 the LINC and Red Hill --

8 Q. That's true.

9 A. -- expansion of LINC and
10 Red Hill, photo radar on LINC and Red Hill,
11 expansion of Red Hill and LINC, traffic incidents
12 on LINC and Red Hill, status reports. So I mean,
13 they are all -- the LINC -- the entire facility, I
14 mean, it was a very important, you know,
15 transportation corridor within the City so....I
16 don't know that I made that conscious notation
17 that you're asking about.

18 Q. Okay. Mr. Worrton
19 testified in the inquiry that during this meeting
20 he perceived that you and Mr. Mater were not
21 happy. What do you recall about the tone of this
22 meeting?

23 A. Which meeting are we
24 referring to?

25 Q. This is a meeting on

1 May 1st that was attended by Mr. McKinnon,
2 Ms. Matthews-Malone, Mr. Kirkpatrick, Mr. White,
3 Mr. Ferguson, Mr. Worrton, Mr. Mater and you.

4 A. I don't know what 'not
5 happy' means. Did we ask (sic) concerns with what
6 was being reported or how it was being reported or
7 whether it was concise and complete? I don't
8 know.

9 Q. When you say did we have
10 concerns, you mean, did you have concerns or did
11 you mean you and Mr. Mater?

12 A. I don't know what 'not
13 happy' meant.

14 Q. I understand. My
15 question was what do you recall about the tone of
16 this meeting?

17 A. Well, seeing the
18 presentation and the report and from what I see of
19 it, it's -- a lot of it's -- some of it is
20 incomplete or incorrect, so I don't know whether I
21 expressed anything in that regard at the time. I
22 couldn't say. I don't specifically remember the
23 meeting.

24 Q. Okay.

25 A. I know that Dan didn't

1 have a lot background knowledge in this, coming
2 from water, so that he was sort of getting up to
3 speed. That was my recollection of the meeting.

4 Q. Okay. But to your
5 recollection of the meeting, recognizing you don't
6 recall it, is it to say you don't recall it well
7 or you don't recall it all?

8 A. I remember the meeting.

9 Q. Okay.

10 A. We had a meeting to bring
11 Dan up to speed, but it's a faint recollection
12 of -- you know, that we had one. I don't recall
13 specifics of discussions or outcomes.

14 Q. Okay. And you don't
15 recall any sort of exchange of angry words. You
16 don't recall any sort of debate compared to
17 discussion, nothing like that? It wasn't tense?
18 That's the kind of thing I'm trying to jog your
19 memory about.

20 A. No, I don't. I don't
21 recall anything like that.

22 Q. Mr. Worrone testified that
23 traffic engineering and operations had implemented
24 Vision Zero, which is intended to get to zero
25 deaths or serious fatalities, and that is a

1 collective effort where you need all of the
2 divisions in public works to be involved. And
3 that -- I'll just say how he said it -- you had
4 have to road engineering have some responsibility
5 in addressing how to make the road safer. And
6 that -- he made that comment in respect of this
7 meeting.

8 Do you recall discussions
9 about -- from traffic suggesting to you that you
10 needed to change your perspective about your role
11 to assist them to help achieve Vision Zero?

12 A. I don't. I do recall
13 when they rolled it out that it was something we
14 had never been involved with before the rollout.
15 So it was a traffic initiative that they were
16 putting forward, so I'm not quite sure how that
17 fits in with the -- everyone else should be
18 involved or has some responsibility.

19 Q. Okay. Before we leave
20 this, you recall that -- you said a few moments
21 ago that there was some -- that there was a lot of
22 information that was incomplete or incorrect in
23 this presentation. What exactly in the things
24 that we've gone through or otherwise did you view
25 to be incorrect?

1 A. Well, those references to
2 the friction testing being done, the lack of
3 indication of the Golder or the five-year or
4 six-year review which would have included the
5 Tradewind report was an appendix to that; it
6 wasn't a separate report.

7 Q. Okay.

8 A. I don't know whether
9 there was anything else that jumped off the page,
10 just seeing it here after 10 years.

11 Q. Okay. And just so that
12 I'm very clear about what your evidence is. What
13 steps did you take to correct the information that
14 you say was incorrect or incomplete to ensure that
15 Mr. McKinnon and others at the meeting had the
16 right or correct information?

17 A. I don't know. I don't
18 know if I....

19 Q. Coming out of this
20 meeting did you provide Mr. McKinnon or any of the
21 other attendees with a copy of the Golder report?

22 A. If I had have been asked
23 for it, I would have provided it.

24 Q. That wasn't my question.
25 My question was coming out of this meeting did you

1 provide Mr. McKinnon or any other attendees with a
2 copy of the Golder report?

3 A. Not that I recall.

4 Q. And what about a copy of
5 the Tradewind report, did you provide that to
6 Mr. --

7 A. Not that I recall.

8 Q. Okay. Registrar, you can
9 close this down. Thank you. And can you go back
10 into OD7 and to page 158.

11 So I asked you just a little
12 earlier about scoping out the shave and pave
13 project.

14 Registrar, can you also bring
15 up 59, please. I want to make sure I have my --
16 the citations correct for you before we get into
17 this. All right. We're going to go back to --
18 apologies. Just give me one more moment. There
19 we go. If you go to 156, please. And call up 157
20 as well. Thank you.

21 So we were just looking at a
22 discussion at a meeting in May, so I'm just going
23 back a little in time to February of 2017, and I
24 won't take you to it, but you can see the very top
25 of 156 which would be paragraph 468, Mr. Andoga

1 has e-mailed Mr. White and Mr. Ferguson -- it's on
2 the page before -- and he said we're proposing
3 resurfacing, and then at the very top he says:

4 "In addition to identifying
5 traffic needs --" which is one
6 of the things he's suggesting
7 "-- is there a preference to
8 the scheduling to be
9 performed." (As read)

10 And Mr. Ferguson responds --
11 and you're not copied on this -- and he comes up
12 with a list of a number items that he says we
13 "provide the following comments," but I think the
14 intention is to suggest that these items should be
15 part of this scope. And they're the cat's eyes,
16 pavement markings, rumble strips, modifications to
17 some of the lanes, and then he says --

18 And, Registrar, maybe you can
19 just pull this out so it's clear. This is at 469
20 where it says "we have also conducted." Six
21 paragraphs in. Yeah. And if you can do it to the
22 end of that. Perfect.

23 So Mr. Ferguson is suggesting
24 that because of a five-year collision history
25 review there were two segments of concern where

1 they were proposing to install barriers. So not
2 the entire LINC or Red Hill but particular areas
3 of both.

4 Registrar, can you close that
5 down. And if you could pull 470, please.

6 Mr. Andoga responds, and he
7 goes through some of them, and then on item 6 he
8 says, "the installation of bears will be a
9 sensitive issue."

10 Do you recall having any
11 discussions with Mr. Andoga about asset
12 management's proposed scope to include barriers at
13 certain locations on the LINC and the Red Hill?

14 A. No, I don't.

15 Q. Okay. Registrar, can you
16 close this down. At 471, can you pull that out,
17 Registrar.

18 Mr. Mater circulated a
19 discussion with you and Mr. McKinnon for March 20.
20 Do you recall whether you attended that meeting
21 and what happened at it?

22 A. No, I don't recall. I
23 mean, if Mr. Mater set a meeting with the general
24 manager, it's likely I attended.

25 Q. Okay. But you don't

1 remember anything about it?

2 A. No.

3 Q. Okay. Can you close that
4 down. And now if you can go to 158 and 159,
5 please. Thank you.

6 So we're jumping forward in
7 time. At 475 this is when the discussion around
8 median -- around traffic scope for the project
9 picks up again. I'm not going to call it out just
10 because it's a little lengthy.

11 So this is at 475. In June
12 Mr. Worrone e-mailed Mr. Becke, Ms. Jacob,
13 Mr. Andoga and Mr. Jazvac, and he said:

14 "Thanks for the opportunity to
15 sit and discuss the upcoming
16 contract for improvements."

17 Mr. Moore, do you recall
18 whether you tended a meeting with individuals from
19 traffic safety that discussed the upcoming
20 contract for improvements?

21 A. No. This looks like what
22 they call a project coordination meeting where,
23 you know, design and asset management and the
24 other stakeholders would get together to
25 discuss --

1 Q. Okay.

2 A. -- what the actual scope
3 was.

4 Q. Okay. Do you recall if
5 Mr. Andoga updated you about this meeting?

6 A. I don't.

7 Q. Okay. Mr. Andoga
8 testified that you and he were having ongoing
9 discussions about scope. I think they might have
10 just been hallway discussions, I'm not sure. Is
11 this the kind of thing that Mr. Andoga would have
12 raised with you, what traffic was looking for?

13 A. We were all in one office
14 and discussions on a lot of projects were hallway
15 discussions. It was not unusual.

16 Q. Okay. I won't go into
17 much detail, but Mr. Worrone's e-mail includes
18 scope. It references the CIMA safety review, and
19 it says that traffic recommends a guide rail
20 system on both sides of the median. And at 476
21 you forward this e-mail to Mr. Mater, and I think
22 you receive it from Mr. Andoga. Is that right?
23 Do you recall that?

24 A. That's likely where I
25 received it from.

1 Q. Okay. Why would
2 Mr. Andoga forward you this e-mail?

3 A. Well, typically it's
4 inconsistent with how we would do work. If we
5 were widening a road and traffic decided that they
6 wanted to put signals at an intersection during
7 the discussion of the scope, they would identify
8 the need for signals and then identify that the
9 cost for that would come out of their signal
10 program. So I think the problem or the concern in
11 this case was there was a lot of things being
12 added to the scope with no identification of where
13 the budget or approval was coming from.

14 Q. So but why does
15 Mr. Andoga forward it to you instead of just going
16 and dealing with it himself?

17 A. Well, I don't know that
18 he didn't try to deal with it during the meeting,
19 and this was what they were insisting on.

20 Q. Okay.

21 A. So he was running it up
22 the flag pole, so to speak.

23 Q. So you respond to
24 Mr. Mater and you say -- and you can call this
25 out, Registrar at 476:

1 "Why are we getting this? I
2 thought you and I and the GM
3 were going to decide what to
4 do. Where do your people get
5 this from? Do they think
6 we're going to spend 10
7 million." (As read)

8 A. Right.

9 Q. And close that down.

10 Before you sent this e-mail to
11 Mr. Mater, did you speak to Mr. Andoga to get the
12 context and background for the e-mail, including
13 any discussions that they had?

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

15 Q. Okay. There's a
16 reference to this CIMA report in here. Did you go
17 back and reread the 2015 CIMA report to refresh
18 your memory about the recommendations on barriers?

19 A. I don't know whether I
20 read the CIMA report. I think my understanding
21 was that we weren't going to put any barriers in
22 until we did road widening, not road
23 reconstruction. So that's why -- where I think my
24 confusion arose.

25 Q. Okay. Did you reach out

1 to Mr. Andoga or anyone in traffic to confirm
2 where the budget was going to come from -- pardon
3 me, except for Mr. Mater in this e-mail, before
4 you contacted Mr. Mater?

5 A. No. It was typical for
6 me if I had a concern or a question I would
7 contact my counterpart, the other director.

8 Q. Okay. I read some
9 frustration in your e-mail. Why are we getting
10 this? Where do your people get this from? Is
11 that how you intended it, that you're trying to
12 express your frustration to Mr. Mater?

13 A. It's possible. It seems
14 like an out of the blue question, and I believe if
15 we go on that's indeed how this was resolved,
16 so....I didn't feel it was appropriate, and
17 dealing with another director that level I believe
18 that that's the way I was -- you know, John, what
19 are we doing here. Like, you know, I thought we
20 had this understood. Was it not, you know,
21 transferred down to your people to, you know,
22 address this appropriately. So that's very much
23 likely how that was framed.

24 Q. Okay. Registrar, can you
25 pull up 160 and 161, please.

1 And so I perhaps moved too
2 quickly, but I think you'd already seen it.
3 Mr. Mater says I believe they are providing the
4 scope that they think is appropriate. I was just
5 in the --

6 A. I've seen that.

7 Q. You saw that?

8 A. Yeah.

9 Q. And then shortly
10 thereafter Mr. Ferguson provided an update about
11 the specific terms. That's in 478.

12 And, Registrar, if you can go
13 on to the next page, please. Pardon me, I
14 misspoke. Can you go back to 160 and 161.

15 In that paragraph 479 in
16 response Mr. Ferguson says to Mr. Ferguson -- and
17 this is at the top of 161, "upon further
18 review" --

19 Registrar, can you pull that
20 up for us. Yeah, that's it.

21 "We are assuming the request
22 for the placement of a
23 continuous guide rail and the
24 lighting improvements will not
25 be required." (As read)

1 And that:
2 "Council direction as well as
3 a funding source will be
4 required for any such
5 enhancements."

6 And that, you know, sets off
7 some discussion amongst Mr. Ferguson and
8 Mr. White. Did Mr. Andoga discuss this response
9 to traffic before he sent it?

10 A. It's possible he spoke to
11 his manager. I don't recall a discussion in that
12 regard, no.

13 Q. Okay. Mr. Andoga didn't
14 deal with a reference to a median barrier being
15 put in certain locations rather than the
16 continuous barrier that he does reference. Did
17 you have any discussions with Mr. Andoga about not
18 proceeding on median barriers for certain areas?

19 A. Well, I think the median
20 barriers that had previously been requested were
21 in the form of continuous guide rail.

22 Q. I understand, but we just
23 looked at a few e-mails ago that Mr. Ferguson had
24 suggested particular areas of the LINC and the Red
25 Hill for median barriers given a five-year

1 collision history, so it wasn't the entirety of
2 the facility, or even in the entirety of the LINC
3 or the Red Hill. It was very particular areas. I
4 can take you back there.

5 Did you have any discussions
6 with Mr. Andoga about the potential of installing
7 median barriers in particular areas?

8 A. No, I don't believe so.
9 I mean, the response here is consistent with the
10 reports and authorizations from council, as he's
11 referred to here. The council direction is to do
12 it when we're doing widening, not when we're doing
13 resurfacing. So the fact that staff has requested
14 it has no consideration in light of that. He's
15 just saying we're not going to consider it until
16 you get council direction from it and a budget.
17 That's what that says.

18 Q. Okay. So I think your
19 answer was that you didn't believe that you had
20 any discussions with Mr. Andoga about the
21 potential for installing median barriers in
22 particular areas; Is that right?

23 A. No. He was quite aware
24 of all these things, so I don't believe I did.

25 Q. Okay. Registrar can you

1 close this down. Can you go to page 182, please.

2 Can you call out 528, please.

3 This is May of 2017. And

4 Ms. Graham, who is a communications officer,

5 e-mailed you and said that Mr. White and

6 Mr. Ferguson had met with a reporter from the

7 Spec, and they didn't answer some questions

8 relating to lighting and pavement and have

9 referred the reporter to you and asked if there

10 was anything that we could provide her, council

11 updates about lighting and pavement.

12 Did you -- we don't have an

13 e-mail in response to this. Did you have any

14 discussions with Ms. Graham about this e-mail?

15 A. I don't know.

16 Q. Okay. Did you provide

17 her with any council updates or anything else to

18 the provide to the Spec?

19 A. I -- I don't -- I don't

20 recall. I don't know what I would have provided

21 her at this time.

22 Q. Okay. Registrar, you can

23 close this down, and if you can go to the next

24 page, please. Actually you can pull up 183 and

25 184 at the same time.

1 This same e-mail in which she
2 says is there any council updates. And maybe it's
3 not clear actually.

4 Registrar, can you bring up
5 182 and 183.

6 So up at the top of 183 this
7 is the second part of Ms. Graham's e-mail:

8 "She's also asked for a copy
9 of the pavement friction
10 testing done on the Red Hill.

11 I had not heard about this
12 before. Is it a public
13 document?" (As read)

14 Do you remember having any
15 discussions with Ms. Graham about the copy of
16 pavement friction testing?

17 A. I don't recall a specific
18 discussion with Ms. Graham in that regard.

19 Q. Okay. So a few days
20 later Ms. O'Reilly, who is a reporter at the
21 Hamilton Spectator, e-mailed Councillor Conley and
22 said she was interested in info about pavement
23 friction testing conducted on the Red Hill last
24 year. And he, Councillor Conley, forwarded that
25 e-mail to his assistant who forwarded it to

1 Mr. Ferguson, and Mr. Ferguson replied and copied
2 you in, and said I've copied and Gary in response
3 to the request about whether -- was there pavement
4 friction testing done and what were the results.

5 So that's on May 30th and
6 June 1. June 1 is a Thursday.

7 Registrar, can you bring up
8 184 and 185, please.

9 So you are on vacation, and
10 just to refresh your memory I believe you're on
11 vacation from June 5 to June 12; is that right?

12 A. It appears so.

13 Q. And it says you're out of
14 office. I'm not going to -- there's some back and
15 forth. You took a week vacation?

16 A. I don't remember it, but
17 I mean, it's -- it's pretty obvious from the back
18 and forth here.

19 Q. Okay. I was just trying
20 to understand the clarity in the length of the
21 vacation. When you're on vacation, or at least in
22 2017 when you were on vacation, did you have a
23 practice of checking your e-mail?

24 A. No, I was on vacation.

25 Q. Okay. And so you weren't

1 looking at any work-related e-mails?

2 A. There's no sense going on
3 vacation if you're going to do work on your
4 vacation.

5 Q. Did you have your
6 assistant Ms. Cameron monitor your e-mails while
7 you were on vacation?

8 A. Typically she did, yes.

9 Q. When you say technically,
10 what do what did you mean by that?

11 A. Sorry, typically.

12 Q. Oh, typically.

13 A. Yes.

14 Q. And did you have any
15 standing direction for her if there was something
16 that seemed urgent what she should do if you were
17 on vacation? Sorry, let me rephrase that.

18 Did you have any standing
19 directions to her when she was monitoring your
20 e-mail and thought that there was an urgent
21 e-mail, if there was some plan for her to contact
22 you or something else.

23 A. I don't know that we had
24 any standing thing. I mean, there was if you see
25 something here, you know -- most of time when

1 someone comes in and they have got an urgent
2 question, it's, I'm sorry, he's out of the office
3 until whenever, and he will get back to you when
4 he comes back. If it's -- if someone else has
5 something that they can address, it's, you know,
6 knowledge of a project that's ongoing was, you
7 know, a question or if a councillor had a resident
8 that had an issue that one of the construction
9 guys could deal with, then it was passed on, you
10 know, that I didn't necessarily -- didn't have to
11 wait until I got back, but that's the types of
12 things that were done.

13 Q. That Diana did?

14 A. Yes.

15 Q. Okay. And it looks like
16 she did that here. You'll see at 540 she replied
17 to Councillor Conley's e-mail. He's also -- both
18 his assistant and Councillor Conley have e-mailed
19 separately. And she says:

20 "By copy I will ask Marco Oddi
21 to investigate and respond."

22 And then she a few minutes
23 later, about a half an hour later she responds,
24 again coping Mr. Oddi and Ms. Jacob this time, and
25 says:

1 "It was Gary who requested the
2 friction testing in 2014, and
3 unfortunately I don't have a
4 copy of that report." (As
5 read)

6 Did Diana have a copy of the
7 Golder report or the Tradewind report to your
8 knowledge?

9 A. Not to my knowledge.
10 It's unlikely.

11 Q. And if she had known
12 where to find it either electronically or in hard
13 copy, would you have wanted her to send it to
14 Councillor Conley?

15 A. That typically wouldn't
16 have been what we did.

17 Q. Better for you to deal
18 directly with councillors?

19 A. Yes.

20 Q. Okay. Ms. Jacob responds
21 and says:

22 "Is this for Red Hill? We
23 could touch base with
24 Ludomir." (As read)

25 And Cameron says:

1 "I don't want to give anything
2 to the councillor."

3 How did Ms. Jacob know
4 Dr. Uzarowski, if you know?

5 A. I don't. But I mean,
6 Ludomir had been around the office for five years.

7 Q. Okay. Registrar, could
8 you pull up 186 and 187, please. So just going
9 forward this is all sort of June 5 to June 8. So
10 Mr. White, who has been copied in at some point,
11 says that traffic doesn't have it and directs him
12 to asset management; that's in 544.

13 And Mr. Sidawi, who has been
14 copied in, says we're trying to track it down.
15 And then Ms. Cameron on the 8th says I've already
16 replied that Gary is back on Monday, too many
17 people answering the e-mail. There's a number of
18 e-mails going back and forth there.

19 Mr. Sidawi, he's the manager
20 of asset management; is that right?

21 A. Yes.

22 Q. So he is Mr. Andoga's
23 boss; is that right?

24 A. That's -- Mr. Andoga was
25 the senior -- yes, he would be Mr. -- yes,

1 Mr. Andoga's boss.

2 Q. Okay. And just going
3 back in time you said, you know, Mr. Andoga was
4 sort of running this scope issue up the flag pole.
5 In the usual course would he go to Mr. Sidawi
6 before we would go to you?

7 A. He may have. I don't
8 know.

9 Q. I'm talking about in the
10 usual course. What? You don't know either way?

11 A. Again, we're all in the
12 same office, you know --

13 Q. Okay.

14 A. -- we work very
15 collaboratively together.

16 Q. Okay. And by 2017, we're
17 in June, had you saved the Golder report or the
18 Tradewind report in a location that would have
19 been accessible to anybody except for someone who
20 had access to your e-mail in-box?

21 A. Other than on the open
22 shelves of my book shelves in my office, I don't
23 know.

24 Q. Okay. So you think that
25 there was a hard copy of the Golder report, the

1 one that Dr. Uzarowski had given you in hard copy
2 when you first met with him, on your book shelf?

3 A. I believe there were
4 several copies.

5 Q. Okay. And electronically
6 had you saved it anywhere else in the system apart
7 from on your M drive?

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

9 Q. Okay. And you returned
10 to the office on June 12. And you -- we'll get
11 there I guess after lunch, but you don't respond
12 to Councillor Conley despite all those many
13 e-mails on June 5 and June 8 when you get back.
14 Were you taking any steps to prepare yourself to
15 reply? Doing further investigation, looking at
16 the report, anything like that?

17 A. I don't know. I don't
18 know why I wouldn't have responded to Councillor
19 Conley.

20 Q. Well, we all know when
21 you get back from vacation you can be a little bit
22 busy. But in terms of your response time, you
23 know, what did you -- what was the level of
24 responsiveness that you held yourself to in
25 respect of dealing with councillors?

1 A. Usually if -- going
2 through the e-mail, I mean, it would have been
3 there, I would have tried to contact Doug right
4 away I believe.

5 MS. LAWRENCE: Okay.
6 Mr. Commissioner, it is 1:02, and I'm about to
7 move on to another topic. I suggest that we take
8 a lunch break, and, if I may, our normal lunch
9 break is to 2:15, and my suggestion is that we
10 take a lunch break today to 2:05.

11 JUSTICE WILTON-SIEGEL: That's
12 fine with me, stand adjourned until 2:05.

13 --- Recess taken at 1:02 p.m.

14 --- Upon resuming at 2:05 p.m.

15 MS. LAWRENCE: Thank you.
16 Commissioner, may I proceed?

17 JUSTICE WILTON-SIEGEL: Yes,
18 let's proceed.

19 MS. LAWRENCE: Thank you.

20 BY MS. LAWRENCE:

21 Q. Registrar, can you bring
22 up OD7, page 186. And if you can call out 547 at
23 the bottom, please. I'm sorry, I realize that
24 there's actually -- this extends onto the next
25 page. Registrar, can you also put out 187 and

1 call out the last line that's on that page. Oh, I
2 need all if 547, please. Thank you.

3 So, Mr. Moore, this is an
4 e-mail from Ms. O'Reilly from the Spectator to
5 Mr. Ferguson and Mr. White. It's not -- you're
6 not copied on this. And she says:

7 "I was finally able to speak
8 to Gary Moore today about the
9 RHV pavement and lighting and
10 now have a couple of follow-up
11 questions." (As read)

12 Do you recall sitting for an
13 interview with Ms. O'Reilly on June 21, 2017?

14 A. I do remember
15 Ms. O'Reilly. I believe it was in my office. I
16 don't know the date, but I do believe I spoke to
17 her.

18 Q. And was anyone else
19 present during that interview?

20 A. Not that I recall.

21 Q. My question was directed
22 at whether a communications officer or someone
23 from the City sat in with you?

24 A. Not that I recall, no, I
25 don't....

1 Q. Okay. And in the usual
2 course when you said for media interviews, did a
3 communications officer also attend?

4 A. I don't recall. I know
5 we used to routinely sit with someone from the
6 Spectator to review our construction plan for the
7 year, but I don't remember whether the
8 communication officer was present or not.

9 Q. Okay. Did you otherwise
10 have much experience being interviewed for
11 articles by professional journalists?

12 A. Um --

13 Q. Before June 21, 2017?

14 A. I had done some CHCH
15 interviews at the side of the road type of thing
16 and addressed other issues with them. I had done
17 a number of yearly interviews with them with
18 respect to the capital budget and occasionally,
19 you know, spoke, you know, maybe coming off of --
20 out of a committee meeting or something like that.
21 So I had had some experience.

22 Q. Okay.

23 A. I don't -- I wouldn't
24 call it extensive.

25 Q. Okay. Did you review the

1 Golder report or the Tradewind report before
2 sitting for this interview?

3 A. I don't -- I don't
4 recall, but I don't know why I would.

5 Q. Okay. Did you contact
6 Dr. Uzarowski before sitting for this interview
7 about friction testing generally?

8 A. I don't know how much
9 time I had between the time this was arranged. I
10 mean, it could have been, you know, a phone call
11 11 o'clock in the morning and she was in my office
12 at 1 o'clock in the afternoon. I don't know how
13 much time I had to prepare for this, but I don't
14 specifically recall anything in particular.

15 Q. Okay. And by this point
16 June 21, 2017 had Dr. Uzarowski provided you with
17 any further information about the UK investigatory
18 standard or how best to assess the friction values
19 from the Tradewind report?

20 A. I don't believe so. I
21 don't recall ever receiving it.

22 Q. You don't recall him ever
23 following up with you about what he'd learned?

24 A. No. I don't recall being
25 clarified on -- the UK standard did or didn't

1 apply or how it applied or if it applied or how to
2 interpret the results in that regard from him,
3 no --

4 Q. Okay.

5 A. -- not before I retired.

6 Q. Okay. And he suggests
7 that he had discussions with you throughout -- or
8 at least on two occasions in 2016, and you would
9 dispute that. Sorry, I should provide more
10 information.

11 Communications in which he
12 provided you with his best sense of -- that there
13 was not a standard and that the numbers were not
14 apples to apples. You dispute ever receiving that
15 information from him?

16 A. I don't recall receiving
17 that type of information, but had I received that
18 information it would have made the Tradewind
19 report absolutely moot because we wouldn't have
20 been able to apply anything to it. So it would
21 have been useless had I received that type of
22 information in that regard. So I don't -- I don't
23 believe I had that type of discussion with him,
24 but I don't recall specifically.

25 Q. Okay. The friction

1 test -- actually I have one more question on that.

2 So you say if I had received
3 that information it would have made the Tradewind
4 report absolutely moot. I'm suggesting to you if
5 you had learned that the grip tester numbers were
6 not apples to apples with the MTO numbers, and
7 that the grip tester numbers were in fact
8 generally higher the way the measurements happened
9 so you really can't say that a grip tester of say
10 40 is much better than a lock wheel of say 30, you
11 agree that that would not have rendered the
12 Tradewind report moot, it actually would have
13 explained your confusion in the Tradewind report,
14 right?

15 A. Without the ability to
16 compare it to something -- I mean -- and have that
17 definitive -- unless someone can say to me a grip
18 tester of 40 is a 35 of the other, to simply say
19 that it's more conservative tells me nothing.

20 Q. That's your evidence?

21 A. That's my evidence.

22 Q. Okay. Friction testing
23 came up during this interview with Ms. O'Reilly;
24 is that right? Do you recall that?

25 A. I don't.

1 Q. Okay. What do you recall
2 about the content of this interview with
3 Ms. O'Reilly?

4 A. I don't. I knew that
5 that's the type of stuff she was looking for.
6 Other than what Ms. O'Reilly is telling
7 Mr. Ferguson in this, I remember her being in my
8 office, I believe, and interviewing, and it was
9 about the Red Hill and LINC, but other than that I
10 couldn't tell you any specifics.

11 Q. Okay. When she e-mailed
12 Mr. Ferguson and Mr. White she said:

13 "Gary also mentioned something
14 about some work to change ramp
15 configurations. Can you
16 clarify what that is and when
17 it will happen?"

18 Does that refresh your memory
19 about a discussion that you had with Ms. O'Reilly
20 about ramps and what that discussion was?

21 A. The only thing that I was
22 aware of is that the -- traffic was proposing
23 changing some of the two-lane exit ramps to single
24 lane exit ramps, so that is the only thing that
25 I'm aware of that I may have mentioned to her that

1 came out of one or several of the reports or -- in
2 the latest of discussions with the them on what
3 they wanted to do -- but --

4 Q. Those discussions --

5 A. -- other than that I
6 couldn't say.

7 Q. Those discussions about
8 scope that you're talking about.

9 A. Yes.

10 Q. The ones we went through
11 with Mr. Worrton and Mr. Andoga?

12 A. That's correct.

13 Q. Okay. Registrar, you can
14 close these out, and if you can go to page 187,
15 please.

16 On June 27 Councillor Conley's
17 assistant e-mailed Mr. Sidawi, Mr. White, you and
18 Councillor Conley and said:

19 "Doug is still looking for
20 this information. Has anyone
21 found it?"

22 And you respond to him, and
23 you say:

24 "Rob, have Doug call in this
25 regard. Thanks."

1 So just stopping there, it
2 looks like you didn't respond to those requests
3 that go back to June 1 and then there's that
4 flurry of e-mails on June 5, and there's a final
5 e-mail on June 8.

6 You get back from vacation on
7 June 12, and you said just before the break that
8 your expectation of yourself was to respond
9 promptly to Councillor Conley. Why had you not
10 responded to those e-mails that we looked at
11 before by June 27?

12 A. I don't know. I have no
13 idea.

14 Q. Okay. Councillor Conley
15 testified that you and he spoke fairly frequently.
16 He would call you up about, you know, things that
17 his constituents were concerned about; is that
18 fair?

19 A. Yes.

20 Q. Okay. And so you told
21 him "have Doug call in this regard, thanks." Did
22 Councillor Conley call you?

23 A. I don't know.

24 Q. Okay. When you sent this
25 e-mail "have Doug call in this regard," what did

1 you plan to tell Councillor Conley about the two
2 questions that he had, which were friction testing
3 -- was friction testing done and what were the
4 results?

5 A. I would tell him what we
6 had done and what the results were, the same as
7 anybody else that would have asked within the
8 staff.

9 Q. Okay. Can you be more
10 specific about what you would have told him?

11 A. I don't know what Doug's
12 specific questions were. Sometimes you had to do
13 an extensive amount of clarification with
14 Councillor Conley in order to find out exactly
15 what his concern was and then address it.
16 Sometimes they weren't just the straightforward
17 question that was transferred to you from his
18 admin.

19 Q. I'm going to stop you
20 there just so you get a bit more context.

21 A. Yeah.

22 Q. Registrar, can you bring
23 up 188, please. So just like last time his
24 assistant and Councillor Conley were both
25 e-mailing on this issue. So at the top at 553 he

1 e-mails you, and he says:

2 "Gary, have you got any
3 information or results from
4 the pavement friction testing
5 done last year?"

6 A. Right.

7 Q. That's his request to
8 you. You've already, five hours before, said get
9 him to give me a call.

10 A. Right.

11 Q. And just stopping here.

12 Ms. O'Reilly had gone to Councillor Conley and
13 asked if he had more information about this, and
14 that's what triggered that e-mail exchange in
15 early June.

16 So with that context, what did
17 you plan to tell him if he called you back?

18 A. Well, I would have
19 clarified that there wasn't any friction testing
20 done last year; that the only friction testing
21 that we had done was in the 2013, '14 Tradewind
22 report, and exactly what the status was in terms
23 of what I had told people several other times in
24 that we had some results, they were higher than
25 what MTO got, we're still trying to get

1 clarification from the consultant on their
2 comparison to a British standard, that we don't
3 have any idea of how it applies.

4 Q. Okay. And sitting here
5 today you can't recall if you actually had a
6 conversation with Councillor Conley about this?

7 A. No, I had dozens of
8 conversations with Councillor Conley on a variety
9 of issues.

10 Q. Okay. You'll see in the
11 next paragraph on 188 there's a reference to
12 Ms. O'Reilly's article that came out on July 15,
13 2017. I'm going to take you into that article.
14 So the font is a little small, so I might go back
15 and forth between these excerpts and the article
16 itself.

17 Registrar, can you move
18 page 188 over to the left-hand side and bring up
19 HAM52704.

20 So this is the electronic
21 version. Just stopping here. Do you read the
22 Hamilton Spectator, or did you in 2017?

23 A. I had occasion to read
24 it, yes.

25 Q. Okay. And when you read

1 it, would you read it in hard copy or would you
2 read it in an electronic format?

3 A. Well, usually in hard
4 copy.

5 Q. Okay. So this obviously
6 is the electronic copy. It might look different
7 than what you reviewed at the time, if you
8 reviewed it. And that is in fact my question.
9 Did you review this article after it was published
10 on July 15th?

11 A. I believe I read the
12 article.

13 Q. Okay. I mean, you're
14 quoted in it, so was it your habit to review
15 articles that you think you might be quoted in if
16 they came to your attention?

17 A. If they came to my
18 attention, yeah.

19 Q. Okay. Registrar, can you
20 go to the second image, please. And can you call
21 out the first six paragraphs, please. Thank you.

22 So in the fourth paragraph it
23 says:

24 "Rumour and speculation about
25 the RHVP being slippery have

1 plagued the parkway since it
2 opened in 2007 and now the
3 City is planning to repave the
4 road surface starting next
5 year. The work, at least a
6 year ahead of schedule, will
7 be preemptively address
8 questions staff cannot answer;
9 is the Red Hill too slippery."

10 (As read)

11 During your interview with
12 Ms. O'Reilly on June 21st, did she put that
13 question to you, is the Red Hill too slippery?

14 A. I don't know. I don't
15 recall the interview.

16 Q. Okay. I'm going to close
17 this down for a moment, Registrar, and if you can
18 go to the bottom half of the page and blow it out.
19 Thanks.

20 So five paragraphs up from the
21 bottom it says:

22 "The RHVP was originally paved
23 with stone mastic asphalt, a
24 more expensive mix that's
25 supposed to last longer, but

1 it's known to be slightly more
2 slippery although still
3 meeting provincial standards
4 in the first few months but
5 typically has better friction
6 once the road is worn down."

7 (As read)

8 Did you give Ms. O'Reilly this
9 information about stone mastic asphalt?

10 A. It's unlikely other
11 than -- it's not truly correct, so other than the
12 fact that we originally paved with the stone
13 mastic asphalt.

14 Q. Okay. What part of this
15 isn't correct?

16 A. Well, there's nothing to
17 say the stone mastic asphalt was supposed to last
18 longer. It was the perpetual pavement that was
19 supposed to last longer. And as far as it's known
20 to be slightly slipperier, I would have never
21 discussed it like that. Those are her words and
22 definitely not mine, although she may have been
23 aware of the MTO's early low friction. But that
24 doesn't -- it doesn't look like something I would
25 have discussed.

1 Q. Okay. Stopping on that.
2 The early low friction issue with SMA, do you
3 recall conveying that to Ms. O'Reilly?

4 A. No, I don't. I don't
5 recall the discussion we had.

6 Q. I know. I'm just trying
7 refresh your memory and get your best evidence.

8 A. It's not going to work.
9 It's gone.

10 Q. You said, but it doesn't
11 look like something I would have discussed. Do
12 you mean you wouldn't have discussed the issue of
13 early age low friction with Ms. O'Reilly or that
14 you wouldn't have discussed it using this
15 phrasing?

16 A. Well, I definitely
17 wouldn't have discussed it using this phrasing,
18 so -- but I don't know whether I did discuss it
19 with her at all.

20 Q. Okay. Going down two
21 paragraphs from there, it says:

22 "And the City did test
23 friction later that year. The
24 Spectator has learned that the
25 results were never made

1 public."

2 Do you recall telling

3 Ms. O'Reilly that the City had tested friction

4 later that year which would have been, you know,

5 in 2015 to 2016, based on the preceding sentence?

6 A. No, I don't. But we

7 didn't do any friction testing, so I don't know

8 whether she was confused with the --

9 Q. Maybe (indiscernible) in
10 the update report where it says "friction testing
11 completed"?

12 A. Yes, I don't know

13 where -- where she got that information from.

14 Q. Okay. It then says, "The
15 results were never made public."

16 And I'm just going to just
17 close this down for a moment, Registrar, and if
18 you can go back to the first call out which is the
19 first six paragraphs at the top.

20 In the second paragraph up
21 from the bottom here it says:

22 "The City has done limited
23 friction testing on the road
24 but refuses to make the
25 results public saying only

1 they were ultimately
2 inconclusive." (As read)
3 So there's a bit of repetition
4 in this.

5 So just going -- Registrar, if
6 you can go back to that callout we were in before.
7 Apologies for jumping around.

8 So there's two references in
9 this article in slightly different language. That
10 the results of the friction testing were never
11 made public, and the one that we just looked at
12 the City re- -- the City has done limited friction
13 testing on the road but refuses to make the
14 results public.

15 Did you tell Ms. O'Reilly that
16 the results were not public?

17 A. I don't know. If she had
18 asked have you made a report to council or, you
19 know, posted those reports, I would have said no.

20 Q. Okay. Did Ms. O'Reilly
21 ask you personally for a copy of the friction test
22 results or a copy of the friction test report?

23 A. I believe she did.

24 Q. And what did you say?

25 A. I think it's in the

1 previous -- on the previous page what I said, that
2 we don't release that type of thing.

3 Q. Okay. So I know -- I'll
4 take you to that quote in a moment.

5 A. Yeah.

6 Q. But your recollection,
7 recognizing you don't have a perfect recollection
8 of this interview, you do recall that she asked
9 you for the results --

10 A. Not in my interview in my
11 office. Coming off of the bench after a committee
12 meeting sort of, you know, ran across the room. I
13 remember that.

14 Q. Okay. Tell me about
15 that. When did that occur?

16 A. Well, it was a committee
17 meeting, and I know she came across the room and
18 sort of as we were filing out of the meeting asked
19 for a copy of the report, and I made that comment
20 that --

21 Q. Okay.

22 A. -- we don't release that
23 type of information (indiscernible).

24 Q. Okay. So how far before
25 the release of this article in July of 2017 did

1 that interaction at the committee meeting happen?

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

3 Maybe a couple of days.

4 Q. Right around the same
5 time?

6 A. Yeah, right around the
7 same time.

8 Q. Okay. In the next
9 paragraph, so the second from the bottom:

10 "There is no official report,
11 Moore said, only an informal
12 chart sent in an e-mail in
13 December 2015 that friction
14 testing was not fulsome and
15 the results were
16 'inconclusive'."

17 So that is attributed to you,
18 and one of those words is in quotations. What is
19 the informal chart that you are attributed to have
20 mentioned here? Informal chart sent in an e-mail
21 in December 2015.

22 A. The only thing I can
23 think of in that regard would have been the
24 Tradewind report, but I don't know whether that's
25 my words or not. A draft chart, a draft report,

1 a, you know, unofficial report, but I don't
2 know -- I don't know that that's my words, but
3 I -- the only thing I can think that would refer
4 to would be the Tradewind report.

5 Q. Okay. So just stopping
6 there before we get into the substance of your
7 response.

8 You are not sure about the
9 particular language you used when -- it says,
10 informal chart here, whether that was your
11 phrasing. Is that your evidence?

12 A. I don't recall.

13 Q. Okay. And do you think
14 that you would have used 'informal chart'? Is
15 that language that you would have used?

16 A. I'm troubled by the
17 informal, but I -- unofficial or draft is more
18 likely. I may have used that. I don't know. You
19 know, coming off the end of the bench, if that's
20 where she got this information from -- but calling
21 me in the, you know, middle of the room, you know,
22 have you got this. That's an informal -- I don't
23 know. It very well could have been, but I don't
24 recall.

25 Q. Okay. On that point do

1 you recall whether you gave information about --
2 you know, that there's no official report, only an
3 informal chart in an e-mail in December 2015. Did
4 you give that to her while you were in the council
5 chamber or in the interview in your office?

6 A. I believe that's -- that
7 was coming off of the bench.

8 Q. So in the council
9 chamber?

10 A. In the council chamber,
11 yeah. Yes.

12 Q. So it says there is no
13 informal report, and then it references an
14 informal chart. And you'll recall that in
15 December 2015 you sent Dr. Uzarowski a chart in
16 December 2015. Do you remember that? Pardon me.
17 Let me rephrase that.

18 You sent him an e-mail that
19 contained the chart that he had sent you in
20 January of 2014. Do you recall that?

21 A. That was the MTO chart.

22 Q. That's right, yeah.

23 A. Yes.

24 Q. Is it possible that you
25 were mis-remembering that you received friction

1 value information by e-mail from Ludomir in
2 December 2015?

3 A. I don't know. It's -- I
4 mean, if you take it apart, there is no official
5 report. That's true. There is no official
6 report. There's nothing to council, no report.
7 And the last part of that, the friction testing
8 was not fulsome, and the results were
9 inconclusive. As far as I'm concerned, that was
10 the condition of the Golder and Tradewind report.
11 Without the ability to test those numbers against
12 some standard they were inconclusive.

13 So the informal chart part,
14 unless the -- we were -- we had talked about the
15 MTO information and she had cobbled together
16 different things that I had said. I can't explain
17 where this information was assembled from.

18 Q. Okay. So you think it's
19 possible that Ms. O'Reilly misunderstood or has
20 misquoted you when you've referenced the informal
21 chart here. Is that a possibility?

22 A. It's a possibility, but I
23 don't know.

24 Q. Do you think it's --
25 that's likely what happened? Is that the way that

1 you think -- is that the best explanation for
2 this, or can you think of another explanation?

3 A. I think if you take out
4 the 'informal' and exchange it for 'draft', it's
5 very applicable. So one word seems to change the
6 whole meaning of the sentence on who said what,
7 so....

8 Q. What's the draft chart?
9 If we just change the word 'informal' to 'draft',
10 what's the draft chart?

11 A. Well, the Tradewind
12 report.

13 Q. Okay.

14 A. The Tradewind report is
15 90 percent numbers. It's a big chart. There's
16 two or three paragraphs of comments at the back.
17 It's virtually, you know, a big chart of numbers.
18 It's an appendix.

19 Q. Okay. Did Ms. O'Reilly
20 ask you for a copy of the informal chart or the
21 draft chart or whatever you called it? Did she
22 ask you for a copy of that?

23 A. I believe she asked me
24 for a copy of the test results or of the friction
25 testing that had been done.

1 Q. Okay. And we'll get to
2 your response, but, you know, I can imagine a
3 circumstance where she asks first for the results,
4 and you said there aren't any results, there's
5 just an informal chart, and then she says, oh,
6 well, can I have the informal chart. And so do
7 you recall that sort of series of questions where
8 she's asking for the different things depending on
9 what you're telling her exists?

10 A. Standing there in the
11 middle of the committee chamber after sitting
12 through two-and-a-half hours of committee meeting
13 and someone coming over and firing a couple of
14 rapid questions, no, I don't recall what she said
15 or included in those questions.

16 Q. Okay. You agree with me
17 that the Tradewind report is actually a report,
18 right? It's not just a series of numbers or
19 charts.

20 A. It's an appendix to the
21 Golder report.

22 Q. And the Tradewind report
23 itself is a report that was prepared by Tradewind
24 Scientific. You agree with me on that, right?

25 A. Not for the City, no.

1 Q. That wasn't my question.
2 You agree that the Tradewind report is a report
3 that was prepared by Tradewind Scientific, right?

4 A. For Golder, yes.

5 Q. Okay. And so when you
6 say "official report" here, I think your evidence
7 earlier might have implied, and I just want to
8 confirm this, that your evidence is that official
9 report means a staff report. Is that how you read
10 that? I might have misunderstood you.

11 A. Again, if that's what I
12 said then -- I mean, there is no staff report or
13 other report otherwise.

14 Q. Okay. You gave evidence
15 yesterday that you didn't have concerns about the
16 numbers that Tradewind came up with; you just had
17 concerns about how they were going to be analyzed.
18 On what did you rely when you said the results
19 were not fulsome?

20 A. The analysis.

21 Q. Okay. And that's because
22 you didn't understand how Tradewind got to the
23 recommendations that it got to; is that right?

24 A. Well, their reliance on
25 the British standard, yes.

1 Q. Okay. In the last
2 sentence it says:

3 "Instead of doing further
4 testing as was recommended the
5 City has decided to repave."

6 (As read)

7 Did Ms. O'Reilly ask you about
8 the potential of doing further testing?

9 A. I don't know.

10 Q. Okay. Registrar, can you
11 close this down, and can you go to image 3 of
12 HAM52704. At the top, the top four paragraphs of
13 image 3. Could you call those out, please. And
14 this is in quotes:

15 "All we got was an indication
16 that we should do further
17 work." (As read)

18 Just stopping there. What
19 indication of "further work" are you referencing
20 in that quote?

21 A. The recommendation I
22 believe in I think it was the Golder report that
23 we do -- we do further testing. It may have been
24 what that -- what was in the Tradewind report,
25 but....

1 Q. Okay. So the further
2 work, that's the work either in the Tradewind
3 report or the Golder report that you received in
4 January 2014?

5 A. I believe so.

6 Q. Okay. And you go on to
7 say:

8 "It was moot when we decided
9 to go ahead with --" and then
10 it's in parentheses "-- but
11 with repaving." (As read)

12 Did Ms. O'Reilly ask you if
13 the Red Hill resurfacing was being expedited to
14 avoid having to do the further work on the parkway
15 that had been recommended?

16 A. I don't know. I would
17 have addressed that with her had she -- had
18 that've been the case.

19 Q. How would you have
20 addressed it with her?

21 A. No. It will address that
22 concern, but between the top down cracking, the
23 longitudinal along the shoulder and the dips and
24 bumps work and the availability of funds is why
25 the repaving was decided to be advanced.

1 Q. Okay. The next paragraph
2 it says:

3 "No one ever really says that
4 type of information because
5 it's the first thing anybody
6 would use in a lawsuit." (As
7 read)

8 A. Yeah.

9 Q. And that is -- you're
10 quoted as saying that.

11 A. Yeah.

12 Q. And that's an accurate
13 quote?

14 A. I believe it is.

15 Q. You knew that friction
16 testing information would need to be provided to
17 the City's lawyers in the event of any lawsuit,
18 right?

19 A. Yes.

20 Q. Regardless of whether you
21 provided it to Spectator or not?

22 A. Right. So it was a
23 stupid thing to say.

24 Q. Okay. And I think you
25 said earlier in your evidence that you'd provide a

1 copy of the Tradewind report if it was responsive
2 to a Freedom of Information request?

3 A. Yes.

4 Q. Okay.

5 A. I wouldn't have a choice.

6 Q. If you read this article
7 at the time roughly when it came out and you felt
8 that the quotations or the way that your -- the
9 evidence you -- or the information you had given
10 Ms. O'Reilly, the way she had summarized it was --
11 was not accurate, would you have not asked for a
12 correction or asked for -- well, for a correction?

13 A. It had never been the
14 practice within the City that I know of or that I
15 was involved in to try and correct anything the
16 papers said.

17 Q. Okay. When you read
18 this, did you note that it was not an accurate
19 representation of what you intended to tell
20 Ms. O'Reilly in respect of the official report or
21 informal chart?

22 A. I guess I believed what I
23 told her at the time was accurate. You know,
24 would wordsmithing have made it better or clearer;
25 possibly. But it wouldn't have changed anything

1 and certainly wouldn't have satisfied any need for
2 the City that I was aware of.

3 Q. Okay. We're going to
4 close this out, Registrar. And if you can go to
5 the middle of this page. I think it is nine
6 paragraphs down, and it says "he wouldn't say
7 whether concerns over friction." Thank you.

8 I just want to ensure that
9 I've put everything to you. This is -- it's not
10 included in this callout, but there's a reference
11 to you two paragraphs up, and so the "he" here I
12 expect is referencing you. It says:

13 "He wouldn't say whether
14 concerns over friction also
15 played a role in deciding what
16 pavement to use." (As read)

17 And so I just want to ensure
18 that I have your evidence about any discussions
19 you had with Ms. O'Reilly about that, and if this
20 is an accurate summary of your discussion with
21 her.

22 A. I'm a little concerned --
23 a little confused on what it actually says, but I
24 don't recall -- I mean, it doesn't really make
25 sense.

1 Q. You know, it might be
2 the -- just the way I did the callout.

3 A. No. It says:
4 "Whether concerns over
5 friction played a role in
6 deciding what pavement to
7 use." (As read)

8 If that had said also played a
9 role in deciding when to pave -- but that's not
10 what it says. It says in what pavement to use.
11 We would always use a high friction pavement
12 anyways, the SMA or the FC2, and I don't know
13 whether that was determined at that time, so I'm
14 not quite sure what she's referring to here.

15 Q. And just to be fair to
16 you, the paragraph just immediately above says
17 it's about -- that the new paving is going to be a
18 Superpave mix and an FC2 mix.

19 A. Okay.

20 Q. And then you are quoted
21 as saying, adding that:

22 "SMA is not being considered
23 again in part because it is
24 more expensive." (As read)
25 And then the next line is:

1 "He wouldn't say whether
2 concerns over friction played
3 a role in deciding which
4 pavement to use." (As read)

5 A. No, that's --

6 Q. And I'm sorry, I didn't
7 put that context to you.

8 A. It doesn't -- it doesn't
9 have any role in deciding what pavement to use.

10 Q. Okay. So why didn't you
11 tell her that?

12 A. Well, I don't know that I
13 wouldn't say. I -- I don't know.

14 Q. Okay. Just so the
15 evidence is really clear, are you saying that this
16 is not an accurate summary of your discussions
17 with Ms. O'Reilly?

18 A. I -- I can't dispute it
19 either way, but I don't believe it's -- I don't
20 believe it's accurate.

21 Q. Okay. Registrar, you can
22 close this down. And you can close down the HAM
23 documents, and if you can go to page 190 of OD7,
24 please. I want you to bring up 191 as well.
25 Thank you. Registrar, can you call out 560 to

1 562, please.

2 We're just taking you through
3 some chronology. This is an e-mail thread that
4 starts in July, and it's Colleen Crawford from
5 Shillingtons law firm contacted Mr. Ferguson.

6 In the subject line it's a
7 piece of litigation that involves Hamilton, and
8 she says that her law firm represents the City
9 with respect to several accidents and wanted to
10 arrange a telephone conference with you to review
11 the roads, the recent friction studies completed
12 by the City and the proposed road work.

13 And if you go down 562,
14 Mr. Ferguson responds and directs Ms. Crawford:

15 "When it comes to friction
16 testing Gary Moore, director
17 of engineering, should be
18 approached as I have not seen
19 the results nor have I been
20 involved in the process."

21 Registrar, you can close this
22 down. And if you can go to 565 on the next page.

23 So Ms. Crawford forwards this
24 e-mail chain to you, and this is now August 10th,
25 and she introduces her firm as representing the

1 City and says she would like to arrange a
2 telephone conference with you. And do you recall
3 whether you -- do you recall having a conversation
4 with Ms. Crawford coming out of this e-mail
5 exchange?

6 A. I remember Ms. Crawford
7 and the request, but I don't -- I mean, I don't
8 recall a specific conversation, no.

9 Q. Okay. Had you had any
10 interactions with Ms. Crawford before this e-mail
11 exchange?

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

14 Q. Okay. And had you had
15 any interactions with the law firm Shillingtons
16 before this e-mail exchange?

17 A. I don't believe so. It's
18 not a familiar name to me.

19 Q. Okay. Had you been
20 involved as a deponent or representative of the
21 City in litigation involving the City before 2017?

22 A. I believe I had been
23 involved in one, maybe two discovery processes,
24 but that would be the limit of it, that would be
25 the extent of my involvement.

1 MS. LAWRENCE: Okay.
2 Mr. Commissioner, I'm sorry to interrupt my
3 questioning, but I understand there might be some
4 issues with the live stream. It seems it's either
5 freezing or not working. And it would be quite
6 early for us to take a break, but I did just want
7 to update you and get your direction on whether we
8 should proceed even though it appears that -- I
9 don't think it's completely off; it's just not
10 functioning well enough to actually follow the
11 proceedings.

12 JUSTICE WILTON-SIEGEL: I
13 suppose the feed is coming from Arbitration Place;
14 is that correct?

15 MS. LAWRENCE: Yes.

16 JUSTICE WILTON-SIEGEL:
17 Mr. Registrar, could you take these documents
18 down, please. So, Mr. Registrar, are you having
19 any indication at your end with respect to the
20 feed?

21 (DISCUSSION OFF THE RECORD)

22 MR. REGISTRAR: I was just
23 alerted to it through an e-mail. I'm just going
24 to take a look at it now.

25 JUSTICE WILTON-SIEGEL: All

1 right. Why don't we -- it is early, but let's
2 take our 15-minute break now, Or actually let's
3 take a 10-minute break. We'll return at five past
4 3:00. Perhaps in the meantime you can address
5 this with your tech person at your end and see
6 whether they can rectify this.

7 THE REGISTRAR: Thank you,
8 Mr. Commissioner. I'll put everyone in a breakout
9 room.

10 JUSTICE WILTON-SIEGEL: No.
11 We'll just take a 10-minute break.

12 THE REGISTRAR: Okay. Thank
13 you.

14 --- Recess taken at 2:55 p.m.

15 --- Upon resuming at 3:11 p.m.

16 MS. LAWRENCE:
17 Mr. Commissioner, I understand that the issues
18 with the live feed have been resolved. May I
19 proceed?

20 JUSTICE WILTON-SIEGEL: Yes,
21 let's proceed.

22 MS. LAWRENCE: Thank you.

23 BY MS. LAWRENCE:

24 Q. Mr. Moore, we were
25 talking before we were interrupted about

1 Shillingtons and your past involvement in
2 litigation matters with -- for the City, and I
3 think what you said was that you had been involved
4 as a -- in examinations on a couple of occasions;
5 is that right?

6 A. That's correct.

7 Q. Okay. Apart from
8 actually going to the formal process of being a
9 city representative had you been involved in
10 providing information to city appointed lawyers to
11 assist them in their preparation in advance of
12 litigation?

13 A. Yes.

14 Q. So you were a person that
15 might have information and law clerks or lawyers
16 might come to you to get that information?

17 A. Or I would direct staff
18 to prepare the information for them.

19 Q. Okay. But I think you
20 also said you had not had past interactions with
21 Ms. Crawford or with the Shillingtons law firm.
22 Is that right?

23 A. I don't believe I had.

24 Q. Registrar, can you bring
25 up OD7, page 191, 567 at the bottom.

1 And there's a reference to
2 e-mail exchanges between Ms. Cameron and
3 Ms. Crawford to arrange a call between
4 Ms. Crawford and Terry Shillington and you on
5 August 15th, and it says brief discussion about
6 friction testing on the LINC and the Red Hill.

7 Did you review the Tradewind
8 report to prepare for this call with Ms. Crawford
9 and Mr. Shillington?

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

11 Q. Did you contact
12 Dr. Uzarowski to get information about the project
13 you had asked him to take on?

14 A. I don't recall.

15 Q. Okay. Registrar, can you
16 call up HAM64114, please. And can you call up on
17 the other image HAM64119.

18 Did you take any notes during
19 the call with Ms. Crawford and Mr. Shillington?

20 A. I don't know. I don't
21 have any notes. I don't -- I don't know what I
22 would have noted or -- if they had asked -- if I
23 had been asked to provide something, I could have
24 jotted it down, but once I carried that out it
25 would have been gone, so I'm not sure.

1 Q. Okay. We have some notes
2 to refresh your memory about this call. First, on
3 August 30th, 2017 Ms. Crawford sent an e-mail to
4 Mr. Thompson, who was another partner at
5 Shillingtons, and it has four lines, and you'll
6 see below that e-mail from Ms. Crawford to
7 Mr. Thompson on August 15th, 8:26 a.m., you say:

8 "As requested, the testing was
9 done in late 2013. I received
10 it in early 2014." (As read)

11 So just jumping ahead of the
12 call that you had with Ms. Crawford, after that
13 call you provided -- you sent her an e-mail on
14 August 15th, and we'll get there in a moment, but
15 you attached a copy of the Tradewind report; is
16 that right?

17 A. I'm not sure whether it
18 was the entire Golder report with Tradewind or
19 just Tradewind. I don't know.

20 Q. Okay. We'll get there.
21 What do you remember about the call with
22 Ms. Crawford?

23 A. Nothing, I don't -- I
24 don't even recall speaking to her.

25 Q. Okay. In her note to

1 Mr. Thompson a couple of weeks later she says that
2 you indicated that paving was equal or better than
3 the MTO roads. Does that refresh your memory
4 about what you told her?

5 A. No. But that -- I mean,
6 that's consistent with the information we had from
7 the MTO testing.

8 Q. Okay. And she also
9 says -- these are not particularly attributed to
10 you, but they are about the conversation that she
11 had with you -- that the LINC numbers in the high
12 50s or low 60s are superior to the RHVP numbers in
13 the low 40s, and that they are planning on
14 repaving the northbound lanes in 2018 and the
15 southbound lanes in 2019, and the report has not
16 gone to city council yet.

17 A. Hm-hmm.

18 Q. On the left-hand image
19 is notes that Shillingtons produced to the
20 inquiry. They are not dated. They have a bit
21 more information. So I'm going to go back and
22 forth between them really just with an attempt to
23 refresh your memory.

24 Do you recall saying that the
25 LINC numbers were superior to the RHV numbers?

1 A. No, I don't. I don't
2 know whether that would have been a term I use,
3 higher. But I don't know whether -- I didn't
4 consider them superior, so I don't know why I
5 would -- I would say that.

6 Q. Okay. In the left-hand
7 image in that -- the handwritten notes at the
8 bottom half of the page it says "LINC superior to
9 RHVP high 50 low 60s." And there's an arrow.

10 And up from the arrow,
11 Registrar, I don't know if you'll be able to
12 follow my direction, but if you could highlight
13 down in the 40s.

14 A. I see that.

15 Q. You see it. Okay,
16 Mr. Moore. You don't have to highlight it then.
17 It's fine.

18 A. It's above that, yeah.

19 Q. It's above that. So I
20 read that as being reflective of what Ms. Crawford
21 is saying in her notes, or in her note to
22 Mr. Thompson. And then there's an arrow, and it
23 says "done at 50km."

24 A. Right.

25 Q. Do you recall providing

1 Ms. Crawford with information about the measuring
2 speed in the Tradewind report?

3 A. I don't.

4 Q. Okay. That's in the
5 Tradewind report, so it's possible that she got
6 that from the report after the fact. It does say,
7 the next line down, "MTO does theirs at operating
8 speed." And do you recall giving her that
9 information, that the MTO does their friction
10 testing at operating speed?

11 A. I don't know whether I
12 was aware of the discrepancy at that time and
13 spoke to her on that. I don't know.

14 Q. Okay. So is it your
15 evidence that at the time, this is in August
16 of 2017, you didn't know what speed the locked
17 wheel MTO testing was done at?

18 A. No, I -- I don't. And I
19 didn't -- if you had asked me, I didn't think it
20 was at operating speed but....

21 Q. But in 2017 what would
22 you have thought -- if someone asked you what's
23 the speed that --

24 A. I thought I remember
25 reading that it was at 80 kilometres an hour or

1 something, but I don't know.

2 Q. Okay. It says in the
3 middle:

4 "Golder's was consultant.
5 Tradelink Scientific a grip
6 tester British method." (As
7 read)

8 Do you recall providing
9 information that Golder was the consultant who
10 retained Tradewind?

11 A. No. I don't know what
12 information I provided. I don't remember the
13 conversation.

14 Q. Okay. Did Ms. Crawford
15 request a copy of the Tradewind report?

16 A. In light of my response
17 that says "as requested" I assume that she did.

18 Q. Okay. Did you have any
19 discussions with her about the Golder report to
20 which the Tradewind report was an appendix?

21 A. Well, that's why I
22 don't -- I don't know what she requested and what
23 I sent her. Whether it was simply the Tradewind
24 report or whether it was the Golder report with
25 the Tradewind report as the appendix. I'm not

1 sure what was sent to her.

2 Q. Okay. And you don't have
3 a recollection because that's really what I was
4 asking was about your recollection.

5 A. No.

6 Q. Okay. Do you remember
7 speaking to her at all about the Golder report as
8 the context for Tradewind report?

9 A. I don't, but it would
10 have --

11 Q. Okay.

12 A. -- you can't talk about
13 one without the other so....

14 Q. Why do you say you can't
15 talk about one without the other?

16 A. Well, the Tradewind
17 report is an appendix of the Golder report. I
18 mean, the information in her notes that Golder
19 report was the consultant and Tradewind, Tradelink
20 Scientific. So given that she was familiar,
21 obviously familiar from some information that it's
22 likely I sent her the whole thing.

23 Q. Okay. Registrar, can you
24 bring up HAM62244. Registrar, can you pull that
25 out. I'm finding the font very small. Thank you.

1 And apologies. Before I do that I'm told that
2 there's two documents that I need to mark as
3 exhibits, the two that we were just looking at.
4 HAM64114, which will be Exhibit 133.

5 EXHIBIT NO. 133: E-mail from
6 Colleen Crawford to David
7 Thompson dated 8/30/2017;
8 HAM64119.

9 MS. LAWRENCE: Did I get the
10 exhibit number wrong?

11 THE REGISTRAR: No, I was just
12 going to say that I noted it down.

13 MS. LAWRENCE: Thank you. And
14 the second one is HAM64119, and that will be the
15 next exhibit.

16 THE REGISTRAR: Sorry,
17 Counsel, I got HAM64119 as Exhibit 133.

18 MS. LAWRENCE: Oh, then I
19 must've misspoke before. That's fine. You can
20 make that Exhibit 133 and the other one is
21 HAM64114.

22 THE REGISTRAR: Thank you.

23 EXHIBIT NO. 134: Handwritten
24 notes, 2 pages; HAM64114.

25 MS. LAWRENCE: Thank you.

1 Apologies for that.

2 THE REGISTRAR: It's okay.

3 That will be Exhibit 134.

4 MS. LAWRENCE: Thank you.

5 BY MS. LAWRENCE:

6 Q. So, Mr. Moore, this is
7 just a separate copy of the same document that we
8 were just looking at. That was the bottom chain.
9 So it says:

10 "As requested, the testing was
11 done in late 2013. I received
12 it in early 2014." (As read)

13 And, Registrar, can you close
14 that out and can you go to HAM53108. And this is
15 the 18-page Tradewind Scientific. And you'll see
16 it doesn't have a --

17 Actually, Registrar, can you
18 bring up the next page. It doesn't a draft stamp
19 on it or anything. And this is the one that --

20 If you can go to the last
21 page, Registrar. Oh, pardon me, I'm at the last
22 page of the report which is image 13.

23 So this is the one -- this is
24 the version that was in the Golder report, but at
25 the time it had a draft stamp on it. And this

1 does not have a draft stamp on it. Both of them
2 were signed by Leonard Taylor. And so does that
3 assist you at all with whether you provided Ms.
4 Crawford with a copy of the Golder report?

5 A. It doesn't.

6 Q. Did you send -- did you
7 forward this e-mail -- this back and forth with
8 Ms. Crawford to anyone at the City?

9 A. No, I don't believe so.
10 I don't know who I would send it to.

11 Q. Okay. Registrar, you can
12 take the document down.

13 Did you think there was anyone
14 that you should be keeping in the loop given that
15 you'd provided information to the City's external
16 counsel?

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

18 Q. Okay. Did you discuss
19 your conversation with Shillingtons with anyone at
20 the City?

21 A. Not that I'm aware of,
22 no.

23 Q. Okay. Did you tell
24 Dr. Uzarowski or anyone else at Golder about your
25 exchange and the fact that you'd provided the

1 Tradewind report to Shillingtons?

2 A. I don't believe so.

3 Q. Okay. And you don't

4 recall having any discussions with anyone about
5 this exchange with Shillingtons?

6 A. It wasn't my practice to
7 share information that I was talking to legal or
8 their representative about.

9 Q. Okay. Registrar, can you
10 bring up OD8, page 12, please.

11 And apologies, I just --
12 before we leave Shillingtons, after the discussion
13 that you had with Ms. Crawford and Mr. Shillington
14 on August 15th, do you remember having any --
15 receiving any request for follow-up from her at
16 any point in 2017?

17 I can tell you, just to give
18 you a bit more context, that you do get a
19 follow-up from her in 2018, and we'll get there
20 when we get there, but this is really just for me
21 to understand if there is any interaction with --

22 A. Well, I was trying to
23 remember if I -- at all. So if you say it's 2018,
24 then -- not that I recall, anything else.

25 Q. Okay. In November

1 of 2017 traffic engineering and operations is
2 working on an update to PWC regarding the status
3 of prior safety recommendations.

4 Registrar, if you could pull
5 out paragraph 23, please.

6 So this isn't entirely clear
7 just with a callout, but Mr. White and Mr.
8 Ferguson are working on this draft report, and
9 then Mr. White sends it to you -- this is
10 mid-November -- to you and to Ms. Matthews-Malone
11 who is going to be become director of
12 transportation. And he says:

13 "Good morning. Here's a final
14 draft of the report which will
15 be sent to John for review.
16 Please provide any comments
17 you may have as soon as
18 possible. This is going to go
19 to the December 4 public works
20 committee meeting but it's a
21 little bit late so it might
22 have to go in January." (As
23 read)

24 Can you close that down,
25 Registrar, and go to HAM26494, please. And can

1 you pull up the second image as well. Thank you.

2 So this draft of this report
3 is quite lengthy. It's a 14-page staff report,
4 and it has a number of recommendations. Number --
5 and I'll get through them, but -- and it also asks
6 that a number of things be taken off the
7 outstanding business list.

8 Just going back in time to
9 that May 1st, 2017 meeting. Did you understand
10 coming out of that meeting that traffic
11 engineering was going to be working towards doing
12 this sort of omnibus report to PWC about all the
13 things that were outstanding the Red Hill and the
14 LINC.

15 A. Was this the meeting with
16 Dan to bring him up to speed?

17 Q. Yeah. Yeah, the meeting
18 with Dan on May 1st, 2015. I know we're going
19 back in time, but did you understand that this was
20 the -- that there was a plan to do a report that
21 addressed all of those issues, tried to pull them
22 together?

23 A. No, I don't -- I don't
24 recall anything specific or seeing anything that
25 said they were going to write a report in that

1 regard.

2 Q. Okay. So this is just
3 the draft report, but I'll take you through some
4 parts of it. Actually before I do, just looking
5 at the first couple of pages, and we can flip
6 through if you need, did you review this draft
7 report when Mr. White sent it to you?

8 A. Typically if somebody
9 sent me a report and asked me for my comments, I
10 would review it and return comments, if I had any.

11 Q. Okay. Going into the
12 report itself there a number of recommendations.
13 The ones I'm going to take you to are the ones I
14 think you might have turned your mind to when you
15 read this. Recommendation B:

16 "Staff are directed to
17 continue to implement the
18 short and medium-term
19 collision countermeasures,
20 Exhibit B." (As read)

21 And E:

22 "The median barriers be
23 installed on the LINC and the
24 Red Hill in coordination with
25 any future widening of the

1 facilities." (As read)

2 Does that refresh your memory
3 about whether you reviewed this draft?

4 A. No.

5 Q. Okay. And did you have
6 any --

7 A. There's nothing there
8 that -- there's nothing there that would, you
9 know, disturb me to the point where this would
10 make this report memorable or anything, so....

11 Q. Okay. That second
12 recommendation, the median barriers be installed
13 on the LINC and the Red Hill in coordination with
14 any future widening. Now, you talked a fair bit
15 about that the median barrier issue was going to
16 be pushed off pending the resolution of the
17 transportation master plan, which part of that was
18 going to be looking at widening.

19 This to me reads like -- it's
20 a bit more directive. If there's a widening, then
21 median barriers will be installed. Is that how
22 you read that recommendation?

23 A. Yes.

24 Q. Okay. And did you have
25 any concern with the idea that median barriers

1 installed if the facilities were widened?

2 A. No. Because median
3 barriers would have to be installed as part of the
4 widening. On the north/south the widening is to
5 the centre, which means you would lose the ditch
6 and you would have to put a median barrier in in
7 order to facilitate the construction. And
8 although there was never anticipation in the EA
9 for the widening of the LINC, it did again because
10 of the -- its sunken nature and the grounds on the
11 outside and the ramps, again, it would be widened
12 to the inside, and once you widen it to the centre
13 then median barriers are a given, not a choice.
14 So they are a de facto thing that would be
15 installed when you widened.

16 Q. Okay. Registrar, can you
17 pull up HAM26493, please.

18 So this is the appendix, and
19 it has -- I feel like we've seen this chart a
20 number of times in a number of iterations. In
21 this one there's the short, medium and long term,
22 and friction testing continues to be listed as
23 complete. There's a -- in this version there's a
24 lead department, and it says engineering services
25 beside it. There is shoulder rumble strips

1 which -- to be completed as part of the
2 resurfacing, and that's under "engineering
3 services." There's the shield rock cuts currently
4 being reviewed.

5 Did you have any information
6 about whether the shoulder rumble -- pardon me,
7 the sheet (sic) rock cuts were currently being
8 reviewed and by whom?

9 A. No. Because I still
10 don't know what that meant.

11 Q. Okay. And then
12 (indiscernible) illumination and the barrier
13 system are still under "to be reviewed."

14 A. Okay.

15 Q. And again, I think I know
16 your answer to this one, but had there been any
17 friction testing done between May 1st, 2017 -- I
18 think is the last time I asked you this -- and
19 this period which is, when you're looking at this
20 draft, November 2017, any friction testing done
21 that would be listed as complete here under
22 "conduct friction testing"?

23 A. Not that I'm aware of
24 that we did anything after '17, no.

25 Q. Or in --

1 A. I'm not aware we did
2 anything after '13.

3 Q. Okay. Registrar, can you
4 close this down. So this draft eventually went
5 not on December 4th but in January of 2018. Do
6 you recall receiving a final version after it had
7 been sent to PWC?

8 A. I couldn't say. I don't
9 know.

10 Q. Okay. Do you recall
11 reviewing it?

12 A. No. I mean, without an
13 e-mail of the response that says, here's my
14 comments or you didn't change what I had the first
15 time, I don't -- I don't know whether I'd seen a
16 final or not.

17 Q. Okay. Apart from those
18 two things that I showed you, most of it is
19 related to collision countermeasures. Did you
20 have -- would you have been interested in a report
21 like that such that you would have read all 14
22 pages, if it was about the sort of collision
23 issues?

24 A. I may have scanned to,
25 you know, ensure that, you know, anything that

1 referred to us was correct, but I may not have
2 done an in depth word to word.

3 Q. Okay. Registrar, can you
4 bring up OD8, page 30, please. Registrar, let's
5 try something else because I think my reference is
6 off. Can you pull up HAM62347. And can you go to
7 the next page of this.

8 So this is a report in
9 December of 2017 that goes to GIC and
10 (indiscernible) members, and it is about a
11 transfer of the traffic operations and engineering
12 and policy and program section of the
13 transportation division to the roads and traffic
14 division, formerly called operations division.
15 And as I understand it Ms. Matthews-Malone was
16 going to take over that division. Have I got that
17 right?

18 A. I believe that was the
19 case.

20 Q. Okay. I raise this with
21 you because if you go down in image 2 --

22 And, Registrar, if you can
23 call out the second from the bottom.

24 And you'll see that there's
25 this reference to you being -- pardon me,

1 Mr. McGuire being temporarily accountable for
2 asset management and geomatics corridor and for
3 the improvement of the capital program
4 development, and that this transfer will allow you
5 the opportunity to provide additional technical
6 support and resources for the LRT. So this is
7 December 2017. When did you start working on the
8 Hamilton light rail transit project?

9 A. Approximately a year
10 before that.

11 Q. Okay. So through all of
12 2017 you were doing work for the LRT?

13 A. Yes. Represent -- public
14 works and asset management were providing the
15 information, reviewing reports and providing
16 expertise to Metrolinx in regard to the possible
17 effects of their facility on our roads. So how
18 they were going to approach it, how we would
19 approach it, all of our standards, all of what was
20 there. Condition assessments and all those types
21 of things were part of the things that we were
22 involved with.

23 Q. Okay. And so by the end
24 of December 2017 how much of your time were you
25 spending on LRT work versus director of

1 engineering work?

2 A. 50 to 60 percent

3 probably --

4 Q. Okay.

5 A. -- off the top of my
6 head.

7 Q. And did that start when
8 you first took on the project earlier in 2017 --

9 A. No --

10 Q. -- or did it ramp up?

11 A. -- it grew.

12 Q. Okay. Were you consulted
13 on the restructuring in dealing with the
14 transportation group division move to road ops.
15 Were you involved in that part of restructuring?

16 A. No.

17 Q. What about the
18 restructuring of your roles and responsibilities
19 so that Mr. McGuire took some on? Did you have
20 input in that?

21 A. No.

22 Q. Did you seek some relief
23 given how much work you were doing on the light
24 rail transit?

25 A. No.

1 Q. Okay. Registrar, can you
2 go out of this and can you go to OD page 23.
3 Pardon me. OD8, if I didn't say that properly.
4 OD8, page 23. And you can pull up 24 as well.
5 Thank you.

6 So this is around the same
7 time. You'll see in paragraph 54 an e-mail from
8 Mr. McKinnon that explains this a little bit more.

9 And, Registrar, if you can
10 call out the paragraph that says "the leadership
11 role in engineering services," under 24.

12 So this provides a little bit
13 more information that you're going to take --
14 you're going to be taking a more active role in
15 the LRT and continue to oversee design,
16 construction and waterfront development, and that
17 Mr. McGuire would oversee asset management and his
18 own group geomatics and corridor management.

19 Did that division of
20 responsibility between you and Mr. McGuire assist
21 in reducing your workload so you had more time to
22 work on the LRT?

23 A. It may have had that
24 effect eventually. I believe there was some, I
25 don't want to say struggles, but that's what they

1 were to try and figure out, how we were going to
2 implement this change given the cohesive nature
3 that we had worked as one division under one
4 director, and now you have one division under two
5 directors. It was causing some angst amongst
6 staff in how would we facilitate this and who was
7 going to make what decision in that regard. So
8 there was some additional work involved in
9 implementing this, but....

10 Q. Okay. Had you plotted
11 out your retirement by January of 2017 when you
12 first took on the LRT work?

13 A. I need to give you some
14 background on that.

15 Q. Sure.

16 A. The City manager had
17 approached me in August or September of the
18 previous year about moving over and being entirely
19 a director within the LRT office, and --

20 Q. Just to stop you there.
21 The August or September, the prior year, you mean
22 2017 or 2016?

23 A. 2017.

24 Q. Okay.

25 A. So I worked on it for a

1 half a year. Things were ramping up. There were
2 things that needed to have more scrutiny and more
3 ability to deal with them directly. The City
4 manager recognized that, and I offered the
5 solution that I would retire and move over there
6 on a contract position. It was my understanding
7 that he agreed in principle on that. That meeting
8 was with myself and Dan McKinnon and the City
9 manager, and so we were waiting for the City
10 manager. I understood that he had to take a
11 report to council to facilitate that move, and it
12 was in his court to make that.

13 So yeah, I don't believe it
14 was until that report was done, and I think that
15 report went, if I remember, sometime near the end
16 of budget process which would have been March,
17 maybe early April of '18. And once that was
18 approved by council, then I made my move official.

19 Q. Okay. Thank you for that
20 background.

21 Before you took on the LRT
22 work, did you have a date in mind when you
23 (indiscernible) years of service or, you know, a
24 pension threshold at which you planned to retire?

25 A. Nothing at that time. I

1 mean....

2 Q. Okay. And when you
3 retired, and we'll of course get to that, in May
4 of 2018, how many years of service did you have at
5 the City?

6 A. 30 years and a week.

7 Q. Okay. And is 30 years
8 the -- a pension threshold?

9 A. I'm sorry?

10 Q. Is 30 years a pension
11 threshold?

12 A. Yeah, 30 years of
13 service, yes.

14 Q. Okay. But is it a
15 pension threshold that gets you --

16 A. No. I was well past any
17 threshold.

18 Q. Okay. And I think I have
19 already said it, but you retired in May of 2018
20 after this report went to council and the budget
21 got sorted for your move over to the LRT, right?

22 A. Yes.

23 Q. Okay. We're still in
24 2017 for the moment, but we will come to that.

25 Registrar, you can close this

1 down. We'll have to go to OD7, and at page 194,
2 please. And can you call out 195 as well, please.
3 Thank you.

4 So looking at 577 and 578, in
5 August of 2017 Dr. Uzarowski prepared a PowerPoint
6 presentation for -- to deliver to some of your
7 colleagues on the M --

8 (Speaker overlap)

9 A. Resiliency.

10 Q. Thank you. And so this
11 is a new asphalt specification?

12 A. Yes, it is.

13 Q. And you were quite
14 interested in having your colleagues understand
15 this specification; is that fair?

16 A. Yeah. I wanted to try
17 and implement it within the division. It was a --
18 I felt a better way to ensure that the -- what was
19 being provided to us by contractors was what we
20 had been specifying?

21 Q. Okay. And this was a
22 good follow-on project from the work that Golder
23 had done in the PMTR; is that fair?

24 A. Yes, it is.

25 Q. So the PowerPoint

1 presentation included a slide that -- after the
2 first 30 pages about this specification. It says:

3 "Other subjects, fibre
4 reinforced microsurfacing and
5 dips on the RHVP." (As read)
6 That's actually listed on the
7 slide itself. I won't take you to it.

8 Do you recall that during this
9 presentation Dr. Uzarowski also discussed fibre
10 reinforced microsurfacing?

11 A. Not that I recall, no.

12 Q. Okay. And dips on the
13 RHVP. Do you recall that he discussed with those
14 who attended this presentation dips on the Red
15 Hill?

16 A. Yeah, it's -- I don't,
17 and it's rather surprising because the audience
18 for this other is all other roads in the City and
19 not the Red Hill or the LINC. So I'm not sure why
20 it was included, or if it was, I don't recall.

21 Q. Okay. Around this time
22 did you have Dr. Uzarowski consider the
23 applicability of microsurfacing on city roads
24 generally? Not the Red Hill but other city roads.

25 A. I don't know that I

1 tasked Dr. Uzarowski. I don't recall. I know
2 asset management was looking at it, as we seen
3 from others, so whether asset management got
4 Dr. Uzarowski involved in that, I don't know.

5 Q. Okay. Registrar, can you
6 close this down and go into OD8, page 15, please.
7 And can you bring up 16 as well, please. And can
8 you call out paragraph 33 which extends onto the
9 next page.

10 So we're in November of 2017,
11 and Dr. Uzarowski e-mailed you regarding hot
12 in-place recycling, and he said he had a
13 discussion with Mr. Wiley from Ecopave. This is
14 in advance of a conference in Halifax, and Ludomir
15 says I will meet with him, that is Mr. Wiley, and
16 then at the end he says "see you in Halifax." So
17 both of you were at that conference, as was
18 Mr. Wiley; is that correct?

19 A. That's correct.

20 Q. Okay. And do you recall
21 what led to this e-mail? Did you ask
22 Dr. Uzarowski to reach out to Mr. Wiley?

23 A. I was quite interested in
24 the applicability of hot in-place recycling on the
25 City roads, and I think I had been researching it

1 for a number of months, and so I do -- I do think
2 that I did ask Ludomir to look into this on my
3 behalf.

4 Q. Okay. And you said you
5 were interested in this potential technology. Am
6 I right that hot in-place recycling is cheaper
7 than a standard shave and pave?

8 A. Yes. Cheaper is not
9 the -- more economical is a better term.

10 Q. Okay. And is that
11 because you're reusing the surface course that's
12 there and you're recycling it, but you don't have
13 to get all new material? Is that why it's more
14 economical?

15 A. There's a number of ways
16 you can do a resurfacing. You can mill off what
17 is there, ship it to a plant, put some
18 rejuvenators in it and then ship it back and reuse
19 exactly what you took off or add a little more or
20 less of something else to it. You can remove what
21 you have there and put all brand new down, or you
22 can do this hot in-place, which takes what's
23 there, mills it up, recycles it through a train
24 that is actually on-site and then puts it back
25 down, which they had been doing quite successfully

1 in BC for a number of years.

2 Q. Okay. And it had been
3 successful in BC, but it wasn't done regularly
4 used in Ontario; is that right?

5 A. It had been used in
6 Ontario extensively, but I want to say pre-2000.

7 Q. And then fell out of
8 favour for some reason?

9 A. Fell out of favour, and
10 just never got back. At the time that they were
11 doing it they were heating the asphalt with open
12 flame, and there had been a number of problems
13 with oxidizing the asphalt overly and other
14 accidents with -- that might occur as you walk
15 past an open flame, but --

16 Q. It fell out of favour is
17 the --

18 A. It fell out of favour,
19 but BC found a way to do it.

20 Q. Okay. Registrar, you can
21 close this down.

22 Do you recall meeting with
23 Mr. Wiley at the CTAA conference in Halifax?

24 A. I do.

25 Q. And were you interested

1 in trying to get more information about using hot
2 in-place with Ecopave for city roads?

3 A. Well, not with Ecopave
4 specifically but using hot in-place was, you
5 know -- how do you do it there. Where do you
6 typically do it there. What are -- you know, who
7 is involved in that type of thing. You know, I
8 was, for lack of a better word, picking his brain
9 for his experience in that regard.

10 Q. Okay. Registrar, can you
11 go to 16 and 17 at the same time, please.

12 Mr. Moore, you see at the
13 bottom of page 16 at paragraph 37 you e-mailed
14 Dr. Uzarowski under the subject line "Red Hill -
15 testing for possible hot in-place." So just
16 stopping there.

17 Had you and Dr. Uzarowski had
18 discussions about the possibility of using hot
19 in-place recycling on the Red Hill before
20 November 21? And just to give you some context,
21 you can look at what your e-mail is, which is at
22 the top of 17.

23 A. I believe so.

24 Q. It's says:

25 "I was expecting to see a

1 proposal and timeframe for
2 cores, BPT and PSV testing for
3 the Red Hill."

4 And all of that was related to
5 hot in-place; is that right?

6 A. Yes.

7 Q. That's what the subject
8 line is?

9 A. That's correct.

10 Q. And so what do you recall
11 about the discussions with Dr. Uzarowski that led
12 to you saying you were expecting to see a proposal
13 and timeframe?

14 A. Well, this would indicate
15 I was waiting, that we had had a previous
16 discussion and I had some expectation that it
17 was -- it was supposed to be here before now.

18 Q. Okay. So it says you
19 were expecting to see a proposal and timeframes
20 for cores, BPT and PSV. Those are all different
21 tests, and we'll go through those in a moment.

22 But do you recall the
23 discussions that you had, if any, with
24 Dr. Uzarowski before sending this e-mail that --
25 in which you discussed these particular three

1 tests that are -- three things that are mentioned
2 and why they would be useful or necessary for
3 possible hot in-place on the Red Hill?

4 A. Well, I don't recall
5 specific discussion with Ludomir in that regard,
6 but I am aware of how these are applicable for use
7 within hot in-place.

8 Q. Okay. Why don't we go
9 through them, and maybe it will refresh your
10 memory. I have some questions about the -- you
11 know, what Dr. Uzarowski told you about this, and
12 it's use.

13 So the first is cores. Did
14 you understand that Golder would have to take
15 cores in order to do testing which would be
16 necessary for assessing the feasibility of hot
17 in-place on the parkway?

18 A. I believe so. That's
19 what I've said here. I knew that cores were
20 necessary, yes.

21 Q. Okay. And that BPT, I
22 understand that's British pendulum testing, is
23 that what you understand it to be as well?

24 A. That's correct.

25 Q. Okay. And what did

1 Dr. Uzarowski tell you about why doing BPT testing
2 was necessary as part of a feasibility assessment
3 for hot in-place on the Red Hill?

4 A. Well, the BPT and PSV
5 give you an indication of the reusability of the
6 stone that's out there in the new mix. Our
7 intention was to put -- to try and put down the
8 SMA to the same mix that you have there. It's
9 what you traditionally do, is whatever mix you
10 pick up is the mix you put down, but you have to
11 assure yourself that everything that is out there
12 is applicable to those standards as if it's a new
13 mix.

14 Q. Okay. And so did you
15 know that just from your own research or knowledge
16 that BPT in particular was something that you
17 needed to do to ensure that the current mix was
18 useable for hot in-place recycling?

19 A. I don't believe so. I
20 would have the general knowledge that you needed
21 to test the mix.

22 Q. Okay. But not the
23 specific tests?

24 A. Yeah. But these specific
25 tests -- I believe this e-mail was in response to

1 a conversation I had had with Ludomir prior to
2 this at some time, whether it was back in Halifax
3 before we left, that, okay, if this is what you
4 have to do, you know, get me a proposal and
5 timeframe.

6 Q. Okay. So this is late
7 2017 at this point, and there had been -- we've
8 sort of gone through this chronology. There had
9 been communications that the Red Hill was going to
10 be repaved in 2018 on one lane and then 2019 on
11 the next lane. With the tendering process is
12 it -- have you missed the window to do a shave and
13 pave for the summer of 2018?

14 A. It would be very
15 challenging to do anything other than that, but
16 the potential of savings and the position the City
17 was in in terms of road deficit was worth at least
18 the exploration of trying to get this in place.

19 Q. I understand in terms of
20 your assessment of the hot in-place. I mean, just
21 generally we're in November of 2017, and you can
22 assume for the moment tenders haven't gone out for
23 a regular shave and pave.

24 A. Right.

25 Q. Is it now too late to

1 actually do tenders for a regular shave and pave
2 to occur in the summer of 2018?

3 A. No, we could --

4 Q. You can still make
5 that --

6 A. We could do those. I
7 mean, we routinely did those --

8 Q. Right. Just for a
9 routine shave and pave?

10 A. For a routine -- well, a
11 a quote/unquote "shave and pave" could be done
12 rather quickly.

13 Q. Okay. But you'd need
14 more lead time to do a tender that involves new or
15 unfamiliar technology or specifications, right?

16 A. Absolutely.

17 Q. And so I think what I
18 heard your evidence was, is that the decision to
19 consider the feasibility of using hot in-place
20 recycling would necessarily postpone a tender
21 process and would likely mean that shave and pave
22 wouldn't happen in the summer of 2018. Is that
23 right?

24 A. If we determined that the
25 hot in-place was a viable option and confirmed

1 that, you know, we could save 10 to \$12 million in
2 that regard, I'm sure an information report would
3 have went to council to inform them that, you
4 know, we were taking advantage of a new
5 technology, but the delivery of the paving would
6 have been delayed.

7 Q. Okay. I get that. I
8 understand the reporting process, but just in
9 terms of the timing. It's November of 2017, if
10 you have to do this feasibility study, and then
11 you have to do a tender on technology you're not
12 familiar with, is say six months enough time to
13 actually put that all together and do a summer
14 2018 repave or not?

15 A. I don't know that we gave
16 it that much. We were going day-to-day to see
17 what we could get done. There may have been a
18 point in time where we had to say, okay, what's
19 the realistic here. I don't know whether we ever
20 reached that.

21 Q. Okay. But you know that
22 it's at least possible that going down this path
23 of assessing the feasibility of hot in-place may
24 mean that the shave and pave -- pardon me, the
25 resurfacing would have to be delayed until the

1 summer of 2019?

2 A. Well, I don't -- I don't
3 know that we missed that. I mean, the advantage
4 of the hot in-place was it wasn't going to take
5 all year, it wasn't going to take 12 to 15 weeks
6 to do. It could be done in seven weeks, which
7 means possibly you could have done it in the late
8 August to early October timeframe which still gave
9 us enough time to do it. So I don't believe any
10 assessment of -- or conscious decision that it was
11 going to be delayed and been reached at that
12 point.

13 Q. Okay. Did you understand
14 at the time you were seeking this proposal from
15 Golder that hot in-place recycling on -- using SMA
16 might engage different feasibility considerations
17 than other types of -- than other pavement types?

18 A. I believe that was part
19 of our discussion.

20 Q. Okay. Dr. Uzarowski does
21 send you a draft -- he sends a draft proposal and
22 then he sends a final proposal. Do you recall
23 receiving two proposals from him? We can go
24 through the e-mails, but --

25 A. No --

1 Q. Not really?

2 A. -- I don't recall

3 receiving either so....

4 Q. Okay. I'm going to take
5 you to the proposal that you eventually approved
6 and circulated, which I think is the one that you
7 must have read.

8 If you can go to HAM1073,
9 please, and if I can call up the first two images,
10 please. So this is November 23, and the scope of
11 work --

12 Registrar, if you can just
13 take out the three bullet points under the -- the
14 three bullet points under the scope of work.

15 Thank you.

16 So this is the three things
17 that you had in your request for a proposal: The
18 British pendulum tester, the pavement texture
19 measurements and the coring of surface at course
20 asphalt layers. The volumetric --

21 A. The pavement texture
22 measurement using a volumetric technique is the
23 sand patch test.

24 Q. Right.

25 A. It's not the --

1 Q. Not the PSV?

2 A. No, it's not the PSV.

3 Q. Okay. Thank you. And
4 your understanding was that all of these were
5 relating to whether the SMA could be used in hot
6 in-place recycling?

7 A. Well, that's what I had
8 asked him for before, yes.

9 Q. Okay. I'm going to close
10 this down. Close out the callout. And if you can
11 call out the image at the top paragraph on image
12 2, please.

13 Did you note that Golder was
14 proposing to do an evaluation in order to
15 determine whether the pavement surface on the Red
16 Hill had sufficient frictional resistance, and, if
17 not, the cause of the low frictional number would
18 be ascertained? And then, provide recommendations
19 that may be implemented to improve pavement
20 frictional numbers. And then lastly it says, and
21 also evaluate the potential for using hot in-place
22 recycling to restore the pavement friction.

23 Did you understand that all of
24 these were the objectives of this set of testing?

25 A. Not -- not to my

1 knowledge. The only thing that I had asked him to
2 do was the viability of the hot in-place.

3 Q. Okay. And you can close
4 that call out.

5 So at this point when you're
6 assessing --

7 MR. LEDERMAN: Sorry, to
8 interrupt. I think there are different versions
9 of this document that -- I don't know whether
10 that's been clarified for the witness.

11 MS. LAWRENCE: I asked him if
12 there -- there was a draft proposal and then a
13 final proposal, and I asked him if he recalled
14 receiving two proposals, and he said he didn't
15 recall.

16 MR. LEDERMAN: Right. But I
17 think this is the final as opposed to the draft,
18 and I think there's an e-mail -- there's e-mail
19 traffic showing the transmission of the draft to
20 the witness. So I just want to be clear about the
21 fact that there are two different documents. The
22 draft is not same as the final, as I understand
23 it.

24 MS. LAWRENCE: That is
25 correct.

1 We can close this down, and if
2 you can go to OD20, and you'll see paragraph 47 he
3 sent a final proposal to Mr. Moore and then the
4 next day Mr. Moore responds approving it.

5 MR. LEDERMAN: Yes, I believe
6 the sequence begins at paragraph 43 of the -- on
7 page 18.

8 JUSTICE WILTON-SIEGEL: All of
9 this aside, I'm missing the relevance of the
10 previous documentation if this is the document
11 that gets approved by Mr. Moore.

12 MR. LEDERMAN: Well, I think
13 the issue is that there are different versions of
14 the document, and he's being asked to comment on
15 the final version but was not asked to comment on
16 the earlier draft which was sent to him. And so
17 it's a matter of completeness that if the witness
18 is being asked to comment on the final version and
19 being asked to answer questions about the final
20 version, the final version is different than what
21 is contained in the draft. I just think as a
22 matter of fairness the draft should be put to him
23 as well.

24 JUSTICE WILTON-SIEGEL: So I'm
25 going to approach this issue, which seems to be

1 coming up towards the end of the day, in the
2 following manner. I'm going to leave it to
3 Ms. Lawrence to decide whether from her
4 perspective there's any relevance to the earlier
5 draft, and to Mr. Lederman or whoever else from
6 counsel for the City, if they feel that it's
7 necessary to bring that draft forward to do so
8 when you do your examination.

9 MR. LEDERMAN: I guess the
10 difficulty, Mr. Commissioner, is that I don't
11 believe it has been established which of these two
12 documents Mr. Moore had reviewed. That's the part
13 that I'm concerned about because that wasn't at
14 all clear in the questions that Ms. Lawrence put
15 to Mr. Moore before she started asking questions
16 about the final version without distinguishing it
17 from the draft version.

18 MS. LAWRENCE: I'm happy to
19 provide some questions to try to provide some
20 clarity to --

21 JUSTICE WILTON-SIEGEL: Okay.

22 MS. LAWRENCE: -- Mr. Moore
23 and to Mr. Lederman on that.

24 JUSTICE WILTON-SIEGEL: That
25 would be fine.

1 MS. JENNIFER ROBERTS: If I
2 might add, I think Mr. Lederman right in his
3 assessment of which document was actually
4 exchanged with the witness. It's the draft that
5 Ludomir sends -- or Dr. Uzarowski. And then the
6 changes that he implements aren't included in what
7 goes out as the final, but it's not clear actually
8 that Mr. Moore, you know, has a chance to have any
9 input on that one.

10 MS. LAWRENCE: I'm happy to go
11 through line by line. That was perhaps just me at
12 the end of the day hoping to push through.

13 BY MS. LAWRENCE:

14 Q. So, Mr. Moore --
15 Registrar, if you can go back to page 18, please,
16 and pull up 19 as well. Can't quite see the
17 timing. Can you go back to 17 and 18. Thank you.

18 So starting at paragraph 40.
19 On November 22 Ms. Rizvi sent Dr. Uzarowski a
20 draft proposal for testing, and that proposal is
21 here. You'll see that, and then you'll see at
22 page 18, and if you look, we were just looking at
23 the -- one paragraph up from the bottom on
24 page 18. It says:

25 "The results of the field

1 investigations and laboratory
2 testing will determine whether
3 the pavement surface." (As
4 read)

5 So we were just looking at
6 that.

7 And Dr. Uzarowki replied to
8 Mr. Moore's e-mail, the e-mail where you sought
9 the proposal and attached a draft proposal.

10 Registrar, can you bring up
11 now 18 and 19. And he had made some revisions in
12 the draft that Ms. Rizvi had reviewed, and he
13 wrote:

14 "Attached is the initial
15 version of the proposal of
16 pavement surface and aggregate
17 evaluation." (As read)

18 "Sorry, I didn't include the
19 proper proposal number. I
20 have requested it, but I'll
21 get it to you tomorrow." (As
22 read)

23 And this version was different
24 than Ms. Rizvi's version and, Mr. Moore, there's
25 no suggestion that you saw that track changes

1 version that is in paragraph 44. That's just to
2 show the differences between Ms. Rizvi's version
3 and Dr. Uzarowski's version which he sent to you
4 on -- I hope I have my date right -- I think it's
5 November 22nd. It is November 22nd. Okay.

6 Now you can go to page 20,
7 please, Registrar. Thank you.

8 The next day on November 23,
9 Dr. Uzarowski sent you a final proposal that I
10 presume included the proposal number, and this
11 final proposal is the one that we were just
12 looking at. It's HAM1073. And Dr. Uzarowski
13 testified that he actually -- he put in -- he
14 appended the draft that Ms. Rizvi had originally
15 done and set out the draft where he'd made the
16 changes; the one that he had sent to you the day
17 before.

18 Registrar, can you bring up
19 HAM26538. And if you can go to image 2 on that.

20 So you'll see in the middle of
21 the page here we have what I've just taken you
22 through. November 22nd he sends you "attached
23 please find initial version."

24 And then if you can go up to
25 image 1, Registrar. At the bottom he sends you

1 that second e-mail "please find the proposal."

2 And then you respond:

3 "Your proposal is satisfactory
4 with the exception of the use
5 of the cold mix to fill in the
6 hole."

7 So from that, recognizing it
8 may be difficult in 2022 to say do you know
9 whether you reviewed the version that is -- that
10 you're immediately responding to, or you reviewed
11 the version that he sent on November 22nd?

12 A. Given that my
13 understanding is we were trying to do -- to
14 determine the hot in-place characteristics, the
15 marked up version was exactly what I would have
16 expected to be responsive to that type of
17 investigation. The final version is not what we
18 were trying to achieve. It referred to friction
19 testing and only minorly referred to the hot
20 in-place. So if I'd had -- I had seen the other
21 one and he had said, sorry, we're going to clean
22 this up and send you one with a number on, it's
23 unlikely that I would have relooked at it.

24 Q. It's unlikely that you
25 would have opened up the final proposal?

1 A. Yeah. Here, I've got a
2 copy of it. Okay. Diana, here's the final copy,
3 you know, thinking that it was done rightly or
4 wrongly. But it doesn't seem to address what our
5 intention was to do out there. It doesn't have
6 the PSV, which he was recommending, and it
7 doesn't -- and it has some other stuff and not for
8 anything that I recall that we were looking to do.

9 Q. Okay. Registrar, can you
10 bring up HAM52830.

11 The next day you forward the
12 attachment, the underlying attachment and the
13 exchange of e-mails that we just went through to
14 Mr. Becke and Mr. Andoga. And you'll see that --
15 I can go into it if I need to -- but you'll see
16 that the -- you're forwarding the November 23
17 e-mail, not the -- which is in the -- the most
18 recent in the chain and then the November 22.

19 And so recognizing you can't
20 see it, but you see there's an attachment there.
21 And you send this to Mr. Becke and Mr. Andoga,
22 "here is what Ludomir will be doing."

23 And so as far -- I know it's
24 not entirely clear, but as far as I can tell you
25 have forwarded the draft that is all about surface

1 friction, the one that I was taking you to, to
2 Mr. Becke and Mr. Andoga; is that right?

3 A. It appears that is what I
4 did, yes.

5 Q. Okay. And if I'm
6 following your evidence, you think that that may
7 have been an error and you didn't mean to send the
8 one. You meant to send the one that you think you
9 looked at, which was the November 22nd one?

10 A. I believe so. I mean,
11 Mike and -- Mr. Becke and Mr. Andoga were actively
12 working on the resurfacing project, and the
13 possibility of the hot in-place, so that's why I
14 would forward that to them. Again, at the time
15 period I'm up to my ears in alligators on the LRT.
16 So, you know, if I grabbed the report and didn't
17 look at it and forwarded it on just for their
18 information, it's very possible I didn't pay
19 attention to what was in it.

20 Q. Okay. So you were not
21 interested in having any sort of further friction
22 testing completed by Golder in 2017; is that your
23 evidence?

24 A. Well, I mean, the BPT and
25 the PSV are testing the frictional qualities of

1 the aggregate that's there. For purposes of
2 evaluating friction of the facility, I don't
3 believe that was our intent. It was to do that
4 type of testing, but simply for the evaluation
5 purposes of reuse of the aggregate.

6 Q. Okay. So PSV testing is
7 polished stone value testing, and that assesses
8 the frictional characters of the aggregate within
9 pavement; is that right?

10 A. It assesses the ability
11 of the stone to withstand polishing, how easily
12 does it wear down.

13 Q. Okay. And that would be
14 relevant to whether it would be good for use in
15 hot in-place recycling. You want to know that,
16 you know, you don't want junk in. You want good
17 quality aggregate if you're going to recycle it.

18 A. I believe it was done
19 initially on that stone, so it was just
20 confirmation.

21 Q. Okay. And Dr. Uzarowski
22 testified that British pendulum testing doesn't
23 contribute to the HIP feasibility aspects. It
24 really is just frictional testing, and that you
25 requested that testing. Do you dispute that

1 evidence?

2 A. I don't know that I was
3 aware one way or the other. I thought everything
4 that was being recommended there was on Ludomir's
5 recommendation for the hot in-place. I wasn't --
6 I don't think -- I don't recall having any
7 initiative to test the frictional qualities of the
8 pavement. I can't think of what would have been
9 the motivation for that at this point.

10 Q. Okay. So you did not ask
11 Dr. Uzarowski to do anything that would actually
12 test the friction as compared to the frictional
13 characteristics of aggregate?

14 A. Right.

15 Q. Okay.

16 A. I don't know.

17 Q. You don't know or you
18 didn't?

19 A. I don't know. I thought
20 the testing that was done was what was recommended
21 by Ludomir for the hot in-place. I don't recall
22 any other reason that we did those tests.

23 Q. Okay. He also testified
24 that you wanted macrotexture testing because he
25 had some concerns -- because you had some concerns

1 that there might be -- that the asphalt might be
2 filled with rubber. Do you dispute that evidence?

3 A. The asphalt might be --

4 Q. Do you recall ever making
5 any commentary like that to Dr. Uzarowski about --

6 A. We did. I know that we
7 were looking at it one time about rubber off the
8 road being of a higher level due to the higher
9 frictional qualities of the aggregate, but I don't
10 know that testing the frictional qualities of the
11 pavement have anything to do with assessing levels
12 of rubber on the road. It doesn't make sense.

13 Q. Okay. And so you didn't
14 ask Golder to do macrotexture friction testing to
15 assess whether the asphalt had rubber content in
16 it?

17 A. I don't have the ability
18 and didn't have the ability to identify what tests
19 should be done. I was relying on Golder and
20 Ludomir in terms of can we use this material for a
21 hot in-place. The tests that we were doing as far
22 as I can recall were recommendations of his to do
23 what was necessary. So I mean, other than that I
24 don't know.

25 MS. LAWRENCE: Okay. I have

1 one very short area of examination that I'm hoping
2 to sneak in just in the next minute or two if
3 that's okay, Mr. Commissioner.

4 JUSTICE WILTON-SIEGEL: Yes, I
5 think that's fine.

6 MS. LAWRENCE: Thank you.

7 BY MS. LAWRENCE:

8 Q. Registrar, can you bring
9 up RHV558, image 5, please. You know what, I
10 don't think any of our eyes can take this. I'm
11 going to use a different version of this. OD8,
12 page 63, please. And if you can call out the
13 first four paragraphs, please.

14 So this is another Hamilton
15 Spectator article, and it's from January 15, 2018.
16 So just several weeks after that proposal we were
17 just looking at. And it says -- you're quoted in
18 this article.

19 The City of Hamilton has hired
20 a consultant to test the asphalt. Results
21 expected to show once and for all whether there's
22 a problem with the material. The parkway has been
23 the subject to complaints regarding slippery
24 pavement. Friction testing was done in December
25 of 2015. It was inconclusive, and the consultant

1 recommended further testing, instead the City
2 opted to repave. And then you were quoted as
3 saying:

4 "We don't know why they feel
5 that it's slippery. That's
6 all part of why the City is
7 doing the testing."

8 Do you dispute that that's a
9 quote that you gave to the Hamilton Spectator?

10 A. Well, I -- I mean, I
11 don't recall what I said or even when this was
12 done, but I don't -- I don't know what testing. I
13 don't know whether that's a misunderstanding.
14 Whether that should have been as part of -- or
15 it's going to be addressed by the repaving.

16 The bottom part is correct,
17 testing includes samples collected, sent to
18 Ireland, comprehensive to know before it can be
19 recycled. That's all very correct, so I don't
20 know why this part seems to be jumbled.

21 Q. You don't know why your
22 quote seems to be jumbled?

23 A. Well, I don't know that,
24 you know, whether she got it correct or not.

25 Q. Okay. Because this quote

1 seems to suggest that the testing that you have
2 asked Golder to do in part is going to assess
3 whether the pavement structure is slippery and
4 that part of the reason that the City is doing the
5 testing is to determine why or if the pavement is
6 slippery. Do you disagree with that
7 interpretation?

8 A. Yeah, I don't know.
9 There's no test that I'm aware of that's going to
10 tell you it's slippery. It's going to tell you
11 that it has more or less friction or it has a
12 certain frictional characteristic, but it's on the
13 aggregate itself. So how that feeds into a
14 slippery, I don't -- I don't know. It doesn't
15 make sense. If I misspoke at the time, I don't
16 know.

17 Q. Okay.

18 MS. LAWRENCE: Thank you.
19 Mr. Commissioner, it's just a few minutes after
20 4:30, and I'm going to be moving on to another
21 topic, so I suggest we wrap up for the day.

22 JUSTICE WILTON-SIEGEL: Okay.
23 Will there be a need for breakout room for
24 counsel?

25 MS. LAWRENCE: I don't think

1 so.

2 JUSTICE WILTON-SIEGEL: That's

3 fine. Then we will stand adjourned until 9:30

4 tomorrow morning.

5 --- Whereupon at 4:34 p.m. the proceedings were

6 adjourned until Wednesday, July 20, 2022, at

7 9:30 a.m.

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