

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Thursday, October 13, 2022 at 9:31 a.m.

VOLUME 68

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

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, October 13, 2022

3 at 9:31 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: Today we have
9 our next witness, Dan McKinnon. He has not yet
10 been sworn.

11 AFFIRMED: DANIEL MCKINNON

12 EXAMINATION BY MS. LAWRENCE:

13 Q. Good morning,
14 Mr. McKinnon.

15 A. Good morning.

16 Q. I'm going to start by
17 asking you some questions about your professional
18 background. I understand you're currently
19 retired. Is that correct?

20 A. That's correct.

21 Q. And you retired in
22 September of 2021?

23 A. Correct.

24 Q. Prior to your retirement,
25 you were the general manager of public works for

1 the City of Hamilton?

2 A. I was.

3 Q. And you started in that
4 role in September 2016. Is that right?

5 A. It is.

6 Q. So, I know you had a
7 lengthy career with the City of Hamilton and its
8 predecessors. I'm going to come back to that, but
9 first I'm actually going to start earlier in your
10 career.

11 Can you tell the inquiry about
12 your professional qualifications, please?

13 A. Sure. 1986, I graduated
14 from Mohawk College from the civil engineering
15 technician program. That was a co-op program.
16 Subsequent to my graduation, I spent my first
17 eight seasons, eight approximately years, in the
18 private sector. I worked for local water and
19 sewer contractors, so I did everything from run
20 heavy equipment to I was a grade man, foreman,
21 raking asphalt, forming, pouring concrete, to the
22 point where I ascended to project management and
23 project superintendant. And by the time I left
24 the private sector in 1994, I was project
25 superintendent running large multidisciplinary

1 projects.

2 Q. Thank you. So, in that
3 time in the private sector, you said that you were
4 doing local water and sewer contracts, and then
5 you did mention some work around asphalt roads
6 grading. Was that work primarily in the context
7 of the water and sewer work or was there road
8 construction involved in that as well?

9 A. There would have been
10 road construction involved in that as well.

11 Q. Road construction arising
12 out of work on sewers or independently road
13 construction?

14 A. Primarily it was the road
15 being reconstructed because we had to dig it out
16 to get to the water and the sewer primarily.

17 Q. Okay. And you said you
18 joined at the time it was the Region of Hamilton
19 in 1994?

20 A. That's correct. I joined
21 the region in the construction office as
22 construction technician. After about six months
23 in that role, I ascended to a construction
24 inspector position and I was in that role for
25 about five seasons.

1 Q. So, that puts us to about
2 1999 and I know that you stayed with the City.
3 Did you move then into management roles?

4 A. I did. In 1999 I was a
5 successful candidate for a supervisor role over in
6 Hamilton Water. The division wasn't called
7 Hamilton Water then, but it's that division, so I
8 was in charge of operational and maintenance
9 contracts. And then from 1999 right through to
10 the end of my career, I ascended to progressively
11 more responsible roles, primarily within Hamilton
12 Water, although there was two short discreet
13 assignments that I was asked to do about a year
14 long each in that period of time, but primarily I
15 was in Hamilton Water in the operations function.

16 Q. Hamilton Water, and let's
17 just call it Hamilton Water, I know it did have a
18 few names, that's a division of public works
19 within the City?

20 A. Correct. That's the
21 division that is responsible for the operations
22 and maintenance and capital renewal of all the
23 City's water, wastewater and stormwater
24 infrastructure from water distribution, water
25 treatment, wastewater collection, wastewater

1 treatment, stormwater collection and management.

2 Q. Thank you. So, just for
3 the benefit of our court reporter and the
4 Commissioner, if you can slow down your answers a
5 little. I also talk quickly, but I'm having
6 trouble catching up.

7 So, am I correct then that
8 your technical background and your experience at
9 least since 1999 has really been related to -- was
10 really related to water management?

11 A. That's correct.

12 Q. And within water, you
13 said you had been promoted through various stages
14 of management. I know from other evidence the
15 inquiry has received that there are various levels
16 of managers and then directors and then senior
17 directors. Is that the path of promotion that
18 you're talking about in terms of your promotion
19 through the water department?

20 A. That's correct.

21 Q. And so, in 2016 when you
22 took over the role of general manager of public
23 works, just prior to that, what was the last most
24 senior role that you had in the water department?

25 A. I was -- the term senior

1 director was, kind of, loosely used, but I was the
2 senior director of Hamilton Water. I was in that
3 position for approximately five to six years. I
4 had three directors reporting to me and then below
5 them were the different operating groups with
6 obviously managers, superintendents, supervisors,
7 that kind of thing. So, I essentially was the
8 head of the water utility for the City of Hamilton
9 for about five years.

10 Q. In that role, in the
11 senior director role, did you report to the
12 manager of public works?

13 A. That's correct.

14 Q. And over time the inquiry
15 has heard evidence that the general manager during
16 that time would have been Chris Murray and then
17 Mike Zegarac in an acting role and then Janette
18 Smith?

19 A. No. I'm sorry. No. So,
20 as the senior director of Hamilton Water, I
21 reported to the general manager of public works,
22 not the City manager.

23 Q. You know what? I
24 absolutely misspoke. You're quite right about
25 that.

1 A. Yeah.

2 Q. In the general manager
3 role, it was -- why don't you tell me over the
4 period of time? I think you said it was for five
5 years. So, was it from 2016 looking backward from
6 about 2010? Is that right?

7 A. Yeah. So, from about
8 2010 to 2016 as the senior director of Hamilton
9 Water, I reported to the general manager of public
10 works who, at the time, was Gerry Davis. For a
11 short stint at the end, it was John Mater. And
12 then when I ascended to the role of general
13 manager of public works, I then began reporting to
14 city manager Chris Murray, for a short period of
15 time, Mike Zegarac, and then at the time end I was
16 reporting to Janette Smith.

17 Q. Thank you very much for
18 clarifying the confusion that I just caused.
19 Let's turn to your role as general manager. We
20 have some organizational charts and I know there
21 were some changes over time, so I thought perhaps
22 that would be the easiest way to go through just
23 so it's not a memory test.

24 Registrar, can you bring up
25 RHV679, image 172, please.

1 So, this document is from a
2 compilation of various organizational charts over
3 time. Does this particular document look familiar
4 to you? It's from the 2018 operating budget
5 presentation.

6 A. It does.

7 Q. So, this is the public
8 works organizational chart at, sort of, the top
9 level and you'll see your name is there under
10 general manager, so this is December 2017, so
11 you've been in the role for over a year at that
12 point. And to just raise in terms of where we're
13 focused, there's engineering fleet and facilities,
14 there's engineering services, which has Gary Moore
15 as the director, there is operations, which has
16 Betty Matthews-Malone, and Rose is underneath her,
17 and then there's transportation, with John Mater,
18 and it also says AGM beside his name.

19 When you started in the
20 general manager role, what role did Mr. Mater play
21 to support you?

22 A. John had been acting in
23 the general manager position from approximately
24 January of 2016 until I entered the role in
25 September. At that time, there was a discussion

1 with Chris Murray about the notion of having a
2 position called associate general managers, and so
3 Chris at the time had asked me, considering where
4 John was in his career, if I would mind, kind of,
5 call it piloting this idea. I was happy to do
6 that. So, John, amongst having responsibilities
7 as are identified on the slide there, was also
8 acting as an associate general manager, which
9 allowed me to use John whatever way I felt was
10 most meaningful to assist me in running the
11 department.

12 Q. Thank you. And can we
13 will come back to this as we go through the
14 chronology, but just for the moment to orient
15 ourselves to Mr. Mater's role, Registrar, can you
16 go to page 175 of the same document, please.

17 And so, this is January 2018
18 and, as I say, we'll get to this. There was a bit
19 of a reorganization and now Mr. Mater is in the
20 associate general manager role, but he does not
21 have the transportation role as it was called
22 before, but then now there's a new program called,
23 or department, called roads and traffic.

24 In that role, this is from
25 January of 2018, am I correct that Mr. Mater

1 stayed in that role for approximately a year until
2 he retired?

3 A. That's my recollection.

4 Q. And during that period of
5 time when he was in the associate general manager
6 role, what was his primary scope of
7 responsibility, Mr. Mater's?

8 A. It was -- I would say it
9 was fluid. There were some, I'll call them,
10 initiatives or projects that I had asked John to
11 spearhead primarily because I didn't have time for
12 it and they did relate to John's former portfolio.
13 So, in the old structure, John had been
14 responsible for transportation planning. Prior to
15 my arrival in the position, it was my
16 understanding or I learned that transportation
17 planning was a council direction to have
18 transportation planning move over to the planning
19 department, so in order to ensure that that
20 happened smoothly and nothing fell through the
21 cracks and no problems occur as a result of that
22 transition, I asked John to lead that, not only
23 because he was my AGM but also because he was very
24 familiar with transportation planning because he
25 had been responsible for it over a period of time

1 and, if I recall correctly, that is John's
2 background. He is a transportation guy.

3 So, that was one of the key
4 projects that I asked him to oversee. I was also,
5 when I came to the position, I was -- some of the
6 things that I brought with me as ideas that I
7 wanted to implement across the department was
8 quality management, so I was asking John at the
9 time to -- I don't think John was as familiar with
10 quality management as maybe I was because of my
11 experience in water, but John was assisting me in
12 that regard as well as how do we strategize about
13 getting quality management set up.

14 And then I think we'll
15 probably talk about further in the evidence John
16 played a role -- as a good example where he
17 recommended to me that there had been a bunch of
18 outstanding issues related to both the LINC and
19 the Red Hill Valley Parkway with respect to
20 outstanding business list items where council had
21 given us direction at different times to do
22 different things, and so John's recommendation was
23 let's get everybody together, let's do one
24 comprehensive report instead of going back to
25 council 15 times on essentially what's the same

1 piece of infrastructure.

2 So, I only use that as an
3 example to give a sense of the type of things that
4 John was doing for me, trying to, kind of, be
5 another strategic brain for me to lean on.

6 Q. Thank you. That's
7 helpful and I think that provides some helpful
8 context for turning now to what was in your scope
9 of responsibility in terms of the areas and
10 categories of your job as GM when you took it over
11 in September of 2016.

12 And, Registrar, for the
13 moment, you can take this document down. Thank
14 you.

15 Sorry, my question was: Can
16 you describe your roles and areas of
17 responsibility in your role as GM?

18 A. I'm sorry. Yeah. So,
19 the notwithstanding a few tweaks in the
20 organizational structure, there's essentially
21 seven divisions within public works. One of the
22 divisions is transit or HSR. One of the divisions
23 is engineering, which is the division that Gary
24 Moore and Gord McGuire were the directors of. One
25 was transportation, which is essentially

1 operations, maintenance and kind of strategic
2 management of the road network. One of them was
3 energy, fleet and facilities. Hopefully that's
4 self-evident what that is. One of them is
5 Hamilton Water. One of them is environmental
6 services, which is forestry, horticulture,
7 sanitariums, parks, landscape architecture, design.
8 I did create on a temporary basis a separate and
9 distinct division dedicated to waste management,
10 and then I did have a very small strategic
11 division that was my quality management folks.
12 Actually, there was eight divisions by the time I
13 left the City in public works, so it was a very
14 broad portfolio, very complex portfolio.

15 You know, my way of portraying
16 it to people who I would explain it to who didn't
17 know, I said, you know, pretty much anyone who
18 wears orange for the City of Hamilton is in public
19 works and, you know, our tag line was we provided
20 the services that bring the City to life and we
21 really did everything from, obviously, transit,
22 waste collection, drinking water, snow plowing,
23 parks. All those things that people see and
24 interact with and really are fundamental to the
25 quality of life that residents enjoy are operated

1 and maintained by public works.

2 Q. Thank you. I'm going to
3 ask you to slow down again.

4 A. Sorry.

5 Q. It's okay. Following
6 from that -- that's, I think, a fairly
7 comprehensive sense of your portfolio that was
8 underneath you -- how much of your time was spent
9 directly related to the management of public works
10 through your directors?

11 A. So, I guess I would
12 describe it this way. As the general manager of a
13 department, and this is probably not unique to
14 public works, not only are you, kind of, the
15 parental figure to your own department, you're
16 also a sibling on SLT, on the senior leadership
17 team, for the City of Hamilton. I remember Chris
18 Murray saying to me when he offered me the job
19 that his expectation was that I would dedicate
20 50 percent of my time to SLT and 50 percent of my
21 time to public works. I remember when I first
22 heard that almost recoiling a little bit. I don't
23 think I had appreciated that Chris was expecting
24 that much of my time to be dedicated to, kind of,
25 I'll say, the corporate team.

1 But I learned fairly quickly
2 that that was just the reality of it. In order to
3 assist the city manager in managing the City and
4 doing things like setting up policy and that kind
5 of thing, it does require a pretty significant
6 amount of your time. So, recognizing that
7 50 percent of my time was going to be available to
8 run the department, which is a huge complex
9 project or department, my role was to interpret
10 strategic policy from the corporate management
11 team. It was to help and assist and support the
12 directors in the development of their strategic
13 plans, and to be that link between, kind of, the
14 corporate voice and the needs and the voice of
15 each of the divisions within public works.

16 I mentioned earlier that when
17 I came to the role as general manager, I brought
18 with me some aspirations of what I thought the
19 department needed based upon my experience in it,
20 and so for that period of time that I had some
21 latitude over, I was really focused on quality
22 management, I was focused on leadership
23 development, I was focused on some of the key
24 elements of quality management around continuous
25 improvement, document management and control,

1 roles and responsibilities and risk management, so
2 to the extent possible where I had latitude, those
3 were the things that I was trying to bring to
4 public works so that we had some consistency and
5 discipline across all of the divisions because it
6 became evident to me fairly quickly that each of
7 the divisions did things in their own way, and,
8 you know, that's probably a natural consequence of
9 a big corporation, but I thought there was areas
10 where there should be much more consistency across
11 the department.

12 Q. Thank you. We will come
13 back to that last point. Before we do, in terms
14 of the 50 percent of your time that was directed
15 towards the management of public works, how did
16 you or did you have practices to keep up to date
17 on the operations of the divisions that were
18 underneath the general manager?

19 A. So, there was a couple of
20 tactics that I employed. One was something that I
21 had done for many years in my older roles. We had
22 what we called quality times. And so, on a month
23 basis, I had dedicated one or two-hour meetings
24 with each of the directors and on a monthly basis
25 they would meet with me, they would provide

1 updates on any issues that they had, whether it
2 might be a council report that might end up being
3 controversial or elicit some kind response from
4 council and the community. They would update me
5 on master plans that they were engaging in. They
6 might make me aware of any emerging issues that
7 were coming to the floor that might need their
8 attention and might end up needing to engage me
9 on.

10 But it was the breadth and the
11 complexity of the public works department really
12 it meant that, you know, I was there as a sounding
13 board, I was there for support, but I didn't and
14 couldn't provide any what I'll call technical
15 advice or expertise to any of the divisions
16 because it's such a wide variety of skill sets and
17 expertise that no one person could ever have it.
18 You know, because I grew up in Hamilton Water, I
19 obviously could speak their language and I had
20 some expertise there, but really it was from a
21 leadership strategic perspective that I interacted
22 with these folks and I really didn't get any -- I,
23 kind of, flew at 50,000 feet. I would say the
24 directors flew at 30,000 feet. They ran their
25 divisions with their teams, but I tried to be as

1 helpful and supportive as I could.

2 Q. Thank you. Do you recall
3 when you took on the general manager role what
4 transition process you engaged in to ensure that
5 you were up to date on the workings of the
6 department?

7 A. Yeah. Well, a few
8 things. There was a few practices that I had
9 engaged in and I probably observed in other places
10 in the organization. One of the primary benefits
11 I had when I became the general manager was the
12 fact that John was in the acting role and that he
13 remained in that AGM role for about a year. That
14 was tremendously helpful for me to have him there
15 because he had already had -- he was in the role
16 for nine months prior to me, you know, becoming
17 the GM. And John had a long history in the
18 department, so I had a tremendous luxury having
19 John there.

20 As part of that, we did have a
21 practice of creating what we could call tech memos
22 or briefing notes, so each director had prepared
23 briefing notes on what were the high priority
24 issues or initiatives that were going on in their
25 divisions. That use of briefing notes was

1 Q. You mentioned that you
2 had been colleagues with some of your directors
3 when you were on DLT, so you knew them. That's
4 the department leadership team. That is right?

5 A. Correct.

6 Q. Is it also called the
7 department management team or is that a different
8 thing?

9 A. Yeah. There's a time
10 when we went from the word management to
11 leadership and I think it was, kind of, symbolic
12 because we wanted senior folks to get out of this
13 notion that they need to manage everything and
14 need to become better leaders, and so we tried to
15 use that in the vernacular to try to perpetuate
16 the idea of leadership as opposed to just
17 managers.

18 Q. Sure. So, you were an
19 attendee at DLT meetings when you were in your
20 role in the water department?

21 A. Correct.

22 Q. And then you continued
23 the practice when you became general manager?

24 A. Correct.

25 Q. And how frequently did

1 you meet with DLT?

2 A. It changed a couple
3 times. I think when I started they were working
4 on a weekly basis. At some point it became
5 obvious that that wasn't providing the best value
6 for the people around the table. It was
7 distracting the directors from their work, and so
8 I can't recall when but at some point I changed
9 the frequency to twice a month.

10 Q. Prior to becoming general
11 manager in 2015, council directed the city manager
12 to review the size and scope of the public works
13 department. Do you recall knowing about that when
14 you were in the water department?

15 A. I did, yes.

16 Q. Registrar, could you
17 bring up OD 2, page 12, please. If you could
18 bring up 13 as well, please. Thank you.

19 Mr. McKinnon, before we go
20 further, so I want to make sure that you can see
21 both the pages and also the windows.

22 A. I believe I can.

23 Q. Great. Our Registrar can
24 call out excerpts of these documents, and so if I
25 fail to do that and you need them to be blown up

1 so that you can read them, just let me know.

2 A. Will do.

3 Q. So, you will see at the
4 bottom of page 12 at paragraph 28 there's a
5 reference to the direction from city council that
6 I just mentioned and you'll see at the top of 13
7 the question that was to be answered is: Is
8 public works department too large? And the staff
9 retained Core International to deal with that.

10 And this is just background.
11 At paragraph 29, you'll see in May of 2016 GIC
12 received a report that summarized Core's initial
13 views, and it appears that Core concluded -- and,
14 Registrar, could you pull out 29 actually -- that
15 there was no data to suggest the general manager
16 role needed to be split into two roles.

17 Were you aware in 2015 and
18 2016 that that was on the table as a potential
19 outcome?

20 A. I believe I was, yes.

21 Q. The staff report
22 recommended the city manager implement improvement
23 opportunities to address various groups. And,
24 again, just for clarity, were you involved with
25 the work of Core in 2015 and 2016 when you were in

1 the water department?

2 A. I don't recall. I may
3 have sat for one interview with Core. I have a
4 vague memory of that, but if I was involved it was
5 just to the extent of a single interview, I
6 believe.

7 Q. Thank you. Registrar,
8 you can close that down and if you can call up
9 image 13 and 14 now.

10 So, that report that went to
11 GIC was before you moved into the general manager
12 role but then in March of 2017 the public works
13 committee received an update to that last report
14 and that report was submitted by you. I'm going
15 to pull up that report and ask you some questions
16 about it. It is HAM61797. Thank you.

17 So, just in terms of the time,
18 am I right that you inherited this project that
19 was started in 2015, worked on in 2016 and then
20 you brought this report to the public works
21 committee in March of 2017, so in your first
22 couple of quarters as general manager?

23 A. You are correct.

24 Q. And how involved were you
25 in the work of Core or the work that followed from

1 Core's recommendations that in order to get to
2 this report in March of 2017?

3 A. I was deeply involved. I
4 don't know how many hours, how many evenings, how
5 many pizzas this took to get this report finished.

6 Q. So, you had said earlier
7 in your evidence that you came to the general
8 manager role wanting to adopt continuous
9 improvement and other matters of quality
10 management, I think was the term that you used.
11 And so, was this a nice coincidence that you had
12 this opportunity to dive into this project when
13 you started in the general manager role?

14 A. Yeah, extraordinary
15 opportunity for me to work as closely with Core as
16 I did and learn the kind of theories that they
17 used for this type of work. What emerged pretty
18 quickly in the early conversations was that
19 organizational design criteria is something that
20 we should spend a lot of time on, because even
21 though the results of this work may or may not
22 compel us to recommend an organizational change,
23 looking at your organization on a regular basis
24 with a continuous improvement lens and using good
25 organizational design criteria, I think, was a

1 like very positive developments. Is it fair to
2 say that Core had found some inefficiencies that
3 needed to be remedied, in addition to trying to
4 enhance the organizational structure?

5 A. Yeah, I think so. You
6 know, some of the bullets there are about
7 optimizing human capital and this notion of who is
8 the crossover manager when there's a conflict
9 between two operating groups. And if it's too
10 low, it's a problem. If that crossover manager is
11 too high, it's a problem. And, you know, the way
12 that we were set up sometimes simple conflicts,
13 the referee in that issue might be the city
14 manager, which wasn't appropriate. It should have
15 been with me or even below me, so those were the
16 types of, I'll say, theories that we were working
17 with to trying to find a more efficient and
18 effective way to organize ourselves.

19 Q. Were those theories that
20 you were working with or did you have some
21 examples -- pardon me. Were they hypotheticals
22 that you were working with or did you have some
23 examples of, as you suggest, I'll take your
24 example, who was dealing with conflicts might not
25 being the appropriate level of person?

1 A. Well, I think one of the
2 examples is probably relevant to the inquiry. So,
3 you have engineering under one director, you had
4 roads operations under another director, and then
5 you had traffic safety and traffic operations
6 under another director who reported to a senior
7 director, so those roles and responsibilities were
8 dispersed across a number of different divisions,
9 and so that's likely going to make it more
10 difficult to be coordinated and cohesive and
11 efficient and effective.

12 Q. And had Core or you
13 concluded that there was a need for increased
14 teamwork across the various divisions in public
15 works, not specific to the Red Hill, I'm asking as
16 a general question?

17 A. Yeah. As a general
18 theme, I don't think we identified it as
19 problematic, kind of, department wide, but in any
20 organization this size you're going to have
21 situations where there's probably improvements
22 that need to be made from a coordination and, you
23 know, an effectiveness perspective. And so, when
24 you, for lack of a better way to describe this,
25 when you layer these criteria over the

1 organization and you, kind of, look through it,
2 that is what compelled us to make some of the
3 changes and then that's why the traffic or the
4 transportation folks ended up coming back together
5 with roads.

6 Q. Coming back to the
7 general manager role and in those first few months
8 where you're finding your feet in that role, did
9 you hear from your directors that there were
10 concerns about a lack of collaboration as between
11 the traffic operations and engineering, traffic
12 planning and engineering services?

13 A. I'm not sure that I
14 heard, you know, a chorus of complaints about that
15 particular issue. You know, I've been in this
16 business a long time and I know that, you know,
17 sometimes groups don't get along and I know that
18 my experience in Hamilton Water, we delivered a
19 lot of capital and I know that the capital
20 delivery guys, they engage with the operations and
21 maintenance guys when they're establishing scope
22 and doing capital projects, and I know that the
23 operations folks often are asking for, I'll say
24 they're asking for the moon and the unfortunate
25 capital delivery guys are having to work within a

1 budget, so I know that there's ongoing tension
2 between any capital delivery group and the
3 operations group that they support. It's been my
4 experience through my whole career that that
5 tension always exists because, you know, there is
6 that dynamic between the two groups. But I don't
7 think I heard anything that made me or compelled
8 me to feel like I had a real fire burning
9 anywhere.

10 Q. In respect of the Red
11 Hill in particular, in these early months, either
12 just as you're finding your feet as general
13 manager or in the context of the preparation of
14 this organizational restructuring, did anyone tell
15 you that the Red Hill was one area where
16 engineering services and those in traffic were not
17 working as cooperatively as they could?

18 A. In the early months I
19 don't recall any conversations about the Red Hill.
20 I think I was distracted by all manner of other
21 things and my focus was really on the organization
22 and I don't recall spending any amount of time on,
23 what I would call, technical or operational
24 issues.

25 Q. Okay. And was that,

1 during that period of time, was that a role that
2 Mr. Mater was filling for you?

3 A. Yeah. You know, for lack
4 of a better way to describe it, John was in that
5 role helping deal with some of the noise that was
6 heading towards my office, so John likely was
7 dealing with many of those complaints, if indeed
8 they were coming up. And John would already be
9 familiar with these because of his previous role.

10 Q. During the course of your
11 tenure as general manager and recognizing this may
12 be a difficult answer to provide, did you receive
13 positive feedback about this new structure and the
14 new structures that you rolled out subsequently?

15 A. I think I received both.
16 I don't think you make these changes and everybody
17 is all applauding. Change is difficult for
18 people. You know, we had been trained in
19 something called ADKAR at the City years ago
20 around change management. The whole idea is that
21 it's around awareness, desire, knowledge, ability
22 and an ability to respond and reply.

23 With that in mind, you know,
24 it had been my observations over my previous
25 career that when there was organizational changes,

1 they often weren't well explained to people and my
2 general belief is that when you explain to people
3 why you're doing what you're doing, your
4 acceptance level is going to rise significantly.
5 And so, again, you know, at the risk of repeating
6 myself, the idea of having an organizational
7 design criteria, sticking to it, believing in it
8 and disseminating that across the groups who are
9 experiencing the change, I think that went a long
10 way to helping people understand why we were
11 making changes, but I don't have a specific memory
12 of people complaining about it, but I have no
13 doubt some did.

14 Q. Registrar, you can close
15 this.

16 So, recognizing that you were
17 quite busy with finding your place within public
18 works as general manager and with this
19 organizational project that you inherited and seem
20 passionate about, what information, if any, did
21 you receive about the Red Hill in the first, let's
22 say the first six months of your tenure as general
23 manager? Maybe that might not have been so
24 specific, but what information in terms of
25 briefings or updates or a sense of, you know, that

1 asset?

2 A. I don't have any
3 recollection of anything, kind of, sticking out as
4 the Red Hill being anything that needed my
5 attention or, you know, beyond what I already knew
6 about the Red Hill. It's a really important
7 artery for the City of Hamilton, but I have no
8 memory of anybody bringing my attention to
9 anything in that first year.

10 Q. Okay. Were you aware
11 prior to taking on the role of general manager
12 that councillors had received public complaints
13 about the safety of the Red Hill?

14 A. I had become aware of
15 speeding and driver behaviour on the Red Hill
16 while I was still in Hamilton Water. I think I
17 became aware of that through news reports, the
18 evening news, local media. I attended public
19 works committee on a regular basis, so I may have
20 heard councillors raise the issues around that.

21 You know, I may be a bit
22 hesitant to admit this. When I was in a public
23 works meeting and they weren't talking about water
24 issues, I was probably looking through e-mails.
25 So, I did have this sense that the Red Hill was

1 experiencing driver behaviour that was
2 inappropriate, you know, people driving 150, 170
3 kilometres an hour down there, so I think I came
4 to the general manager's office with this
5 preconceived notion that the Red Hill was where
6 you know, for some reason people were driving --
7 their driver behaviour for some reason was just
8 inordinate.

9 Q. So, I'm going to turn now
10 to February of 2017.

11 Registrar, could you bring up
12 OD 7, page 167, please, and if you can call out
13 494, the paragraph and the first three paragraphs
14 of the excerpted text. Yes, just a little bit
15 more. Perfect. Thank you, Registrar.

16 So, we're at February of 2017.
17 You've been in the role for some time and in that
18 month there was an accident on the Red Hill which
19 resulted in a lot of media enquiries, quite a
20 significant accident, and as well around this time
21 there was also some accidents on the LINC, one of
22 which resulted in a fatality.

23 Do you have a general
24 recollection of there being significant accidents
25 on the Red Hill around this period of time?

1 A. I don't.

2 Q. Is this the kind of
3 issue, media scrutiny, for example, that, in 2017,
4 at least at this early point in 2017, that you
5 would have left primarily to Mr. Mater or were you
6 directly involved?

7 A. No, I wouldn't be
8 directly involved in this and I'm not sure if it
9 would have been John that I would have expected to
10 deal with it maybe because of his background.

11 You know, when I -- sorry to
12 back up here, but when I think about the Core work
13 and the decision that council made to keep public
14 works as a single department, that sent a very
15 clear message to me about the altitude that they
16 wanted to general manager to work at. You know,
17 at the risk of repeating myself, it's an immense
18 department. I know that you have heard evidence
19 from Marco Oddi and Martin White. Marco and
20 Martin were both managers. And, just for context,
21 there was 34 managers in public works.

22 So, when it came to an issue
23 like this, I would be relying on probably the
24 staff in transportation to manage it so that, at
25 the time, 2017, I'm guessing that would have been

1 Betty or Martin to respond to this and to do
2 whatever they felt they needed to do with respect
3 to answering questions in the media. If they felt
4 that there was a report that needed to come to
5 council, a capital project that needed to be
6 developed, operational things that they needed to
7 do, that would be completely -- they would have
8 complete authority and accountability to do that
9 on their own. If they were to make me aware of
10 it, that would be helpful, but there was no need
11 for them to come to me for approval or anything
12 like that.

13 Q. Registrar, could you
14 close this down and go to page 169, please, and
15 call out 498, please.

16 So, this is a little bit
17 later. This is by August. But just as an
18 example, the collisions in 2017 began to result in
19 not only media scrutiny, but also individuals who
20 wanted to come and, through delegation requests,
21 speak to the public works committee about their
22 family members who had been involved in fatal
23 accidents or other issues around safety on the Red
24 Hill. In particular, in this time, as you'll see
25 in the underlying e-mail from Ms. Leduc to you and

1 others, they're asking for barriers to be
2 installed.

3 So, certainly recognizing the
4 altitude at which you were working, is this or was
5 this kind of level of public interest something
6 that rose to your level or still something that
7 you would rely on your directors and managers to
8 deal with?

9 A. So, I vaguely remember
10 these delegations. The responding to all the
11 questions that would arise from these delegations
12 would continue to reside with Martin White,
13 possibly Dave Ferguson and Betty, the experts
14 within the division that respond to any questions
15 that emerged from this. If council had have asked
16 us about whether or not there was something that
17 staff felt they needed to do, it would be Betty
18 and that team who would be responsible for
19 developing whatever countermeasures might be
20 required.

21 I would obviously need to be
22 aware of it. One of the, I'll call it,
23 uncomfortable roles or responsibilities that I had
24 as a general manager was I couldn't be a technical
25 expert in everything but I had to try to have some

1 kind of a beat on certainly issues that might
2 arise in the public, and the reason for that is
3 often I would be the only person who would be
4 attending a council meeting, and so if there was a
5 report or an information or recommendation report
6 that emanated from this delegation and I was in
7 council, I might have to answer to it. So, I did
8 need to keep a beat on things at a high level.

9 In a perfect world, all the
10 technical questions will be asked of the technical
11 staff in the committee meeting, the public works
12 committee, where all my technical experts attend,
13 but there is this opportunity for councillors to
14 ask questions in council when I don't have that
15 backup, so I always did try to at least have a
16 Coles Notes version of any particular issue so
17 that I could at least give something to the
18 councillors, if indeed they asked me a questions
19 at council.

20 Q. Were issues that dealt
21 with the deaths of citizens on the Red Hill the
22 kind of topic that you would really want to have,
23 using your language, have sort of a beat on or
24 having Coles Notes about?

25 A. Yeah. I mean, obviously

1 the public interest in it and the fact that there
2 was a loss of life. One of the priorities for
3 public works is protecting public health. That's
4 the number one priority that we have. So, yeah,
5 to that extent, but, you know, I think at the time
6 I was trying to reconcile people dying on
7 highways. It's unfortunate. It's often
8 attributable to driver behaviour in one form or
9 another, you know, so I think at the time was I
10 trying to understand is this an unusual number of
11 accidents or deaths. But, again, I was leaving it
12 to the experts to -- they would be the ones who
13 would know whether or not there was outliers in
14 the numbers or whether or not the frequency of
15 this was something that should compel us to act.

16 Q. Recognizing that you want
17 to keep the technical expertise with the technical
18 experts, at this time were you knowledgeable about
19 the past discussions on the possibility of adding
20 median barriers to the LINC and the Red Hill?

21 A. I'm certain that I heard
22 that discussion at committee meeting. I believe
23 it was also discussed at the staff level and I
24 can't remember where or the specific comments, but
25 I know that when the issue of median barriers come

1 up, and I learned this from Gary, is that if
2 you're going to put in median barriers, you're
3 going to have to install some kind of storm
4 collection system in the barrier because it's a
5 grass median right now, so it's not -- it ends up
6 being a pretty expensive exercise.

7 The same held true for
8 lighting, so I know that lighting and median
9 barriers were discussed a number of times and, you
10 know, essentially I learned from Gary that they
11 may seem straightforward, but there's probably an
12 EA involved and there's a whole bunch of ancillary
13 work that would be required that would really
14 drive the budget up.

15 Q. Those discussions with
16 Gary, I presume you mean Mr. Moore?

17 A. Correct.

18 Q. Those discussions with
19 Mr. Moore, were those while you were in the role
20 of senior director in water?

21 A. No. He would have -- I
22 would have learned that after I became the GM.

23 Q. Okay. And can you
24 identify when in your tenure as GM you had those
25 discussions with Mr. Moore?

1 A. I can't. You know, I
2 suspect a review of my calendar would identify
3 that I attended anywhere from ten to twenty
4 meetings every week for ten years, so, you know,
5 there's things I know. Where I learned them or
6 who I learned them from, sometimes it's very
7 difficult to pinpoint, but I do recall discussions
8 about barriers, the lighting, the stormwater
9 system that would have to be installed in order to
10 put in barriers and just how much work that was.

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

13 Just on that point,
14 recognizing you may not be able to pinpoint an
15 exact date, in terms of those discussions with
16 Mr. Moore, were they happening prior to
17 Mr. Moore's retirement?

18 A. Yeah. That conversation
19 that I alluded to would have occurred at some
20 point between when I became the GM and when Gary
21 left, so that --

22 Q. Okay. So, that narrows
23 it down a little bit.

24 A. -- narrows it down, I
25 guess, a year and a half approximately, yeah.

1 Q. Do you recall if those
2 discussions were related to media or public
3 interest in the potential to install barriers?

4 A. To the best of my memory,
5 I thought it related to the conversations that
6 were happening at committee.

7 Q. Okay. And the
8 conversations were about whether to install median
9 barriers or not?

10 A. Correct.

11 Q. The issue of median
12 barriers before you became GM had gone to public
13 works committee and were connected with the
14 potential to widen the LINC and the Red Hill. Was
15 that something that you were familiar with, at
16 least conceptually, that there was some discussion
17 about the potential to widen those parkways?

18 A. Again, it sounds
19 familiar. I wouldn't have been deeply involved in
20 a discussion like that, but it sounds somewhat
21 familiar.

22 Q. In 2017, Mr. Mater
23 testified that he had involvement in or oversight
24 over the assessment of the transportation master
25 plan. Was that something that you left to

1 Mr. Mater?

2 A. I did. And when I became
3 aware that council had directed that the
4 transportation planning group be moved over to
5 planning and ec dev, the general manager in
6 planning asked me not to complete the
7 transportation master plan and just -- so, when
8 the transfer of those staff and those
9 responsibilities went over to planning, that they
10 be allowed to finish it off, so that they wouldn't
11 inherit something that was done by somebody else
12 that they now had to fulfil. So, I agreed to
13 that, so the TMP actually was completed once it
14 was over in planning and ec dev.

15 Q. And the TMP is a
16 transportation planning document?

17 A. Transportation master
18 plan, correct.

19 Q. And so, it would or did
20 it, to your knowledge, deal with traffic volumes
21 and assessments about whether widening various
22 roads would make sense?

23 A. I don't think the TMP
24 would have got to that granular level. I could be
25 wrong, but it was more of a policy document in

1 many respects. I think it created, kind of,
2 typologies of streets depending on the nature of
3 the street. I don't think it would have got to
4 the discreet level of what does the Red Hill
5 specifically need. That would be a study on its
6 own.

7 Q. Registrar, could you go
8 to the prior page, 168, please, and if you could
9 call out 495.

10 This is an e-mail from
11 Mr. Ferguson about media discussions around the
12 median barriers and it's to you and he copied
13 Mr. Mater and Mr. White. And he says:

14 "Just in case something
15 comes up at council."

16 And he says he got off the
17 phone with Collins and Conley asking questions
18 about barriers. I believe they also spoke to
19 Gary.

20 So, just on that point and not
21 so much on the issue of barriers particularly but
22 your expectations around how traffic and
23 engineering and operations staff would update you,
24 was this the kind of information that you expected
25 your staff to raise with you; that is, discussions

1 with councillors?

2 A. Yeah. I had a practice
3 with the directors that if there was an emerging
4 issue or if there was something that might come up
5 at council or a councillor might ask me a
6 question, the directors generally would know
7 because of their interaction with councillors to
8 give me a heads-up on it. So, sometimes I could
9 be provided speaking notes and based on my, kind
10 of, cursory understanding of it, I was able to
11 answer questions. Sometimes I would read a
12 briefing note like this and it might say, okay,
13 Dave, you're coming to council with me tonight,
14 just because I would be worried that I wouldn't be
15 able to manage the answer properly because I just
16 didn't have the knowledge or the understanding.

17 So, there was never a one size
18 fits all, but this looks like the type of document
19 I got on a regular basis from different staff to
20 try to keep me involved to the extent that they
21 didn't want to see me get cornered with a question
22 at council and didn't have anything in front of
23 me.

24 Q. Registrar, can you close
25 the call out and bring up 496 and 497, please.

1 So, following from the -- this
2 was actually a delegation request e-mail, not the
3 e-mail we were just looking at. This gets to
4 Mr. Mater. Ms. Wunderlich forwards this e-mail
5 writing:

6 "FYI, according to Gary
7 this is a traffic issue."

8 And then Mr. Mater replied
9 adding Mr. White to the exchange:

10 "According to Gary,
11 everything is a traffic
12 issue."

13 So, recognizing that's just a
14 little snippet of discussions between your staff
15 on which you are not copied, had you received
16 information from traffic engineering and
17 operations that they had had issues with Mr. Moore
18 in relation to countermeasures on the Red Hill or
19 the LINC?

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

22 Q. Do you recall having any
23 more general discussions with Mr. Mater or
24 Mr. White about the relationship between what
25 things were traffic issues and what things fell

1 within the scope of engineering services as it
2 related to the parkways?

3 A. Not at that point, I
4 didn't, no.

5 Q. Okay.

6 A. I don't believe anybody
7 had, kind of, raised a white flag with me.

8 Q. Registrar, can you close
9 this down and can you go to page 150, please, and
10 if you can pull out 454 to 456.

11 So, this is for context,
12 Mr. McKinnon. In January of 2017 Mr. Ferguson
13 reached out to Mr. Moore and other staff in
14 engineering services and said he was following up
15 on plans for the RHVP and that Mr. Moore had
16 mentioned the year prior that he was planning to
17 repave the RHVP and that, as a result, traffic
18 engineering should hold off doing some
19 installations so that you could coordinate the
20 installation of reflective markers when the
21 repaving was happening. That's the, sort of,
22 context of these e-mails. And Mr. Moore says:

23 "Yes, we have to get on
24 it."

25 And Mr. Andoga says:

1 "Yes, we're going to
2 start doing competing
3 strips in 2017 for
4 project/program to
5 resurface the needs.
6 This will be reflected in
7 the 2018 budget."

8 So, just with that context of
9 some discussions amongst staff, were you aware in
10 early 2017 that engineering services was
11 considering resurfacing the Red Hill either in
12 2017 or 2018?

13 A. No. You know, at the
14 risk of sounding cavalier, I would characterize
15 this as a sausage making that goes on without me
16 knowing about it.

17 Q. Fair enough. In terms of
18 capital budget issues, a program like this with a
19 significant price tag, when in the process would
20 you expect your staff to raise the consideration
21 of implementing such a program with you?

22 A. So, the development of
23 the capital budget on an annual basis, kind of,
24 starts in around June, but it really starts to get
25 real in around September and Gary and Pat McNab

1 and his team, they would produce, kind of, a what
2 they thought was the eleventh-hour draft in a
3 document that I could look through. That document
4 could have hundreds and hundreds of lines in it as
5 far as discreet capital projects. So, typically I
6 would start to become aware of what the capital
7 budget, the contours of the capital budget, looked
8 like in the early fall.

9 I do have a memory about this
10 particular project and it was actually with Mike
11 Zegarac and Mike -- we're probably in another
12 meeting somewhere and Mike said, hey, there's a
13 project I'll put into the capital budget that
14 wasn't there last year and it's pretty significant
15 money. Do you know about it? And I didn't at
16 that point in time and it was this project. And
17 so, I recall coming back and going through that
18 book and then I think I ultimately spoke to Gary
19 and said, what's the deal on this project? What's
20 the background on it?

21 And the reason I think it
22 stood out was Gary had always advocated for what I
23 will call a runway, and what I mean by that is if
24 you had an idea around a capital budget and you
25 developed a capital budget sheet, if it was the

1 fall of 2017 that you were putting it in for the
2 first time and it never appeared in the forecast,
3 you were probably going to put it in for 2020,
4 maybe 2019, and there's a number of reasons for
5 that. Primarily you might need studies, you might
6 need to do environmental assessment, there might
7 be utilities that have to be cleared out of the
8 corridor, and then you had to get the design done
9 once the capital budget was approved.

10 So, there's a distinction
11 between the one year capital budget that gets
12 approved every year versus the three-year
13 forecast, and so my recollection is Gary put this
14 in in the fall of 2017 and he was going to do it
15 in 2018.

16 And so, that would have caught
17 people's attention. Unfortunately, it didn't
18 catch mine early enough, but not only at the staff
19 level, but there's a number of councillors who
20 watch that forecast too because they have their
21 projects that they can see moving closer to the
22 current year and to see one jump in, I'll call it
23 jumping the queue like that, it wasn't normal and
24 it really was not consistent with, kind of, the
25 way Gary had always preached to put projects into

1 the budget. I do know there was some money that
2 apparently became available that he felt made the
3 project possible, and so I believe that was his
4 rationale for doing it.

5 Q. So, that recollection
6 that you have in the fall of 2017, Mr. Moore
7 putting an item line for resurfacing into the 2018
8 operating budget, have I got that right?

9 A. Capital budget.

10 Q. Capital budget. Thank
11 you. Sorry.

12 A. Correct.

13 Q. And it being a line item
14 that you would have approved the budget but you
15 might not have noted that particular item line.
16 Is that -- until it went to council. Is that --

17 A. Yeah. And I don't think
18 there was kind of an approval process on my part.
19 The budgets on the tax levy capital budget, it's
20 immense. It's everything from resurfacing the Red
21 Hill Valley Parkway to installing a splash pad in
22 Ward 3 to building a flower island in, you know,
23 Ward 7 and a hockey rink out in Ward 14. So, you
24 know, it's a very wide, very complex, large
25 capital budget. I just wouldn't know enough about

1 any of the individual projects to have an opinion
2 one way or the other, but I did want to be
3 familiar with it so that I could see if there was
4 trends and that kind of thing and I could speak to
5 it with some level of knowledge.

6 Q. Thank you. So, when I
7 say approval before, is that fair to say that you
8 would have been the person to submit the budget
9 for public works?

10 A. No --

11 Q. Approving individual
12 items on it?

13 A. Yeah, and I wasn't even
14 involved in the submission of it. I mean, again,
15 I'll characterize it as the sausage making. All
16 of the divisions that deliver capital on the tax
17 levy side create their own capital budgets. They
18 all create their own forecasts. It gets fed into
19 one master list that was managed by one of Gary's
20 staff, Pat McNab. She was the keeper of the
21 lists. And then it evolves year over year over
22 year. That information, Gary and the team working
23 with Mike Zegarac's team, the finance, it then
24 gets moved over there. I have very little
25 involvement in it, only to the extent that, you

1 know, if I looked at it and I had questions about
2 it, I might go to my staff and say, what is this,
3 or, you know, why is this project being moved
4 forward, or that kind of thing. But beyond that I
5 really didn't have much involvement in it.

6 Q. But in this particular
7 circumstance, you did get some questions about the
8 item for resurfacing and you were not aware, then
9 you had to go back and talk to Mr. Moore. Is that
10 right?

11 A. So, I did ask Gary about
12 it, look for his explanation as to why it was
13 being done the next year and, kind of, where the
14 money came from. Gary gave me the explanation. I
15 may have actually circled back with Mike to
16 explain it, but ultimately that remained in the
17 budget and as far as I can recall it got approved.
18 So...

19 Q. So, can you narrow down
20 the time frame in which those discussions would
21 have happened, knowing what you know about the
22 budget cycle?

23 A. So, the story, if you
24 will, that I just gave you probably happened over
25 a period of a couple weeks, likely in September or

1 maybe October.

2 Q. Of 2017?

3 A. Yes.

4 Q. Okay. Registrar, you can
5 close this down. If you can go to page 172 of
6 OD 7, please, and if you can call up 507, please.

7 So, Mr. McKinnon, this is just
8 to orient you to a document I'm going to take you
9 to. In March of 2017, Mr. Cooper, who was a
10 project manager in traffic engineering and
11 operations, e-mailed Mr. Ferguson, David Ferguson,
12 who is a superintendant. Do you know both
13 Mr. Cooper and Mr. Ferguson?

14 A. I know Mr. Ferguson. I'm
15 a little embarrassed to say I can't picture
16 Mr. Cooper.

17 Q. Okay. They were
18 e-mailing because Mr. Cooper was preparing an
19 information update in respect of the Red Hill and
20 the LINC, and Mr. Cooper provided two documents
21 for Mr. Ferguson's review.

22 So, I'm going to assume from
23 your earlier evidence that this would have been
24 very much below your radar as project manager and
25 superintendant are working on drafts. Is that

1 fair?

2 A. That's correct.

3 Q. Registrar, you can close
4 this down and go to HAM25870, please. Thank you.
5 And, Registrar, could you call out from the top
6 half of the left-hand side, please. Actually,
7 Registrar, can you go a little bit further. If
8 you can go down, include the appendices. Yes.
9 Start there. That's perfect. Go down and then
10 the copy to. A little bit further, just so you
11 can catch Dan McKinnon's name. Perfect. Thank
12 you. Excellent.

13 How is that in terms of font
14 size? Okay to see?

15 A. Perfect.

16 Q. Great. So, this is an
17 information update and it is submitted to the
18 mayor and members of council, so not to public
19 works. It references the wards that are affected
20 and it is in respect of the LINC and Red Hill
21 safety improvements, referencing an earlier staff
22 report that had been filed.

23 It says:

24 "At the public works
25 committee meeting, staff

1 Q. Yeah.

2 A. Not that I recall. It's
3 entirely possible, but I don't recall it.

4 Q. Fair enough. So, this is
5 an update to those safety improvements. By March
6 of 2017, had any of your staff provided you with a
7 backgrounder orally or otherwise about safety
8 improvements on the LINC and the Red Hill over
9 time?

10 A. I feel like this is the
11 conversation that John had with me saying that
12 there had been a bunch of outstanding business
13 list items, kind of, discreet and disparate from
14 one another and many of them were being worked on
15 and scheduled and whatnot and in order to come
16 back to council rather than have 12 or 15 reports
17 he wanted to consolidate it all in one report, so
18 I'm interpreting from what I'm seeing on the
19 screen that this is the same thing.

20 Q. Okay. We do know you
21 attended a presentation with a number of people in
22 May of 2017. And we'll get to that in a moment.
23 Does that accord generally, this conversation you
24 had with Mr. Mater was sometime in the spring of
25 2017?

1 A. I believe so.

2 Q. Okay. Registrar, can you
3 close this down and can you open up Appendix A.

4 So, would you have reviewed
5 this information report before it was submitted to
6 the mayor and members of council?

7 A. So, I'm just twiggling to
8 the vernacular here. This says information
9 update, which is not a report. This was something
10 that Martin would not have been pushing through
11 clerks. He could have sent it from his desk and
12 it was a mechanism we used as staff to try to get
13 information out to council quickly without going
14 through, kind of, the regulatory regime of a
15 formal report.

16 Q. Thank you for that
17 clarification. Would you have read this
18 information update before it was pushed out to the
19 mayor and members of council?

20 A. I may have read it, not
21 for the purposes of approving it, but I may have
22 read it out of just an interest to see what's
23 going to council.

24 Q. Okay. Let's contrast an
25 information update with an information report.

1 The inquiry has heard some evidence that over time
2 the general manager used to sign off on
3 information reports or recommendation reports and
4 that that had at some point moved to more staff
5 below the general manager doing that. What was
6 your recollection of how you handled information
7 reports that were going to be submitted to
8 council?

9 A. Yeah. I think what you
10 just described is consistent with my experience.
11 I think that change happened before I became the
12 general manager and, again, it's consistent with
13 this idea that based on the organizational
14 structure and design, the expectation of the
15 general managers is not to be in the weeds and to
16 not be technical experts. And so, I recall that
17 change happening when I was the head of Hamilton
18 Water, and so that practice continued when I was
19 the general manager, that the directors would sign
20 the reports and the authors, who were generally
21 below the directors, their names would be put on
22 them as the author.

23 And so, notwithstanding that,
24 all reports would still come -- all reports to
25 council, either information reports or

1 recommendation reports, would arrive at my desk
2 for a review before it was sent to clerks and the
3 types of things that I would be looking for often
4 would be, you know, somewhat grammatical, but I
5 would look at it from -- my approach was I wanted
6 to look at it from a layperson's perspective to
7 make sure that it was going to be readable for
8 council. I was trying to imply some consistency
9 across public works and, as an example of that, we
10 had a guide document that would articulate what
11 the expectation was as far as each of the
12 sections of the report you have an executive
13 summary, you have recommendations, you have
14 analysis, you have background, you have relevant
15 consultation.

16 One of my earlier observations
17 was the guide said that the executive summary
18 should be no more than two paragraphs. I often
19 received reports where the executive summary was
20 two or three pages. So, it was my role in order
21 to try to instill some discipline and consistency,
22 I would put some of those reports back and say,
23 how come this isn't done in two paragraphs? Often
24 I would see in that similar example where
25 everything that was in the executive summary would

1 be repeated in the history, and so it may sound
2 like I was being a little nit-picky, but the
3 reality is I had heard from council before we make
4 reports hard to read, and I think there might have
5 been a prevailing thought on the part of some of
6 the councillors that that was deliberate so they
7 wouldn't read it, and that wasn't the case.

8 So, that's what I saw as my
9 role. Is this reading properly? Sometimes staff
10 would write something that didn't actually say
11 what they intended to say just because writing is
12 not easy. So, that was the role that I played,
13 was to say, you know, are you following the
14 guideline? Is this making sense to me as someone
15 who is maybe not familiar with the issue? Are we
16 being efficient and concise with the language?
17 Are you actually being clear in what you're asking
18 for?

19 So, that was the role that I
20 played, because often directors don't see reports
21 that are coming from other divisions. I could see
22 them all and that was one of the things that I
23 took on, was I wanted to elevate the quality of
24 our reports, I wanted to make sure we were being
25 consistent and, you know, out of a sense of

1 empathy for council, I wanted to make sure that
2 they could get the information they needed to make
3 the decision, be concise, be efficient and get it
4 upfront.

5 Q. Thank you. So, when you
6 say the reports that were going to council, are
7 you being precise in only reports that were
8 actually going to council or does that also
9 include reports that would go to a standing
10 committee like the public works committee?

11 A. Yeah. And, forgive me,
12 all reports go to committee first. Nothing gets
13 to council -- generally speaking, nothing gets to
14 council unless it's already gone through
15 committee, so they're all committee reports for
16 the sake of my previous statement.

17 Q. Thank you, I just wanted
18 to clarify. So, you gave that helpful answer in
19 respect of my question was about information
20 reports. Did you have a different lens when you
21 were dealing with recommendation reports and
22 review of those?

23 A. A different lens?
24 Recommendation reports often were seeking council
25 approval for either a new policy, a change in

1 policy. It was -- you might have been looking for
2 approval of a budget, either an operating or
3 capital budget. You might have been looking for
4 approval of a master plan. On those type of
5 reports, I would probably look at the tracking
6 sheet, and so the tracking sheet was a separate
7 document that would ride along with the report to
8 my office and it would inform me as to who had
9 been consulted on the report.

10 So, for example, if there was
11 a budget request on the tracking sheet, I would
12 need to see that either Ashley Bono, who was my
13 manager of finance, or somebody over in capital
14 budgets had reviewed the report and agreed with
15 what was being said there. You know, we wanted to
16 make sure that our staff weren't asking for things
17 from a budget perspective that central finance
18 wasn't in agreement with. So, I would do that
19 check. Really, I was relying on directors to do
20 that. That only took a few seconds for me to do
21 that, so that was one of the things that I would
22 do. But as far as, kind of, the content and the
23 material nature of the report, I was just reading
24 it, again, from a readability perspective.

25 Q. Thank you. Registrar,

1 could you close that call out and can you bring up
2 the next image, please. Thank you. That's
3 perfect.

4 So, again, Mr. McKinnon,
5 recognizing that you're in the weeds or that you
6 don't want to be in the weeds on this sort of
7 report, this report, we were just looking at
8 Appendix A, which is short-term countermeasures
9 that Mr. White was reporting on and they had
10 various timelines for completion, those sorts of
11 things, and then this is the medium and long-term
12 safety improvements and that distinction between
13 medium and long-term versus short-term was
14 something that came out in the 2015 CIMA report
15 and the staff report. So, that's been moved over
16 to this update.

17 And so, here, it says:

18 "Conduct pavement
19 friction testing."

20 And the status is completed.

21 And then there are sheet rock cuts, which are to
22 be reviewed by engineering services, and then
23 there are a few long-term options, either to be
24 completed by resurfacing or shoulder rumble strips
25 or to be reviewed and considered during

1 resurfacing or reviewed by engineering services.

2 So, a few questions on this
3 document. First, did you expect that your staff
4 would provide reports that were checked for
5 accuracy in terms of the factual information
6 contained in them?

7 A. Absolutely.

8 Q. And where there were
9 various divisions within public works who might be
10 responsible, so, for example, here where you see
11 that Mr. Mater -- pardon me, Mr. White is
12 submitting this document but it's referencing the
13 work of engineering services, would you expect
14 that there would be communications and
15 collaborations between the departments?

16 A. Of course.

17 Q. And were there written
18 policies under your watch that ensured that there
19 would be that kind of cooperation?

20 A. So, I am a big champion
21 of policy and procedure. I don't know how you
22 would write a policy like that. I mean, there's a
23 certain expectation about professionals that if
24 they're going to sign off on something, that
25 they're the ones who have validated it and they've

1 worked together. So, you know, if it's
2 problematic, I don't think you can solve it by
3 policy. I think you solve it by culture and roles
4 and responsibilities.

5 Q. Was that an area that you
6 identified needed a cultural shift?

7 A. I'm not sure if I would
8 use the term "culture," but as time went on and as
9 we were undertaking a number of initiatives from a
10 quality management perspective, I did see some
11 weaknesses in the roles and responsibility being
12 clear to staff. And, you know, one of the things
13 to help resolve that was when I put roads and
14 traffic together so that they were together, they
15 were under one -- so, there was no crossover
16 manager. It was one director who was responsible
17 for it. It was a division that had a very, kind
18 of, similar skill set. They made sense to be
19 together.

20 So, when it comes to roles and
21 responsibilities, you have a few different ways of
22 ensuring that you're not carrying unnecessary
23 risk. One is to have an organizational structure
24 that is appropriate and all the right people are
25 together. Another one is to have very clear job

1 descriptions. Another one is to have, when you
2 undertake a project, to have very clear charters
3 with roles and responsibilities articulated in the
4 charters.

5 But when it is necessary to
6 work across divisions, these folks were all
7 professionals and, you know, if there's a problem,
8 first of all I expect them to sort it out, but if
9 it doesn't, they should escalate it.

10 Q. And when you say they
11 should escalate it, if it's between divisions,
12 that escalation would be to you. Is that right?

13 A. Yeah. I mean, so, when
14 you say division, so if it's between two
15 directors, if two directors aren't getting along,
16 they should be coming to me. But if it's staff
17 within each of the divisions, then those two
18 directors should be sorting it out.

19 Q. Thank you. Registrar,
20 you can close this down and you can close this
21 document as well.

22 Mr. McKinnon, it's about five
23 minutes to 11:00, so I'm going to do a few more
24 lines of questioning and then, just in case you're
25 not aware of our break schedule, we'll be taking a

1 break shortly.

2 A. Can I ask you a question?

3 Am I okay to make notes?

4 Q. If it's a blank pad,

5 that's fine. You shouldn't have any notes in

6 front of you. If you feel it will be helpful to

7 jot down things as I'm asking questions or just so

8 that you don't forget something, I don't have any

9 issue with that, but it's actually the

10 Commissioner who controls the process, so that may

11 be a question better directed to him.

12 JUSTICE WILTON-SIEGEL: Well,

13 I don't have anything further to add at this

14 point. If the notes assist you in answering the

15 questions, by all means make those notes. If

16 they're for purposes of recollecting the

17 questions, I would suggest that that's probably

18 unnecessary, Mr. McKinnon, because the hearings

19 are being transcribed and the video is available

20 on the website and there will be a physical

21 transcription as well for your benefit that will

22 also be on the website.

23 THE WITNESS: Thank you. Fair

24 enough. Thank you. The first note I've written

25 is that break is at 11:00.

1 JUSTICE WILTON-SIEGEL: Thank
2 you for sharing that note with us.

3 BY MS. LAWRENCE:

4 Q. And now I feel held to
5 it, so I will try to get through the next line of
6 questions in the next few minutes.

7 Registrar, could you bring up
8 OD 7, page 180, please. And could you also bring
9 up 181 and could you call out all of 523.

10 So, we're in April of 2017.
11 We were just looking at that information update
12 that Mr. White sent in March. And in April you
13 receive an e-mail from the mayor, copied to
14 Mr. Murray, and it was to you and to Mr. Murray,
15 it was copied to members of council, and the
16 subject line is "Expressway." I'll just give you
17 a minute to read that.

18 Do you recall receiving this
19 e-mail from the mayor at the time?

20 A. I do.

21 Q. He says that -- first, he
22 notes that the lane markers are very faint on dry
23 days and virtually invisible when it is raining,
24 which you will have remembered when you received
25 this e-mail, but you may not remember now, is, at

1 least according to the mayor's testimony, there
2 had been quite a significant rain storm just prior
3 to him sending this e-mail. So, he says:

4 "Virtually invisible when
5 raining. The reflectors
6 that have been installed
7 in some locations do help
8 but many of them are
9 missing or not
10 reflecting."

11 And he compares that to the
12 bright and reflective lane markers on 400-series
13 highways. And he says:

14 "I find myself searching
15 and guessing where the
16 lane markers are. I find
17 it to be an unsafe
18 condition and a hazard
19 for all drivers that
20 should be easily
21 remedied. My vision is
22 very good."

23 And then he ends by saying:

24 "I look forward to your
25 answer and some immediate

1 attention to this safety
2 issue."

3 So, just stopping there, you
4 said you do remember receiving this e-mail?

5 A. I do.

6 Q. Is part of the reason you
7 remember receiving this e-mail because it contains
8 some pretty significant strong language about an
9 unsafe condition from the mayor?

10 A. Yeah, both, one, because
11 it's from a mayor. It wasn't customary for him to
12 e-mail me every day. And two, because of the
13 issue that he was highlighting in it.

14 Q. Were you personally a
15 regular driver on the Red Hill?

16 A. I would say yeah. Yeah.

17 Q. Had you experienced
18 issues with faint line markings?

19 A. I don't recall that, no.

20 Q. Were you aware of, either
21 from your personal driving experience or in your
22 role as general manager, that the City had
23 installed reflective markers or cat's eyes on the
24 Red Hill?

25 A. I have a memory of cat's

1 eyes being there at some point, but it's kind of a
2 vague memory.

3 Q. Okay. Registrar, can you
4 close this down and call out the next two
5 paragraphs together, please.

6 So, you'll see later the same
7 day Councillor Jackson chimes in and agrees that
8 it was horrendous trying to determine where the
9 lane markings were, and then Mr. White responds
10 the next day about the seasonal process of
11 repainting lane markings and the collision
12 countermeasures that had been addressed in 2015,
13 including to install in-lane retroreflective
14 pavement markers. And then he says:

15 "We're going to install
16 or reinstall in-lane
17 pavement markers at the
18 next repaving, the
19 resurfacing that's coming
20 up, and we're also going
21 to paint the markers, as
22 we do every spring."

23 So, with that little summary,
24 did you ask Mr. White to respond to Mayor
25 Eisenberger's and Councillor Jackson's e-mails?

1 A. I don't recall a
2 conversation with Martin, but I likely did.
3 That's likely why he's writing back.

4 Q. Is this the kind of
5 technical information that you would rely on staff
6 for?

7 A. Absolutely.

8 Q. Did you feel satisfied by
9 Mr. White's response, given the pretty strong
10 language that both the mayor and Councillor
11 Jackson used in their e-mails?

12 A. Yeah. I mean, he's
13 clearly aware of the issue. He's using his
14 technical expertise to determine what's the best
15 way to manage it and he's making reference to -- I
16 think he made reference to an upcoming project
17 where a different style of -- unless I
18 misunderstood that -- markings is going to be
19 used.

20 Q. Yes, that's right. The
21 plastics marking, the durable material?

22 A. Yeah.

23 Q. My question really was
24 not about were you satisfied with the way
25 Mr. White responded; more were you comfortable

1 that repainting the lane markings and inlaying the
2 pavement markers at resurfacing, that that would
3 be an appropriate and sufficient response to the
4 concerns raised by the mayor and Councillor
5 Jackson?

6 A. I think that's an example
7 of, kind of, the technical piece of this that I
8 wasn't necessarily qualified to have an opinion
9 on.

10 Q. Did these e-mails from
11 the mayor and Councillor Jackson prompt you to
12 inform yourself in more detail about the current
13 status of the Red Hill and the LINC as it related
14 to safety issues?

15 A. Not that I recall.

16 Q. Okay. Can you pinpoint
17 with respect to these e-mails if you spoke to
18 Mr. Mater about the Red Hill and the LINC and all
19 of the various items that were being brought to
20 council? Was that before or after receiving these
21 e-mails from the mayor or the e-mail from the
22 mayor and the e-mail from Councillor Jackson?

23 A. Yeah. I don't recall if
24 it was before or after.

25 Q. Okay. Do you recall if

1 these e-mails prompted you to reach out to
2 Mr. Mater to get more information?

3 A. I don't recall.

4 Q. Okay. Registrar, you can
5 close those down.

6 A. Maybe just as a followup,
7 like, Martin has responded to the mayor with an
8 action plan. He CC'd John, who is our
9 transportation guy. I wouldn't see that there was
10 anything left for me to do here.

11 Q. Commissioner, as I noted
12 before, we take a break around 11:00. It's now
13 11:05.

14 JUSTICE WILTON-SIEGEL: It's
15 11:05?

16 MS. LAWRENCE: Sorry, it's
17 11:04.

18 JUSTICE WILTON-SIEGEL: That's
19 fine. Let's take our 15-minute break. We'll
20 return at 11:20.

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

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

23 MS. LAWRENCE: Commissioner,
24 may I proceed?

25 JUSTICE WILTON-SIEGEL: Yes,

1 please proceed.

2 MS. LAWRENCE: Thank you.

3 BY MS. LAWRENCE:

4 Q. Mr. McKinnon, we're now
5 going to talk about the meeting that you attended
6 on May 1, 2017.

7 Registrar, can you bring up
8 OD 7, page 178, please. Thank you. And,
9 Registrar, could you also bring up on the
10 right-hand side HAM888. Thank you.

11 So, Mr. McKinnon, this is, on
12 the left-hand side, the overview document that
13 sets out that Mr. Mater circulated a calendar
14 invitation for a meeting titled "The LINC/RHVP
15 Plan" scheduled for May 1 and he attached an
16 agenda, which we'll come to in a moment. On the
17 right-hand side is the actual e-mail calendar
18 invitation that he sent and you'll see that it was
19 sent on March 27, 2017, so a fair bit in advance,
20 and it is sent to you, to Mr. Moore, to
21 Ms. Matthews-Malone, to Mr. White,
22 Mr. Kirkpatrick, who, just stopping there, was
23 Mr. Kirkpatrick in the transportation group?

24 A. Yes.

25 Q. And was he involved in

1 transportation planning in particular?

2 A. Yes. That's my
3 understanding, yes.

4 Q. Thank you. Sorry, it
5 doesn't mean to be a memory test, but thank you
6 for that. And Mr. Worrton, did you know
7 Jason Worrton from traffic engineering and
8 operations?

9 A. I believe I met Jason a
10 couple times, but had not interacted with him very
11 much.

12 Q. Okay. So, you'll see --
13 I just wanted to pull out this document itself
14 because it is sent on March 27. We're going to
15 get into the agenda, which is set out in part on
16 the left-hand side, and there was a presentation
17 about the background to the Red Hill and the LINC
18 and council direction in respect of the parkways.

19 So, with that context, the
20 discussion that you said you had with Mr. Mater
21 about bringing everything on the parkways
22 together, would that have happened before
23 March 27, 2017?

24 A. It's possible. I don't
25 recall.

1 Q. Okay. So, maybe put
2 differently, you don't recall whether this
3 appointment for this calendar invitation was sent
4 in response to that discussion that you had with
5 Mr. Mater?

6 A. It likely was, but I just
7 can't remember the specific date of the
8 conversation.

9 Q. That's fair. Registrar,
10 you can close the right-hand side and if you can
11 bring up 179 as well. Thank you. Could you pull
12 out the agenda items at 518, please. Registrar,
13 sorry, it follows on to the next page.

14 Mr. McKinnon, do you recall
15 directing Mr. Mater to set an appointment for you
16 and the other invitees?

17 A. I don't recall. I mean,
18 you know, I would imagine the conversation like
19 that would have been, well, let's get everybody
20 together, set it up and I would have left it with
21 John, if that's what you mean by directing.

22 Q. In terms of that
23 conversation that you recall, did Mr. Mater
24 express some frustration that there was a number
25 of items that needed to be brought together?

1 A. I don't recall.

2 Q. Okay. Looking at the
3 agenda, do you recall did you set this agenda?

4 A. I don't believe so.

5 Q. The metadata for the
6 agenda document has N. Clark listed as the author.
7 Is that your assistant?

8 A. N. Clark? No.

9 Q. Yes.

10 A. I'm assuming that's Nancy
11 Clark, who was the administrative assistant or
12 coordinator when Gerry was there, but she retired
13 prior to my becoming GM.

14 Q. Okay. Did you discuss
15 with Mr. Mater who should attend a meeting to talk
16 about bringing together all of the items on the
17 LINC and the Red Hill?

18 A. We likely had a
19 conversation and I probably would have relied on
20 John to identify who should be there.

21 Q. Okay. One of the items
22 that's listed on the agenda is friction testing
23 results. Do you recall speaking with Mr. Mater in
24 advance of this meeting in setting the agenda
25 about friction testing results being an item for

1 discussion?

2 A. I don't.

3 Q. When you say you don't,
4 is that you just don't have a recollection either
5 way or you're confident that you didn't have a
6 discussion with Mr. Mater before March 2017 about
7 friction testing results?

8 A. No. I don't recall
9 either way.

10 Q. Okay. Registrar, you can
11 close these two -- actually, no. Before we do,
12 one last question on this.

13 So, when you saw this agenda,
14 did you understand that you would be taken through
15 the history of the Red Hill and the LINC? Was
16 that your expectation?

17 A. To the extent that it
18 would relate to these agenda items, yes.

19 Q. Okay. Registrar, you can
20 close that down.

21 The inquiry has a slide deck
22 presentation that Mr. Worrone e-mailed to
23 Mr. White, Mr. Ferguson and Mr. Mater, so his
24 direct bosses, on May 1, which Mr. Worrone has
25 identified was presented at the May 1 meeting.

1 Registrar, I'm going to pull
2 that out. It is HAM25976. And can you pull out
3 image 3 on the right-hand side. Thank you.

4 Mr. McKinnon, I'm just raising
5 these two as the first two images just to see if
6 the visual might help with refreshing your memory.
7 Do you recall sitting through a presentation where
8 these slides were presented?

9 A. It certainly feels
10 familiar.

11 Q. Okay. So, this is one of
12 quite a large slide deck. You'll see, and again,
13 this is just for context for you to try to refresh
14 your memory, this presentation puts together the
15 motions from council in yellow, reports that were
16 received in blue, third-party information in grey
17 and staff reports in -- pardon me, consultant
18 reports in green.

19 A. I think the green might
20 be council reports.

21 Q. I think you might be
22 right. Thank you. I just confused myself there.
23 The grey reports are the consultant reports.

24 Registrar, could you close
25 this call out and bring up image 4, please. Thank

1 you.

2 So, this continues really just
3 through the chronology. That's what the red dots
4 are. So, it spans over two pages and then it ends
5 with the outstanding business list, which is a
6 slide as well. Do you recall being taken through
7 the slides that relate to various, I'll say,
8 projects over time on the Red Hill and the LINC?

9 A. I don't recall, but I
10 likely was. That certainly appears to be the
11 format of this meeting, so...

12 Q. Okay. Registrar, could
13 you bring up image 9 and image 11, please. Thank
14 you.

15 So, this is an example of the
16 slides that relate back to the overall chronology.
17 They're quite detailed. This one is in respect of
18 the November 2013 public works report and it
19 relates to an underlying consultant report. Do
20 you recall actually getting the presentation that
21 went into the detail of each of these slides, or
22 was it higher level than that?

23 A. I don't recall. I think
24 the guys knew that getting deep into something was
25 probably not a good use of all of our time if they

1 were doing it for my benefit.

2 Q. Okay. And did you
3 understand going into this meeting that this was
4 for your benefit?

5 A. I think I interpreted it
6 for everybody's benefit, but yeah, I certainly was
7 interested to see it because I wanted to just have
8 a general sense of, kind of, what was going on.
9 As you can see from the information here, there
10 was a tremendous amount of outstanding actions
11 that had to happen, so in an effort to be somewhat
12 conversant in it, I would have these types of
13 presentations delivered to me on a somewhat
14 regular basis.

15 Q. So, I raise these two
16 slides because they're an example of the level of
17 detail. Recognizing you might not have gone
18 through each individual line, was this the first
19 time that you had been presented with the history
20 in some detailed way about the various committee
21 and staff projects on the Red Hill and the LINC?

22 A. I can't say for certain,
23 but I believe so.

24 Q. Your evidence earlier was
25 that you would expect any information update or

1 information report to council to be accurate.
2 Would you also expect that staff would use their
3 skills to provide the most accurate information to
4 you?

5 A. I would.

6 Q. Registrar, you can close
7 these down and if you could bring up image 31,
8 please.

9 So, I've just skipped over 30
10 or so slides that deal with -- that have a level
11 of detail like the ones that we did just pull up
12 and I've moved directly to the outstanding
13 business list. This, as I interpret it, was a
14 list of the matters that remained on the
15 outstanding business list and that had to be
16 reported back to council.

17 Do you recall when being
18 presented with this information in the May 1, 2017
19 meeting that the number of outstanding items on
20 the OBL seemed long, seemed numerous?

21 A. Did I believe that the
22 number of outstanding items was numerous?

23 Q. I'll put it differently.
24 Were you left with the impression that the number
25 of outstanding items was significantly longer than

1 for other assets that you had to deal with?

2 A. Yeah. I think that's a
3 fair statement. It was clear to me that this was
4 receiving a lot of attention and a lot of work was
5 either be initiated by staff or direction from
6 council, so yeah, it was a busy file, is the way I
7 would describe it. But that also, you know, would
8 be consistent with the nature of the facility.
9 You know, it's the only highway that the City
10 owns, so a pretty major thoroughfare. So, whether
11 or not that was out of the ordinary for such a
12 facility, I wouldn't know, but it certainly looked
13 like a busy file.

14 Q. Were you left with the
15 impression that the projects initiated on this
16 asset came from council more than coming from
17 staff?

18 A. I don't think I had an
19 opinion whether or not more were from staff or
20 from council, but it was evident to me that
21 council was showing pretty significant interest in
22 it.

23 Q. Okay. Did you have the
24 impression that staff were being reactive rather
25 than proactive?

1 A. No, I don't think I had
2 that impression at the time. No.

3 Q. Okay. You'll recall
4 going back to the agenda item that one of the
5 items was friction testing results. Do you recall
6 conversations or discussions during this meeting
7 about friction testing?

8 A. I don't. I don't have
9 any memory of that.

10 Q. And is that to say you're
11 confident that there was no discussion about that
12 agenda item or you just can't recall either way?

13 A. I can't recall either
14 way.

15 Q. If there was an item on
16 an agenda, would you expect that it would have
17 been dealt with?

18 A. Generally, yes. I mean,
19 sometimes agenda items end up getting booted to
20 the next meeting if you run out of time, but
21 that's the whole point of the agenda, so I would
22 expect that we spoke to it.

23 Q. Okay. In your
24 understanding, who among the attendees at this
25 meeting was responsible for speaking to the

1 item of friction testing results?

2 A. I don't recall.

3 Q. Okay. Thinking more
4 generally about your experience, who did you
5 understand within public works would be
6 responsible for any issues around friction?

7 A. If I didn't know what I
8 know now, I'm not sure I would have had an opinion
9 whether or not it belonged in traffic engineering
10 or traffic safety or engineering. Certainly I
11 know now that Gary was the one that undertook the
12 test, but if I didn't know that, I'm not sure who
13 would have owned it to be honest. I probably
14 would ask the guys, "Who owns that?"

15 Q. Do you remember asking
16 anybody who owns that?

17 A. No. No. I mean, it was
18 one item out of many, many items in that meeting,
19 so...

20 Q. Okay. Well, it's one
21 item that's quite specifically on the agenda. Do
22 you remember having any discussions with Mr. Moore
23 about friction testing, either before or during
24 this meeting?

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

1 Q. Okay. Had anyone in
2 public works told you about trying to obtain
3 friction test results from engineering services,
4 particularly Mr. Moore, and not being able to
5 receive them?

6 A. Not that I recall.

7 Q. What do you remember
8 about the tone of this meeting?

9 A. I don't have any
10 recollections of the tone of the meeting, which
11 would normally lead me to believe that the tone
12 was customary to what I was used to.

13 Q. Okay. Do you recall any
14 pointing fingers or casting of blame as amongst
15 the different divisions who had some
16 responsibility for the Red Hill?

17 A. I don't recall either
18 way.

19 Q. Okay. Registrar, you can
20 close this down and you can go back into OD 7,
21 page 180, please, and if you can pull out 520 to
22 522.

23 So, this is day after and it's
24 an e-mail exchange between you and Mr. Mater. And
25 you say:

1 "John, I appreciate you
2 calling the meeting
3 yesterday and think there
4 is discussion yet to be
5 had on the topic. Let's
6 discuss at our next QF."

7 I'll just go through to the
8 e-mails before I ask my questions. Mr. Mater
9 said:

10 "Thanks for attending. I
11 really wanted you to hear
12 the conversation. I've
13 asked Martin and his team
14 to lead on the
15 preparation of a report
16 that would consider all
17 the motions and likely
18 adjust our approach given
19 the news of the repaving
20 and such."

21 And then you say:

22 "I'm concerned about the
23 optics of the paving
24 nowhere in the forecast
25 and suddenly getting done

1 right away. Anyhow,
2 let's chat some more."

3 So, starting with the
4 reference to paving, did Mr. Moore advise you at
5 the meeting on May 1 of his intention to resurface
6 the Red Hill?

7 A. He may have. I can't
8 recall one way or the other.

9 Q. Okay. Mr. Mater says:
10 "And likely adjust our
11 approach given the news
12 on repaving."

13 Casting your mind back to this
14 period of time, do you interpret that as there
15 needed to be some change from something that you
16 and Mr. Mater had spoke about previously?

17 A. I apologize. I'm not
18 sure I understand your question.

19 Q. That's all right. I can
20 rephrase it.

21 Do you recall what "our
22 approach" was that Mr. Mater was referencing
23 there?

24 A. I'm only going to
25 interpret from reading here. I don't have any

1 memory of this, but if John and his group had a
2 list of actions that they were going to take on
3 the Red Hill and the LINC and then the decision
4 was made to go resurface the Red Hill, some of
5 those actions that John was going to take probably
6 should be put on hold because they could probably
7 sweep that up in the scope of the resurfacing on
8 the Red Hill, so going out and doing it now would
9 probably be a waste of time and money if you're
10 just going to do it next year. And it's always
11 better to do it as part of a large construction
12 project because you get better prices and it's
13 generally, from a structural perspective, it's
14 better to do it then, so that's what I gleaned
15 from that statement.

16 Q. Mr. Mater says:

17 "I've asked Martin and
18 his team to lead on the
19 preparation of a report
20 that will consider all
21 the motions."

22 Was that the game plan coming
23 out of the May 1 meeting?

24 A. That Martin was going to
25 lead it?

1 Q. That Martin and his team
2 were going to prepare a report that will consider
3 all of the motions.

4 A. I don't know if it came
5 out of the meeting, but clearly at some point John
6 has asked Martin to do that, so whether it was at
7 the meeting or just after the meeting or as a
8 result of the meeting, that's what it appears.

9 Q. Okay. One of the agenda
10 items in the meeting, and I can take you back
11 there if you need, is strategy to address, and
12 then it says, "So what?" But I think the strategy
13 to address items is the one that I'm focused on.

14 What do you recall from the
15 May 1 meeting about the discussion with those
16 attendees about how to address the number of items
17 on the OBL?

18 A. I don't recall.

19 Q. So, you say to Mr. Mater
20 in your first e-mail:

21 "I think there is
22 discussion yet to be had
23 on the topic."

24 What does that refer to?

25 A. I don't know what was in

1 my mind at that moment when I wrote the e-mail to
2 John. I clearly had something on my mind that I
3 wanted to circle back with John on, but I don't
4 recall what that was.

5 Q. Okay. Do you think that
6 it related to your follow-up e-mail to Mr. Mater:

7 "I'm concerned about the
8 optics of the paving"?

9 A. It could have. Could
10 have. Yeah.

11 Q. What concerns did you
12 have about the optics of the paving?

13 A. I think it was related to
14 the story I gave you before. Nowhere in the
15 forecast was the paving. It's suddenly getting
16 done right away. That, again, was contrary to the
17 approach that Gary wanted everyone to use when
18 they were bringing forward new capital projects.
19 It was the kind of thing that would catch the
20 attention of some members of council and we would
21 get questions on why are you doing this? Why is
22 this pushing out other projects that were supposed
23 to be done this year?

24 Q. What rationale did
25 Mr. Moore give you for moving forward with the

1 paving at the May 1, 2017 meeting?

2 A. I don't know if it was at
3 the May meeting with Mr. Moore. At some point
4 Gary shared with me that additional money had
5 become available and I probably -- I'm not sure I
6 can convey the story accurately, but I think it
7 had something to do with development charges. And
8 so, when development charge money is being used
9 for growth projects, sometimes levy money has to
10 be put with it because whatever project you're
11 doing might have a benefit to existing.

12 And so, I think what I
13 interpreted at the time is if that development
14 project had been delayed for a year or two, now
15 that benefit to existing money is now available,
16 and I think that's what I interpreted from Gary's
17 this is a happy coincidence that just happened,
18 this money is available, he was looking to program
19 this in, he sees that money there, so he made the
20 decision to put it in.

21 And, you know, in fairness,
22 shave and pave projects don't typically require
23 the length of runway that normal projects to with
24 respect to utility relocation, EAs, studies, and
25 all that kind of thing, so it is the type of

1 project you can do fairly quickly, but, again, it
2 was not necessarily consistent with what Gary
3 would typically advocate for --

4 Q. Okay. The optics here,
5 did they connect in any way to requests for
6 friction tests that had gone unanswered, to your
7 knowledge?

8 A. Not for me. That wasn't
9 something that twiggged for me.

10 Q. Okay. Were you expecting
11 that Mr. Moore would provide friction testing
12 results to Mr. Mater and his team coming out of
13 the May 1 meeting?

14 A. My expectation is for all
15 the divisions to get along and share information,
16 and if they're doing a joint report, that they
17 work together on it and act like a team.

18 Q. Registrar, could you
19 bring up HAM35785 and can you call out
20 Mr. Martin's e-mail to Mr. Soldo at the top.

21 So, this is an e-mail that's
22 from much later in time, from January of 2019, and
23 Mr. Soldo has asked Mr. White if he ever received
24 a copy of the Tradewind report. And Mr. White
25 responds:

1 "I did ask for it several
2 times. I can also state
3 that Gary did admit it
4 was done at one point,
5 but then he discounted
6 the results and minimized
7 the value of the tests.
8 At the meeting with
9 Mr. Mater, Dan, Dave and
10 myself, I recollect him
11 saying something about it
12 being an English test or
13 a standard or something
14 similar and then he
15 declined to share the
16 results with Dan and John
17 Mater. He also said that
18 the asphalt was covered
19 with rubber from tires."

20 So, I'm raising this e-mail,
21 recognizing it doesn't have any sense of the
22 timing of when this meeting happened. At this
23 point, because you just attended a meeting, just
24 looking at the meeting from May 1 in which
25 Mr. White, Mr. Mater, Mr. Ferguson and you and

1 Mr. Moore were there, do you recall the content
2 that Mr. White has in this e-mail about an English
3 test, whether Mr. Moore raised that at the May 1,
4 2017 meeting?

5 A. No. I'm familiar with
6 the idea that it's a UK standard that was used for
7 the testing, but I don't have a precise
8 recollection of that discussion in that meeting.

9 Q. Okay. If you will assume
10 that Mr. White is talking about a meeting from
11 before Mr. McGuire's discovery of the Tradewind
12 report, do you recall having a meeting in which
13 Mr. Moore advised that he had friction tests,
14 declined to share them and said something about it
15 being an English test?

16 A. My earliest recollections
17 of any conversation about the friction testing and
18 the UK tests was after October 1 of 2018, when
19 Gord shared that report with me. It was the
20 subsequent conversations that I had with Gary.
21 That's the earliest recollection I have of having
22 any meaningful conversation about friction testing
23 or this UK standard.

24 Q. Do you recall any meeting
25 at any time, I guess before the January 14, 2019,

1 in which you and Mr. White, Mr. Mater,
2 Mr. Ferguson and Mr. Moore discussed friction
3 testing and it being an English test?

4 A. I don't.

5 Q. Okay. Registrar, you can
6 close this down.

7 A. Ms. Lawrence, if I can
8 just make a comment?

9 Q. Sure.

10 A. This may have just been
11 Martin's perception, but where Martin says that
12 Gary declined to give us the report, I certainly
13 have no memory of requesting the report. And you
14 and I don't know each other, but I can tell you I
15 have a track record of not tolerating nonsense.
16 If I asked for the report, I was getting the
17 report. I wouldn't be satisfied with asking for
18 the report or seeking the report and somebody
19 blowing me off like that. So, I appreciate that
20 might have been Martin's perception at that time.
21 I don't recall that conversation, but I think most
22 people who know me would agree I wouldn't be
23 tolerating that.

24 Q. Thank you. As a followup
25 to that answer, do you recall Mr. White or

1 Mr. Ferguson or Mr. Mater advising you that they
2 had sought to obtain friction testing results and
3 they hadn't received a response? Not necessarily
4 that someone had declined, but just that they
5 hadn't received a response?

6 A. If they did, I don't
7 recall that conversation.

8 Q. Okay. Registrar, you can
9 close this down and can you go to OD 7, page 188,
10 please.

11 Mr. McKinnon, on July 15, 2017
12 a Hamilton Spectator reporter, Nicole O'Reilly, of
13 the Hamilton Spectator published her article,
14 "Highway traffic tragedies: Why are there so many
15 crashes on the Red Hill?" and it included some
16 statements from Mr. Moore. We have an underlying
17 copy of the document, but it's quite small font,
18 so I'm going to rely on this excerpt, but if you
19 would like me to go into the article itself, just
20 let me know.

21 Registrar, can you pull out
22 554, please.

23 This was quite a lengthy
24 article. Did you read it when it was published?

25 A. I don't know if I read

1 it, like, immediately after it was published, but
2 I've definitely seen excerpts from it.

3 Q. Okay. When you say
4 you've seen excerpts, is that in the context of
5 preparation for the inquiry?

6 A. I've definitely seen it
7 in preparation for the inquiry. I feel like I've
8 seen it before then. I'm certain I've read it
9 before then.

10 Q. Okay. So, in other
11 words, at some point during your tenure as general
12 manager you read it?

13 A. Correct.

14 Q. Do you recall whether you
15 read it for interest or as part of your enquiries
16 after the Tradewind report was discovered?

17 A. I recall Gord McGuire
18 sending me articles a few times. Actually, some
19 of the directors, as a normal part of their
20 process, would send me articles or tweets that had
21 been in social media that they were tracking on a
22 particular issue and I'm pretty sure Gord sent me
23 probably more than one article and I think this
24 was one of them, but I can't recall when or when I
25 read it.

1 Q. When you say Mr. McGuire
2 sent you articles a few times, do you mean in the
3 course of just updating you that he sent articles,
4 you know, as he read things and he thought they
5 might be of interest to you, or do you mean in the
6 context of after the discovery of the Tradewind
7 report, he specifically sent you articles?

8 A. It could be one or the
9 other. I think Gord did send me, if he saw
10 something in the media that had something to do
11 with his portfolio that might grow legs, he would
12 send me the link so that I could have a look so
13 that I was prepared if I got cornered in City Hall
14 or something like that. So, I can't recall with
15 precision if that was the case here or if he sent
16 me this in relationship to him finding the
17 friction report.

18 Q. Okay. I actually think
19 he sent it to you in August of 2018 and we'll get
20 there in the chronology in due time.

21 In any event, I hear your
22 evidence was at some point prior to the
23 preparation of preparing for the inquiry you read
24 this report?

25 A. I believe I did, yes.

1 Q. But you're not confident
2 that you actually read it in July of 2017?

3 A. No.

4 Q. Okay. Mr. Moore is
5 attributed as saying, in respect of friction
6 testing, that there is no official report, only an
7 informal chart sent in an e-mail in December 2015.
8 The friction testing was not fulsome and the
9 results were inconclusive.

10 Did anyone in Mr. Mater's
11 group, Mr. Mater, Mr. Ferguson, Mr. White, tell
12 you that they had requested any kind of assessment
13 of friction on the Red Hill from Mr. Moore?

14 A. I don't remember one.
15 They may have, but I don't recall one.

16 Q. Do you recall being aware
17 that Mr. Moore had told the Spectator that there
18 were some kind of results and that those results
19 were inconclusive?

20 A. If I read this article, I
21 would have been aware of that. At the time I read
22 the article, I would have been aware of that. I
23 don't remember ever hearing that from Gary, if
24 that's what you mean.

25 Q. Okay.

1 A. Sorry, I didn't hear that
2 from Gary until after Gord found the Tradewind
3 report and I went and talked to Gary. That's the
4 earliest memory that I have of Gary even speaking
5 about this to me.

6 Q. What did you know at the
7 time, that is, in July of 2017, about collision
8 patterns on the Red Hill?

9 A. I'm not sure I knew about
10 collision patterns on the Red Hill at that time.

11 Q. At the bottom of this
12 excerpt, the last couple of paragraphs, it says:

13 "No one ever releases
14 (that type of)
15 information."

16 That's in reference to the
17 informal chart Mr. Moore has said exists that he's
18 refusing to share with the Spectator. So, he
19 says:

20 "No one ever releases
21 (that type of)
22 information because it's
23 the first thing anybody
24 (would use in a)
25 lawsuit."

1 Did Mr. Moore convey to you
2 any views or opinions about how and when to
3 release information related to the Red Hill to the
4 media before you spoke to him in late 2018?

5 A. Gary shared his views on
6 the release of information with me?

7 Q. Yes.

8 A. I don't recall ever
9 having a conversation with Gary about when and
10 what should be released. You know, my expectation
11 is we have a MFIPPA office, a freedom of
12 information office. There have been a fairly
13 robust effort to start to do disclosure by design
14 at the City. Transparency was very important to
15 council. So, I'm not an expert and I would assume
16 when a request is made for information from the
17 operating divisions, that the directors make sure
18 we're following whatever MFIPPA rules there are
19 and whatever policy documents exist within the
20 City for the disclosure of any kind of document.

21 Q. Do I understand what you
22 just said to be that in the usual course that city
23 staff should tell someone who wants information
24 from them to use the FOI process rather than
25 providing it directly?

1 A. If they have a concern
2 about confidentiality, they should. They
3 should -- or at least consult legal to see whether
4 or not -- because notwithstanding there's a
5 policy, everybody will look at it and interpret it
6 differently and I know freedom of information and
7 requests for information from the City make staff
8 nervous because staff don't want to do the wrong
9 thing. They don't want to release information
10 that may actually be private. And so, and I'm
11 certainly no expert, so my guidance has always
12 been and always would be if it's not obvious to
13 you that this information can be released, get
14 some guidance. Either talk to the MFIPPA office
15 or talk to legal.

16 Q. Mr. Moore is attributed
17 as saying, four paragraphs from the bottom:
18 "All we got was an
19 indication that we should
20 do further work. It was
21 moot when we decided to
22 go ahead with repaving."

23 Did Mr. Moore at any time
24 before late 2018 connect for you any consultant
25 reports that he received with his decision to go

1 ahead with repaving?

2 A. The only recollection
3 that I have of a conversation with Gary, and we
4 may have had it more than once, about his
5 motivation for repaving the Red Hill was with
6 respect to top-down cracking. And I suspect
7 you've heard perpetual pavement, rich bottom layer
8 of asphalt, you know, a thin riding course on top.
9 You want to address the top-down cracking before
10 it starts bottom-up cracking, all of which I just
11 said I learned from Gary. And so, my belief at
12 the time that Gary was advising me of this was
13 that if there was a consultant study motivating
14 him to do it, it was related to the cracking.

15 I don't recall him ever saying
16 to me that he was going to do resurfacing of the
17 Red Hill because of friction and any friction
18 tests that he had done.

19 Q. What was the circumstance
20 in which you were having those conversations with
21 Mr. Moore? In particular, was it in a large
22 group? Was it in a one on one? What do you
23 remember about the context?

24 A. To the best of my memory,
25 I think it might have been during one of our

1 quality times. Gary's office was ten feet from
2 mine. Sometimes he could drop in or talk about
3 something or during his quality time, you know,
4 talk about a higher priority project, so I feel
5 like it was in my office and it was just the two
6 of us, so it was probably during the quality time
7 where he was updating me on his priorities.

8 I think we had more than one
9 conversation about it because I remember
10 appreciating the conversation because I was
11 learning and he talked about the samples that had
12 gone away to Ireland. I think the tests that they
13 were doing was polished stone value, because I
14 thought it was curious that we needed a test done
15 that was only done in Ireland. That seemed odd.
16 But I can't recall, kind of, the broader context
17 of that conversation, but I am pretty confident it
18 was just him and me in my office.

19 Q. Do you recall whether
20 that discussion or discussions included reference
21 to microsurfacing or skidabrading or shot
22 blasting?

23 A. No. I don't recall any
24 of that conversation with Gary.

25 Q. Do you recall ever being

1 informed before late 2018 about pavement
2 rehabilitation strategies that are called
3 microsurfacing, skidabrading or shot blasting or
4 were those terms completely foreign to you?

5 A. They were not completely
6 foreign to me. As an inspector, I was involved in
7 some projects where we did some shot blasting and
8 surface treatment of roadways. I wasn't familiar
9 with those terms in the sense of using that to
10 remediate the surface of an existing road. A
11 couple of the terms were somewhat familiar to me,
12 but I had never heard them in the context of using
13 them to remediate the surface of an existing road.

14 Q. Do you recall having any
15 discussions with Mr. Moore in the context of the
16 Red Hill resurfacing about any kind of
17 remediation, apart from shave and pave?

18 A. I don't. I think the
19 starting point for all of those conversations was
20 we're going to do a shave and pave and here is
21 what it looks like, other than he was
22 investigating that hot in-place technology because
23 he thought that might be a more cost effective way
24 of getting the same result, but even with hot
25 in-place you're removing that surface layer.

1 You're not trying to amend the existing surface in
2 any way.

3 Q. It sounds like Mr. Moore
4 provided you with a fair bit of information over
5 time or a fair bit of information and it sounds,
6 I'm hearing from your evidence, that you believe
7 these conversations happened over a period of
8 time. Is that right?

9 A. I don't remember
10 precisely. I think it was actually over a
11 somewhat short period of time. I believe it was
12 in the fall of 2017 and it was probably around
13 that discussion of, okay, how did this get into
14 the budget and what are you doing? And I think it
15 probably emanated from the discussion about the
16 project getting into the capital budget request on
17 fairly short notice. I suspect that was all tied
18 together, so it probably only occurred over a
19 period of a couple weeks, maybe a month or
20 something like that, but I can't say with
21 certainty.

22 Q. Are you able to provide a
23 clearer sense of what information he provided to
24 you in what order; that is, when he started
25 telling you about shave and pave versus exploring

1 hot in-place or anything else? I'm just trying to
2 understand the sequence of the information he
3 provided to you over time.

4 A. Yeah. I apologize. I
5 don't know in what order he shared that
6 information with me. It's just kind of mushed
7 together.

8 Q. Okay. But in your mind,
9 it's over a period of time of a relatively short
10 period of time, a matter of weeks, within a
11 quarter?

12 A. That's my recollection,
13 yes.

14 Q. One of the reasons I'm
15 interested in if you can recall the sequence is
16 because we do know when some of those samples were
17 sent to Ireland, which is a point you've stuck in
18 your mind that can help us identify when. So, the
19 samples were sent, I don't have the exact date,
20 but I believe in December 2017.

21 Do you recall Mr. Moore
22 advising you about those samples as being part of
23 the first conversation that you had with him on
24 this or where in the sequence that particular bit
25 of information was conveyed to you?

1 A. No, and even to the
2 extent that I don't have precise memory of whether
3 or not he said he had done it or he was going to
4 do it. It was just about this notion of samples
5 and this test and it had to be done in Ireland, so
6 I can't say with any confidence that he had told
7 me that he it done it or he was going to do it.

8 Q. Okay. And do you recall
9 if he explained what the testing of the samples,
10 what information that testing would provide?

11 A. No. I don't think we got
12 too deep into it, to be honest. You know, I
13 have -- I don't have a sense of what the
14 motivation for the specific tests were.

15 Q. In those conversations,
16 did you develop any impression that Mr. Moore had
17 any concerns about the current pavement structure
18 on the Red Hill?

19 A. To the extent that the
20 top-down cracking would have an adverse effect on
21 the life of the roadway. That was what I took
22 away from that conversation. He was concerned
23 about that.

24 Q. No other concerns that he
25 expressed to you, to your recollection?

1 A. He may have, but that was
2 the big one that I took away, because Gary took a
3 fair bit of time, kind of, walking me through the
4 pavement design, the mix design, being the rich
5 bottom lay, the thin riding course. The idea is
6 that you never touch the bottom layer and if you
7 do the interventions properly you just keep
8 resurfacing the top and the whole idea was this
9 was perpetual pavement. So, yeah, that's about
10 it.

11 Q. Okay. Registrar, could
12 you close this and can you go to OD 8, page 23,
13 please. Could you also call up page 24, bring up
14 page 24, and then call out the excerpted text in
15 paragraph 54, please.

16 Mr. McKinnon, this e-mail is
17 from December 2017 and it's from you and it is an
18 e-mail about some changes to the organizational
19 structure that will become effective as of
20 January 1, 2018. And we've talked a little bit
21 about some of these, I think.

22 So, Betty Matthews-Malone was
23 going to take over a new division called roads and
24 traffic. And to the best of your recollection,
25 what was the change under this new division, apart

1 from the name, that you had implemented?

2 A. Yeah. So, traffic
3 operations and traffic engineering had previously
4 not been nested in with Betty's shop. It was over
5 under Geoff Lupton in -- it was called energy
6 fleet and traffic. And policy and programs, a
7 little fuzzier on that one. I think Jennifer
8 DiDomenico might have come over in that one as
9 well. I think Jen might have been under John
10 Mater at the time, if I'm not mistaken.

11 Q. You also note that
12 Mr. Mater was going to be retiring in 2018 and he
13 was going to assume the role of associate general
14 manager until his retirement. So, we already, I
15 think, spoke a little bit about that.

16 On the second call out,
17 someone from transportation planning services
18 section would be moving into traffic operations
19 and engineering. Where were they before, the
20 transportation planning services, if you can
21 recall? I know this is some time ago.

22 A. I thought they were under
23 John Mater somehow, but I'm not entirely sure.
24 So, I think that was Al Kirkpatrick and I thought
25 he was under John at the time.

1 Q. Okay. That's fine. It's
2 not a memory test, especially not on this kind of
3 information.

4 A. Yeah.

5 Q. Jumping down a couple of
6 paragraphs to the last bullet, the leadership role
7 in engineering services would be shared between
8 Mr. Moore and Mr. McGuire and you reference in
9 this e-mail that Mr. Moore was taking on a more
10 active role in providing technical support and
11 resources to the LRT and that he would continue to
12 oversee design, construction, waterfront
13 development, and Mr. McGuire would oversee asset
14 management and his own group, geomatics.

15 What was the impetus to split
16 the director of engineering responsibilities
17 between Mr. Moore and Mr. McGuire?

18 A. Primarily I felt I was
19 observing that the workload on Gary was extreme.
20 You know, and I've seen this before in my
21 experience at the City where you ask people to
22 take on extra work and we're all proud and we're
23 all capable people, so we often say yes, but there
24 was a lot of activity going on with the LRT office
25 and I wanted to lighten Gary's load a little bit

1 out of a sense of empathy for him. My memory is
2 Gary didn't want me to do that, but I decided to
3 do it anyway and that's why I gave the asset
4 management responsibilities to Gord.

5 You know, I think the other
6 part of that motivation was I think Gary had
7 already started to kind of signal that he might
8 retire, so I'm a big fan of acting assignments,
9 and so it was an opportunity for Gord to have an
10 opportunity to get some experience acting with
11 some additional responsibilities. So, those were
12 my two prime motivations.

13 Q. Thank you. In terms of
14 giving Mr. McGuire oversight over the asset
15 management section as compared to one of the other
16 sections, was there any magic to choosing that
17 section over the others?

18 A. No. I think my rationale
19 at the time was that Gord's home position as
20 manager of geomatics, he was at the front end of
21 the process for capital works. Asset management
22 is at the front end and I know that Gary was going
23 to be working a fair bit with the design section
24 already in the LRT office, so under this scenario
25 Gary would still be responsible for design and

1 your production while he was in the LRT office,
2 but the asset management stuff was kind of longer
3 range planning, the condition assessments, that
4 kind of stuff, so I'll characterize it as Gord's
5 home position and asset management are at the
6 front end of the process, where design and
7 construction are at the back end of the process,
8 and Gary was still going to have to fairly
9 intimately linked to them through his efforts on
10 the LRT, so that made sense to me.

11 Q. Thank you. Registrar,
12 you can close these down and if you can go to
13 OD 7, page 182, please. Thank you. And if you
14 can pull up 527. Actually, 526 and 527, please.

15 So, we were just looking at an
16 e-mail that you sent in December 2017. We're
17 jumping a little in time. This is on a new topic.
18 On April of 2017 Charles Brown from audit
19 services, the auditor general, submitted a
20 performance audit report on the use of external
21 consultants and the overview document has
22 excerpted an aspect of that, the audit services
23 findings, identifying a lack of corporate
24 governance over the hiring and management of
25 consultants. I'm going to go into the document

1 itself just to give you a bit more context.

2 Registrar, you can close this
3 down and can you bring up RHV607, please, and can
4 you call out the executive summary, the first two
5 paragraphs.

6 Mr. McKinnon, I'm happy to get
7 into the underlying audit report itself, but just
8 to start, do you recall the circulation of this
9 report from audit services?

10 A. I do remember it.

11 Q. In advance of it being
12 circulated, do you recall public works being
13 involved in this enquiry from audit services?

14 A. I do.

15 Q. Audit services had
16 identified this lack of corporate governance over
17 the hiring and management of consultants and
18 there's a number of different aspects of that lack
19 of corporate governance. Had you identified the
20 lack of corporate governance or any issues with
21 hiring and management of consultants during your
22 tenure as general manager?

23 A. I don't think I found
24 specific evidence of problems per se, but one of
25 the quality management initiatives, and so I

1 mentioned earlier that in the quality management
2 system, one of the elements is continuous
3 improvement, and one of the items that I had
4 assigned to my continuous improvement team was
5 project management.

6 And so, in public works you
7 have essentially nine divisions now that have
8 operational and maintenance responsibilities, but
9 almost every one of them delivers capital,
10 everything from, you know, the largest project I
11 ever signed off on was \$160 million right down to
12 a \$35,000 assignment and everything in between.

13 So, whether you are
14 undertaking, you know, just for an example, if
15 you're undertaking an archeological assessment of
16 a site where you're going to build a park or
17 whether or not you're building a wastewater
18 treatment facility that's going to cost
19 \$150 million, everything in between, there was a
20 full range of projects in between from soup to
21 nuts. So, there were all manner of project
22 management practices and processes on how to
23 manage consultants, whether or not they were doing
24 a study for you, whether or not they were doing a
25 detailed design, conceptual design, whether or not

1 they were doing a master plan for you, and there
2 was not the presence of any kind of coherent
3 guidance from the organization on how to do that.

4 Each of these decisions and
5 sections within decisions had developed their own
6 processes on how to do that, and so it was one of
7 those things that was kind of out there in, kind
8 of, the to-do list and, when Charles came out with
9 this, it made sense for me to give that as a
10 project to my quality management people as a
11 continuous improvement project. They set up a
12 charter and, using sound project management
13 principles, they set up a continuous improvement
14 project and we identified representatives within
15 each of the divisions to work on how can we come
16 up with as much as possible consistent processes,
17 consistent charters, consistent project management
18 tools so that it will never be perfectly
19 consistent all the way across but to try to get
20 out the weaknesses and risks that were identified
21 in this audit.

22 By the way, I'm not sure that
23 came to a conclusion prior to my exodus from the
24 City, but I know that quality management team had
25 put in a heck of a lot of effort on it and there

1 was -- I remember seeing a number of the tools
2 that they were already using and had agreement
3 they would use across the department.

4 Q. Okay. Can you just give
5 us an example of what kind of tools you mean?

6 A. The one that we spent a
7 lot of time talking on was the charters. Many
8 capital projects would get started and get
9 executed without even having the charter. In my
10 view, charter is an essential piece of the
11 information that has to exist at the start of a
12 project because it identifies the scope of work,
13 what's the motivation for doing the work, who are
14 the stakeholders on the project delivery team, who
15 are the alternates, who is the champion so that if
16 there's some kind of a roadblock that is beyond
17 the abilities of the project manager to resolve,
18 who do they go to? Is there a corporate champion?
19 There were certain projects where me as the
20 general manager, I might be identified as the
21 corporate champion. That was the one that I think
22 a lot of time was spent on as far as coming up
23 with something that may not be exactly the same
24 across all of the operating groups but had some
25 very consistent pieces within it.

1 I think one of the other areas
2 that we spent a lot of time on was just the idea
3 of scope changes and change orders. It's not
4 unusual -- a lot of effort, to my earlier comments
5 about Gary saying you need a good length of runway
6 to make sure you have everything in order before
7 you put a contract out on the street. Sometimes
8 you don't have that length of time. Sometimes
9 priorities change and you have to respond quickly.
10 So, it wasn't unusual for we're actually out in
11 the field, we're doing the project and we discover
12 something and now we have to change, we have to
13 add scope. Sometimes that's unavoidable, but I
14 was seeing evidence of why didn't we catch that
15 during the conceptual design? Why didn't we
16 anticipate that? So, trying to tighten that up so
17 that we were more disciplined on identifying the
18 actual scope before we get into the field. Adding
19 scope once you're out in the field, you're not
20 going to get the same value that you would get if
21 all the scope is included and you're getting a
22 competitive bid process.

23 So, I think those are the best
24 two examples that I can think of of the types of
25 things we were trying to get at with the

1 continuous improvement project as it related to
2 project management.

3 Q. Registrar, you can close
4 this down. We're moving to a different topic now.
5 Registrar, can you go into OD 8, page 31, please.
6 Can you call out 75 and 76. Actually, 77 as well,
7 please. Sorry, Registrar. Thank you. That just
8 makes it a little bit bigger.

9 So, focusing your attention on
10 paragraph 76, it says:

11 "The same day -- "

12 You can see in 75 we're
13 talking about December 4:

14 " -- Ms. Cameron -- "

15 Who is Mr. Moore's assistant:

16 " -- Mr. McGuire and
17 Mr. Field all exchanged
18 e-mails."

19 You're not on these e-mails.

20 Mr. Moore is copied. But Ms. Cameron says:

21 "Councillor Conley is
22 requesting an information
23 report on lighting the
24 Red Hill. As he says, he
25 still gets complaints. I

1 spoke to Mike and since
2 Martin is doing a report
3 on January 15 that's
4 responding to five
5 previous motions that
6 includes barriers, he
7 thought a coordinated
8 effort would be
9 required."

10 And Mr. McGuire responds and
11 says:

12 "We're looking at right
13 now because Martin has a
14 report going out.
15 Lighting needs to be in
16 the context of the
17 original EA and
18 restrictions placed on
19 this file. Mike is
20 looking into this
21 currently."

22 So, you can close that down,
23 Registrar.

24 Mr. McKinnon, in terms of your
25 historical knowledge coming into the role as

1 general manager, what did you know about the
2 rationale for the level of lighting on the Red
3 Hill, if anything?

4 A. I didn't have any kind of
5 understanding about it.

6 Q. Did you have any
7 anecdotal knowledge that members of the public
8 viewed or some members of the public viewed the
9 Red Hill to be insufficiently illuminated?

10 A. Prior to becoming GM?

11 Q. Yes.

12 A. No.

13 Q. And what about as you
14 became GM and certainly as you started to develop
15 a little bit more knowledge about the history of
16 the parkways?

17 A. I have memories of
18 conversations where Gary articulated because he
19 built it, he also was very involved in the LINC.
20 And I don't know if I'm remembering this
21 correctly, but what I thought I heard Gary say was
22 that through the environmental assessment process,
23 lighting was identified as an issue. There was a
24 great concern about, kind of, the natural
25 environment and the adverse effects that lighting

1 would have on the natural environment, as well as
2 concerns about residents who live close to the Red
3 Hill. They didn't want to have big lights shining
4 into their bedroom windows. And to the extent
5 that those issues were sore points during the
6 design and the EA and the construction, that what
7 existed there now was, kind of, what he felt
8 should stay the way it is, because if you start
9 changing that, you were going to have all these
10 constituencies challenge you on why are you
11 changing it? You already got an EA that approved
12 it this way. There's all these concerns.

13 So, I'm sure I'm paraphrasing
14 what Gary said to me, but that's, kind of, the
15 essence of what I understood from any
16 conversations that I had with Gary.

17 Q. Was this information
18 conveyed from Mr. Moore over a number of
19 conversations or one conversation?

20 A. I suspect it was more
21 than one, but I don't know if it was one or two or
22 five. I'm not sure.

23 Q. Do you recall the context
24 that led to you and Mr. Moore having those
25 conversations about illumination?

1 A. Not specifically, no.

2 Q. They would have been all
3 before Mr. Moore retired?

4 A. Oh, yeah. I would think
5 so.

6 Q. Just I'm trying to narrow
7 down the timeframe.

8 A. Yeah.

9 Q. And I think you were busy
10 through much of 2016 on your organizational
11 changes and getting up to speed, so is it likely
12 it was sometime in 2017 into 2018 before he
13 retired? Is that the window of time we're looking
14 at?

15 A. I would think so, yeah.

16 Q. Okay. So, this is
17 December 2017 and Councillor Collins is asking for
18 an information amount. Were you aware in December
19 of 2017 that the public works committee had
20 previously approved \$100,000 approximately to do
21 consultant assessment of the original EA and
22 whether illumination was feasible? Did you have
23 that knowledge?

24 A. It sounds familiar, but I
25 don't know how much I knew about it or what I knew

1 about it, but it certainly sounds familiar.

2 Q. Okay. Registrar, could
3 you leave this up but also bring up OD 7,
4 page 108. You'll see in the bottom of this page
5 this is just the reference that I was talking
6 about to that approval. It's from September 16,
7 2016 and Mr. Moore submitted a report on lighting.

8 Registrar, can you go down to
9 page 109 on the right-hand side.

10 And this report commented on
11 the CIMA report.

12 Registrar, can you call out
13 the excerpt that's at the top of 109.

14 Mr. McKinnon, I'm just trying
15 to refresh your memory. So, this is
16 September 2016. You may have had a few things on
17 your plate that month as you're starting, so you
18 may not have seen this at the time. But this is a
19 report that says:

20 "The high-level review
21 was not comprehensive
22 enough and a more fulsome
23 review and business
24 analysis would be
25 required to be

1 comprehensive study and that that matter be
2 referred to the 2017 capital budget process for
3 consideration.

4 So, a few questions on this.
5 Where it says the matter would be referred to the
6 2017 capital budget process for consideration,
7 would you personally have any involvement in
8 moving something from a recommendation like this
9 on to the capital budget spreadsheet for the
10 relevant division?

11 A. No.

12 Q. So, that wouldn't be
13 something that would come to your attention
14 through tasks that fell on your plate?

15 A. No, not at all. That's a
16 \$100,000 item in a department that has a
17 \$1.3 billion operating and capital budget annually
18 and 2,500 staff. This is, at the risk of sounding
19 self important here, this is sausage making as far
20 as I'm concerned.

21 Q. More generally and just
22 using this as an example, the public works
23 committee looks at this, recommends following to
24 council. Would you review the outstanding
25 business list items if any of items made it on to

1 the outstanding business list? In a general
2 sense, was that part of your practice?

3 A. We would reserve some
4 time within our department leadership team meeting
5 to go over the outstanding business list somewhat
6 regularly. You know, my reason for doing that was
7 if I saw something that had been sitting on the
8 list for 18 months, I wanted to be aware of why is
9 this taking so long. But I didn't take a deep
10 interest in any particular thing that was on there
11 unless some emerging issue highlighted it. But my
12 involvement in the review of the outstanding
13 business list was to look at things. If they had
14 been sitting there for months and months and
15 months, I would want to know why. But I think the
16 message was pretty clear to the directors. I'm
17 not managing their outstanding business list item.
18 It's up to them, the directors and the managers,
19 and I think that was very well understood. For
20 the most part, I never had to change directors on
21 that. They were all very good about that.

22 Q. And it wasn't a useful
23 way for you to actually keep up to date on
24 information that was happening? Amongst the other
25 ways you had to do that?

1 A. Correct, yeah. I mean,
2 you know, with the general manager of public
3 works, you can come in and just start reading your
4 e-mail all day long and get lost on it on things
5 that are happening, so every day it was a
6 challenge to decide, okay, what's the best use of
7 my time as the leader of this department and
8 getting into stuff like this was not a good use of
9 my time.

10 Q. Thank you. It's very
11 helpful to have a sense of your practices.

12 Registrar, you can close this
13 down and if you can go back into OD 8, so you can
14 close out the right-hand side and if you can go to
15 OD 8, 84 and 85, please.

16 At the bottom of this page at
17 230, it was in March of 2018 that Mr. Field, who
18 is in lighting first e-mailed Mr. Malone, who is a
19 consultant at CIMA, with information from the
20 staff report on September 19, 2016 saying:

21 "Ahead of meeting that
22 we've just scheduled, I
23 would like to talk about
24 a project with you for
25 lighting."

1 Were you aware in that period
2 of time, between September 2016 and March 2018,
3 that there was this matter of staff undertaking a
4 comprehensive assessment of lighting that was not
5 being acted on?

6 A. No. I don't have any
7 memory on that.

8 Q. Mr. Field has testified
9 that he was really busy with the lighting project,
10 the LED replacement lighting project. Given that
11 context and your evidence that you don't manage
12 outstanding business list items for your
13 directors, is it surprising to you that a matter
14 within public works would sit with, you know, over
15 a year's delay?

16 MS. CONTRACTOR: Sorry to
17 interrupt. I don't think that was a fair summary
18 of what Mr. Field's evidence was, and so if the
19 witness is being asked to respond to that, perhaps
20 we can provide a more accurate and complete
21 summary of what Mr. Field's evidence was as to why
22 he didn't respond to that particular item, and why
23 he waited to respond to that particular OBL item.

24 MS. LAWRENCE: I'm actually
25 happy to ask Mr. McKinnon this without any context

1 at all. Perhaps I'll do that instead.

2 MS. CONTRACTOR: Thank you.

3 BY MS. LAWRENCE:

4 Q. Mr. McKinnon, is it
5 surprising to you that an item would sit on an
6 outstanding business list from September of 2016
7 to March of 2018 without staff commencing the
8 item?

9 A. Is it surprising? I've
10 seen it happen, so I don't think it surprises me.
11 It's certainly not ideal, but it would happen from
12 time to time and it can happen for a number of
13 reasons. It could happen because the staff who
14 were assigned it just don't have enough resources
15 to do it. In a perfect world, they would have
16 escalated that earlier than a year and a half and
17 did something, but there could be a variety of
18 reasons why things linger and it could be
19 associated with council priorities, emerging
20 issues, that kind of thing.

21 So, is it surprising? No. Is
22 it ideal? No, it's not ideal either. But the
23 practical reality of our world there, it would
24 happen from time to time.

25 Q. Thank you. Registrar,

1 could you pull up page 31 of OD 8 and if you can
2 call out 75, please.

3 So, we're in December of 2017
4 and one thing that is on the plates of the traffic
5 engineering and operations staff is the report
6 that Mr. Mater mentioned in May to pull together a
7 number of items that are on the outstanding
8 business list in relation to Red Hill and the
9 LINC. And we'll get into that document in a
10 moment.

11 Do you recall seeing the
12 public works committee report, it's 18008, that
13 dealt with a number of different items? Do you
14 know what I'm talking about?

15 A. That's the report that
16 resulted from the initiative that John took to get
17 everybody together and put their arms around?

18 Q. Yes, that one.

19 A. I have a memory of that
20 report, yes.

21 Q. I'm going to bring it up
22 in a moment, but just to orient you to what I was
23 talking about, on December 4, 2017, Mr. White sent
24 an e-mail to Mr. Collins attaching a draft and the
25 appendices of a report and he said it was subject

1 to changes by the director or general manager. In
2 the usual course, what were your expectations
3 about providing information to councillors in
4 advance of taking -- providing information like a
5 draft report to councillors in advance of taking
6 it to committee?

7 A. So, I think there was a
8 pretty well understood practice that when staff
9 were drafting a report, inevitably there may be
10 one or more councillors who have a deeper interest
11 in it than others because it's ward specific,
12 because it's an issue that they have a particular
13 interest in, so I think, kind of, corresponding
14 and interacting with councillors on draft reports
15 is perfectly fine.

16 Getting to the point where
17 you've, as a manager, have finished a complete
18 draft of a report with an attachment and sending
19 that whole thing as a draft to one councillor, I
20 don't think that's cool. I think that, kind of,
21 has drifted over the line a little bit. I think
22 what that starts to do is create a perception that
23 the councillor could be influencing the actual
24 recommendations in a report. And so, council
25 would be unable to function properly and I think

1 staff would be harmed if they didn't have the
2 opportunity to consult with individual councillors
3 ahead of particular reports, but there's a line
4 there and there's optics that have to be, kind of,
5 respected there.

6 And so, what I think Mr. White
7 did there, you know, had I been aware of it at the
8 time, I probably would have said to him, not when
9 your report is that far down the line, you just
10 don't send it to them, but dialogue with them and
11 get their sense of it. It's helpful for staff to
12 have that dialogue because often it's difficult
13 for staff to anticipate the types of questions or
14 the concerns that councillors might have when
15 we're drafting the report from staff perspective,
16 so I think that interaction is important but I
17 think there is a line there to observe, one, so
18 that you don't experience improper influence on
19 your recommendations, and two, so that you're not
20 perceived as being unduly influenced on whatever
21 professional recommendations you might be making.

22 Q. Thank you. Would you
23 have that same concern if it was a complete final
24 draft, not subject to any changes, and simply
25 provided in advance of the circulation by clerks?

1 A. I think that would bother
2 me, too, because then I wouldn't understand. If
3 it's already finished, what's the point of giving
4 it to one councillor? They're all going to get it
5 in advance of the committee meeting, so I think I
6 would probably need to hear a pretty compelling
7 reason to do that.

8 Q. Perhaps just another
9 nuance on that, and I think perhaps you've
10 addressed it in your evidence already, but just to
11 clarify, would you have any concern with staff
12 reaching out to councillors in advance of a public
13 works committee meeting to understand the
14 councillor's concerns or to ask them if they had
15 any questions that staff could take back and
16 address before the meeting, that kind of
17 information sharing meeting?

18 A. I think that's good
19 practice myself.

20 Q. Thank you. So, we can
21 close this down and if you, Registrar, can go into
22 this document. It's HAM46174.

23 Mr. McKinnon, this was the
24 document that I was asking if you remembered
25 without showing it to you, so here it is now. So,

1 it is for committee, public works committee,
2 January 15, 2018 and it's quite lengthy. It is
3 submitted by Jennifer DiDomenico, who was the
4 acting director of transportation, by happenstance
5 on that day, and it's prepared by Dave Ferguson
6 and Martin White.

7 And just stopping here before
8 we get into the details, to clarify your evidence
9 about your review of reports that go to committee,
10 on a report like this, would you have reviewed
11 this before it was finalized and provided to
12 clerks? It --

13 A. That was my practice and
14 my belief is that I saw this before it went to
15 clerks.

16 Q. Okay. So, we're going to
17 come to this in a moment, but you asked for a
18 walk-through of this report with some of your
19 staff, including Ms. Matthews-Malone and
20 Mr. Ferguson and Mr. White. Why did you want a
21 walk-through of the report in addition to your own
22 review of it?

23 A. So, there were certain
24 reports that would go to council. This one is a
25 fairly meaty report. It has a lot of stuff in it.

1 My learning style was better to hear from people
2 than to read, so sometimes on reports that just
3 had way more information in them or were more
4 prominent, I would ask for staff to come and just
5 spend a half an hour or an hour or an hour and a
6 half to walk-through me to help me understand
7 beyond the words that I've read what are political
8 sensitivities, what's the history on this kind of
9 stuff so I could hear from staff. Often any kind
10 of speaking points that I might have to articulate
11 in a council meeting would be me using whatever I
12 heard in these face-to-face meetings as opposed to
13 what's written in the report. So, it was a
14 practice of mine to do that periodically on bigger
15 reports.

16 Q. Okay. On this one, it is
17 meaty. It's 11 pages long and it contain a number
18 of different recommendations, including -- and,
19 Registrar, if you can pull out the recommendations
20 on the left-hand side -- continuing to implement
21 short and medium-term countermeasures, and then
22 undertaking a detailed collision analysis on the
23 LINC and the Red Hill, that the Hamilton Police be
24 requested to undertake regular speed and
25 aggressive driving, doing an annual traffic count,

1 that median barriers be installed on the LINC and
2 the Red Hill in coordination with any future
3 widening, and that public works report back in
4 2020 on an update of the overall operating
5 conditions on the LINC and the Red Hill -- and,
6 Registrar, you can close that down -- with a focus
7 on activities, including discussions with the MTO.
8 And then removing some elements off the
9 outstanding business list.

10 One of the aspects of this
11 report, which you and I have touched on before, is
12 median barriers. I can pull that one out again if
13 you would like, but the recommendation is that
14 median barriers be installed in coordination with
15 any future widening of the facilities, and the
16 report goes into some detail about the movement
17 that the City had made to attempt to negotiate or
18 at least start to consider widening of the LINC
19 and the Red Hill.

20 By January 2018, did you have
21 an impression about whether widening of the
22 parkways was a circumstance that was actually
23 likely to happen?

24 A. Did I believe that the
25 widening of the expressway was an event that was

1 likely to happen?

2 Q. Yeah. Did you have a
3 sense whether there was a real possibility that
4 that was going to actually be achieved?

5 A. Yeah. I think in a
6 general sense I thought it was going to happen. I
7 didn't think it was going to happen soon. It was
8 a tremendous amount of work that has to happen.
9 It's a complicated corridor not from the natural
10 environment or the infrastructure perspective.
11 There is indigenous issues there. There will be
12 environmental constituency who might not want to
13 see -- there would be a lot at play there as far
14 as doing the expansion, but I think with the
15 growth of Hamilton it's inevitable at some point
16 something is going to have to change on both of
17 those features to allow more capacity on it.

18 There are restrictions on both
19 ends at the 403 and the QEW again which would take
20 a significant period of time. I don't think I was
21 convinced that anything was going to happen with
22 respect to widening in my career and possibly my
23 lifetime, but I think eventually it's going to
24 happen.

25 Q. Okay. Registrar, could

1 you pull up images 3 and 4, and if you could pull
2 up the right-hand side, the five paragraphs
3 starting with, "Both these motions." Yes. Thank
4 you.

5 So, this report is dealing
6 with a number of different motions. This one is
7 about the police. And just looking at the
8 underlying information and what you understood, in
9 this section of the report, there is a reference
10 in the second paragraph that we have up here to
11 prior consultant reports identifying an over
12 representation of incidents that occur on the LINC
13 in dry road conditions and on the Red Hill in wet
14 road conditions.

15 There's also:

16 "As a result of a number
17 of crossover fatal
18 collisions, there had
19 been a public debate on
20 the need to install
21 median barriers along
22 both the LINC and the Red
23 Hill."

24 So, you said earlier that you
25 didn't have a sense of a collision circumstances

1 on the LINC and the Red Hill. Was reading this
2 report the first time that you had this level of
3 detail about the types of collisions that were
4 occurring on the LINC and the Red Hill?

5 A. When was this?

6 Q. This is -- by the time
7 you're reading it, it's either late December or
8 early January 2018 and it's in advance of the
9 public works committee meeting that's going to
10 proceed on January 15, 2018.

11 A. Forgive me for being slow
12 here. Can you ask me question again?

13 Q. Of course. I'm directing
14 you to the second paragraph in the excerpt here
15 and it says the reports, the past consultant
16 reports, identified there was an
17 overrepresentation of incidents that occur on the
18 LINC in dry road conditions and on the Red Hill in
19 wet road conditions. And then it goes on to talk
20 about the public debate around median barriers.

21 So, on that, the LINC has an
22 overrepresentation of dry road condition -- sorry,
23 incidents during dry road conditions and the Red
24 Hill has the same in wet road conditions, was
25 reading this report the first time that you

1 received information about the collision patterns
2 on these parkways?

3 A. I don't recall when I
4 started to receive different pieces of
5 information. You know, I guess my perspective in
6 becoming the general manager and obviously
7 starting to learn more about the transportation
8 group, it started to be obvious to me that in
9 every ward of the City there was concerns about
10 traffic safety and it seemed every quarter there
11 was an intersection where maybe somebody had died
12 and now that was the latest call for changes
13 somewhere. And so, I'm not sure at this point I
14 distinguished between fatal collisions that might
15 be happening on the LINC versus the Red Hill or
16 the LINC and the Red Hill versus anywhere else in
17 the City because whenever one happened, there was
18 always considerable attention to it both from the
19 media and from council. So, I don't recall having
20 involvement where I read this and I, kind of, came
21 to the conclusion that there's something different
22 about the Red Hill and the LINC.

23 Q. Thank you. And I'll try
24 to be more specific with my question because I
25 think the reference to the fatal collisions in

1 that last part of that paragraph might be
2 distracting.

3 My question was about the
4 first sentence with the LINC has collisions in dry
5 road conditions and the Red Hill has an
6 overrepresentation of collisions in wet road
7 conditions. Did that collision pattern, did you
8 know that before reading this report?

9 A. I don't believe so. And,
10 you know, even reading it now, I suspect I'm
11 reacted the same way I would is reacted then, is
12 to say clearly there's something unique about both
13 of these roadways as somebody is not a
14 transportation safety practitioner. One is
15 straight as a pin and flat. The other one is
16 curvy and it's on a pretty significant grade. You
17 know, so that's got to have something to do with
18 it, but I probably didn't ponder it for too long
19 because I know my team is looking after it.

20 Q. Okay. You can close this
21 down, Registrar, and can you go into OD 8, page 42
22 and 43.

23 So, Mr. McKinnon, the reason I
24 was asking about what you understood about
25 collision patterns is because you do have that

1 meeting with your team before the public works
2 committee on January 15.

3 And, Registrar, if you can
4 pull out paragraph 114 at the bottom. Actually,
5 you don't have to pull that out. I'll summarize
6 it.

7 So, on January 9, the day
8 after the scheduled meeting with you, Mr. Ferguson
9 wrote to individuals at CIMA, a consultant that he
10 had worked with in the past, and he wrote -- maybe
11 this we can call out at the top of 43:

12 "Wondering if you can
13 assist me. On Monday,
14 we're heading back to
15 committee. During
16 management discussions
17 yesterday, the GM asked
18 how these numbers compare
19 to other locations. Are
20 we on par with others?
21 And suggest they have
22 asked for a possible
23 comparison to 406,
24 Highway 7/8, DVP."

25 So, I think that the reference

1 to GM here is to you. Do you remember being
2 interested in how the collision patterns on the
3 LINC and the Red Hill compared to other locations
4 outside of Hamilton?

5 A. I do.

6 Q. Why were you interested
7 in having that information, that comparator
8 information?

9 A. My interest was that I
10 was concerned that when council reads these data
11 points with no reference, they would be frustrated
12 by that because -- and to my earlier comments
13 about readability of reports, as I read this, I
14 just, you know, we kind of blurt out some data
15 points. Nobody is going to understand them. They
16 have no way to reference them or compare them to
17 something else, and so I was a little bit
18 frustrated but I said to the guys, how is council
19 going to take this information? They're not
20 experts, so is there some way we can create
21 context for them so that they can understand is
22 this consistent with what happens in other
23 communities, on other highways, that kind of
24 thing? And so, that was the motivation for me
25 asking for this, was so that the report would be

1 more meaningful for council.

2 Q. I see. Registrar, can
3 you close that call out and on one of the pages
4 can you bring up HAM46147 again and can you go to
5 image 9.

6 So, Mr. McKinnon, just so that
7 I'm clear about I think what your evidence is
8 referring to, is it this -- I think you said that
9 you found a chart would be frustrating or the data
10 points would be frustrating. Is this the
11 collision history chart, is that what you're
12 referring to, that you wanted to have that plus
13 something else that you could tell council, show
14 the kinds of collisions and the total collisions
15 and say, here are some comparators?

16 A. Yeah. So, these were
17 obviously representative of the Red Hill and the
18 LINC, but they just don't seem to have any context
19 around them. They're a bunch of interesting
20 numbers. Hard to distinguish any trending there.
21 Some of the columns might have some trending, but
22 when I looked at this, I'm like, okay, so what?
23 Can you just give me a sense? Are those numbers
24 way better than other facilities or are they way
25 worse or are they similar? That was the

1 motivation, to help council understand.

2 Q. Thank you. Commissioner,
3 I'm moving into another topic that I think will
4 take longer than four minutes and we're four
5 minutes to 1:00. I would suggest that we break
6 just a little early for lunch and then come back.

7 JUSTICE WILTON-SIEGEL: That's
8 fine. Let's break and we'll return as usual at
9 2:15.

10 --- Luncheon recess taken at 12:56 p.m.

11 --- Upon resuming at 2:16 p.m.

12 BY MS. LAWRENCE:

13 Q. Good afternoon,
14 Mr. McKinnon.

15 Commissioner, may I proceed?

16 JUSTICE WILTON-SIEGEL: Please
17 do.

18 BY MS. LAWRENCE:

19 Q. Thank you. Registrar,
20 could you call up OD 8, page 119, please. I'm
21 sorry, it's paragraph 119, page 44.

22 THE REGISTRAR: Sorry,
23 counsel. What was the page number?

24 MS. LAWRENCE: OD 8, page 44.

25 THE REGISTRAR: Thank you.

1 BY MS. LAWRENCE:

2 Q. So, Mr. McKinnon, before
3 the break we were talking about your interest in
4 getting comparator collision experience from
5 400-series highways or other relevant highways for
6 the January 15, 2018 public works committee
7 meeting.

8 Registrar, could you call out
9 118, 119 and 120, please.

10 Mr. Ferguson contacted CIMA
11 about the status of the memorandum that he had
12 sought from them on January 12, so we're getting
13 very close to the public works committee meeting
14 at this point, and Mr. Ferguson received it on
15 that day and forwarded it -- pardon me, Mr. White
16 forwarded it to Mr. Mater, to Ms. Matthews-Malone,
17 to Mr. Moore and to Mr. McKinnon.

18 So, just stopping there for a
19 moment, assessing that those who were copied on
20 this e-mail, do you recall Mr. Moore being
21 involved in discussions you had to the lead-up to
22 the January 15, 2018 public works committee
23 meeting?

24 A. I don't recall one way or
25 the other if he was.

1 Q. Okay. And Mr. Mater,
2 we're now in January of 2018, technically he has
3 moved out of transportation and into the associate
4 general manager role. Do you recall from this
5 point forward how involved Mr. Mater was in issues
6 relating to the Red Hill and the LINC?

7 A. Not in detail. I mean,
8 he remained, kind of, my guy representing my
9 office on it because of his history and his
10 involvement in it, but I couldn't tell you how
11 involved he remained.

12 Q. Okay. As we move forward
13 over the next six or seven months, Mr. Soldo joins
14 the City and it seems you start to rely on
15 Mr. Ferguson and Mr. Soldo going forward. That
16 seems to be what the documents indicate in terms
17 of who you're dealing with. Does that reflect
18 your memory over the course of, say, 2018?

19 A. Yeah. Betty, who was the
20 head of the division, left in, I want to say,
21 June, and Edward was the successful candidate
22 through the recruitment process and I believe he
23 started in July.

24 Q. And so, when you say
25 Mr. Mater was your guy on this, the inquiry, the

1 documents the inquiry has seen suggest that he
2 really starts to take a back seat and doesn't
3 start to be as involved in these meetings. So,
4 when you say he's still your guy, what do you mean
5 by that?

6 A. So, in January when we
7 did the restructuring, I believe it was in January
8 and those kind of operational responsibilities
9 went to other directors, I would have been relying
10 on John to, kind of, be the eyes and ears on this
11 particular file because of his history; but I do
12 recall that as time went on we knew that John was
13 going to be leaving, so we were slowly diminishing
14 his role in a variety of things. And so, you
15 know, I can't tell you when he stopped attending
16 these meetings, but at the start of the year he
17 was my guy and then over a period of time, kind
18 of, backed away from it and once Edward arrived,
19 it was -- so, when I say my guy, he would have
20 been my eyes and ears on the file. He would have
21 had a diminishing role in actually directing
22 things because it would have fell to Betty and
23 Gary at the time.

24 Q. Thank you. And so, we
25 were looking at paragraph 119. Mr. White

1 forwarded the memorandum to the group listed here,
2 including you, and attached an analysis conducted
3 by CIMA to address the questions that Mr. Ferguson
4 attributed to you from the meeting the week
5 before.

6 And that memo, there's a
7 summary of it at 120, it looks at the period of
8 time between 2009 and 2013 on Highway 406 in a
9 particular segment, Highway 7 and 8 in a
10 particular segment and Highway 8 in a particular
11 segment.

12 Registrar, could you call that
13 up. It's HAM1095, please.

14 Mr. McKinnon, do you recall
15 reviewing this memorandum when you received it?

16 A. It doesn't look familiar
17 to me, so I may have reviewed it at the time, but
18 I'm not really recognizing it.

19 Q. Okay. It does have a
20 formula and it's fairly detailed. Do you recall
21 your staff raising its substance with you, in
22 particular, the collision rate comparison between
23 those comparator highways and the LINC and the Red
24 Hill?

25 A. Not specifically.

1 Q. No, okay. Do you recall
2 learning that the collision memo, this one from
3 2018, showed that the collisions on the LINC and
4 the Red Hill were lower when compared to the three
5 provincial roadways?

6 A. That does sound familiar.

7 Q. Did that provide you with
8 information you thought would be useful to the
9 councillors at the public works committee meeting?

10 A. Whether it was lower or
11 higher, my focus was -- I mean, that was a happy
12 coincidence, but my focus was to give the
13 councillors a better ability to have some context,
14 so certainly it looked like it was good news, but
15 I was more focused on, okay, take that
16 information, embed it into the council report so
17 the councillors can understand what the numbers
18 mean.

19 Q. Fair enough, so useful
20 either way. Just extra data is useful. But you
21 understood that this actually showed that the LINC
22 and the Red Hill had favourable conditions in
23 terms of collision rates?

24 A. That's what it looked
25 like, yeah.

1 Q. When you say you were
2 trying to get it embedded into the material that
3 was going to go to the councillors, this is just
4 the evening of January 12 and the public works
5 committee is on January 15. Did you think that
6 there was enough time to actually embed this
7 information into the memo or did you intend to
8 provide that context, that data, verbally?

9 A. Yeah, so maybe bad choice
10 of words, but that obviously would have been too
11 close to the committee meeting to physically
12 change the report. I wouldn't have done anything
13 with this. I wanted to think our staff would be
14 able to speak to the issues because I was fairly
15 certain council would be asking questions about
16 what do these numbers mean. By virtue of this,
17 Dave and Martin, Betty, or whoever chose to answer
18 the question, could go through the data and
19 explain it to them. But in the absence of it,
20 they wouldn't have been able to provide context to
21 council.

22 Q. So, it would be a helpful
23 thing to have in their back pocket, as it were,
24 and that they would raise it with councillors
25 orally if nothing else. Is that what your

1 expectation was?

2 A. Yeah. I can't remember
3 specifically. Sometimes you can send out an
4 e-mail ahead of time with the information so that
5 the councillors have it a day ahead of time, but
6 that's not necessarily -- the optics of that
7 aren't great, sending e-mails that are relative to
8 a report that's coming up. I suspect this was
9 going to be back pocket stuff so that if there
10 were questions, they would be able to help
11 councillors walk through it.

12 Q. Thank you. Registrar,
13 you can close this down and you can go back into
14 OD 8 and if you can go to page 45, please, and if
15 you can pull up 46 as well, please.

16 Mr. McKinnon, looking at the
17 bottom of 45 at paragraph 124, Mr. Ferguson and
18 Mr. Izadpanah from CIMA have another e-mail
19 exchange where CIMA provides additional comments
20 for the collision memo and, in particular,
21 provides rates of what they, in this chart, call
22 serious collisions, and in the e-mail are actually
23 the proportion of fatal and injury collisions,
24 severe collisions, in the total number of
25 collision for the LINC and the Red Hill and for

1 comparison highways.

2 Just stopping there, do you
3 recall reviewing or receiving a chart that looked
4 like the chart that is at the bottom of the
5 page 45?

6 A. I don't. And if I just
7 might add, this is a great example of why I don't
8 get involved in the details. Things changing like
9 this, you know, clearly this puzzle was being
10 assembled on the fly here with this latest request
11 that I had made and I didn't have time to follow
12 the bouncing ball on stuff like this. That's why
13 it was always left up to the divisions to deal
14 with. So, I may have seen this, I may not have
15 seen this, I would never have been able to speak
16 to it, so I'm not sure if I saw this or not.

17 Q. Fair enough. So, I do
18 think this eventually comes to you, so I'm going
19 to walk you through these weeds in a little bit of
20 detail.

21 So, at the top of Frictional
22 Characteristics, Mr. Izadpanah says:

23 "The table shows that
24 more than half of
25 collisions on the LINC

1 and almost half of
2 collisions on the Red
3 Hill are either fatal or
4 injury collisions. These
5 percentages are
6 significantly more than
7 the highway sections in
8 the comparison group."

9 So, recognizing you may not
10 have had the chart, did you learn from your staff
11 that these statistics that more than half or
12 nearly half of collisions on these parkways were
13 either fatal or injury collisions? You can walk
14 through the next several e-mails where your staff
15 are saying we should tell Mr. McKinnon this.

16 A. So, if your question is
17 do I recall this?

18 Q. Yeah.

19 A. No, I don't.

20 Q. Okay. So, you'll see
21 from the next few e-mails that Mr. McKinnon,
22 Mr. White and Ms. Matthews-Malone do talk about
23 this, why these parkways are less forgiving, they
24 say, and Ms. Matthews-Malone responds and says
25 that they should notify you prior to the PWC

1 meeting later that day. So, this is at 8:15 a.m.
2 on January 15, 2018.

3 Registrar, can you go to the
4 next page.

5 So, the meeting is the next
6 day. So, pardon me, I forgot. 129 at the top,
7 Mr. White forwarded this e-mail to you and said:

8 "Here is CIMA added some
9 additional data."

10 Registrar, could you pull that
11 out so that Mr. McKinnon can see it and, frankly,
12 so I can. At this point in the day, our eyes all
13 get tired.

14 So, Mr. White e-mails you and
15 says:

16 "Here is some additional
17 data on injury and
18 fatality rates. See
19 below. In this regard,
20 we have a higher rate
21 than the comparative
22 data. This is likely
23 caused by speeding and
24 distracted driving."

25 So, recognizing you may not

1 remember now, I just wanted to provide that to you
2 to show where and how your staff provided this
3 information to you. Does this refresh your memory
4 about receiving those statistics about
5 injury/fatal collisions?

6 A. No.

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

9 Did you attend the PWC meeting
10 that was on January 15 as set out in
11 paragraph 130?

12 A. I don't know if there is
13 an attendance sheet there. Clerks often take
14 attendance. I suspect I was there, but I don't
15 have a memory of it.

16 Q. You don't have any
17 recollection of presenting. If you were there, it
18 was to support your staff. Is that right?

19 A. I attended every PWC
20 committee where could because I was the GM of PW,
21 so...

22 Q. Was that your personal
23 practice or is that actually a requirement for the
24 general manager?

25 A. I'm not sure I would use

1 the word "requirement," but I think it's certainly
2 the expectation that the department head attends
3 the committee meeting that is for their
4 department. I would have to have a pretty good
5 excuse not to be there.

6 Q. There were a number of
7 things on the agenda on this day. Do you recall
8 whether the Red Hill/LINC report that we went
9 through before lunch that was submitted on this
10 day was well received by council?

11 A. I don't remember the
12 meeting, so I don't remember any particular --
13 particulars from the meeting itself.

14 Q. Registrar, can you go to
15 the next page and call up 132, please.

16 So, you sent a calendar invite
17 to a number of your more senior staff,
18 Ms. Matthews-Malone, Mr. White, Mr. Ferguson,
19 Mr. Mater in traffic, and Mr. Moore, Mr. McGuire
20 in engineering services and to Grant McGuire. Do
21 you know why you copied Grant McGuire? Do you
22 know Grant McGuire?

23 A. I assume that was a typo
24 and that was supposed to mean Gord, but no, I
25 don't know any Grant McGuire that I can think of.

1 Q. I assume, too, but I just
2 wanted to check.

3 A. Yeah.

4 Q. This calendar invite was
5 for a meeting for January 31 and the subject line
6 was "Follow up on the Red Hill Report - PW
7 Committee, January 15." Did you have a practice
8 to have debriefs after public works committee
9 meetings?

10 A. I would say it was not a
11 regular thing, but if something happened during
12 the meeting that I felt we needed to debrief on,
13 then I would call for a debrief.

14 Q. Okay. And in this one,
15 you have already gathered up a group of people for
16 the pre-brief, if you will, the meeting before.
17 Do you recall why you wanted to have a follow-up
18 meeting with this group of staff after the public
19 works committee meeting?

20 A. I don't.

21 Q. Okay. I can tell you
22 that the recommendations in the report were
23 accepted by and large by the public works
24 committee. Does that assist you either way?

25 A. No.

1 Q. Okay. Registrar, could
2 you close that out and could you go to page 52,
3 please, and can you pull out 145.

4 So, we don't have any notes
5 from the January 31 meeting, the calendar
6 invitation that we were just looking at, but we do
7 have this e-mail from Mr. Ferguson who says on
8 February 1:

9 "At our management
10 meeting yesterday, the
11 general manager asked the
12 question of why are
13 motorists more likely to
14 be injured travelling on
15 our roadways when
16 involved in a collision
17 compared to others and
18 why is it so close to
19 50 percent?"

20 So, it's my interpretation is
21 that that's a reference to those statistics that
22 CIMA provided just before the public works
23 committee meeting and I think the reference here
24 is to you as general manager. Do you recall
25 raising questions about that statistic or those

1 statistics at the meeting on January 31?

2 A. I don't.

3 Q. I'm sorry, I can see that
4 you were recorded -- I think you said, "I don't
5 know." I didn't hear you.

6 A. I'm sorry. No, I don't
7 recall that.

8 Q. Is it that you don't
9 recall the meeting on January 31 at all or you
10 just don't remember having this part of the
11 discussion?

12 A. Both.

13 Q. Okay. Knowing the way
14 that you interact with your staff and the way that
15 you practice, would this statistic be something
16 that you would want to have the staff dig into?

17 A. Absolutely. I likely
18 would have wanted to hear their reaction of why is
19 that and then hear what their plan is for
20 evaluating it.

21 Q. Registrar, could you
22 close this down and go to page 54, 148, and if you
23 can pull that. That's perfect. Thank you,
24 Registrar.

25 This is just a little bit more

1 context. Mr. Ferguson and CIMA have a bit of a
2 back and forth as a followup to the question of
3 why is that stat at 50 percent, and Mr. Ferguson
4 says:

5 "Our GM -- "
6 Which I think, again, is
7 reference to you:
8 " -- and the director of
9 Eng, Gary Moore,
10 questioned this
11 statistic. I'm not sure
12 if you've met Gary, but
13 he emphatically
14 questioned that. Our GM
15 was pretty supportive,
16 but when Gary went off in
17 the meeting, he raised
18 the question."

19 So, on that, does that refresh
20 your memory about the meeting on January 31 at
21 all?

22 A. Not really, no.

23 Q. Do you recall at any
24 meeting dealing with the RHVP related tasks after
25 the January 2018 meeting that Mr. Moore engaged in

1 any conduct that could be described as being
2 emphatic?

3 A. I don't have a specific
4 memory of this meeting, so I guess the answer is
5 no.

6 Q. It doesn't have to be
7 this meeting. I'm just asking about a general
8 recollection of meetings with Mr. Moore in this
9 period of time. Does the description that
10 Mr. Ferguson has provided to you, does that twig
11 any memory for you?

12 A. About Gary in any
13 meeting?

14 Q. About Gary in any meeting
15 around this period of time related to the Red
16 Hill, related to an issue around collision.

17 A. I can't -- well, I don't
18 have a specific memory of the meetings around the
19 Red Hill. Gary, you know, could be dismissive
20 sometimes, so I don't know. I think you would
21 have to ask Mr. Ferguson what he meant by that,
22 but I don't have any recollection of the meetings
23 around the Red Hill at this point.

24 Q. In respect of Mr. Moore,
25 did you have the impression from him that he was

1 reluctant to accept any suggestion that the Red
2 Hill needed improvements?

3 A. Considering I don't
4 remember the meeting, I don't remember that kind
5 of a discussion, so I -- no.

6 Q. I was actually speaking
7 more generally. In your discussions with
8 Mr. Moore, let's say through 2017 and into 2018,
9 before he retired, do you remember having any
10 discussions with him in which you were left with
11 the impression that he thought the road was just
12 fine as is and didn't need to be improved?

13 A. To have a precise memory
14 about a specific conversation, no, I don't.

15 Q. I was actually trying to
16 come up with, sort of, a general comment rather
17 than a specific memory, but were you left with the
18 impression that Mr. Moore, from any conversation
19 you had with him in that period of time, that he
20 thought the road was fine or well designed and
21 that the attempts for these safety improvements
22 were unnecessary?

23 MS. CONTRACTOR: I'm sorry. I
24 don't think I understand the question. The
25 witness has stated that he does not have a

1 recollection of any specific discussion where he
2 was left with that impression, so I don't know how
3 he can have an impression without a recollection
4 of a specific event.

5 JUSTICE WILTON-SIEGEL: I
6 don't think that's quite right. I think there's
7 been some misunderstanding of what the question is
8 in terms of how specific it is intended to be to a
9 particular meeting, so I'm going to allow the
10 question to be put again by Ms. Lawrence.

11 MS. LAWRENCE: Thank you.

12 BY MS. LAWRENCE:

13 Q. My question is: In 2017
14 and 2018, did you have any discussions with
15 Mr. Moore in which you were left with the
16 impression that he thought the Red Hill was well
17 designed and that it didn't need any safety
18 improvements?

19 A. I don't recall any
20 conversations like that. I don't recall having
21 the impression that he had conveyed that to me
22 about the Red Hill.

23 Q. Do you recall, and during
24 that same period of time, discussions with
25 Mr. Moore in which he left you with the impression

1 that any concerns with the Red Hill were
2 attributable to driver conduct?

3 A. I recall comments from
4 Gary, and I can't tell you when, but Gary had
5 identified driver behaviour I think on a number of
6 occasions as far as being the cause for the
7 accidents or a portion of the accidents on the Red
8 Hill, and I think that was supported by some of
9 the things that I had read in the media. Some of
10 the data points around people speeding and that
11 kind of thing, so that's familiar to me. I don't
12 have any memory of Gary, you know, making comments
13 otherwise.

14 Q. Thank you. Going back to
15 this back and forth about that 50 percent
16 number being fatalities and serious injuries, do
17 you recall later coming to learn that that
18 statistic was not related to fatalities and
19 serious injuries, but rather related to fatalities
20 and any injury at all?

21 A. That sounds familiar and,
22 you know, again another example of why this was
23 something I couldn't spend time on because it kept
24 moving around and that's why I tried to stay out
25 of the weeds on stuff like this. That is my

1 recollection, that somehow the data, the second
2 set of data, there was a question mark around it
3 because of the way the reporting was being done.
4 So, that sounds familiar and would reinforce why I
5 didn't get involved in details like this, because
6 I would not have time to keep following the
7 bouncing ball on issues like this, which would be
8 all across public works.

9 Q. Registrar, you can close
10 this down and if you can go to page 62 of OD 8,
11 and if you can call out the bottom half of this
12 page, please.

13 So, these are e-mails that you
14 are not copied on between individuals that I don't
15 think you had any connection to, at least in
16 January of 2018. It's a third-party consultant
17 speaking to another third-party consultant,
18 Dr. Uzarowski, and they exchanged a link to an
19 article in the Hamilton Spectator dated
20 January 15, 2018. So, I'm really just showing you
21 this for a little bit of context because I'm not
22 going to go into the article itself, but rather
23 just an excerpt. So, it's January 15 and it's
24 called "Scratching the surface for answers on Red
25 Hill paving."

1 Registrar, could you close
2 that and go to the next page, please.

3 The article covers some of the
4 same ground as the article we were looking at
5 earlier, the July 2017 article. It references
6 some comments from Mr. Moore, some references to
7 some families who had lost their children and were
8 suggesting that median barriers would be
9 appropriate. Would it be helpful if I try to blow
10 it up? I won't blow it up all that much.

11 But, Registrar, could you pop
12 out just the font in 169 just so that nobody needs
13 to be so close to the screen.

14 Is that at all better?

15 A. Yeah. Thank you.

16 Q. So, it deals with median
17 barrier issues and it also starts off by
18 referencing that the City of Hamilton had hired a
19 consultant to test the asphalt on the Red Hill,
20 results that were expected to show once and for
21 all there is a problem with the material.

22 So, just stopping there, do
23 you recall whether or not you read this article at
24 the time that it was published?

25 A. I don't recall.

1 Q. Did you have a practice
2 of reviewing media around public works committee
3 meetings; that is, to see what the media was
4 saying following from a public works committee
5 meeting?

6 A. No. Generally the
7 directors would do that and if they identified
8 something just prior to a committee meeting where
9 they thought it might come up, they might make me
10 aware or they'd, at a minimum, prepare themselves
11 to respond to it.

12 Q. Okay. The next paragraph
13 references that the parkway had been subject to
14 complaints, like the July 2017 article says
15 friction testing had been inconclusive, and in the
16 fourth paragraph the article says that:

17 "Samples were collected
18 before Christmas and
19 being sent to Ireland for
20 specialized analysis."

21 So, your evidence earlier was
22 that Mr. Moore had conveyed to you at some point
23 that he was sending samples to Ireland. Does that
24 refresh your memory about whether you reviewed
25 this -- does that paragraph refresh your memory

1 about whether you reviewed this article around the
2 time that it was published?

3 A. No.

4 Q. Do you recall from the
5 conversations that you had with Mr. Moore if you
6 understood that the testing he was doing by
7 sending those samples to Ireland related to
8 frictional qualities of the asphalt?

9 A. No, I don't.

10 Q. You don't recall either
11 way?

12 A. No. I mean, the best
13 memory I have of the discussions with Gary, it was
14 always around top-down cracking that he was
15 reacting to.

16 Q. I understand. I'm
17 talking specifically about that testing, why he
18 had to send something to Ireland, which is
19 something that I think stuck in your memory
20 because it's unusual.

21 A. Yeah.

22 Q. And my question was if
23 you recalled, especially being given a bit more
24 context with this article sitting here today,
25 whether you recalled knowing that the samples that

1 were being tested actually, that that was testing
2 for frictional qualities?

3 A. No. I didn't know that.

4 Q. Registrar, you can close
5 this down. Could you go to page 70 of OD 8.

6 In February of 2018 you had
7 some exchanges with the mayor and with Mr. White
8 again about the cat's eyes that had come up the
9 year before. For ease of review, I'm actually
10 going to go into the document itself.

11 Registrar, can you go to
12 HAM35357 and can you start at image 4. Registrar,
13 you can take down OD 8 and -- that's perfect --
14 image 4, please.

15 THE REGISTRAR: Sorry, this
16 copy I have only has two pages.

17 MS. LAWRENCE: And image 2
18 will work for me. Thank you.

19 THE REGISTRAR: Okay.

20 BY MS. LAWRENCE:

21 Q. Mr. McKinnon, this is an
22 e-mail exchange that is with you and Mr. White and
23 Mayor Eisenberger and you'll see it starts at the
24 bottom from a message from Mr. White about
25 replacing or not replacing pavement marking

1 reflectors.

2 Registrar, just for ease of
3 being able to see this, could you call out the
4 bottom half of the right-hand image, please.

5 So, he says:

6 "Not replacing the
7 markers. We'll do that
8 as part of the scope of
9 the repaving. We are
10 repainting the LINC with
11 durable plastic pavement
12 marking. Hope that
13 helps, Dan."

14 And then you flip that e-mail
15 to the mayor and you say:

16 "In followup to your
17 questions."

18 Do you recall having a
19 discussion verbally with the mayor about
20 reflectors in 2018?

21 A. Verbally, I may have, but
22 I don't remember it.

23 Q. Okay. We just don't have
24 a document that would explain what prompted this
25 back and forth.

1 A. Mm-hmm.

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

4 A. If I may, Ms. Lawrence?

5 Q. Please do.

6 A. This is an excellent
7 example of the difficulty I had trying to balance
8 staying out of the weeds with trying to represent
9 public works, so it's a perfect example of how I
10 would be wasting my time being an information
11 traffic op. And this is what I was always trying
12 to stay out of, was just relaying information back
13 and forth and then somewhere along the line people
14 are asking me technical questions that I have no
15 business answering.

16 So, the balance that I was
17 always trying to strike was being informed enough
18 so that I could represent the department and
19 possibly answer the odd question to council and
20 staying out of the weeds so I can do my job. And
21 so, I can't think of a better example of that than
22 right here where I've had enough and said, Martin,
23 could you follow up with the mayor? So, forgive
24 my tone, but this would happen to me periodically
25 and I would get sucked into these details where I

1 had no place being. So...

2 Q. Thank you for that
3 context. When dealing with the mayor, I presume
4 you do want to have enough information that you
5 can, sort of, satisfy him that you are responsive.
6 Is that fair, that you're also trying to balance
7 that?

8 A. Yeah, but by the same
9 token, I dig a hole for myself and this is a great
10 example of it. So, I would often, you know,
11 receive a request from the mayor -- well, often.
12 When I would receive a request from the mayor, I
13 tried as much as possible to redirect it to the
14 staff person who wanted it, but sometimes I would
15 get caught thinking, okay, I could just answer
16 this and move on and on to something else and
17 before you know it I'm bogged down in something
18 where I shouldn't be. So, this was a constant
19 thing that, quite frankly, you have to stay on
20 guard for when you're at the general manager level
21 or else you end spending time on things that are
22 really providing no value.

23 Q. Again, thank you for that
24 context. So, you'll see in response the mayor
25 comes back and says:

1 "When is the resurfacing
2 scheduled for? Is it
3 years away? What do we
4 do with these reflectors
5 in the meantime? Is it a
6 warranty issue?"

7 So, some of those points are
8 very in the weeds. Is it a warranty issue? What
9 do we do with the reflectors? The question of
10 resurfacing, I would suggest to you, is a bigger
11 question. Were you aware of the timeline for
12 resurfacing as of February 2018?

13 A. I don't think so. I
14 mean, ultimately we never did it in 2018, so again
15 this is probably a good example of how fluid
16 things can be. The original intent was to pave in
17 2018, but with all this analysis going on between
18 hot in-place and other options, the date kept
19 moving. And so, again, at my parallel I would
20 maybe try to answer this and get bogged down into
21 a whole other discussion with engineering about
22 finding out when the resurfacing started. So,
23 forgive me, but the answer to your question is I
24 don't think I knew when the resurfacing was going
25 to start.

1 Q. Okay. And then you have
2 some back and forth. You say:

3 "Don't want to overreact
4 to this, but let's chat."

5 What sort of overreaction were
6 you trying to avoid in yourself?

7 A. Forgive me, but I think
8 the frustration I'm feeling now is the frustration
9 I was feeling then, because reliving it and these
10 types of things were frustrating for me because it
11 just felt like it was wasting my time. So, I
12 probably called Martin and said, okay, I'm going
13 to connect you with the mayor because I don't need
14 to be in this conversation at that point. The
15 mayor was asking fair questions. It's just that I
16 was just going to be an information clerk back and
17 forth and back and forth and, you know, it's not
18 unreasonable for the mayor to think that I would
19 be involved at this level of detail, but I just
20 wasn't and I shouldn't be.

21 Q. I see. That's helpful.
22 Another interpretation of this is, you know, I
23 don't want to overreact to this in that the mayor
24 asking us why is rescheduling not happening when
25 we said it was going to happen. Is that a

1 possible interpretation? Again, it's your e-mail,
2 so I'm asking if that might be what you were
3 concerned about.

4 A. Yeah. I'm not sure what
5 was in my mind at the time. I'm not sure what I
6 meant by that, to be honest.

7 Q. Okay. Maybe I'll put it
8 differently. Sitting as general manager, did you
9 have concerns with the fact that rescheduling had
10 been at least discussed, bandied about, to be
11 happening in 2018 and that it wasn't and it was
12 going to be at some point after 2018? Did that
13 raise at your level a concern for you?

14 A. No. It's one of hundreds
15 of millions of dollars worth of projects where
16 their schedules change and move and shift and
17 notwithstanding the fact that it's a higher
18 profile project, it wouldn't have stood out to me
19 as something that I necessarily need to pay a lot
20 of attention to.

21 Q. Thank you. Registrar,
22 you can close that down and go back into OD 8,
23 page 79, please, and if you can call out 216.

24 In March you sent bi-monthly
25 reoccurring calendar invitation beginning on

1 April 9 titled "Red Hill/LINC Discussion." So,
2 just stopping there, bi-monthly, every two months,
3 and the attendees were some people from traffic
4 operations and engineering, including
5 Ms. Matthews-Malone, who was the director,
6 Mr. McGuire, at this point having that dual role,
7 part of the director role in engineering,
8 Mr. Sidawi from engineering, Ms. Leishman, manager
9 in continuous improvement and quality, Mr. Soldo
10 and Ms. Morello and I think an assistant.

11 Why did you include or why did
12 you want to have bi-monthly meetings with a group
13 of staff that were in traffic engineering,
14 engineering services, continuous improvement and
15 your general manager's office?

16 A. So, I think this was the
17 continuing evolution of what eventually we called
18 the parkways management committee, and so the fact
19 that I have Pat Leishman there tells me that this
20 is exactly what it is. So, the idea that you have
21 this main piece of infrastructure that runs
22 through the City, it's obviously a very high
23 profile, one of the most expensive pieces of
24 infrastructure we have, all manner of issues
25 around it with respect to conversations with

1 council, that kind of thing, so I wanted to have a
2 regular meeting so that nothing fell through the
3 cracks because some of the responsibilities were
4 sitting in different divisions even after my
5 restructuring where I was trying to reduce the
6 amount of crossover and putting myself as the
7 crossover manager. You can only go so far with
8 that, and so for those folks who might be familiar
9 with quality management systems, I wanted somebody
10 to be the process owner specifically for this
11 meeting on my behalf, and that's why Pat Leishman
12 was there.

13 And what that means is I'm not
14 going to rely on anybody in traffic,
15 transportation or engineering to own this. I'm
16 going to, kind of, own it out of my shop and Pat
17 is going to be the process owner, which means she
18 is going to be scheduling the meetings every two
19 months, she is going to be responsible for
20 soliciting ideas from people as far as agendas for
21 those meetings, she's going to be responsible for
22 making sure that the minutes get done and then any
23 action items that come out of the meetings.

24 You know, one of my
25 observations was that when you have this type of,

1 I'll call it a committee, if you don't put the
2 ownership in the right place, it doesn't continue
3 to happen or be as effective as it should be, and
4 that's why I put Pat in charge of it, because she
5 had nothing to do with the road or the individual
6 portfolios, but from a quality management
7 perspective she was going to go the process owner
8 and she reported directly to me. So, the content
9 and the action items of the meeting wouldn't
10 necessarily be of real significance to me or Pat,
11 but she would make sure that she was tracking the
12 items so that if there was action items for
13 Mr. Ferguson or Betty or Sam or Gord, that they
14 were being tracked on a regular basis so when we
15 came to the next meeting we could review them
16 together and nothing would fall through the
17 cracks.

18 Q. Thank you. That's
19 helpful. I notice this is at a high level.
20 Except for perhaps Mr. Ferguson, who was at the
21 superintendant level, there's no one on here who
22 was a project manager, I mean a, sort of, more
23 low-level person who might go and, sort of,
24 implement things. Was that intentional?

25 A. It was not intentional to

1 not have those people in the meeting. Betty, Dave
2 Ferguson and Martin White were the transportation
3 folks and at any time they could have had other
4 people there that they might feel should be
5 sitting in on this meeting, but they were just
6 the -- and, I mean, Dave Ferguson, he was at the
7 superintendant level, so he -- or senior project
8 manager level, so he did implement things and he
9 was the transportation safety guy, so yeah,
10 there's nothing that looks odd to me as far as the
11 membership at this meeting. Recognizing that it's
12 not necessarily my meeting, it's our meeting, and
13 anybody is able to invite other folks who they
14 thought might be important for any particular
15 meeting depending on the agenda.

16 Q. I'll ask the question in
17 reverse. Did you focus specifically on people who
18 had authority and roles of seniority within their
19 respective divisions? Was that part intentional?

20 A. Yes. There was no
21 question if I wanted directors there.

22 Q. I know you've given quite
23 a long answer about this meeting, so apologies if
24 I'm asking a question again, but what was the
25 impetus of this meeting? And I'll give two

1 examples to frame your answer.

2 Was it related to the traffic
3 projects that had come out of the last public
4 works committee meeting or to the restructuring
5 that was going on or to both or to neither?

6 A. I would say it was to
7 both and to more. Anything around the
8 transportation system with a primary focus on the
9 parkways, whether it was studies, capital
10 planning, you know, one of the things that I
11 recall being discussed here was the idea of having
12 an annual shutdown so we could do maintenance.
13 There was -- you know, it just felt to me like
14 there was always stuff all over the place relative
15 to both parkways when it came to studies or
16 capital or, you know, things that might have been
17 coming out of planning and ec dev, and I just
18 wanted to make sure that there was a regular
19 check-in so that Sam and Martin and Betty, they
20 can all hear each other and we wouldn't lose track
21 of anything. But I wasn't keeping track of the
22 stuff. It was really -- my thing was I
23 characterized it as my meeting to get people's
24 attention to say, I'm calling a meeting, I want
25 you there, and then the fact that it was a process

1 that was out of my office, people would feel more
2 compelled to show up for it.

3 Q. Thank you. And do you
4 recall did they show up for it? Was it a meeting
5 that -- was it a series of meetings that were well
6 attended by people at the director level?

7 A. Yes, and I would say that
8 there was regular commentary about how much
9 everybody appreciated it, because it kept them all
10 on the same page because they would often learn
11 something new from somebody about what had
12 happened and they would all provide updates, and
13 so it was, I would say, the culture around this
14 meeting was very positive.

15 Q. You said earlier in your
16 evidence that one of the things you wanted to
17 start doing was having project charters and I
18 think that was in the context of projects where
19 there was going to be a consultant. We were
20 talking in the context of that auditor's report
21 about consultants.

22 But taking it out from that
23 context, just project charters generally, did you
24 view that this meeting or this collection of
25 people was the kind of committee that should

1 actually be formalized? I know eventually it gets
2 a name, but besides calling it something, did you
3 foresee that it was going to become something that
4 would be formalized with a charter and with a
5 scope and all of those sorts of things?

6 A. Yes. Again, just
7 vernacular, we ended up developing a terms of
8 reference for this and your comment about
9 charters, they would apply to projects beyond just
10 consultant assignments, capital projects. Any
11 time you're going to have something that has a
12 start and an end with a bunch of people doing
13 something, I wanted them to have a charter. This,
14 because it was more of an organizational structure
15 tool, I guess, you know, I was referring to it as
16 a terms of reference and eventually we did create
17 a terms of reference for what is this meeting,
18 what's the scope, who attends, what's the point of
19 having the meeting so that as members change new
20 people could can come in and get up to speed
21 pretty quick as to why are we here. This type of
22 meeting, if you don't have a terms of reference,
23 the conversations and the agendas can start to
24 zigzag all over the place if you're not careful,
25 so I wanted to stay very focused on the parkways

1 here and make sure that nothing was getting
2 dropped.

3 Q. The terms of reference
4 are created. I believe they're created quite a
5 number of months after this first meeting. In
6 your recollection, was it a year or more before
7 you really formalized this committee into what
8 became the parkways management committee or terms
9 of reference?

10 A. I believe that's correct.
11 We had a number of discussion about it and by the
12 time, you know, Pat -- I put Pat in charge and she
13 kind of turned her mind to it. She was the one
14 that was able to kind of get it going and actually
15 get it down on paper and get it in front of the
16 committee.

17 Q. Thank you. Registrar,
18 you can close this down and if you can go to
19 page 92, please. Could you call out the first
20 couple of paragraphs of 253, along with the text
21 of 253. Yes. Thank you.

22 Mr. McKinnon, you're not
23 copied on this but this appears to me, I interpret
24 it to be an e-mail from Mr. Ferguson to
25 Mr. Cameron to prepare for the upcoming bi-monthly

1 LINC and parkway meeting and he says:

2 "Gord, please send a
3 designate."

4 And then he says to Ann:

5 "I have included you as I
6 would like to discuss
7 setting up a website page
8 specific to the Red Hill
9 and the LINC."

10 And on that, were you aware of
11 Mr. Ferguson's interest in setting up a web page
12 that was specific to the parkways?

13 A. No. That doesn't sound
14 familiar. It sounds like a good idea, but I don't
15 recall it.

16 Q. Okay. More generally and
17 not necessarily externally facing, the way a
18 website could be, do you recall having discussions
19 with staff about creating ways to have a
20 centralized location to save materials that would
21 be relevant to people who attended these meetings?

22 A. Yes. When I became the
23 general manager, there were, I think, 11 asset
24 management software programs across public works.
25 There was -- the name is escaping me now, the

1 program that Gord used for --

2 Q. ProjectWise.

3 A. ProjectWise. There were
4 other groups that had other versions of that and I
5 had most familiarity with something called Intelelex
6 as a document management system. So, Intelelex
7 wasn't necessarily project focused. And then we
8 had also been experimenting across the department
9 with different types of share points.

10 So, as you can imagine,
11 there's going to be data all over the place and my
12 goal through the quality management was to get it
13 all into one place. And so, many, if not all, of
14 the documents that I would anticipate that would
15 come out of this meeting and that Dave might have
16 been referring to there I thought could sit nicely
17 in Intelelex, so this was one of the efforts that I
18 was pushing forward, is to get everybody on to
19 Intelelex. It didn't mean I was going to replace
20 ProjectWise for Gord, but -- so, the information
21 could be shared broadly.

22 And then additionally, in
23 support of the transparency by design or
24 disclosure by design that corporate wanted to do,
25 you would have much fewer systems that you were

1 working with. So, forgive that long-winded
2 answer. I think that's what you're asking.

3 Q. It is. Thank you. Had
4 you identified that there had been issues with
5 information not being shared prior to you joining
6 as general manager?

7 A. I'm not sure I had a
8 strong feeling that people weren't sharing it. I
9 think I had a feeling that people were just
10 finding it difficult to find it because it might
11 be residing in different locations, so I think
12 that was in my mind more than this idea that
13 people aren't sharing.

14 Q. Okay. Registrar, could
15 you close this out and go to page 86, please.

16 I'm not going to pull this up
17 because I'm going to go directly to the document,
18 but you'll see, Mr. McKinnon, at the bottom of
19 this page Mr. Ferguson created a briefing note
20 containing information about the status of
21 initiatives on the Red Hill. I'm going to go to
22 it. It's HAM1171.

23 And, as that's coming up, you
24 spoke about briefing notes before. Was this your
25 preferred format to receive information from

1 staff?

2 A. Yeah. I mean, I can be
3 loose with the vernacular, I guess, but this looks
4 like, kind of, the memo template from the City of
5 Hamilton. Briefing notes look a little different.
6 Tech memos look different. But essentially they
7 do the same thing; provide you with Coles Notes of
8 an issue so you're only reading through two or
9 three pages as opposed to a 50-page report.

10 Q. Thank you. So, this is,
11 sort of, following from as I took you through some
12 of the documents around the comparator highways
13 and the serious -- pardon me, the fatalities and
14 injuries collisions. And so, Mr. Ferguson is
15 answering two questions: Why are motorists more
16 likely to be injured travelling on our roadways
17 and involved in a collision versus comparison
18 roadways, and why are collisions and injuries
19 occurring?

20 And in that second part,
21 Registrar, could you pull out in the right-hand
22 side under 2 in the top half. That one. Yes.
23 Thank you.

24 I think I've asked you this at
25 various times, but at this point, so this is March

1 of 2018, did you understand that the primary
2 reason for collisions on the parkways related to
3 driver conduct?

4 A. At this point in time, I
5 don't recall what my understanding was, but that
6 was a prevailing understanding all the way through
7 this, is that driver behaviour was not the only
8 contributor but a pretty significant one to the
9 collisions that were happening.

10 Q. Thank you. You can close
11 this down, close the call out.

12 This briefing note also
13 contains the current status of outstanding items
14 from the January 2018 PWC meeting. By March, did
15 you have any concerns about the momentum for the
16 projects that were still on public works staff's
17 plate?

18 A. Specifically to this
19 report, the projects that are identified in the
20 original report?

21 Q. Yeah. So, from January,
22 we're now in March, did you have any concerns
23 about dragging or lagging in terms of coming out
24 of that PWC meeting in January and trying to
25 implement the next steps relating to the parkways?

1 A. If Betty wasn't making me
2 aware of any concerns, then I wouldn't have had
3 any concerns. I wouldn't have been paying
4 attention to the details.

5 Q. Okay. Under the bottom
6 at the very bottom it says "Additional action
7 items recommended by staff" and one of them is a
8 messaging web page and the other is a dedicated
9 section in the annual collision report. Were you
10 familiar with the annual collision report?

11 A. Was I familiar with it in
12 March of 2018? I certainly became familiar with
13 it at some point. I don't know how familiar with
14 it I was at that moment.

15 Q. Okay. When you became
16 familiar with it, I think it might have been a
17 little later from now but I'll ask again at an
18 appropriate time, did you appreciate that the
19 annual collision report had a specific section for
20 the Red Hill and the LINC?

21 A. That sounds familiar.
22 That would make sense.

23 Q. Was that your preference,
24 to provide particular information about the Red
25 Hill and the LINC in a public document like that?

1 A. I don't think I directed
2 anybody to do it, but that would have made sense
3 for them to do it that way. If I saw it, I'm sure
4 I would have appreciated because of the status and
5 the profile and the traffic volumes and the speed,
6 it would make sense to have its own section.

7 Q. Thank you. I note the
8 time. It's 3:17 and we usually take our break at
9 3:00. I do note because of my request to end a
10 little early today, we are not going to have very
11 much time. I propose, subject to your views,
12 Commissioner, that we take a ten-minute break and
13 then come back so that we have a little bit more
14 time.

15 JUSTICE WILTON-SIEGEL: Sure.
16 Why don't we just say 3:30?

17 MS. LAWRENCE: Sure. Thank
18 you.

19 JUSTICE WILTON-SIEGEL: Okay.

20 --- Recess taken at 3:17 p.m.

21 --- Upon resuming at 3:30 p.m.

22 MS. LAWRENCE: Commissioner,
23 may I proceed?

24 JUSTICE WILTON-SIEGEL: Yes,
25 please do.

1 MS. LAWRENCE: Thank you.

2 BY MS. LAWRENCE:

3 Q. Mr. McKinnon, we were
4 just talking about some circumstances in 2018 and
5 we're going to go back there.

6 Can you, Registrar, go into
7 OD 8, page 97, please, and can you call out the
8 first three paragraphs. Thank you.

9 So, these paragraphs relate to
10 Mr. Moore's retirement. And the first is from
11 March of 2018. You e-mailed Mr. Moore attaching a
12 retirement agreement. I'm not going to go into
13 the retirement agreement, but in terms of the
14 timing, March 2018, when did you first learn that
15 Mr. Moore intended to retire?

16 A. There was a conversation
17 that had started in the fall of 2017, I believe.
18 Gary and I had had regular dialogue about his
19 retirement for a long period of time before this
20 day. I don't know the day specifically, but I
21 would say it was in the fall of 2017, so I know he
22 had been thinking about it and that a conversation
23 emerged about him retiring and then maybe moving
24 over on a contract basis to the LRT office. So, I
25 suspect he was dialoguing with Chris at the time,

1 too. I'm not entirely sure. But there was this
2 understanding that when the time came when he was
3 going to retire, he was going to move over and
4 work on contract out of the LRT office for a
5 period of time.

6 Q. Thank you. Can you close
7 this down and can you call out 267, please.

8 So, again, I'm not going to go
9 into the retirement agreement itself, but this is
10 a comment that was included in it:

11 "I'm only retiring in
12 order to take this
13 position."

14 And that's in reference to the
15 LRT:

16 "I'm not otherwise
17 retiring and had no
18 intent to retire until
19 Chris Murray requested
20 that I take this work
21 on."

22 So, given your evidence just
23 now about the discussions that started in 2017
24 with Mr. Moore, was it also your understanding
25 that Mr. Moore's intention to resign was linked to

1 taking on a position at the LRT?

2 A. Yeah. I don't recall
3 seeing this language in the agreement. I'm not
4 sure it was in the agreement that I have. Maybe
5 it was and I just missed it.

6 Q. It may not have been. I
7 think it was in an e-mail that went to
8 Ms. Fontana.

9 A. Okay. Yeah. I don't
10 think I've seen it in print that way before, but I
11 think I did have an understanding that if it was
12 not for the LRT, then Gary probably would have
13 continued to work for a bit longer.

14 Q. Registrar, can you close
15 this down and can you call out the bottom of 268.
16 I guess it doesn't make sense to not call out the
17 top of the rest of 268 as well. Thank you.

18 So, Mr. McKinnon, this is
19 April 13, so we moved ahead a little in time from
20 your discussions or at least the initial e-mail in
21 March, and you send out an announcement for his
22 retirement congratulating him on 30 years of
23 delivering some significant capital works, some of
24 the most significant capital works that Hamilton
25 has seen, and you note that his last day as a City

1 employee will be May 25 and then he joins the LRT
2 office.

3 Registrar, you can close those
4 down. That was really just for context in terms
5 of the timing.

6 So, you've already given some
7 evidence about Mr. McGuire taking on part of the
8 portfolio of the director of engineering services.
9 What was the process to fill Mr. Moore's role
10 going forward from this announcement?

11 A. I would say we had a
12 typical recruitment. We did a posting internally
13 and externally. We advertised to the best of my
14 memory in a number of publications the posting and
15 we had a number of candidates apply for it. I
16 would have to look through the file, but I have a
17 recollection that there was a significant response
18 to it and we interviewed a number of people.

19 Q. Was Mr. McGuire in an
20 acting role officially during that period of time
21 or was the position or the responsibilities that
22 Mr. Moore had held, was that position vacant
23 during the recruitment process?

24 A. No. I believe I put Gord
25 in it because he was acting for the front end of

1 engineering services, so when Gary retired I just
2 made him acting director while we took the
3 recruitment. I couldn't have people reporting to
4 me, so somebody had to be acting in the role.

5 Q. Thank you. And
6 eventually he was the successful candidate for the
7 permanent position. Did you do any role from
8 April of 2018 until he got into the permanent
9 position to ensure smooth transition between
10 Mr. Moore and Mr. McGuire?

11 A. I apologize. I didn't
12 hear the very first part of that.

13 Q. The very first part was
14 Mr. McGuire was the successful candidate in the
15 permanent position.

16 A. Right.

17 Q. And the next part of my
18 question was: Did you have any role from April of
19 2018 until Mr. McGuire was in the permanent
20 position to ensure a smooth transition between
21 Mr. Moore and Mr. McGuire?

22 A. I'm not sure I did
23 anything overtly. Gord had worked in the division
24 for I think his whole career. I think Gord is a
25 25-year man. He had been in engineering services

1 for the entire time. He had been a manager there
2 on the leadership team there for a significant
3 period of time. He had been acting in the role
4 for months. Other than having my usual quality
5 times, him and I were already getting up to speed
6 on a lot of the issues as a result of his acting
7 time from January. I can't think of anything
8 overtly that I did beyond, you know, having
9 regular dialogue with him. He was already a peer
10 of all the other managers, so I was fairly
11 confident that there wasn't going to be anything
12 about engineering services that I know that he
13 didn't already, so I don't think I did anything
14 overtly. I have a sense that Gary might have
15 prepared some briefing notes for Gord, but I can't
16 say with certainty.

17 Q. Okay. If he did, did he
18 do that at your direction or do you just think he
19 may have done that?

20 A. I may have asked him to
21 do it or he may have done it of his own volition.

22 Q. Okay. Turning to OD 9A,
23 page 23, please. I think that's OD 8. OD 9A,
24 page 23. Thank you. Registrar, could you call
25 out the bottom half of this page, please, under

1 RHVP Lighting Study.

2 You gave some evidence earlier
3 about lighting on the Red Hill and what you
4 understood. This now is in June of 2018 and CIMA
5 has been engaged to assist with an assessment of
6 lighting pursuant to that public works committee
7 direction.

8 If you look to 53,
9 Mr. Field -- do you know Mr. Field?

10 A. I do.

11 Q. Mr. Field, who was at the
12 time in lighting within engineering services,
13 forwarded a request to get an environmental
14 assessment from the upper Red Hill at the request
15 of CIMA and he is looking to other people in
16 engineering services.

17 Registrar, could you close
18 this out and go to the next page, please, and can
19 you call out the section above HIR Suitability
20 Study. Thank you.

21 So, he's having some back and
22 forth with Ms. Jacob and Mr. Becke in design. And
23 you're not copied on these e-mails, but he says to
24 them:

25 "This is an ongoing

1 assessment that's been at
2 the request of council.
3 It's a full on review of
4 the safety performance of
5 the LINC and the Red Hill
6 with a focus on lighting.
7 They have done a complete
8 EA review of the LINC and
9 the Red Hill and want to
10 examine the upper Red
11 Hill EA."

12 The next paragraph, which is
13 about a week after Mr. Field is sending these
14 e-mails, is that you and Mr. McGuire met with the
15 subject line of "Calendar Invitation, LINC/Red
16 Hill Lighting."

17 I wanted to give you that
18 context that's in the earlier paragraphs to assist
19 you with whether you can recall this subject or
20 the content of that meeting with Mr. McGuire.

21 A. Did Mr. McGuire set that
22 meeting up? Do you know?

23 Q. I am sure I can find that
24 out.

25 A. I'm just curious. It may

1 not be relevant. But no, I don't have any
2 recollection of that. You know, this feels to me
3 like an example of, you know, periodically Gord
4 probably more so than others would want to keep me
5 up to date on things and that might have had
6 something to do with the proximity of our offices,
7 but I don't recall the discussion around this.

8 Q. Thank you. So, just as a
9 note, the calendar invitation that's referenced
10 here was sent by you on the same day, June 11, at
11 10:22 and it's for an 11:30 meeting. So, it looks
12 like you're setting a calendar invitation, but
13 just for later that same day --

14 A. Okay.

15 Q. -- and it's from you to
16 yourself and to Mr. McGuire. I ask and I
17 recognize you may not have a particular
18 recollection of this. At this point, as Mr. Field
19 has said in the e-mails he's sending to design,
20 CIMA has done a complete EA review at this point.

21 Leaving aside your
22 recollection of June 11, do you recall at some
23 point in the spring or summer of 2018 Mr. McGuire
24 updating you about CIMA's conclusions coming out
25 of their EA review?

1 A. I suspect Gord did. I
2 can't remember the details of it, but...

3 Q. So, CIMA's -- and this is
4 really just a high-level summary -- finding was
5 that there was no restriction on broader
6 illumination from their review of the EA. Was
7 that consistent with or does that assist you with
8 refreshing your memory about whether Mr. McGuire
9 updated you about, you know, what the EA actually
10 said and whether illumination was possible on the
11 Red Hill?

12 A. That does sound familiar.
13 I believe Gord did make me aware of that.

14 Q. Was that consistent with
15 information or with your understanding of the
16 ability to add further illumination on the Red
17 Hill?

18 A. To the extent that I was
19 in the sausage making on this particular issue,
20 no. I thought there was some prohibition against
21 putting any more lighting in this, and I think
22 that's the point Gord was making when he made me
23 aware of it, was that, you know, there was this
24 belief that you couldn't put any more lighting.
25 They've done a review and there doesn't seem to be

1 anything prohibiting it. So...

2 Q. Your evidence earlier
3 today was, I believe, that Mr. Moore had conveyed
4 to you at some point that in order to add
5 illumination you would have to conduct an EA, and
6 he said there would be environmental issues and
7 that there would be indigenous concerns. I don't
8 have your evidence from this morning right in
9 front of me, but do you remember that evidences
10 and have I summarized it fairly?

11 A. You have.

12 Q. Did Mr. McGuire tell you
13 that indeed the next thing would be from CIMA's
14 perspective to complete a fresh EA?

15 A. I don't recall that, but
16 Gord likely told me that.

17 Q. Did you understand from
18 discussions with Mr. McGuire that the next step
19 would be quite an extensive step, much like
20 Mr. Moore had said. There would have to be
21 environmental issues, indigenous consultations,
22 those sorts of things. Did he get to that level
23 of detail with you?

24 A. He may have.

25 Q. Maybe even taking a step

1 even higher level, were you left with the
2 impression from Mr. McGuire that adding additional
3 illumination on the Red Hill would be a
4 significant long-term and expensive project?

5 A. I don't know that Gord
6 would have had to tell me that. I think I already
7 had a sense that if that was going to happen, it
8 was going to be fairly expensive.

9 Q. Fair enough. Did you
10 have a view about whether city staff should
11 recommend taking that next step?

12 A. No, I don't think we
13 were -- the next step meaning what? The EA?

14 Q. Meaning starting the
15 process to conduct an EA and assess what
16 environmental issues need to be addressed.

17 A. I don't recall having an
18 opinion about that. I suspect that council would
19 probably be supportive of at least doing the EA.

20 Q. Thank you. I'm going to
21 turn to a different topic now.

22 Registrar, you can close this
23 down and if you could go into this document, 9A,
24 and to page 53, please.

25 In August, Mr. Ferguson

1 prepared an updated memo, much like the one that
2 we looked at earlier, that briefing memo, and he
3 did so on August 2 and then he circulated it to
4 you, you'll see in 127, on August 21.

5 Registrar, could you call out
6 paragraph 127.

7 I'm going to take you into
8 this in a moment, but just for context,
9 Mr. Ferguson sent his updated memo, an earlier
10 memo from March 2018, the report back from
11 January 2018 and correspondence between Mayor
12 Eisenberger and Steven Del Duca, the Minister of
13 Transportation, which was in respect of the
14 potential for widening and the connection of the
15 parkways to provincial highways.

16 And just given that summary,
17 do you recall receiving those documents from
18 Mr. Ferguson?

19 A. I don't. Notwithstanding
20 the fact that Mr. Ferguson is a great guy, this
21 much e-mail traffic from a superintendant in
22 public works was an indication I wasn't managing
23 my time very well because I shouldn't be involved
24 at this level. But no, I don't remember it.

25 Q. To provide a little bit

1 more context, this is August 21 and one of your
2 bi-monthly meetings for that group that you say
3 eventually became the parkway management committee
4 was scheduled for August 30.

5 A. Okay.

6 Q. I don't know if that
7 changes your perspective. Maybe I'll say it this
8 way: Was this the kind of information you were
9 hoping to receive and circulate to those groups in
10 advance of those bi-monthly meetings?

11 A. I was hoping for them to
12 share that amongst themselves. Again, I don't
13 want to sound flippant, but this is sausage making
14 that I didn't need to be involved in.

15 Q. Fair enough. Registrar,
16 could you bring up HAM1388. Thank you.

17 This is the memorandum. Does
18 it look familiar to you?

19 A. I suspect I saw it. It
20 doesn't look familiar to me, but...

21 Q. Okay. Registrar, you can
22 close that down and if you can go to 9A, page 54.
23 Registrar, can you call out 129, please. Thank
24 you. Can you make that smaller and also call out
25 HAM1383 and can you call out that appointment as

1 well.

2 Mr. McKinnon, on August 3 you
3 sent an invitation to Mr. Soldo, having recently
4 joined the roads and traffic, and Gord McGuire.
5 The subject was "Meeting and go for lunch" and it
6 was scheduled for August 30 from 10:30 to
7 1:30 p.m. and the attachment was the RHV/LINC
8 update memo, which I believe was the memo we were
9 just looking at from Mr. Ferguson.

10 Do you recall why you arranged
11 for quite a lengthy lunch and meeting with
12 Mr. Soldo and Mr. McGuire?

13 A. I would be speculating,
14 but I take notice of the date there. This request
15 went out on August 3. Edward had just started
16 with the City probably a few weeks before. He was
17 going to have to work very closely with Gord, so
18 the fact that I invited them both out for lunch
19 suggests to me that we can talk about this memo,
20 but it's also an opportunity for the three of us
21 to sit and get to know each other. I mean,
22 obviously I knew Gord. So, I think it was
23 probably all of that wrapped together.

24 Q. Was that, sort of, your
25 management style, to do lunches or longer informal

1 meetings with new colleagues?

2 A. Yeah, even with
3 colleagues that weren't new. I always made an
4 attempt every couple of months to grab a director
5 and go out for lunch. In this particular case,
6 the relationship between Gord's portfolio and Ed's
7 portfolio, it's very important for those two folks
8 to be on the same page and, you know, you only get
9 one chance to make a first impression. It was
10 early for Edward, so I wanted to, you know, set
11 the tone that you guys are going to be working
12 closely together. And, you know, I think because
13 this was a current timely issue, the LINC update,
14 we could look at that at the same time.

15 Q. Okay. So, you just chose
16 something that you think would be a connection for
17 them rather than having a specific desire to have
18 a discussion on a particular date with them about
19 this?

20 A. I honestly don't recall
21 if it was -- it probably wasn't random. Gord
22 again was in an office ten feet from mine, so Gord
23 and I may have been talking about it in the
24 hallway that day and said, well okay, it's a
25 current issue that's a complicated one, so let's

1 get together and have a bite to eat.

2 Q. Okay. There was a
3 chronology that was created in 2019 that goes
4 through a number of different events and it was
5 prepared by Ms. Graham with input from others and
6 it has some entries for this period of time.

7 Registrar, could you close
8 these down and go to HAM55560 and can you go to
9 image 5, please. Could you call out the first
10 third of that page. If you can make it as big as
11 you can. This is very small writing.

12 Mr. McKinnon, you'll see these
13 are some entries from August of 2018, again in
14 this lengthy chronology. Do you recall reviewing
15 this chronology at any point? I can go through
16 it, but it's basically a spreadsheet that looks
17 like this.

18 A. I will say it looks
19 familiar, so I believe I've seen it.

20 Q. Okay. On August 1
21 Ms. Matthews-Malone retires. Mr. Soldo starts
22 just before that. It says:

23 "On August 15, Martin
24 White e-mails Mr. Soldo a
25 draft of the 2017 annual

1 collisions report which
2 shows wet weather issues
3 on the Red Hill. Soldo
4 requests meeting with key
5 players held on August
6 30."

7 So, just stopping there, do
8 you recall receiving a copy of the draft annual
9 collision report in or around August of 2018?

10 A. I do not.

11 Q. Okay. And would you have
12 put that in the category of sausage making?

13 A. Are you referencing the
14 collision report or the council report that would
15 have the collision report appended to it?

16 Q. Well, I guess either. It
17 was referencing the actual annual collision report
18 itself.

19 A. If the -- generally it
20 was sausage making, but the only caveat would be
21 that if they were intending to take a council
22 report to committee and speaking to the collision
23 report and appending it to it, then I might take a
24 cursory review of it, yeah. If it was going to
25 end up before committee, then I would probably

1 want to have a quick look at it.

2 Q. Okay. So, in this entry
3 it says:

4 "Mr. Soldo requests
5 meeting with key players
6 held August 30."

7 Now, we know from looking at
8 that calendar that you actually sent that on
9 August 3 for August 30. Do you recall have lunch
10 with Mr. McGuire and Mr. Soldo and attending a
11 meeting with a broader group of people on the same
12 day, including Mr. Ferguson?

13 A. I don't remember a
14 meeting like that.

15 Q. Okay.

16 A. It's certainly possible,
17 but I don't remember it.

18 Q. I've raised Mr. Ferguson
19 because you'll see in the next entry:

20 "Key players meeting with
21 Dave Ferguson, Edward
22 Soldo, Gord McGuire, Dan
23 McKinnon discussing wet
24 weather issues on the Red
25 Hill."

1 Do you remember having a
2 meeting, I know you've said you don't remember
3 with Mr. Ferguson, but that dealt with wet weather
4 issues on the Red Hill in August of 2018?

5 A. I don't remember that
6 meeting.

7 Q. Okay. Do you recall very
8 early in his tenure Mr. Soldo raising with you the
9 collision patterns on the Red Hill being of note
10 to him?

11 A. I don't. Not to say he
12 didn't do that, but I don't recall it.

13 Q. Okay. The next entry up
14 is:

15 "Mr. McGuire, Gord,
16 suggests conventional
17 paving. Wants to get
18 tender out."

19 Do you recall when Mr. McGuire
20 advised you that the City was going to proceed
21 with a regular old shave and pave and no longer
22 explore hot in-place recycling?

23 A. I don't have confidence
24 in my memory of this, but I do remember him
25 telling me and I want to say it was in August, in

1 around that timeline. But I don't have a lot of
2 confidence in that.

3 Q. Okay. Was it sometime
4 before you learned about discovery of the
5 Tradewind report?

6 A. I believe so.

7 Q. Do you recall having a
8 discussion with Mr. Soldo or Mr. McGuire about the
9 friction characteristics of the Red Hill in or
10 around August of 2018?

11 A. No.

12 Q. Okay. Registrar, can you
13 go to page 62, please. Sorry, pardon me. OD 9A,
14 page 62. Can you bring up 61 as well, please, and
15 can you call out the bottom of 61. Sorry, 146 and
16 147.

17 A. Ms. Lawrence, if I may,
18 there's just something on my mind. It wasn't
19 unusual for staff, be it Dave Ferguson, Martin
20 White, Betty, Gord, to want to share information
21 with me, one, just to make me aware, two,
22 sometimes just to have a discussion about it. Not
23 that I necessarily was making decisions or giving
24 direction. Sometimes people need a sounding board
25 and I was trying to be a good leader a lot of

1 times, so I would always accommodate those
2 meetings.

3 Sometimes, though, as a result
4 of those meetings I would get dragged into the
5 details and we talked about that a little earlier.
6 So, you know, from my leadership style, that was
7 one of the things that, you know, I was always
8 trying to balance. I wanted to be supportive of
9 staff. If they wanted to give me details about a
10 particular report, sometimes I would listen.
11 Sometimes that would help me in case I got caught
12 in the lobby at City Hall and somebody asked me a
13 question.

14 But I was always -- and I
15 think I've said this before. I was always careful
16 not to get into the details because I didn't want
17 anybody thinking that I was going to grab the
18 wheel on something, because I wasn't. I didn't
19 have the technical expertise and it wasn't my
20 role. But I was always balancing that with
21 wanting to be available for people and, you know,
22 I think sometimes just the back and forth was
23 helpful for them.

24 And so, a lot of these
25 meetings were like that, and so I just wanted to

1 give a little more context to some of these
2 meetings and why, for the most part, I don't
3 remember them, because once the meeting was done I
4 moved on and often I was doing it to try to help
5 benefit them.

6 Q. Thank you for that
7 context. I was hoping to slip in one more set of
8 questions, but I don't believe that I have time,
9 again, given --

10 A. Sorry.

11 Q. It's fine. We have
12 tomorrow as well. Given my request and gratitude
13 for the acceptance of the request to end early
14 today.

15 Mr. Commissioner, it's a few
16 minutes after 4:00 now and if we could adjourn for
17 the day, I would be appreciative.

18 JUSTICE WILTON-SIEGEL: That's
19 fine. Then let's adjourn for the day and we'll
20 reconvene tomorrow at 9:30 a.m.

21 --- Whereupon the proceedings adjourned at
22 4:01 p.m. until Friday, October 14, 2022 at
23 9:30 a.m.

24

25