



**Public Hearing**

**Audience publique**

**Commissioner / Commissaire**

The Honourable / L'honorable  
C. William Hourigan

**VOLUME 18**

**Held at :**

Ian Scott Building  
100 Thomas More Private  
Second Floor Courtroom  
Ottawa, Ontario  
K1N 1E3

Thursday, July 7, 2022

**Tenue à:**

Immeuble Ian Scott  
100, Thomas More Private  
Salle de cours au 2<sup>e</sup> étage  
Ottawa, Ontario  
K1N 1E3

Jeudi, le 7 juillet 2022

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John Adair	Co-lead Counsel / Avocat principal
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Mark Coombes	Commission Counsel / Avocat de la Commission
Anthony Imbesi	Commission Counsel / Avocat de la Commission
Fraser Harland	Commission Counsel / Avocat de la Commission
Liz McLellan	Commission Counsel / Avocate de la Commission
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Peter Wardle	The City of Ottawa
Betsy Segal	
Catherine Gleason-Mercier	
Jesse Gardner	
John McLuckie	Amalgamated Transit Union 279
Jaime Lefebvre	
Michael Valo	Alstom Transport Canada Inc.
Charles Powell	
Lena Wang	
Jacob McClelland	
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Julie Parla	
Morgan Watkins	
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Michael Varantsidis  
Gary Gibbs  
Kim Gillham

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Jesse Wright  
Mannu Chowdhury

RTG (Rideau Transit Group General Partnership)

+

OLRTC (Ottawa Light Rail Transit Group General Partnership)

+

RTM (Rideau Transit Maintenance General Partnership)

Michael O'Brien  
James Doris

STV

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Ottawa, Ontario

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--- Upon commencing on Thursday, July 7, 2022, at 9:02 a.m.

**THE REGISTRAR:**

**COMMISSIONER HOURIGAN:** Good morning. Welcome to day 18 of the hearings. Our first witness is Mr. Mario Guerra from RTM. Are you there, sir?

**MR. MARIO GUERRA:** Yes, I am, sir.

**COMMISSIONER HOURIGAN:** Okay. You're going to be asked questions this morning. We have an echo. Stand by. Okay, you're going to be asked questions this morning from a number of counsel. Before we do that, though, we need you to either swear and oath or affirm to tell the truth. It's your choice. What do you prefer?

**MR. MARIO GUERRA:** To affirm.

**COMMISSIONER HOURIGAN:** Okay, stand by.

**--- MR. MARIO GUERRA, Affirmed:**

**COMMISSIONER HOURIGAN:** All right. Ms. McGrann, Commission counsel, will begin.

**--- EXAMINATION IN-CHIEF BY MS. KATE McGRANN :**

**MS. KATE McGRANN:** Good morning, Mr. Guerra. To begin with, would you please provide us with a brief overview of your professional background as it relates to the work that you did on Stage 1 of Ottawa's Light Rail Transit System?

**MR. MARIO GUERRA:** Sure. I've been working in transit since 1980, started off as an apprentice with the Toronto Transit Commission. Eventually, from there, I worked my way up to the -- be in charge of all maintenance for rail vehicles with the TTC. I worked in New York for almost two years as -- in charge of maintenance. And then I've been working on P3 projects from a bid perspective, and the last four or five years as Vice President of Operations in Charge of Transit Projects for SNC-Lavalin And then the last two years, I've been the Acting CEO and General Manager for RTM in Ottawa.

1                   **MS. KATE McGRANN:** Okay. And so you started that role in  
2 about June of 2020; is that right?

3                   **MR. MARIO GUERRA:** Yes.

4                   **MS. KATE McGRANN:** Okay. Going to -- we'll be bouncing  
5 around throughout the chronology of the project a little bit today but, to start with, I'm  
6 just going to ask that you be shown a document. It's at RTM592807.

7                   **--- EXHIBIT No. 288**

8                                   RTM00592807 – Email from Epi Hajjar to Hall Manton et al  
9                                   Re – Lessons Learned Workshop #3 3 May 2021

10                   **MS. KATE McGRANN:** So this is an email, and it's actually an  
11 invitation to a Teams meeting. The subject is "Lessons Learned: Workshop No. 3" and  
12 it was sent on May 3<sup>rd</sup>, 2021, to you and a number of others, and you can see that  
13 there's a series of Word documents attached. We'll be looking at some of those later in  
14 the evidence, but just to help position everyone, can you help us understand what the  
15 Lesson Learned Workshop is that was described in the title of this email?

16                   **MR. MARIO GUERRA:** I believe, to the best of my recollection, it  
17 was to learn from some of the things in Ottawa Stage 2 that we can look to try and  
18 improve on going forward on other projects.

19                   **MS. KATE McGRANN:** And, sorry, this was to learn from Ottawa  
20 Stage 2 or from Stage 1 for the purposes of Stage 2?

21                   **MR. MARIO GUERRA:** Stage 1 from the purposes of Stage 2.

22                   **MS. KATE McGRANN:** From Stage 1 for the purposes of Stage 2?

23                   **MR. MARIO GUERRA:** Yes.

24                   **MS. KATE McGRANN:** Okay. And we can take this document  
25 down for now. It's my understanding that before you took on the role of Acting CEO and  
26 General Manager of RTM, you sat on RTM's Board of Directors; is that right?

27                   **MR. MARIO GUERRA:** That's correct.

28                   **MS. KATE McGRANN:** Okay. And during what period of time did

1 you serve on the board?

2 **MR. MARIO GUERRA:** I'm going to say probably two years prior  
3 to revenue service I would have started on the board.

4 **MS. KATE McGRANN:** So approximately 2017 to 2019 kind of  
5 thing?

6 **MR. MARIO GUERRA:** That sounds about right.

7 **MS. KATE McGRANN:** And then did you continue on as a  
8 member of the board until you became acting CEO and general manager?

9 **MR. MARIO GUERRA:** I did.

10 **MS. KATE McGRANN:** And then at that point, how did your  
11 position on the board change?

12 **MR. MARIO GUERRA:** Well, I now report to the board as the CEO  
13 and general manager.

14 **MS. KATE McGRANN:** Okay. And I understand that the terms  
15 "board of directors" and "executive committee" were used interchangeably to describe  
16 that group of individuals at RTM; is that right?

17 **MR. MARIO GUERRA:** That's correct.

18 **MS. KATE McGRANN:** Just speaking generally about the period  
19 of time around trial running and heading into revenue service, we have heard evidence  
20 that there were reliability issues with the system, and in your Commission interview, you  
21 spoke to the fact that the reliability of the system wasn't was it should be. Do you recall  
22 giving that evidence?

23 **MR. MARIO GUERRA:** I do.

24 **MS. KATE McGRANN:** And just in terms of the issues with the  
25 reliability of the system, I'd like us to take a look at one of the lessons learned  
26 documents that we saw attached to that email that just popped up. It's at  
27 RTM592807.1.

28 **--- EXHIBIT No. 289:**

1 RTM00592807.0001 – ORLT Lessons Learned Mitigation  
2 Plan/2 – Liquidated Damages 8-Subcontractors, 10-Rolling  
3 Stock Provider March 2021

4 **MS. KATE McGRANN:** So the title of this document is “OLRT  
5 Lessons Learned Mitigation Plan/2: Liquidated Damages, Subcontractors, Rolling Stock  
6 Provider”, and there’s some numbers in there as well. It’s dated March 2021, and the  
7 issue identified here is:

8 “The subcontract of the rolling stock and service  
9 provider was lacking strong contractual protection to  
10 cover the risks and prime agreement requirements,  
11 resulting in delays and non-compliance.” (As read)

12 And then if we scroll down a little bit so we can see the findings,  
13 you’ll see that this document says:

14 “The Alstom Citadis 1500V...” (As read)

15 And that’s the vehicle that’s used on Stage 1 of Ottawa’s light rail  
16 transit project?

17 **MR. MARIO GUERRA:** Yes.

18 **MS. KATE McGRANN:** So it says:

19 “[That vehicle] was a prototype hybrid vehicle, with its  
20 first test runs on the OLRT project, and therefore it  
21 was a continuous trial and error scenario.” (As read)

22 And I wonder if we can stop there for a second. And the first  
23 question I have for you is, at what point in time did you and your colleagues come to the  
24 conclusion that the vehicle was a prototype hybrid vehicle?

25 **MR. MARIO GUERRA:** As a board member, I was more focused  
26 on the maintenance aspect of the business. The choosing of the vehicle type and the  
27 evaluation of the vehicle type would have been more on the OLRTC side of the  
28 business.

1                   **MS. KATE McGRANN:** Understood, but as a member of first the  
2 board and, at this point in time, acting CEO and general manager, you took part in these  
3 lessons learned exercises with your colleagues, correct?

4                   **MR. MARIO GUERRA:** I did some, yes.

5                   **MS. KATE McGRANN:** And these documents are intended to,  
6 among other things, capture the results of the work that you all did together to capture  
7 the lessons learned?

8                   **MR. MARIO GUERRA:** Yes.

9                   **MS. KATE McGRANN:** And so I guess I'm wondering if you can  
10 tell us at what point you and your colleagues came to the conclusion that this vehicle  
11 was a hybrid vehicle, as it's described in this document here.

12                   **MR. MARIO GUERRA:** Well, from a maintenance perspective, at  
13 the point that the system went into revenue system, when we started seeing repeated  
14 failure with the vehicles and the reliability wasn't what we thought it would be.

15                   **MS. KATE McGRANN:** And did that come as a surprise to RTM  
16 that the vehicle was a prototype hybrid vehicle with the reliability issues that you saw?

17                   **MR. MARIO GUERRA:** The fact that it was a hybrid vehicle was  
18 not a surprise, but the fact that there were so many reliability issues I would say yes.

19                   **MS. KATE McGRANN:** What about the concept that it was a  
20 prototype vehicle that involved a continuous trial and error scenario? Was that a  
21 surprise to RTM at the time that the system went into trial running?

22                   **MR. MARIO GUERRA:** I would have to say I wasn't as involved in  
23 the day to day, but from my perspective the answer is no, it's wasn't a surprise.

24                   **MS. KATE McGRANN:** And so this conclusion that the vehicle is a  
25 prototype hybrid vehicle, was that something that RTM took into account when it was  
26 preparing to maintain the vehicle through trial running and into the revenue service  
27 period?

28                   **MR. MARIO GUERRA:** To a certain extent I would say yes.



1                   **MS. KATE McGRANN:** Okay. Can you speak a little bit to how  
2 that affected RTM's preparations?

3                   **MR. MARIO GUERRA:** Well, for example, we retained Alstom, the  
4 vehicle supplier, as our maintainer, under the impression that they would be better  
5 suited to maintain the fleet.

6                   **MS. KATE McGRANN:** And do you know if the conclusion that this  
7 was a prototype hybrid vehicle was shared with Alstom, the maintaining arm of that  
8 company?

9                   **MR. MARIO GUERRA:** They're one company. I would assume  
10 they were fully aware.

11                   **MS. KATE McGRANN:** But did RTM have discussions with  
12 anyone from Alstom about the impact that the nature of the vehicle would have on the  
13 maintenance requirements heading into revenue service?

14                   **MR. MARIO GUERRA:** Not that I can recall.

15                   **MS. KATE McGRANN:** And to your knowledge, did RTM or RTG  
16 have discussions with the City about the fact that the vehicle is a prototype hybrid  
17 vehicle that's in a continuous trial and error scenario?

18                   **MR. MARIO GUERRA:** Pre-revenue service I couldn't tell you; I  
19 wasn't involved, but post-revenue service, at least when I became involved, there were  
20 discussions around that, yes.

21                   **MS. KATE McGRANN:** Can you summarize what the purpose of  
22 those discussions were and what the takeaways were?

23                   **MR. MARIO GUERRA:** Well, they mostly centred around incidents  
24 and whether Alstom had experience any of those incidents anywhere else. I mean, the  
25 vehicle was unique to Ottawa in some extents, but there were similar type vehicles in  
26 service elsewhere around the world.

27                   **MS. KATE McGRANN:** Okay, but the document that we're looking  
28 at here describes this vehicle as a prototype vehicle with continuous trial and error.

1 Maybe we can stop with the continuous trial and error for a second. Was the  
2 continuous trial and error scenario, described in this document, still in play when the  
3 vehicles went into revenue service?

4 **MR. MARIO GUERRA:** To a certain extent I would say yes.

5 **MS. KATE McGRANN:** Okay. And is that something that was  
6 discussed with the City?

7 **MR. MARIO GUERRA:** I would probably say yes. Indirectly  
8 through conversations, yes.

9 **MS. KATE McGRANN:** And what was the City's reaction to the  
10 notion that the vehicle is a prototype that's still in the midst of a continuous trial and  
11 error scenario?

12 **MR. MARIO GUERRA:** I seem to recall one of concern.

13 **MS. KATE McGRANN:** Okay. And can you be a bit more specific  
14 about how that concern played out from the City's perspective?

15 **MR. MARIO GUERRA:** Yeah. Concern -- and I'm trying to  
16 remember here. Concern with regard to the impact on reliability of a vehicle that was, in  
17 fact, a prototype in many ways. It was about that concern. Without having that ---

18 **MS. KATE McGRANN:** Mr. Guerra, I'm sorry to interrupt you, but it  
19 looks like your counsel has indicated that he'd like to speak, so we'll just let him go first  
20 and then we'll come back to this.

21 **COMMISSIONER HOURIGAN:** Yes, counsel? Does counsel for  
22 the witness have an objection or something they want to say? Is counsel for the  
23 witness there?

24 Ms. McGrann, who is it that seems to be ---

25 **MS. KATE McGRANN:** Mr. Capern has put up a raised hand icon  
26 on his screen, so I just want to make sure that we're not missing ---

27 **COMMISSIONER HOURIGAN:** Sure. Mr. Capern, are you out  
28 there?

1 Right. Let's just proceed, then.

2 **MS. KATE McGRANN:** Okay. His audio is not working, so I  
3 wonder if we can just hang on a second, because I do think ---

4 **COMMISSIONER HOURIGAN:** All right. Let's take a break and  
5 we'll figure it out.

6 **THE REGISTRAR:** All rise. The Commission will recess for a few  
7 minutes.

8 --- Upon recessing at 9:14 a.m.

9 ---Upon resuming at 9:17 a.m.

10 **THE REGISTRAR:** The hearing is now resumed.

11 **--- MR. MARIO GUERRA, Resumed:**

12 **COMMISSIONER HOURIGAN:** All right. I see the witness,  
13 Commission counsel, and does Mr. Capern have a objection, or -- there he is.

14 Mr. Capern, what do you have to say? You're on mute, sir. Mr.  
15 Capern, you're on mute.

16 **MR. GORDON CAPERN:** Apologies, Commissioner. I -- the  
17 reason I was interrupting was because the audio on the webcast, which my client group  
18 is watching because they don't have the access to the Zoom, was not functioning for the  
19 first few minutes of Mr. Guerra's evidence, and so I wanted to alert the Commission that  
20 there was an issue with the public broadcast that was interfering, at least with my  
21 client's ability to participate. So that was the reason for my interruption, and I apologize  
22 for it.

23 **COMMISSIONER HOURIGAN:** All right. I appreciate you letting  
24 us know. I take it that issue has been resolved? Do we know?

25 **MR. GORDON CAPERN:** I believe that it has.

26 **COMMISSIONER HOURIGAN:** It's been resolved. I'm getting the  
27 thumbs up from everybody in the control room, so ---

28 **MR. GORDON CAPERN:** Yeah. Yes.

1                   **COMMISSIONER HOURIGAN:** --- I think we're all set.

2                   **MR. GORDON CAPERN:** Yes. Thank you for your indulgence,  
3 Commissioner.

4                   **COMMISSIONER HOURIGAN:** No, thank you for letting us know.  
5 Go ahead, Ms. McGrann.

6 **---EXAMINATION IN-CHIEF BY MS. KATE McGRANN (cont'd):**

7                   **MS. KATE McGRANN:** Okay. So turning back to RTM592807.1  
8 that's on the screen, we had been talking about the City's reaction to the notion that the  
9 vehicle's a prototype hybrid that's still in the continuous trial and error scenario, at least  
10 to some extent, as it enters Revenue Service, and I think, Mr. Guerra, you had  
11 communicated that the City expressed concerns about the reliability of service that  
12 could be expected. Is that a fair summary of your evidence?

13                   **MR. MARIO GUERRA:** Yeah. But I think, as I alluded to earlier,  
14 my involvement with the City would have been more during my tenure as CEO and GM.  
15 I wouldn't have really had any conversations with the City prior to Revenue Service  
16 around this subject matter at the Board level.

17                   **MS. KATE McGRANN:** Okay. And so part of what I'm going to do  
18 as I work through these documents with you is get your understanding of the group that  
19 worked on this lessons learned exercise. I want to get your understanding of what led  
20 to these conclusions and then how these issues affected the project.

21                   So if you're not able to speak to a certain aspect of it, then you can  
22 just let us know.

23                   Looking at the bullet point list -- so we have looked at the first  
24 paragraph -- the second half of the first paragraph says:

25                                   "For the prime agreement, the Canadian content  
26                                   requirement within a certified manufacturing facility  
27                                   with experienced and skilled workforce has to  
28                                   achieved, as well as service proven history

1 demonstrated. However, the provider failed to meet  
2 such contractual criteria, this resulting in the  
3 manufacturing to take place within the maintenance  
4 and service facility by local unskilled workers, and the  
5 risk of such decision absorbed by the project." (As  
6 read)

7 A couple of questions. The provider here, is that Alstom, the  
8 vehicle manufacturer?

9 **MR. MARIO GUERRA:** I believe it is, yes.

10 **MS. KATE McGRANN:** Okay. And when the paragraph ends with  
11 the notion that the risk of such decision absorbed by the project, is that the risks created  
12 by departing from the plan and instead, manufacturing vehicles in the maintenance and  
13 service facility with local unskilled workers?

14 **MR. MARIO GUERRA:** Again, this particular piece of information  
15 would have been provided by OLRTC, who were the arm of RTG that are -- had a  
16 contract with Alstom from a supply. As a maintainer, we really were not privy to any  
17 such agreements or arrangements.

18 **MS. KATE McGRANN:** Okay. So I'm going to take you to another  
19 lessons learned document from the same email chain, and it's at RTM592807.2.

20 **--- EXHIBIT No. 290:**

21 RTM00592807.0002 – OLRT Lessons Learned Mitigation  
22 Plan – 03 – Minor Deficiency List, 05-Transition into  
23 Revenue Service, 07-Premature integration March 2021

24 **MS. KATE McGRANN:** So this is a document titled "OLRT Lessons  
25 Learned, Mitigation Plan/ --" I'm going to leave the numbers out -- but "Minor Deficiency  
26 List, Transition into Revenue Service, and Premature Integration," also dated March  
27 2021. Are you familiar with this document, sir?

28 **MR. MARIO GUERRA:** Yes, I am.



1 the PA is being applied in the way that it's supposed to be applied. The system is  
2 working, and doing so without -- initially, without, you know, clients on the system. That  
3 would be a soft start.

4 A hard stop is where you just flip on the switch one day and you're  
5 in Revenue Service without the benefit of a trial period or a soft start or a vetting-in  
6 period.

7 **MS. KATE McGRANN:** Okay. And sticking with the explanation  
8 that you've just provided about the vetting-in period for a moment, I know the  
9 Commission has heard evidence about the importance of a vetting-in period to shake  
10 out issues and allow everyone to get used to the system.

11 You've mentioned the vetting-in period being a time to understand  
12 how the Project Agreement works. Can you speak a little bit more to that purpose?

13 **MR. MARIO GUERRA:** Well, you know, the Project Agreement, in  
14 many ways, leaves a lot left to interpretation in terms of -- so in having the time to get  
15 agreement on the interpretation of KPIs and things of that nature would have gone a  
16 long way to ensure a smoother transition.

17 **MS. KATE McGRANN:** So is the idea there that through the  
18 vetting-in period, both RTM and its subcontractors on the one hand, and the City on the  
19 other hand would see how each is interpreting the KPIs, would identify where there are  
20 potential mismatches, and would take the opportunity to try to resolve those  
21 mismatches before opening the system to Revenue Service and bringing customers in  
22 to rely on the service to be provided?

23 **MR. MARIO GUERRA:** Yeah, especially on a brand-new system,  
24 absolutely, that's correct.

25 **MS. KATE McGRANN:** Okay. And then if we can look at the  
26 impacts for a second -- because you talked about the number of minor deficiencies that  
27 were open, and I wonder if we can just, in particular, look at the last three bullet points  
28 under the "most important impacts" list here. So we've got:

1 "Remaining open deficiencies list, transitioned and  
2 newly appearing deficiencies early in the transition."  
3 (As read).

4 Can we stop for a second there and just speak a little bit more  
5 about that? So you mentioned that the minor deficiencies list was "exhaustive", I think  
6 is that you used; is that fair?

7 **MR. MARIO GUERRA:** Yes.

8 **MS. KATE McGRANN:** And that minor deficiencies list was  
9 examined by RTG, and the City, and the independent certifier at the time of substantial  
10 completion. Was RTM consulted about the entries on the minor deficiency list at any  
11 point up to the time that substantial completion was achieved?

12 **MR. MARIO GUERRA:** Again, I was not involved in the day-to-day  
13 back -- during the revenue service but, to the best of my recollection, we would have  
14 been made aware of the list just prior to revenue service.

15 **MS. KATE McGRANN:** Just prior to revenue service?

16 **MR. MARIO GUERRA:** Yes.

17 **MS. KATE McGRANN:** And what about the milestone that came  
18 before revenue, the substantial completion milestone, to your knowledge, based on your  
19 experience as a member of the executive committee or board of directors, was RTM  
20 made aware of the status of the minor deficiencies list as it stood at the time that  
21 substantial completion was applied for? Was it given the opportunity to feedback?

22 **MR. MARIO GUERRA:** To the best of my recollection, somewhat,  
23 but I don't remember -- to the best of my recollection -- again, I'll say that I wasn't  
24 involved in the day -- I don't remember it being brought to the attention of the board. I  
25 may be wrong, but I don't recall it.

26 **MS. KATE McGRANN:** Okay. And then turning to the size of the  
27 list and the number of items that were on it, can you speak to the impact that the  
28 number of minor deficiencies had on the reliability of the service and, in particular, the



1 maintainers responsibilities at the start of revenue service?

2 **MR. MARIO GUERRA:** Yeah. I mean, in general, the list of  
3 retrofits, for example, that needed to be done on the vehicle, you're sharing space in a  
4 facility. You're sharing space in a facility with the vehicle supplier, with the maintainer,  
5 and with the warranty team responsible to perform -- address the deficiencies vehicles,  
6 so -- so you're, in essence, competing for space. So the more -- the more retrofits and  
7 deficiencies you need to address, the less time you may have to deal with other issues  
8 such as maintenance or -- whether it be corrective or preventative. There's only so  
9 much space available to be able to do that.

10 **MS. KATE McGRANN:** Okay. And the facility that you're referring  
11 to is a maintenance and storage facility?

12 **MR. MARIO GUERRA:** Yes, the Belfast facility.

13 **MS. KATE McGRANN:** Okay. So you're competing for space as  
14 between the supplier, the maintenance team, and then the warranty team; that's what  
15 you said, right?

16 **MR. MARIO GUERRA:** Correct.

17 **MS. KATE McGRANN:** And I believe that, as far as the constraints  
18 you're dealing, you're also dealing with the fact that there's a limited number of  
19 engineering hours that can be used on any particular day to address issues with the  
20 vehicles?

21 **MR. MARIO GUERRA:** Yes, that definitely is something that  
22 affects your ability to maintain, maintain the infrastructure and as well as offer sufficient  
23 time for vehicles to be tested.

24 **MS. KATE McGRANN:** Okay. And then one more constraint that  
25 you're operating under, I understand, is the number of vehicles and the number of  
26 spares available. So if there's a limited number of spares, then you can only get so  
27 much work done because vehicles need to be out on the line during the day; is that  
28 right?

1                   **MR. MARIO GUERRA:** Correct, especially during the morning  
2 peak service when the numbers are higher.

3                   **MS. KATE McGRANN:** Okay. So with those constraints and the  
4 competition for space that you've described, I take it you would have to prioritize the  
5 most pressing issues on any given day in order to try to meet the service requirements;  
6 is that right?

7                   **MR. MARIO GUERRA:** Yeah, Alstom would, yes, our  
8 subcontractor, yes.

9                   **MS. KATE McGRANN:** Okay. And it's fair to say that the  
10 subcontractor operating under all of those constraints may not be able to deal with  
11 priority issues as quickly as they would have otherwise liked, for all the reasons we've  
12 discussed?

13                   **MR. MARIO GUERRA:** Yes, that would be true.

14                   **MS. KATE McGRANN:** And so then, I take it, it just took a little bit  
15 more -- or quite a bit longer to get to items on the minor deficiencies list than would  
16 have otherwise been envisioned?

17                   **MR. MARIO GUERRA:** Yes, absolutely.

18                   **MS. KATE McGRANN:** And there are still minor deficiencies  
19 outstanding today, correct?

20                   **MR. MARIO GUERRA:** There are still retrofits outstanding today,  
21 yes.

22                   **MS. KATE McGRANN:** Okay. And then the reference to "newly  
23 appearing deficiencies early in the transition", do you know what that's speaking about?

24                   **MR. MARIO GUERRA:** I can -- I can speculate if that's all right.  
25 You know, as the vehicles or the system, the infrastructure, you know, goes into  
26 revenue service, new issues start to appear that otherwise would not appear during  
27 testing and commissioning, so -- so these deficiencies now need to be dealt with, and  
28 typically through some sort of program, retrofit, or -- and that. So that is in addition to

1 what was already open going into revenue service.

2 **MS. KATE McGRANN:** Okay. And I take it that the appearance of  
3 deficiencies, although you may not have known what they were going to be, the fact that  
4 additional deficiencies may appear, that risk was known to RTM at the time that the  
5 system went into revenue service?

6 **MR. MARIO GUERRA:** Sorry, the risk that -- I just want to make  
7 sure I understand your question -- the risk that there would be additional deficiencies?

8 **MS. KATE McGRANN:** That additional deficiencies may appear.

9 **MR. MARIO GUERRA:** Always, yes, on a brand-new system. I  
10 would qualify that by saying probably not to the extent that they happened, though.

11 **MS. KATE McGRANN:** Well, in -- and I'm thinking, in particular,  
12 given the language that we looked at on the last lessons-learned document about the  
13 fact that this was a prototype and a continuous trial-and-error scenario, my expectation  
14 would be that RTM would be expecting more deficiencies than you may otherwise  
15 expect from a service-proven vehicle; is that fair?

16 **MR. MARIO GUERRA:** I think, in retrospect, yes.

17 **MS. KATE McGRANN:** Okay. The next bullet point in this list  
18 says:

19 "Start of revenue service was not ready, but pressure  
20 to start due to schedule delays." (As read).

21 Let's start with the first part of this bullet point where it says, "Start  
22 of revenue service was not ready." What's that referring to?

23 **MR. MARIO GUERRA:** I -- again, that would be something that  
24 would have been RTG and OLRTC, but I wouldn't have any insight into that.

25 **MS. KATE McGRANN:** Can you speak to the discussions that the  
26 lessons-learned exercise had that led to this bullet being on this document?

27 **MR. MARIO GUERRA:** Again, this would have been the group, the  
28 OLRTC group, the construction group that was in charge of that, that would have dealt

1 with the start of revenue service and pressures and whatnot. Our goal as the  
2 maintainer was to try and be ready for when revenue service finally took place, and that  
3 was through mobilization. That was our role.

4 **MS. KATE McGRANN:** Okay. And in your role as maintainer, in  
5 preparing for revenue service, were you, and was the RTM Board, aware at the time  
6 that the system was not ready for revenue service at the start?

7 **MR. MARIO GUERRA:** I would say no, I don't think I could say we  
8 were aware it was not ready, no.

9 **MS. KATE McGRANN:** And then this bullet point goes on to say,  
10 "Pressure to start due to schedule delays." Can you speak to the pressure to start  
11 revenue service that's described in this bullet point?

12 **MR. MARIO GUERRA:** Again, I wasn't intimately involved. I mean  
13 every project has pressure to start. But in this particular case, again, it's not something  
14 that, as the maintainer, we were involved in.

15 **MS. KATE McGRANN:** Okay. And I just want to make sure that I  
16 understand you evidence here, sir. As a member of the RTM Board of Directors or  
17 Executive Committee of the maintainer, you, in that role, were not aware that the  
18 system was not ready for the start of revenue service?

19 **MR. MARIO GUERRA:** I would say no, that's not something I  
20 would say we were aware of.

21 **MS. KATE McGRANN:** Okay. And you were -- you and the other  
22 members of the board or executive committee of a pressure to get revenue service  
23 started due to schedule delays?

24 **MR. MARIO GUERRA:** No, I mean I think everybody felt the  
25 pressure, but I was -- I couldn't speak to any of the details around that.

26 **MS. KATE McGRANN:** Okay. And then with respect to that the  
27 last bullet point in this list, which says:

28 "Trial running should have been from two weeks to

1 several months.” (As read).

2 Do you -- can you speak to how this conclusion was arrived at by  
3 your group?

4 **MR. MARIO GUERRA:** I think this, I believe, speaks to the start  
5 soft that we talked earlier where we should have -- you know, we should have taken  
6 more time to ensure, in retrospect, that the system was thoroughly tested or stressed to  
7 flesh out any issues, technical issues, as well as any commercial issues, as we  
8 discussed before.

9 **MS. KATE McGRANN:** Okay. And there have been some  
10 suggestions made in the evidence before the Commission that extending trial running to  
11 a period longer than two weeks would not have identified further deficiencies. What’s  
12 your reaction to that suggestion?

13 **MR. MARIO GUERRA:** I don’t agree with that.

14 **MS. KATE McGRANN:** And can you explain why you don’t agree  
15 with it?

16 **MR. MARIO GUERRA:** Well, the more time you have to test, and  
17 stress, and communicate with all the parties on how to resolve issues, the better off the  
18 system’s going to be when it’s finally in revenue service. That’s just in my mind, based  
19 on my experience. The more time, the better, especially -- especially on a brand-new  
20 system like this one in Ottawa.

21 **MS. KATE McGRANN:** And then sticking with the notion of a start  
22 for a moment, there’s been some evidence that the City did in fact engage in a soft start  
23 through the running of a parallel bus service for three weeks, through the decision to  
24 launch the system on a weekend as opposed to a weekday, to the decision not to offer  
25 free service and others. Can you speak to whether you agree with those aspects and  
26 the characterization of the beginning of service as a soft start?

27 **MR. MARIO GUERRA:** I would not characterize those as a soft  
28 start, no.

1 **MS. KATE McGRANN:** Okay. And why is that?

2 **MR. MARIO GUERRA:** I mean, it's simply as we said earlier when  
3 we looked at soft start versus hard start. Flipping the switch and going directly at the  
4 forum and the service to me is not a soft start, regardless of whether you're starting on a  
5 weekend or a weekday.

6 **MS. KATE McGRANN:** And what about the three weeks of parallel  
7 bus service that was provided?

8 **MR. MARIO GUERRA:** Again, I think that does not speak to a soft  
9 start with regards to the system, In my mind that's -- I think that's an insurance policy in  
10 case the system isn't working. The bus service is there to back it up.

11 **MS. KATE McGRANN:** Okay. And just to help us understand.  
12 What is it about the three weeks of parallel bus service that does not qualify as a soft  
13 start to you? Is it because there are passengers that are riding the system? What is it?

14 **MR. MARIO GUERRA:** It's because it really is not -- the system is  
15 still in full revenue service with full passengers, full service. The PA is being applied  
16 fully as the City chooses to interpret it. There is no ability to look at anything that might  
17 come up and through discussions and workshops ensure that it's dealt with before you  
18 go into full revenue service. The bus service simply does not do anything to help with  
19 that.

20 **MS. KATE McGRANN:** Okay. Would it be fair to say that one of  
21 the things that -- or one of the opportunities that a soft start would have provided that  
22 wasn't provided here is the opportunity to identify issues, workshop the resolution of  
23 issues, and have those issues resolved without the pressure of having to provide full  
24 passenger service?

25 **MR. MARIO GUERRA:** Absolutely. I agree with that 100 percent.

26 **MS. KATE McGRANN:** Okay. And if we scroll down a little bit  
27 looking at this document, in the Overview section, I just want to quickly touch on  
28 something here. That's perfect.

1                   This section describes that the rules of engagement could be  
2 clarified with the client -- and this is the look forward part of this exercise, I believe --  
3 during contract negotiations and allow for a bedding in period. And we've spoken to the  
4 importance of that a little bit, including a winter. Can you speak for a moment about the  
5 importance of having a winter included in the bedding-in period?

6                   **MR. MARIO GUERRA:** Yeah. I mean, this is, I think, a nice to, not  
7 absolutely need to. But you know, how you react to a system during the first winter  
8 months is critical in ensuring success long term. All sorts of things are going to happen  
9 that you maybe didn't foresee. Maybe the wind blows and you have snow drifts in  
10 certain areas and not in others. I mean, that's a very simple example. But those kinds  
11 of things could be vetted out simply by having a bedding-in period during the winter.  
12 And again, especially on a brand new system.

13                   **MS. KATE McGRANN:** Okay. And there's been evidence in the  
14 Commission's proceedings that trains were running at least on part of the track and  
15 maybe more in winter conditions. But from the perspective of the maintainer and the  
16 first winter that was encountered in revenue service, is it your view that having a  
17 bedding-in period through a winter season would have been beneficial to this project?

18                   **MR. MARIO GUERRA:** Yes, absolutely.

19                   **MS. KATE McGRANN:** Okay. And why is that, despite the fact  
20 that there had been trains running in winter conditions prior to the opening of revenue  
21 service?

22                   **MR. MARIO GUERRA:** Yeah. I mean, trains were running for  
23 testing and commissioning purposes. The system really wasn't being stretched to its  
24 full capacity as it, you know -- during the winter conditions -- 15 trains out, the switches  
25 operating as they would during revenue service and things of that nature.

26                   **MS. KATE McGRANN:** Oaky. And I take it that the stressing of  
27 the system under revenue service conditions, the importance of doing that s because  
28 that kind of running may bring issues to the fore that may not have appeared during the

1 testing and commissioning. Is that what we're looking at?

2 **MR. MARIO GUERRA:** Yeah. I mean, it could be technical issues.  
3 It could be commercial issues. It could be anything, yes, absolutely.

4 **MS. KATE McGRANN:** Okay. And then part of the way through  
5 this paragraph it says:

6 "It is critical that the operation and maintenance group  
7 exhaustively inspects the entire deliverable from the  
8 constructor for inclusion on the deficiencies list at the  
9 time of substantial completion. As a construction  
10 contractor, the remaining deliverables are largely  
11 governed by the contents of this list. If issues arise  
12 that are not on this list, post substantial completion,  
13 generally it is much more difficult to bring  
14 responsibility of any issue to the contractor."

15 So for starters, just to get us positioned, the construction contractor  
16 and the contractor who is referred to throughout, would that be OLRTC?

17 **MR. MARIO GUERRA:** I believe so.

18 **MS. KATE McGRANN:** Okay. And when this document says that  
19 it's critical that the operations and maintenance group exhaustively inspect the entire  
20 deliverable for inclusion on the deficiencies list at the time of substantial completion,  
21 what's being described there?

22 **MR. MARIO GUERRA:** Well, that we have the ability to inspect the  
23 system and to ensure that these things do get -- first of all, that they don't impact our  
24 ability to maintain the system, and secondly that there's a commitment to deal with them  
25 in the timeframe that's successful, that's acceptable from a maintenance perspective.

26 **MS. KATE McGRANN:** Okay. Reading this, it raises a question as  
27 to whether on Stage 1 there were deficiencies that existed at the time of substantial  
28 completion that didn't make their way on to the deficiencies list and that's what led to



1 the recommendation that there would be this exhaustive inspection for inclusion of  
2 matters on the deficiencies list. Is that accurate?

3 **MR. MARIO GUERRA:** I think that's a possibility, yes.

4 **MS. KATE McGRANN:** Okay. And so is it the case then that this  
5 kind of exhaustive inspection that's contemplated here may have caught some issues  
6 that weren't identified through the testing and commissioning that was done on the  
7 system?

8 **MR. MARIO GUERRA:** It's a possibility, yes.

9 **MS. KATE McGRANN:** Okay. And do you know whether  
10 deficiencies that were later identified following substantial completion, whether anyone  
11 on the RTG side of this project formed the view that those deficiencies could have and  
12 should have been identified earlier in the timeframe of he project?

13 **MR. MARIO GUERRA:** I can't speak to specifics. I can only  
14 speculate that probably, yes.

15 **MS. KATE McGRANN:** Okay. And then if ewe move on through  
16 this paragraph where it says:

17 "As a construction contractor the remaining  
18 deliverables are largely governed by the contents of  
19 this list."

20 I take that to mean that for OLRTC as it has tried to finish up the  
21 construction of the project, it's focused on the deficiencies list and trying to close those  
22 items out, and maybe not so much focusing on new deficiencies that appear; is that  
23 fair?

24 **MR. MARIO GUERRA:** No, I would say they're focused on both  
25 but probably more so on existing deficiencies.

26 **MS. KATE McGRANN:** Okay. And any new deficiencies that  
27 appear then become -- if OLRTC does not deal with them, they become RTM's to deal  
28 with; is that generally what happened here?

1                   **MR. MARIO GUERRA:** Yes, I would say that's accurate.

2                   **MS. KATE McGRANN:** Okay. And the problem that's described in  
3 the last sentence here:

4    "If issues arise that are not on this list post substantial  
5 completion generally it is much more difficult to bring  
6 responsibility of any issues to the contractor."

7                   I take that to mean, sir, that if issues arise that aren't on the  
8 deficiencies list, even if they ought to be the responsibility of OLRTC to take care of and  
9 resolve, it becomes much more difficult to get OLRTC to take responsibility for those  
10 issues. Is that fair?

11                   **MR. MARIO GUERRA:** There is a process in place. But yeah, and  
12 it needs to be followed to ensure that it is a warranty related issue and not due to lack of  
13 maintenance, for example. So there is a process that needs to be followed.

14                   **MS. KATE McGRANN:** Okay. And understanding that there is a  
15 process, I think what this document is saying is that if you don't get the issues that exist  
16 on that deficiencies list while you can engage in the process it becomes, as it says here,  
17 much more difficult to get OLRTC to take responsibility for those issues; is that fair?

18                   **MR. MARIO GUERRA:** Yes, that's fair. OLRTC had its  
19 subcontractors, yes.

20                   **MS. KATE McGRANN:** Okay. And was that the experience that  
21 you had on this project? Did you see that play out?

22                   **MR. MARIO GUERRA:** I did.

23                   **MS. KATE McGRANN:** And when you saw that issue play out did  
24 it mean that it took longer for issues affecting the reliability of the system to be  
25 addressed?

26                   **MR. MARIO GUERRA:** In some cases, yes.

27                   **MS. KATE McGRANN:** And we can take this document down now.  
28 We've heard evidence about Alstom's staffing levels through trial

1 running heading into revenue service and you spoke to Alstom staffing levels in your  
2 Commission interview. And you said that the concerns about understaffing on Alstom's  
3 part were a matter that the RTM board was aware of. Do you remember giving that  
4 evidence?

5 **MR. MARIO GUERRA:** Yes.

6 **MS. KATE McGRANN:** And in your Commission interview you  
7 said that this understaffing issue was one that was escalated through the RTM board to  
8 Alstom senior staff. Do you remember giving that evidence?

9 **MR. MARIO GUERRA:** Yes, I do.

10 **MS. KATE McGRANN:** And I'm paraphrasing here, but I take it  
11 that that escalation didn't initially lead to much of a change, but eventually, with time,  
12 Alstom did increase its staffing.

13 **MR. MARIO GUERRA:** That's correct.

14 **MS. KATE McGRANN:** And I think in your Commission interview  
15 you indicated that particularly after the second derailment, Alstom's staffing approach  
16 changed for the better.

17 **MR. MARIO GUERRA:** Yes, it did.

18 **MS. KATE McGRANN:** Can you just describe in a bit more detail  
19 the RTM board's efforts to address the Alstom staffing issue?

20 **MR. MARIO GUERRA:** So first I'll maybe, if I can, explain Alstom  
21 staffing essentially is in two parts. There's the maintenance aspect and there's the  
22 supply aspect. The supply is dealing with warranty-related issues, and the maintenance  
23 is dealing with maintenance-related issues, obviously. Our concern was one as it  
24 relates to our ability to deliver cars into service, but we did not, as an RTM entity, have a  
25 contract with Alstom supply. So we were dealing through the Alstom maintainer, and at  
26 times, in all honesty, it was a little confusing as to who did what on the Alstom side.

27 So we met with senior managers from Alstom consistently to voice  
28 our concerns with the regard to staffing levels on both sides. It was a concern that we

1 had, and the City as well expressed the same concern.

2 **MS. KATE McGRANN:** And what was the reaction that you  
3 received in those meetings?

4 **MR. MARIO GUERRA:** I mean, in some cases they worked to try  
5 and increase the resources. In most cases, they simply did not. So I think it was mixed.

6 **MS. KATE McGRANN:** And the contract that RTM had with  
7 Alstom and the aspects of that contract that would allow RTM to try to get Alstom to  
8 staff up, for example -- how effective was the contract in assisting in those efforts?

9 **MR. MARIO GUERRA:** Yeah, I'm not a commercial contract  
10 person, but the contract is performance-based, so we cannot tell Alstom they must have  
11 x number of employees. We can simply say it's performance-based, the reliability is  
12 such, and we believe one of the reasons their a lack of resources. So we said that they  
13 needed to address that.

14 **MS. KATE McGRANN:** Okay. And you spoke a little bit about the  
15 division between retrofits as opposed to preventative and corrective maintenance. In  
16 your Commission interview you said that Alstom's responsiveness with respect to the  
17 retrofits also came to the attention of the RTM board. Do you remember giving that  
18 evidence?

19 **MR. MARIO GUERRA:** Yes.

20 **MS. KATE McGRANN:** And you explained that the retrofits would  
21 fall on the supply side or the construction side, and that the RTM board voiced concerns  
22 over this. But this would have been OLRTC that would have had to meet with Alstom in  
23 that particular matter; is that fair?

24 **MR. MARIO GUERRA:** That's fair.

25 **MS. KATE McGRANN:** Okay. And so RTM and OLRTC have an  
26 interface agreement as between the two organizations; is that right?

27 **MR. MARIO GUERRA:** That's correct.

28 **MS. KATE McGRANN:** And in your Commission interview, you

1 were asked a question about the effectiveness of the interface agreement, and I'm  
2 going to pull that evidence up so that we can go through it together. And then I'll have  
3 some questions for you about it.

4 So if we could turn up TRN69. And we'll want to go to PDF page  
5 116. And if we can scroll down a little bit, we're going to start at line 13 here.

6 Can you see that transcript okay?

7 **MR. MARIO GUERRA:** I can.

8 **MS. KATE McGRANN:** Okay. So starting at line 13, you're asked:

9 "With respect to the speed at which Alstom was  
10 addressing the retrofits and the issues that arose  
11 there, how effective was the interface agreement  
12 between RTM and OLRTC in resolving this issue or  
13 seeking to resolve it?" (As read)

14 And you responded:

15 "In that particular instance, the interface agreement  
16 itself was, from the perspective of -- because we  
17 would simply ask for OLRTC to intervene because...."  
18 (As read)

19 And then I'm going to skip ahead here:

20 "That would ultimately impact our ability to deliver  
21 service, right? So...." (As read)

22 And then you say:

23 "And that led to a lot of issues around the penalties  
24 and assessing penalties and who was responsible  
25 and all that wonderful contractual stuff that's still  
26 ongoing today." (As read)

27 And you're asked:

28 "Okay. So when you're talking about penalties and

1 assessing penalties, are you speaking about the  
2 penalties that the City can levy against RTM?" (As  
3 read)

4 And you responded:

5 "Yes, especially because it's complicated because  
6 you're in a warranty period as well. So there's -- you  
7 know, you get assessed. Let me played it out for you  
8 once through. So RTG gets assessed penalties by  
9 the City for various APRs, or non-performance, or  
10 whatever it is." (As read)

11 I'll stop for a second there. What's an APR?

12 **MR. MARIO GUERRA:** I think I might have said KPIs and it didn't  
13 come across correctly.

14 **MS. KATE McGRANN:** Okay. And a KPI is a key performance  
15 indicator?

16 **MR. MARIO GUERRA:** Correct.

17 **MS. KATE McGRANN:** And that's a measure in the project  
18 agreement that is applied to RTM and its subcontractors?

19 **MR. MARIO GUERRA:** Yes, it is.

20 **MS. KATE McGRANN:** Okay. So turning back to your answer  
21 here:

22 "RTG would flow those deductions down to RTM. If  
23 it's within Alstom's scope, then deductions get flowed  
24 down to Alstom maintenance. You know, and then  
25 they claim it's due to defect or warranty, and so then it  
26 comes back up through us to RTC, to Alstom supply.  
27 It's kind of -- that's how it would work." (As read)

28 And you're asked:

1 "Okay. So when you say it's complicated by the fact  
2 that it's in the warranty period, does the complication  
3 flow from the number of parties who are engaged  
4 from that?" (As read)

5 And you say:

6 "From that and also assigning responsibility because  
7 it's -- the maintainer will state that it's CC defect, and  
8 the constructor or supplier will say that it's due to poor  
9 maintenance, so there's always a little bit of friction  
10 there." (As read)

11 And then we clarify:

12 "Just so someone who's reading this transcript will  
13 know what you're talking about, the maintainer is  
14 RTM, and they would be saying it's a CC defect. The  
15 CC is OLRTC?" (As read)

16 You reply:

17 "Yes. And their subs would be Alstom maintenance  
18 and Alstom supply." (As read)

19 And then you're asked:

20 "The exercise in determining the responsibilities for an  
21 issue like this -- has that exercised any impact on  
22 RTM's ability to performance its maintenance and  
23 obligations under the project agreement?" (As read)

24 And you say:

25 "It's hard to make a direct link, but certainly it had an  
26 impact from the perspective of the -- we are assessed  
27 penalties, and in turn so is Alstom maintenance in the  
28 first instance. And so from that perspective, you

1 know, the fact that you're not being paid is not a good  
2 motivator. So it's hard to make a direct link, but I  
3 would say indirectly probably somewhat." (As read)

4 Two questions for you here. You mentioned the fact that you're not  
5 being paid is not a good motivator, and that's a reference to the fact that the City was  
6 not making payments under the contract due to the deductions that they'd levied to  
7 RTM; is that right?

8 **MR. MARIO GUERRA:** That's correct.

9 **MS. KATE McGRANN:** And that RTM is passing deductions, at  
10 least some of them, down to Alstom in that instance?

11 **MR. MARIO GUERRA:** Yes.

12 **MS. KATE McGRANN:** And you've identified that non-payment as  
13 an indirect factor that may have an impact on the maintenance services that are  
14 provided.

15 **MR. MARIO GUERRA:** I would say yes.

16 **MS. KATE McGRANN:** And then I'm going to ask you, sir, did this  
17 all have another impact in that the friction or the need to sort out who's responsible for  
18 dealing with these issues -- did that have any impact on the speed or efficiency at which  
19 the issues could be resolved, from the perspective of the provision of reliable service?

20 **MR. MARIO GUERRA:** Again, as I said, it's hard to make a direct  
21 link, but I would have to say the answer is probably yes.

22 **MS. KATE McGRANN:** We can take that document down.

23 If we can pull up RTM592807.8.

24 **--- EXHIBIT No. 291:**

25 RTM00592807.0008 – OLRT Lessons Learned Mitigation  
26 Plan/01 – Interface Agreement Alignment March 2021

27 **MS. KATE McGRANN:** And just while we're talking about the  
28 interface agreement and the interplay between Alstom maintenance, RTM, OLRTC, and



1 Alstom manufacturing, if I can put it that way, this is a document titled "OLRT Lessons  
2 Learned: Mitigation Plan Interface Agreement Alignment". The issue identified here is:

3 "The current status and nature of the interface  
4 agreement is adversarial, putting the construction  
5 group and the maintenance group as individual  
6 standalones without alignment and having separate  
7 objectives and cost centres." (As read)

8 And am I right, sir, that the construction group described here is  
9 OLRTC and the maintenance group is RTM?

10 **MR. MARIO GUERRA:** In this particular project, yes.

11 **MS. KATE McGRANN:** Okay. And this describes the interface  
12 agreement between those two organizations, right?

13 **MR. MARIO GUERRA:** Yes.

14 **MS. KATE McGRANN:** And it describes it as adversarial. Can you  
15 just speak to your experience of the interface agreement and to the extent that your  
16 experience was adversarial to help us understand why this conclusion is set out here?

17 **MR. MARIO GUERRA:** I think one example we just covered is the  
18 -- whenever there's an incident, a failure or some sort of issue during the warranty  
19 period on a CC defects claim, typically, in some cases, the constructor will accept it or  
20 the -- in some cases, they won't, and it makes for the relationship, some friction there,  
21 because we are assigned the deductions in the first instance, so we're the ones that  
22 take the brunt of those deductions, "we" being RTM.

23 **MS. KATE McGRANN:** Okay. And for somebody who's looking at  
24 this situation from the outside at the sort of thousand-foot level, they may form the view  
25 that okay, so there's RTG, there's RTM, there's OLRTC, but really, this is the same  
26 family of companies, and there's certainly a lot of interrelations between them.

27 What led to the adversarial nature of the relationship between RTM  
28 and OLRTC?

1                   **MR. MARIO GUERRA:** I mean, I can speculate. I think the -- you  
2 know, the -- as the findings talk to there, the deliverables are different for each entity. I  
3 think that's probably the biggest factor.

4                   **MS. KATE McGRANN:** And understanding that the deliverables  
5 are different, the constructor is putting the system together, the maintainer is  
6 maintaining it after the fact, but isn't there a common goal to have a system that works  
7 as described in the Project Agreement and is capable of being maintained as  
8 envisioned in that agreement through the entire life cycle of the relationship?

9                   **MR. MARIO GUERRA:** There should be, but at times, probably  
10 not.

11                   **MS. KATE McGRANN:** And if you can't answer this question, then  
12 you'll let me know, but what, in your experience, led to that departure from the common  
13 goal?

14                   **MR. MARIO GUERRA:** I think it's just the nature of the contracts  
15 and the way they work.

16                   **MS. KATE McGRANN:** Okay. So if we scroll down a little bit and  
17 look at the findings here, it says:

18   "The findings resulting from the workshops identified  
19   that the interface agreement between the maintainer  
20   and constructor should allow for the transfer of the  
21   construction project as a facet of the maintenance  
22   agreement." (As read)

23                   It goes on to say, "This includes but not limited to --" and it  
24 describes a couple of options, a non-exhaustive list though.

25                   And it goes on to say:

26   "Partner stakes must be consistent for both the  
27   construction and maintenance contractors, both  
28   working towards a common goal and to find

1 successful handover, supported by an executive  
2 committee that has a clear mandate to protect the  
3 interests of the parent companies, both embedded in  
4 the construction phase, and accountable for the  
5 results." (As read)

6 I have a couple of questions about this, but first, can you unpack  
7 this for a little bit and help us understand what's being described in this paragraph?

8 **MR. MARIO GUERRA:** Well, I think the first paragraph talks about,  
9 you know, the constructor having a role with regards to the maintenance agreement,  
10 and then it gives some examples through integrated deliverables, you know, budgetary  
11 change orders, liabilities, and so on, whereas now, their involvement basically stops at,  
12 you know, Revenue Service, plus warranty.

13 **MS. KATE McGRANN:** Okay. And when the second paragraph  
14 talks about the partner stakes must be consistent for both the construction and  
15 maintenance contractors, was that not the case on this project?

16 **MR. MARIO GUERRA:** I think for the most part it was.

17 **MS. KATE McGRANN:** Can you speak to me about the parts  
18 where it wasn't?

19 **MR. MARIO GUERRA:** I think in essence, we had four.

20 **COMMISSIONER HOURIGAN:** I think we may have a freezing  
21 issue. Just stand by.

22 Mr. Capern, if you could alert your client to the fact that he's frozen?

23 Okay. The witness is back. I think you're muted, so if you want to -  
24 - there we go. Okay. Let's proceed.

25 **MS. KATE McGRANN:** I believe that you're still muted, Mr.  
26 Guerra.

27 **MR. MARIO GUERRA:** Is that better?

28 **MS. KATE McGRANN:** That is better, and we can hear you just

1 fine. Can you hear me?

2 **MR. MARIO GUERRA:** Yeah, I can. Thank you.

3 **MS. KATE McGRANN:** Okay. So where we lost the connection  
4 with you there was I had just asked you to describe where the -- where OLRTC and  
5 RTM were not working towards a common goal, so could you start again? Sorry about  
6 that.

7 **MR. MARIO GUERRA:** Sorry, I'm afraid -- maybe I'll just start --  
8 you kind of asked me to unpack the -- that was the question, right, that you asked?

9 **MS. KATE McGRANN:** Yes. Please go ahead.

10 **MR. MARIO GUERRA:** Okay. So I'll start at the first paragraph  
11 again.

12 I think that the first paragraph talks about the constructor having a  
13 role during -- as part of the maintenance agreement, and it gives examples of how that  
14 might be achievable through integrated deliverables, budgets, liabilities, and so on.

15 The second one talks about the partner stakes be consistent so  
16 that there's more of a common goal within the companies, a more holistic look at the  
17 project rather than silos of maintenance and construction.

18 **MS. KATE McGRANN:** Okay. So with respect to the need for  
19 more of a common goal, can you describe where there wasn't a common goal between  
20 OLRTC and RTM on the Stage 1 Project?

21 **MR. MARIO GUERRA:** Well, I think, as I said earlier, the  
22 deliverables were not the same. You know, the constructor's intent on getting the  
23 system up and running, getting it constructed, getting it up and running, and seeing it  
24 through its warranty period, whereas the maintenance is more of a long-term -- in this  
25 particular case, 30-year view. And oftentimes, the two don't align very well.

26 **MS. KATE McGRANN:** Okay. And this document speaks to the  
27 need for the construction and maintenance contractors to be working towards a  
28 common goal and a defined successful handover. Would you describe the handover in

1 this project to have been successful?

2 **MR. MARIO GUERRA:** I wouldn't characterize it as fully  
3 successful, somewhat but not fully. In retrospect, certain things could have been done  
4 a little bit better.

5 **MS. KATE McGRANN:** And what, in your mind, could have been  
6 done better?

7 **MR. MARIO GUERRA:** I think we talked about deficiencies list, is  
8 one thing. I think the handover, the information, the documentation could have been  
9 handled better. The maintenance of the system during construction could have been  
10 handled a little bit better. Things -- those are a few that come to mind.

11 **MS. KATE McGRANN:** Okay. And we've talked about the  
12 deficiencies list and the impact that that had on, in particular, the reliability of the system  
13 in Revenue Service. Can you speak to the handover and documents and the  
14 implications of how that was done for the provision of reliable service in this project?

15 **MR. MARIO GUERRA:** Well, I think the focus was on, you know,  
16 achieving Revenue Service, so things like documents being handed over took a little bit  
17 of a back seat, and as a result, they were not handed over in a manner that would have  
18 -- in retrospect, would have been easier to deal with. So as a result, at times, we  
19 struggled to find certain documents.

20 **MS. KATE McGRANN:** And as a result of struggling to find certain  
21 documents, did RTM and/or its subcontractors find themselves without information  
22 required to identify or resolve issues that came up during Revenue Service?

23 **MR. MARIO GUERRA:** I think it just made it a lot more difficult to  
24 get the information, but eventually, we did get the information.

25 **MS. KATE McGRANN:** Okay. And when you speak about it being  
26 more difficult to get information but eventually getting it, it sounds like that could have  
27 led to a less efficient resolving of issues as they arose; is that fair?

28 **MR. MARIO GUERRA:** Again, it's hard to make a direct link, but I

1 think that's -- there's probably some truth in there, yes.

2 **MS. KATE McGRANN:** Okay. And then you also spoke to  
3 maintenance of the system during construction as something that could have been  
4 improved. Is that a fair summary of your evidence?

5 **MR. MARIO GUERRA:** Yes.

6 **MS. KATE McGRANN:** And if that had been the case here, if  
7 maintenance on the system during construction had been done to the level that you're  
8 envisioning in this document, what benefits would have flowed to the project as it goes  
9 into Revenue Service?

10 **MR. MARIO GUERRA:** Yeah. I think in retrospect, I think what I  
11 meant to say there was the involvement of the maintainer during the construction period  
12 to maintain the system, and thus, I think it would have ensured a much smoother  
13 transition rather than us just being handed the system on Day 1. We would have  
14 already been there experienced and we would have been assured that the system was  
15 maintained as it should have been, so ---

16 **MS. KATE McGRANN:** Okay. So it sounds like the benefits that  
17 would flow from that would be twofold. One, the system is maintained to the level that  
18 you would want it to be as you're heading into revenue service; is that fair?

19 **MR. MARIO GUERRA:** Yes.

20 **MS. KATE McGRANN:** And two, the maintainer has already  
21 started its way along the learning curve and so it's quite a bit further along in its  
22 familiarity with the system and its ability to issues as you head into revenue service as  
23 opposed to having those learning experiences while there are passengers on the  
24 system; is that right?

25 **MR. MARIO GUERRA:** That's correct.

26 **MS. KATE McGRANN:** And then, to the extent that you can, if you  
27 could just help us understand what's envisioned in this document when it says that:

28 "The construction and maintenance contractor should

1 be supported by an executive committee that has a  
2 clear mandate to protect the interests of the parent  
3 companies embedded in the construction phase and  
4 accountable for the results.” (As read).

5 What’s that describing?

6 **MR. MARIO GUERRA:** I think, in essence, that exists currently  
7 through the interface agreement. I think this just needs -- this just looks to formalize  
8 that process a bit more to ensure that the -- the holistic interest of the projects are dealt  
9 with rather than -- I mean there exists executive committees for OLRTC; there exists  
10 one for RTG and one for RTM. I think this speaks to an overarching executive  
11 committee for the entire project. At least that’s what I think it does.

12 **MS. KATE McGRANN:** Okay. And I presume, and I’ll ask you, is  
13 the idea behind the overarching executive committee that that may help address the  
14 issue that this document’s dealing with, which is the adversarial nature of the  
15 relationship that arose between OLRTC and RTM?

16 **MR. MARIO GUERRA:** I would say yes.

17 **MS. KATE McGRANN:** Okay. Now we can take that document  
18 down. And we had spoken before, as part of our discussion leading into the interface  
19 agreement topic about Alstom under-resourcing, as perceived by RTM, and you spoke  
20 about the steps that the board took to address that, and you spoke about the fact that  
21 Alstom has since taken significant steps to upgrade its approach in staffing. In your  
22 Commission interview, you said that that really happened after the second derailment; is  
23 that fair?

24 **MR. MARIO GUERRA:** Right.

25 **MS. KATE McGRANN:** What would you say to someone, such as  
26 an OC Transpo customer, for example, who asked you why it took the second  
27 derailment for RTM’s subcontractor, Alstom, to staff-up appropriately for this project?

28 **MR. MARIO GUERRA:** I can’t explain. I’m sorry. You’d have to

1 ask somebody from Alstom.

2 **MS. KATE McGRANN:** In terms of RTM's efforts, is there anything  
3 that could have been done prior to the second derailment to devote the number and  
4 kind of resources necessary, do you think?

5 **MR. MARIO GUERRA:** From my perspective, I don't think there's  
6 anything else that we could have done, no.

7 **MS. KATE McGRANN:** Okay. And I -- I recognize we're bouncing  
8 around a little bit here, sir, but I do want to bring up another document that touches on  
9 an issue that we have been discussing, and so that's going to be RTM592807.4.

10 **--- EXHIBIT No. 292:**

11 RTM00592807.0004 – OLRT Lessons Learned Mitigation  
12 Plan/06 – Interface and Tactical Handover March 2021

13 **MS. KATE McGRANN:** So this is a document titled “OLRT Lessons  
14 Learned: Mitigation Plan, Interface and Tactical Handover”. The issue identified here is  
15 that there are interface and integration issues related to the handover from one phase of  
16 a project to another in relation to the various stakeholders. And if we could just scroll  
17 down to take a look at the findings, this document says:

18 “It was discussed that independent groups and teams  
19 working on the same project have poorly documented  
20 data to support an effective handover which results of  
21 information, poor document structure, and lack of  
22 coordination due to the delineation of responsibilities.”  
23 (As read).

24 And when you mentioned earlier that there were issues with  
25 document handover and things like that, is this -- is that consistent with what we're  
26 reading about here?

27 **MR. MARIO GUERRA:** Yes, it is.

28 **MS. KATE McGRANN:** So it's describing the same kind of issues?



1 **MR. MARIO GUERRA:** Yes.

2 **MS. KATE McGRANN:** And you had -- you had used the word  
3 “siloes” earlier to describe, I think, OLRTC and RTM; is that right?

4 **MR. MARIO GUERRA:** At times, yes.

5 **MS. KATE McGRANN:** Okay. And so is that -- we’re talking about  
6 -- and this document discusses independent groups and teams working on the same  
7 project, the same kind of idea as being the silos of RTM and OLRTC?

8 **MR. MARIO GUERRA:** I would say yes, yeah.

9 **MS. KATE McGRANN:** The flooding of information, poor  
10 document structure, and lack of coordination, does that describe part of RTM’s  
11 experience at the time of the handover of the system?

12 **MR. MARIO GUERRA:** Somewhat, yes.

13 **MS. KATE McGRANN:** Okay. And then this document goes on to  
14 say:

15 “To add to these transition difficulties, tactical issues  
16 such as the client’s lack of knowledge and  
17 understanding...”

18 Would that be the City?

19 **MR. MARIO GUERRA:** I believe so.

20 **MS. KATE McGRANN:** Okay.

21 “... created multiple triggers (errors), not allowing the  
22 system to report, reset, or correct itself which resulted  
23 in the flooding of the network due to a system not  
24 designed for “trigger happy testers.” (As read).

25 Do you know what’s being described there?

26 **MR. MARIO GUERRA:** I don’t recall this, to be honest with you.

27 **MS. KATE McGRANN:** Okay. If we can look at the findings that  
28 are noted here, the first three bullet points speak to -- speak to poor management of

1 documents, key information being missing, and the burden and risk of sorting out and  
2 aligning the data was with the RTM group. So I take it, on this project, then, the  
3 document issues described here fell to RTM to deal with; is that fair?

4 **MR. MARIO GUERRA:** Yes.

5 **MS. KATE McGRANN:** And that would be an additional burden on  
6 the RTM group that wouldn't have been anticipated as you're preparing for revenue  
7 service; is that fair?

8 **MR. MARIO GUERRA:** That's fair, yes.

9 **MS. KATE McGRANN:** So one more item on the to-do list as RTM  
10 is trying to provide reliable service to customers?

11 **MR. MARIO GUERRA:** Yeah, I'd say that's fair, yeah.

12 **MS. KATE McGRANN:** Did this draw the focus of RTM, at least in  
13 part or at times, away from its primary responsibilities of maintaining the system?

14 **MR. MARIO GUERRA:** As I said, it's hard to make direct links with  
15 these things, but I would say yeah. I mean when the information is not immediately  
16 available and you have to struggle to find it, yes, it would.

17 **MS. KATE McGRANN:** Okay. And then the fourth bullet here:

18 "None or limited access to the software and systems  
19 used during construction." (As read).

20 What's that in reference to?

21 **MR. MARIO GUERRA:** I'm struggling trying to remember  
22 specifically what that reference is, to be honest with you?

23 **MS. KATE McGRANN:** Okay. We can move onto the next bullet  
24 point:

25 "Limited tactical handover." (As read).

26 What's that describing?

27 **MR. MARIO GUERRA:** I can speculate. It related to, you know, a  
28 plan in terms of how the handover takes place. You know, in retrospect, that should

1 have been specified more clearly in terms of how that happens and what it looks like,  
2 and I think that's what this talks to, having that in place.

3 **MS. KATE McGRANN:** Okay. And was it the experience on this  
4 project that the plan that was in place was not sufficient to achieve the kind of handover  
5 that RTM was hoping for?

6 **MR. MARIO GUERRA:** Yeah. I think in retrospect, it may have  
7 been a listing of document, but in terms of how they're handed over and -- you know, as  
8 we had discussed earlier, the structure and all that, we would have benefitted from  
9 having something like that in place.

10 **MS. KATE McGRANN:** And that would be a more -- more of a  
11 complete for how the system was to be handed over from OLRTC to RTM and its  
12 subcontractors?

13 **MR. MARIO GUERRA:** Yeah, as it relates to the documentation in  
14 this case, yes.

15 **MS. KATE McGRANN:** Okay. And then this bullet point appears  
16 to -- well, does draw a distinction between tactical handover and strategic handover.  
17 What is that difference in your mind?

18 **MR. MARIO GUERRA:** I don't know, to be honest with you?

19 **MS. KATE McGRANN:** Okay. Then we'll just move on to the last  
20 bullet point, which says:

21 "Resources did not follow, often sent to other projects  
22 too soon." (As read).

23 Was it your experience on this project that the resources that RTM  
24 needed were not there or were sent to other projects too soon?

25 **MR. MARIO GUERRA:** I think in some cases, I agree, it probably  
26 was.

27 **MS. KATE McGRANN:** And can you give us some examples as  
28 they pertain to the provision of reliable services, resources that either weren't there or

1 were sent to other projects too soon?

2 **MR. MARIO GUERRA:** I think from a design perspective, at times,  
3 you're looking for information on something and people have moved on. I think we ran  
4 into that a couple of times. I mean, eventually, we'd get the information, but it's a little  
5 bit more difficult to do so.

6 **MS. KATE McGRANN:** Okay. I think that there's a -- it's been  
7 raised that OLRTC, as far as resources to complete warranty work, may not have had  
8 the resources that were required; was that your experience on this project?

9 **MR. MARIO GUERRA:** Well, if OLRTC includes Alstom supply,  
10 then the answer is probably yes.

11 **MS. KATE McGRANN:** Okay. And what about OLRTC more  
12 generally?

13 **MR. MARIO GUERRA:** I mean the interface agreement allows us  
14 to do the work and then -- and then be reimbursed, so it's not as big an issue in that  
15 particular instance.

16 **MS. KATE McGRANN:** Okay, subject, I suppose, to the comments  
17 you made earlier about the friction of that relationship and the inefficiencies that may  
18 follow?

19 **MR. MARIO GUERRA:** Yes.

20 **MS. KATE McGRANN:** And just if you can speak generally to the  
21 sort of cumulative effects of the document issues, the lack of a complete plan for  
22 handover, and the resources that weren't there and weren't there for as long as you  
23 needed. Can you speak to the cumulative impact of all of that on RTM's ability to  
24 provide a reliable service during the revenue period?

25 **MR. MARIO GUERRA:** Well, RTM is responsible in the first  
26 instance to react to issues. In some cases we have to react without being able to  
27 consult the constructor because it's safety related or service related or whatnot. And  
28 then you know, then deal with whether it's a warranty issue afterwards.

1 For the more long-term issues that weren't safety or service critical,  
2 sometimes it did impact the timing of getting those issues resolved.

3 **MS. KATE McGRANN:** And that impact on the timing, did that  
4 have a -- in cases, at least, did that have a flow-down effect to the reliability of the  
5 service that could be provided?

6 **MR. MARIO GUERRA:** In some cases, but again I'll state that from  
7 a service and safety critical perspective, issues were dealt with right away.

8 **MS. KATE McGRANN:** Okay. In your Commission interview -- I'm  
9 shifting focus now so you can take this document down.

10 Just I want to speak to you about some evidence you gave in your  
11 Commission interview where you spoke about an army of City representatives that were  
12 on the system at the start of revenue service looking for things that were wrong and  
13 reporting what they found back to you. Do you remember giving evidence along those  
14 lines?

15 **MR. MARIO GUERRA:** I do.

16 **MS. KATE McGRANN:** Okay. And can you just explain how that  
17 activity impacted the maintenance team in its work trying to provide revenue service to  
18 customers?

19 **MR. MARIO GUERRA:** I mean, we were just overwhelmed, I think.  
20 I believe, if I recall correctly, 900 work orders in September alone, the first month of  
21 revenue service. We just couldn't keep up and as a result, you know, some safety  
22 critical -- not safety critical; I'll rephrase. Service critical stuff probably wasn't getting  
23 done in a timely manner. Not probably; it wasn't because we just didn't have the time  
24 and the resources to be able to do it all.

25 **MS. KATE McGRANN:** Okay. And in your view, based on your  
26 experience there, the 900 work orders, was that a clear reflection of the needs of the  
27 system or was that artificially inflated as a result of the activities of the City  
28 representatives?

1                   **MR. MARIO GUERRA:** Oh, I mean, they were artificially -- I mean,  
2 they were picking on just every little thing out there. Most of it, I don't think, was of a  
3 relevant nature.

4                   **MS. KATE McGRANN:** So it sounds to me like that activity was  
5 counterproductive to the goal of providing reliable service to the customers?

6                   **MR. MARIO GUERRA:** I mean, yeah. I mean, you can -- I'm just  
7 trying to think of an example. For example, reporting a dirty floor in the station, that's  
8 fine. We clean them every night so unless there's a slip hazard or something like that,  
9 you know, that doesn't warrant the work order. That's probably a fairly good example of  
10 what was going on.

11                   **MS. KATE McGRANN:** Okay. Did you or did anybody at RTM  
12 speak to the city about the impact that this activity was having on the maintainer to try to  
13 address it?

14                   **MR. MARIO GUERRA:** We did. We tried to make the City see that  
15 the way that the work orders were being entered in what I call batches made it  
16 impossible for us to react in a timely manner. But at least for September they continued  
17 on for the month.

18                   **MS. KATE McGRANN:** Okay. And ultimately were the -- was  
19 RTM able to come to some sort of understanding with the City that addressed this  
20 artificial increase of work orders?

21                   **MR. MARIO GUERRA:** No. it improved once -- I would say the  
22 next month, you know, we reduced that number substantially but the City did not have  
23 the number of people on the system as they did during September. So the numbers  
24 decreased.

25                   **MS. KATE McGRANN:** Okay. So the issue sort of naturally  
26 resolved itself as the number of people from City moving through the system and testing  
27 it decreased?

28                   **MR. MARIO GUERRA:** Yeah. And it's like we said before. You

1 get better at reaction and dealing with issues as well. And this is why, you know, I keep  
2 going back to the soft start. This is where all these things get flushed out, right?

3 **MS. KATE McGRANN:** Okay. And did anybody at the City talk to  
4 RTM in advance about the fact that the City would have representatives on the system  
5 at the start of revenue service moving through the system looking for issues, testing the  
6 system, things like that?

7 **MR. MARIO GUERRA:** Again, I'll say, I was on the Board but to  
8 the best of my knowledge no, we didn't expect such an onslaught of work orders.

9 **MS. KATE McGRANN:** Okay. And Mr. Charter gave some  
10 evidence about this activity during his appearance before the Commission earlier this  
11 week. I'm just going to show it you and then ask you for your reaction to it.

12 So if we could pull up TRN205. And we'll want to go to page 125 of  
13 the PDF. And if we can take a look at line 7 onwards. You'll see that Mr. Charter is  
14 asked:

15 "I want to give you the chance to deal with Mr.  
16 Guerra's evidence that RTM is being flooded with  
17 work orders generated by an army of people who are  
18 going through and interacting with the system,  
19 looking for problems. So talk to me about the  
20 information that you gave to Mr. Jacob about the  
21 City's intention to have people interacting with the  
22 system once it opens to revenue service."

23 And Mr. Charter says:

24 "Part of it is we want people in the system, using the  
25 system and we'd like to capture issues before they  
26 happen. So I'd rather have my staff try the escalators  
27 and elevators before having maybe potentially a  
28 customer who's stuck in an elevator for a period of

1 time. I don't want to find out through an unfortunate  
2 event that the passenger emergency intercom didn't  
3 work properly. So I had staff from time to time go test  
4 those, press a button, make sure it functions properly  
5 so it was a combination of thinking what customers  
6 would do but as well it was part of our oversight."

7 And I guess the question I have for you, sir, is what's your reaction  
8 to the idea that it would be beneficial to have City representatives moving through the  
9 system during revenue service testing the system to try to find issues before they  
10 impact a customer?

11 **MR. MARIO GUERRA:** I mean, that's what testing and  
12 commissioning is for, in my mind. It's not to happen when you go into revenue service.  
13 It is the passengers that are stressing the system and checking the system and  
14 reporting issues that may happen. In my mind, what Mr. Charter, with all respect,  
15 describes here should be done as part of the testing and commissioning phase without  
16 passengers on board. Or better yet, during a soft start. I'll say that again.

17 **MS. KATE McGRANN:** Okay. And the reason or one of the  
18 reasons that you would want to do it without customers on board, I take it, is so that the  
19 customers don't have to bear the brunt of all of this activity and the issues that follow.

20 **MR. MARIO GUERRA:** Absolutely.

21 **MS. KATE McGRANN:** If we can take this document down. Just  
22 while we're speaking about the relationship between RTM and the City, once revenue  
23 service had started, Mr. Charter in his Commission interview and then in his  
24 appearance before the Commission also spoke about hesitancy on the part of the City  
25 to take RTG at face value when it came to suggestions that RTG or RTM may make  
26 about mitigating efforts the City could take to address some of the issues that came up  
27 during service. And Mr. Charter gave that evidence in the context and discussing  
28 requests to the City to adjust the brake profile used in relation to wheel flats.



1 My question for you is, did you observe any hesitancy on the part of  
2 the City to take requests coming from RTG or RTM about how issues could be  
3 addressed at face value? Did you find the City hesitant to take suggestions?

4 **MR. MARIO GUERRA:** I think in some cases, yes. But I think with  
5 time the relationship improved and I think that was less and less a recurrence.

6 **MS. KATE McGRANN:** When it was an occurrence, early in the  
7 relationship, early in revenue service -- have I got the timeframe right?

8 **MR. MARIO GUERRA:** Yes.

9 **MS. KATE McGRANN:** When it was happening, did it have any  
10 impact on RTM's ability to provide reliable service?

11 **MR. MARIO GUERRA:** I would say indirectly probably yes.

12 **MS. KATE McGRANN:** And can you help us understand how that  
13 worked?

14 **MR. MARIO GUERRA:** Well, I think you talked about the brake  
15 rate as an example, something that now is commonplace and it happens. We have an  
16 agreement. But initially it wasn't and it was -- there was a bit of a back and forth in  
17 terms of when it should be and how it should be applied. And that did result in flat  
18 wheels which resulted in vehicles being out of service and whatnot.

19 **MS. KATE McGRANN:** And can you think of any other examples  
20 where the City's hesitancy to take RTG or RTM at face value may have impacted the  
21 reliability of the service provided?

22 **MR. MARIO GUERRA:** I mean, at times, incidents happen on the  
23 line and Alstom and RTM, they believed that it's not warranted to take the vehicle out of  
24 service but the City will take the vehicle out of service at times when we believe it  
25 should stay.

26 **MS. KATE McGRANN:** Okay.

27 **MR. MARIO GUERRA:** But again, I think that's improved  
28 significantly as well.

1                   **MS. KATE McGRANN:** Okay. And I take it that the need for RTM  
2 and the City to work collaboratively together is essential to the provision of reliable  
3 service; is that fair?

4                   **MR. MARIO GUERRA:** Absolutely, yes.

5                   **MS. KATE McGRANN:** And you spoke to the importance of that  
6 partnership relationship in your Commission interview, and I'd like to take you to some  
7 of that evidence now, so if we could turn up TRN69.

8   **(SHORT PAUSE)**

9                   **MS. KATE McGRANN:** And then if we could go to page 159 of the  
10 PDF. So we'll look at line 15 here or so -- 14, I suppose. So you're asked:

11   "Based on what you know about the project and the  
12 relationship involved and things like that, is there  
13 anything that you think could have been done or could  
14 be done to create more opportunities for the kind of  
15 partnership relationship that you've described to  
16 happen?" (As read)

17                   And you say:

18   "Yeah, I mean, open dialogue. I mean, you know, it's  
19 almost like there's a fear of -- or perception that we're  
20 being cut -- given any breaks." (As read)

21                   And if I could just stop there for a second to clarify your evidence,  
22 were you describing a fear on the part of the City, that it would be seen to be giving  
23 RTG or RTM breaks?

24                   **MR. MARIO GUERRA:** Yes.

25                   **MS. KATE McGRANN:** And then you go on to say:

26   "Like, that if we discuss something, that it will be  
27 perceived as us getting a break rather than looking at  
28 it from the long-term success of the project. And

1 because of that, you know, the opportunity to actually  
2 have progressive discussions around the payment  
3 and these other things don't present themselves. And  
4 that's probably a little bit politically driven, if I'm being  
5 honest with you, in Ottawa." (As read)

6 So in this answer, when you spoke about this impediment to having  
7 an open dialogue between the City and RTG, and you speak about it being a little bit  
8 politically driven, do you think that the communications with the public and the media  
9 around this project have contributed to that environment?

10 **MR. MARIO GUERRA:** I mean, this is my opinion, obviously, but  
11 the answer is yes.

12 **MS. KATE McGRANN:** Okay. And could you describe a little bit  
13 what you think the impact of that has been?

14 **MR. MARIO GUERRA:** I mean, we talked about the ability for us to  
15 resolve an issue -- let's say the punitive applications of the payment or something like  
16 that. And if anything changes, from my opinion anyway, there seem to have been the  
17 fear that that could be perceived as cutting us a break, and that wouldn't be looked  
18 upon very well.

19 **MS. KATE McGRANN:** Okay. And that wouldn't be looked upon  
20 very well by members of the public?

21 **MR. MARIO GUERRA:** The Commission, members of the public,  
22 yes.

23 **MS. KATE McGRANN:** And by the Commission are you referring  
24 to the Transit Commission?

25 **MR. MARIO GUERRA:** Yes.

26 **MS. KATE McGRANN:** And would you include members of City  
27 council in that group of people who you think there was a fear of them not seeing it?

28 **MR. MARIO GUERRA:** I wouldn't know. I mean, I know the

1 Commission a little bit. I wouldn't know about City councillors.

2 **MS. KATE McGRANN:** Okay. So we can take this document  
3 down.

4 **COMMISSIONER HOURIGAN:** All right, Counsel. We'll take the  
5 morning break.

6 **THE REGISTRAR:** All rise. The Commission will recess for 15  
7 minutes.

8 --- Upon recessing at 10:29 a.m.

9 --- Upon resuming at 10:53 a.m.

10 **THE REGISTRAR:** The Commission has resumed.

11 **COMMISSIONER HOURIGAN:** Okay, we're back. Please  
12 proceed.

13 **MS. KATE McGRANN:** Okay. Before the break, we had been  
14 talking about factors that may have gotten in the way of RTM and the City having an  
15 open dialogue about the project, and I'd like to show you the document at  
16 RTM592807.5.

17 **--- EXHIBIT No. 293:**

18 RTM00592807.0005 – OLRT Lessons Learned Mitigation  
19 Plan/ 9 – Media Perception of Performance March 2021

20 **MS. KATE McGRANN:** This is a document titled "OLRT Lessons  
21 Learned: Media Perception of Performance", and the issue identified here is:

22 "Negative communication in the media regarding the  
23 rolling stock of the OLRT project. Harmful public  
24 image and reputation impacted by misinformation and  
25 inaccurate headlines." (As read)

26 Do you see that? I'm not sure that we can hear you, Mr. Guerra.  
27 You don't appear to be muted, but we're not getting any volume from you.

28 **MR. MARIO GUERRA:** How about now?

1 **MS. KATE McGRANN:** Now we can hear you. Thank you.

2 **MR. MARIO GUERRA:** Sorry.

3 **MS. KATE McGRANN:** No. That's all.

4 So I'd asked you, you can see the document, okay; you see the  
5 issue that I just read aloud to you?

6 **MR. MARIO GUERRA:** I can.

7 **MS. KATE McGRANN:** Okay. And if we can scroll down a little bit,  
8 I want to take a look at what else is described in this document. So there's a mention of  
9 a lack of a set communication plan and a lack of alignment with the City early in the  
10 launch of the project. Is that consistent with your experience on the launch of this  
11 project when it came to public communications?

12 **MR. MARIO GUERRA:** I don't know that I had anything to do with  
13 that, to be honest with you.

14 **MS. KATE McGRANN:** Okay. Well, let's go a little bit further and  
15 see if you can speak to anything in this document.

16 So the second paragraph, under the heading "Funding", says:

17 "Expectations from the City client was perfection from  
18 day one." (As read)

19 Can you speak to that point?

20 **MR. MARIO GUERRA:** I think I would agree with that.

21 **MS. KATE McGRANN:** Okay. And it goes on to say:

22 "Reliability was judged from a misunderstanding of  
23 the functionality of a rail system and the expectations  
24 of adaptational transition from bus to rail, without the  
25 education of new operators, users, and general  
26 public." (As read)

27 Would you agree with that description?

28 **MR. MARIO GUERRA:** To a certain extent, yes.

1                   **MS. KATE McGRANN:** Okay. And to the extent that you disagree  
2 with it, please explain that to us.

3                   **MR. MARIO GUERRA:** I mean, I think from the perspective that it  
4 was a brand new system in a city that had very little experience with light rail, I would  
5 agree with the statement.

6                   **MS. KATE McGRANN:** Okay. And I want to focus on the bullet  
7 pointed list here, which describes, first:

8   “The project team was not ready for the media  
9   aggressiveness and bad press received.” (As read)

10                   From your roles, first on the RTM board of directors and then as  
11 acting CEO and general manager, did you experience the media and press as it’s  
12 described in this document?

13                   **MR. MARIO GUERRA:** I would say yes, more so when I took over  
14 as RTM CEO.

15                   **MS. KATE McGRANN:** Okay. And the next bullet point says:

16   “No communications were provided to the media from  
17   the project team, and therefore the project suffered  
18   the impacts of such.” (As read)

19                   Can you speak to the impacts on the project of the media  
20 aggressiveness and the bad press here?

21                   **MR. MARIO GUERRA:** I mean, I can speculate from my  
22 perspective and what I was exposed to: the fact that there was only one side of the  
23 story being told, from my perspective.

24                   **MS. KATE McGRANN:** And what impact did that have on the  
25 project, do you think?

26                   **MR. MARIO GUERRA:** Again, it’s hard to make direct links, but I  
27 would say that it probably didn’t go over well with staff and whatnot the fact that we  
28 weren’t able to put our opinion out there.

1                   **MS. KATE McGRANN:** Okay. And before the break we'd been  
2 talking about evidence you gave in your Commission interview about one obstacle to  
3 open communication between RTM and the City being a fear on the City's part that it  
4 might be perceived to be giving RTM or RTG a break on this project. Do you think that  
5 the media communications contributed to that environment at all?

6                   **MR. MARIO GUERRA:** Yeah, media, especially social media.

7                   **MS. KATE McGRANN:** And if we can just scroll down a little bit  
8 further, the last two bullet points here describe:

9   “The project communication team was not consulted  
10   on the media correspondence being offered; no  
11   communication was issued by the project team; and  
12   the communications issued to the media lacked  
13   knowledge and capacity to explain the issues arising.”

14   (As read)

15                   And I'd suggest to you that's consistent with what you just said  
16 about only one side being told in the media.

17                   **MR. MARIO GUERRA:** Yes.

18                   **MS. KATE McGRANN:** And then the overview here describes:

19   “A better education and transition from bus to rail  
20   would have been required.” (As read)

21                   It talks about the City needing to be “more direct and  
22 communicative, offering better education to the general public on their new system”,  
23 and “should have managed the media in a more effective manner”.

24                   What benefits do you think might have flowed to the project if that  
25 had happened?

26                   **MR. MARIO GUERRA:** I think people would have understood the  
27 issues a little bit better and why they were happening, and maybe overall the project  
28 wouldn't have been perceived in the manner that it was initially.

1                   **MS. KATE McGRANN:** Okay. And thinking about the partnership  
2 between RTM and the City, do you think if this kind of approach had been taken to the  
3 media, that would have facilitated a more effective partnership relationship as between  
4 the two organizations?

5                   **MR. MARIO GUERRA:** Again, it's only my opinion based on what I  
6 was exposed to, but I would agree with that statement, yes.

7                   **MS. KATE McGRANN:** Okay. And we can take this document  
8 down.

9                   I'm going to show you another document. It's COW466007. If we  
10 could scroll down a little bit, this is the operational restrictions document for Stage 1,  
11 and we're looking at revision 3. Are you familiar with this document?

12                   **MR. MARIO GUERRA:** I am.

13                   **MS. KATE McGRANN:** Could you speak to the steps that RTM  
14 took to ensure that it was consistently implemented during time that you were acting  
15 CEO in June?

16                   **MR. MARIO GUERRA:** I believe that RTM provided its own  
17 document outlining what actions it would take with regards to the various documents  
18 contained here.

19                   **MS. KATE McGRANN:** Okay. So am I -- would I be right in  
20 understanding that RTM took the information from the Operational Restrictions  
21 document and put that information into its own operations documents?

22                   **MR. MARIO GUERRA:** Yes.

23                   **MS. KATE McGRANN:** We can take that document down. And I  
24 will be jumping around a little bit now, sir. I apologize for that, but I did want to ask you  
25 about one other aspect of RTM's relationship with the City. In your Commission  
26 interview you describe the City at times as "micromanaging". Do you remember give  
27 that evidence?

28                   **MR. MARIO GUERRA:** I do.



1                   **MS. KATE McGRANN:** And one of the things or one of the  
2 impacts you said that had was that it drew focus away from you and members of your  
3 team from the maintenance work to deal with other issues that were being raised by the  
4 City; is that fair?

5                   **MR. MARIO GUERRA:** That's correct.

6                   **MS. KATE McGRANN:** Okay. And I just -- I want to give you the  
7 opportunity to address this. What would say to, for example, an OC Transpo customer  
8 who says that the City's micromanagement of RTM is warranted given the system's  
9 performance to date and, in particular, the second derailment?

10                  **MR. MARIO GUERRA:** I would -- I could understand how  
11 someone might arrive at that conclusion, but I would not agree with it.

12                  **MS. KATE McGRANN:** And why not?

13                  **MR. MARIO GUERRA:** I think the partnership needs to be  
14 different, not one that micromanages, but one that explores a way to resolve issues at a  
15 higher level. RTM and our subcontractors, we were contracted with the maintenance of  
16 the system, and to be micromanaged in our -- in conducting that work, I don't think, is  
17 good for anyone.

18                  **MS. KATE McGRANN:** And why isn't it good? Like, what flows  
19 from that?

20                  **MR. MARIO GUERRA:** Because, ultimately, you have two parties  
21 doing the same job. You have RTM and its subcontractors, you know, saying, "This is  
22 what needs to be done. This is how it needs to be done," then you have another party  
23 telling you same thing, and sometimes not speaking the same language.

24                  **MS. KATE McGRANN:** Okay.

25                  **MR. MARIO GUERRA:** And that creates conflicts.

26                  **MS. KATE McGRANN:** Okay.

27                  **MR. MARIO GUERRA:** And therefore, you have to explain -- take  
28 time to explain why you're doing things the way you're doing it rather than just doing it.

1                   **MS. KATE McGRANN:** And would that have -- would that have  
2 negative impacts on RTM's ability to provide reliable service to efficiently resolve issues  
3 as they arise?

4                   **MR. MARIO GUERRA:** I think yeah. And I think when you're  
5 being micromanaged, it really does not allow you to work at the level that you should be  
6 at because you have to take time to deal with that.

7                   **MS. KATE McGRANN:** Okay. I have two more documents I'm  
8 going to ask you questions about. The first one is a report from Network Rail on its  
9 maintenance assessment, and the second details some -- a return-to-service status  
10 update from TRA. So we'll start with the Network Rail document. It's at NRC1. And if  
11 we go -- so this is a Network Rail Consulting Report, Rideau Transit Maintenance. It's a  
12 maintenance assessment on the Ottawa LRT, and the date is the 5<sup>th</sup> of December,  
13 2021. Just to situate ourselves here, if we could go to page 11 of this PDF, this  
14 describes the scope of Network Rail's work, and it says:

15   “NRC, Network Rail Consulting, was requested to  
16 provide a technical assessment of the effectiveness of  
17 RTM and its subcontractors' maintenance framework  
18 and organization of the following asset groups as  
19 described in Appendix A to Schedule 53 of the Project  
20 Agreement.” (As read).

21                   And it lists some assets and things. Are you familiar with the work  
22 that Network Rail did?

23                   **MR. MARIO GUERRA:** I am.

24                   **MS. KATE McGRANN:** Okay. So if we could turn back to page 8  
25 of this document -- it's quite a lengthy document. We don't have time go through all of it  
26 today, but I will ask you about some conclusions that are set out in the overview,  
27 starting with under the heading “Supervision and Oversight”. The report says:

28   “The structure of the preventative maintenance

1 process is quite thin. All the inspections are  
2 completed by frontline staff and there are no  
3 documented requirements for anyone else to review  
4 asset conditions.” (As read).

5 And it goes on to say:

6 “There does not appear to be particularly strong  
7 oversight of the work done by frontline staff.” (As  
8 read).

9 And keeping in mind that this report is delivered on December 5<sup>th</sup>,  
10 2021, can you speak to what, if anything, RTM has done in response to this finding by  
11 Network Rail?

12 **MR. MARIO GUERRA:** Oh, yeah. I mean we’ve -- on the  
13 oversight piece, for example, we’ve not reorg’ed to ensure more oversight on the  
14 technical and management side of the business. So, for example, on the management  
15 side, we now have 24/7 management oversight of the business, which includes all  
16 subcontractors. And on a technical side, you know, we’ve staffed up with subject-matter  
17 experts to be able to provide technical oversight on our subcontractors and on  
18 ourselves to ensure that preventative maintenance activities are conducted in a timely  
19 and proper manner.

20 **MS. KATE McGRANN:** Okay. And looking at the next heading on  
21 the document, “Assurance”, the document says:

22 “The quality department have a schedule of internal  
23 audits that have been well-delivered and documented.  
24 However, these are limited to desktop review  
25 confirming that procedures are up to date and that  
26 there is a suitable evidence of compliance. They do  
27 not review the quality of finished work.” (As read).

28 Could you speak to what, if anything, RTM has done in response to

1 this finding?

2 **MR. MARIO GUERRA:** Yeah, so this is more on the technical  
3 oversight where we now -- we still do the desktop audits, as we're required to do, but  
4 now down a level where we actually will do quality checks on the preventative  
5 maintenance activities, documenting everything from employee qualifications, safety  
6 guidelines, as well as the -- to ensure that the tasks are being completed in accordance  
7 with the work method statements.

8 **MS. KATE McGRANN:** Okay. And if we can scroll down to the  
9 next page, I just want to you briefly about the sentence under the heading "Reporting".  
10 The document says:

11 "We did not see a structured reporting and review  
12 process." (As read).

13 And they conclude:

14 "We conclude that it is difficult for management to get  
15 a high-level picture of what's going on and to be able  
16 to drill down into detail to identify and prioritize  
17 appropriate actions." (As read).

18 What, if any, steps did RTM take in response to this finding?

19 **MR. MARIO GUERRA:** So again, the oversight ensures that have  
20 a loop back to ensure that issues and gaps are addressed, and we continue to work  
21 with Alstom, primarily, with regards to the assets in terms of reporting on the reliability of  
22 the vehicles and the actions that are being taken to deal with issues to improve  
23 reliability.

24 **MS. KATE McGRANN:** Okay. And the steps that RTM has taken  
25 so far to respond to the findings with respect to supervision, oversight, assurance, and  
26 reporting, what has the impact of those steps been on the project from what you've  
27 seen?

28 **MR. MARIO GUERRA:** Yeah, I'll qualify, when I say RTM, I'm

1 including Alstom and maintenance in that as well. And from my perspective, it's  
2 significantly improved things from the perspective of dealing with issues openly and  
3 honestly, transparently. We now have daily meetings with the City and Alstom where  
4 issues are discussed and everybody has an opportunity to contribute. So it really has  
5 sped up our ability to deal with issues and ensure that we don't repeat the same  
6 mistakes.

7 **MS. KATE McGRANN:** Okay. We can take that document down.  
8 And, as promised, the last document that I'll be asking you some questions about today  
9 is at TRA4. And we'll just use this to ground some questions I've got for you about the  
10 return to service following the second derailment. So we're looking at a PowerPoint  
11 presentation titled "Independent Evaluation: Confederation Line 1, safe return to service  
12 status update". It's a technical briefing to the City of Ottawa Transit Commission by  
13 Transportation Resource Associates Inc. dated November 5<sup>th</sup>, 2021. Have you seen  
14 this document before?

15 **MR. MARIO GUERRA:** I don't recall seeing it, no.

16 **MS. KATE McGRANN:** Okay. If we could just go to slide 25 of this  
17 document -- so that's numbered slide 13. I wonder if we can get down to slide 25. I'm  
18 sorry. That's great. So earlier in the presentation, there's a description of mitigation  
19 and corrective actions that were taken associated with the root cause of the  
20 derailments, but this PowerPoint presentation also describes that all light rail vehicle  
21 safety-critical open items were addressed prior to trains entering testing, including  
22 wheels, and I'm wondering if you can speak at all to the steps that were taken to  
23 address safety critical open items on the vehicles during the time that the system was  
24 down following the second derailment?

25 **MR. MARIO GUERRA:** As they related to the derailment, or just in  
26 general?

27 **MS. KATE McGRANN:** The work that was done during the return  
28 to service work following the second derailment, so whatever work was done, if you

1 could just describe it at a high level for us.

2 **MR. MARIO GUERRA:** Well, obviously, we did a lot of work to deal  
3 specifically with the issue at hand, which was the -- you know, the quality control  
4 associated with ensuring that the type of incident that happened for the second  
5 derailment with the bolts not being torqued, to there was a whole quality control and QA  
6 focus with Alstom ensuring that things are checked.

7 We also had to come up and revise the work method statements in  
8 terms of how things are done and how they're documented as well.

9 And then -- and specifically, we had to come up with checks of the  
10 fleet to ensure that the vehicles were safe for Revenue Service. So that was the  
11 process in terms of coming up with what that looks like, and then actually executing on  
12 it.

13 **MS. KATE McGRANN:** Okay. And this PowerPoint presentation  
14 also describes testing of the vehicles and including testing of mock service. Do you  
15 have knowledge of the work that was done there?

16 **MR. MARIO GUERRA:** Yeah. Mock service essentially was, you  
17 know, to test the vehicles to ensure that they were fit for service.

18 When the system is shut down for the length of time that it was and  
19 the vehicles aren't operating, then when you put the vehicles back into operation, things  
20 are going to happen, so the purpose of the mock service was to address any of those  
21 issues.

22 **MS. KATE McGRANN:** Okay. And if we can scroll down to Slide  
23 30, I just want to point out one particular statement in this and get your reaction to it.

24 So this slide is describing mock service. It was testing based on  
25 established criteria. Did RTM have input into that criteria at all?

26 **MR. MARIO GUERRA:** Yes, we did.

27 **MS. KATE McGRANN:** And how would you describe the criteria  
28 that was applied to the mock service testing?

1                   **MR. MARIO GUERRA:** Probably a little more than what was  
2 required, but at that point, you know, we were pretty much at the mercy of the City and  
3 its consultants, so you know, it was what it was, and we abided by it.

4                   **MS. KATE McGRANN:** Okay. And this statement -- this -- the  
5 third main bullet point on this slide says, "Mock service will continue until safety and  
6 reliability are assured."

7                   I take it that the mock service testing was completed?

8                   **MR. MARIO GUERRA:** Eventually, yes.

9                   **MS. KATE McGRANN:** And how did -- what was your view of the  
10 results of the mock service testing?

11                  **MR. MARIO GUERRA:** I think in general, for the most part, it was  
12 a useful exercise to ensure that the vehicles were reliable, safe and reliable.

13                  **MS. KATE McGRANN:** Okay. And we can take this slide down.

14                  My last question for you, Mr. Guerra, is if you could just speak to  
15 RTM's view of the current status of the system from a safety perspective and a reliability  
16 perspective?

17                  **MR. MARIO GUERRA:** I think from a reliability perspective, we've  
18 achieved near 100 percent availability in the last two months, so from an availability  
19 perspective, it's quite good. You know, we've taken that -- even though we're only  
20 putting 11 trains in service, we are providing at least 15 every day, which is part of our  
21 deal with the City. So from an availability perspective, I think we're doing quite well.

22                  Safety, safety is always first, no matter what we do, so I believe that  
23 the system is very safe and that all the proper safeguards are in place in cases where  
24 something might happen.

25                  So both from an availability and from safety, it's reliable. I think  
26 from an infrastructure perspective and from a reliability as it relates to infrastructure, I  
27 think there's still a little bit more work to be done. I think the system is reliable, but I  
28 think we need to focus on ensuring that it is reliable long term.

1                   You have to appreciate, there was a lot of emphasis put on the  
2 vehicles because of what happened. We need the same level of emphasis to be put on  
3 the infrastructure. And I think we're well on our way to getting there, and I think we will  
4 get there in a short period of time.

5                   **MS. KATE McGRANN:** Okay. And can you just speak at a high  
6 level to the plans in place to get there? Are they comprehensive, do you have  
7 confidence in them, do you have any concerns about this?

8                   **MR. MARIO GUERRA:** No. The plans are all in place. We've  
9 hired independent consultants where needed to help us get there quicker. It's just a  
10 matter of executing on what we've committed to doing, and I think that the system will  
11 be the better for it, going forward.

12                   **MS. KATE McGRANN:** Okay. And my last question for you is,  
13 from an operations perspective, how would you describe the relationship between RTM  
14 and the City at this point in time?

15                   **MR. MARIO GUERRA:** I would say the relationship is -- I'm going  
16 to separate the commercial and put those aside, because I -- no need for me to speak  
17 to those.

18                   From an operational perspective, you stated, I think the relationship  
19 is very good, I think better than it's ever been on this project. And I believe that because  
20 of that, you're seeing the reliability that you're seeing.

21                   **MS. KATE McGRANN:** Okay. Those are my questions for you for  
22 now. Thank you very much for your time.

23                   **MR. MARIO GUERRA:** Thank you.

24                   **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.  
25 Next up is the City of Ottawa.

26 **--- CROSS-EXAMINATION BY MS. CATHERINE GLEASON-MERCIER:**

27                   **MS. CATHERINE GLEASON-MERCIER:** Good morning.  
28 Catherine Gleason-Mercier, G-l-e-a-s-o-n-M-e-r-c-i-e-r, for the City of Ottawa.



1 Good morning, Mr. Guerra.

2 **MR. MARIO GUERRA:** Good morning.

3 **MS. CATHERINE GLEASON-MERCIER:** To start off, I believe you  
4 told Commission counsel that prior to taking on your current role as Acting CEO and  
5 General Manager of RTM, you were on the RTM Board of Directors, correct?

6 **MR. MARIO GUERRA:** Correct.

7 **MS. CATHERINE GLEASON-MERCIER:** And I believe in your  
8 interview with Commission counsel, when you were in that role on the RTM Board, you  
9 told Commission counsel you were not really involved in the day-to-day operations; is  
10 that correct?

11 **MR. MARIO GUERRA:** Not as I am today, no.

12 **MS. CATHERINE GLEASON-MERCIER:** Right. And so it's fair to  
13 say that your involvement in the day-to-day really only started when you became CEO  
14 and General Manager in June 2020; is that fair?

15 **MR. MARIO GUERRA:** I would agree with that, yes.

16 **MS. CATHERINE GLEASON-MERCIER:** So before that time, you  
17 had oversight from a board level, correct?

18 **MR. MARIO GUERRA:** Correct.

19 **MS. CATHERINE GLEASON-MERCIER:** I want to talk a little bit  
20 about the comments you made in your interview with Commission counsel with regards  
21 to how RTM was not ready for how involved the City would be on a day-to-day basis.  
22 Do you recall making those statements?

23 **MR. MARIO GUERRA:** I do.

24 **MS. CATHERINE GLEASON-MERCIER:** And you knew that there  
25 would be daily operating meetings between the City and RTG and RTM, correct?

26 **MR. MARIO GUERRA:** Yes.

27 **MS. CATHERINE GLEASON-MERCIER:** And that's in the Project  
28 Agreement, that the parties would meet and discuss the previous day's operations and

1 any issues that arose on that day, correct?

2 **MR. MARIO GUERRA:** Yes.

3 **MS. CATHERINE GLEASON-MERCIER:** And you also discussed  
4 with Commission counsel, I think, in your interview and also today, your perception that  
5 the City had an army of people on the system whose sole purpose was to find things  
6 that were wrong and report those things, correct?

7 **MR. MARIO GUERRA:** Correct.

8 **MS. CATHERINE GLEASON-MERCIER:** And you explained that  
9 this was really in the first few months of operation, more so in the first month, and then it  
10 tapered off. You told Commission counsel that in your interview. Do you remember  
11 that?

12 **MR. MARIO GUERRA:** Yes.

13 **MS. CATHERINE GLEASON-MERCIER:** And again, this was at  
14 the time when you weren't involved in the day-to-day operations, you were at the  
15 oversight on the board level, correct?

16 **MR. MARIO GUERRA:** Correct.

17 **MS. CATHERINE GLEASON-MERCIER:** So you'll agree with me  
18 then that your perception of the City staff seeking out issues in that first month, that's  
19 not direct knowledge, is it? You weren't there, you weren't on the ground in the day-to-  
20 day, correct?

21 **MR. MARIO GUERRA:** No. That would have been communicated  
22 to us, sorry, by management of RTM.

23 **MS. CATHERINE GLEASON-MERCIER:** And that management  
24 would have been Mr. Jacobs?

25 **MR. MARIO GUERRA:** Yes.

26 **MS. CATHERINE GLEASON-MERCIER:** And you weren't  
27 involved in any of those daily meetings between the City and RTG and RTM to discuss  
28 any of the issues that came up, say, in September, October, November, 2019, correct?

1                   **MR. MARIO GUERRA:** I was not.

2                   **MS. CATHERINE GLEASON-MERCIER:** So again, you have no  
3 direct knowledge about the work orders in that period, do you?

4                   **MR. MARIO GUERRA:** I do, based on what was provided to us by  
5 management.

6                   **MS. CATHERINE GLEASON-MERCIER:** Right. So you don't  
7 have direct knowledge of the discussions of the work orders, because you weren't in  
8 those discussions. Your knowledge is from what was reported to you by Mr. Jacobs?

9                   **MR. MARIO GUERRA:** That's correct.

10                  **MS. CATHERINE GLEASON-MERCIER:** Would you agree with  
11 me that a responsible owner sending in staff to ensure that issues are not sitting  
12 undiscovered or buried by a maintainer is good standard practice?

13                  **MR. MARIO GUERRA:** To a certain extent, yes.

14                  **MS. CATHERINE GLEASON-MERCIER:** And you'll agree with me  
15 that the City wasn't actually creating these issues that were being identified in  
16 September 2019, it was identifying existing issues and reporting those, correct?

17                  **MR. MARIO GUERRA:** Issues that typically would not be reported  
18 through that process.

19                  **MS. CATHERINE GLEASON-MERCIER:** But it wasn't -- it was  
20 identifying issues, correct?

21                  **MR. MARIO GUERRA:** I would assume -- I would say yes, but  
22 again, I would say issues that I didn't believe to be worthy of being reported through a  
23 work order. They're issues that get addressed through the ongoing maintenance of the  
24 system.

25                  **MS. CATHERINE GLEASON-MERCIER:** Sir, maybe you didn't  
26 understand my question, so I'll repeat it and rephrase it.

27                                What I'm asking is, the City didn't create any issues, it was  
28 identifying existing issues, whether you agree with how it was reported or not, correct?

1                   **MR. MARIO GUERRA:** To the best of my knowledge, that's  
2 correct.

3                   **MS. CATHERINE GLEASON-MERCIER:** And isn't it the case that  
4 a number of these issues that were identified and work orders created, those were for  
5 OLRTC to complete, they were design and construction deficiencies; is that fair?

6                   **MR. MARIO GUERRA:** No, I don't think that's fair. I think there  
7 was a mix of things.

8                   **MS. CATHERINE GLEASON-MERCIER:** So some were for  
9 OLRTC to complete and some were for RTM to complete?

10                  **MR. MARIO GUERRA:** Yeah, I would say that's probably correct,  
11 yes.

12                  **MS. CATHERINE GLEASON-MERCIER:** And the evidence that  
13 we've heard in this hearing thus far is that in the first three weeks of service, service  
14 went well and that would be in September 2019, correct?

15                  **MR. MARIO GUERRA:** It depends on what your definition of  
16 "service went well"; from a vehicle perspective, yes. But from the number of work  
17 orders that were generated you would think that service was not running well.

18                  **MS. CATHERINE GLEASON-MERCIER:** So it's fair to say in this  
19 period RTM was not dealing with maintenance issues on the vehicles, correct?

20                  **MR. MARIO GUERRA:** Well, we have subcontracted Alstom to do  
21 that for us.

22                  **MS. CATHERINE GLEASON-MERCIER:** And I believe you told  
23 me Alstom wasn't -- or you told Commission counsel, sorry, that Alstom wasn't  
24 sufficiently resourced at the beginning of the project?

25                  **MR. MARIO GUERRA:** That was our impression, yes.

26                  **MS. CATHERINE GLEASON-MERCIER:** Regarding the work  
27 orders, are you aware that the City agreed to cap the work order amount to \$10,000 a  
28 day for deductions despite the volume of work orders?

1                   **MR. MARIO GUERRA:** I'm not a lawyer or a contractor but I  
2 believe that's the way that the PA is suppose dto work. So I don't know that the City  
3 agreed to anything.

4                   **MS. CATHERINE GLEASON-MERCIER:** Are you aware that the  
5 City has imposed or agreed to this \$10,000 cap?

6                   **MR. MARIO GUERRA:** I would agree that the cap is in place, yes.

7                   **MS. CATHERINE GLEASON-MERCIER:** And will you agree with  
8 me that the City reviews disputed work orders?

9                   **MR. MARIO GUERRA:** Yes.

10                  **MS. CATHERINE GLEASON-MERCIER:** And when it's time to  
11 levy deductions, the City has been reasonable and discussed those work orders and the  
12 deductions with RTG and RTM?

13                  **MR. MARIO GUERRA:** I think they've been discussed. I don't  
14 know about the City being reasonable about it.

15                  **MS. CATHERINE GLEASON-MERCIER:** Well, let's take a look at  
16 one. Do you recall a work order for wood slats above the guideway?

17                  **MR. MARIO GUERRA:** I think I do, yes.

18                  **MS. CATHERINE GLEASON-MERCIER:** And are you aware that  
19 the City agree to remove a higher deduction for RTM's failure to follow the corrective  
20 and preventative maintenance plan and instead lowered the deduction to a service  
21 quality failure? And as a result the deduction was only \$1000?

22                  **MR. MARIO GUERRA:** If it's the same one that I believe it was  
23 also when the City initially levied deductions of over \$800,000.

24                  **MS. CATHERINE GLEASON-MERCIER:** But sir, I'm asking about  
25 this particular work order.

26                  **MR. MARIO GUERRA:** I'm -- that's fair. I'm asking you if it's the  
27 same work order where the City initially levied over \$800,000 in deductions for one work  
28 order. Is that the same one that you're referring to?

1                   **MS. CATHERINE GLEASON-MERCIER:** The one I'm referring to  
2 was recently put into the PD and we can pull it up if you like. I believe it's COMH66.

3 **--- EXHIBIT NO. 294:**

4                   COMH0000066 – Work Order No: 00089983 7 June 2021

5                   **MR. MARIO GUERRA:** For me to recall a work order ---

6                   **COMMISSIONER HOURIGAN:** Let's just wait for the question,  
7 okay?

8                   **MS. CATHERINE GLEASON-MERCIER:** Of course.

9                   **COMMISSIONER HOURIGAN:** This may help. They're going to  
10 bring up the work order so you can see it, okay? Just wait.

11                   **MS. CATHERINE GLEASON-MERCIER:** Do you see that, sir?

12                   **MR. MARIO GUERRA:** I can.

13                   **MS. CATHERINE GLEASON-MERCIER:** And this is a work order,  
14 I believe, we see for a small section of wood slats dislodged above the guideway; do  
15 you see that?

16                   **MR. MARIO GUERRA:** That's what it says, yes.

17                   **MS. CATHERINE GLEASON-MERCIER:** So then do you recall  
18 that this work order, the City removed the higher deduction for not following a corrective  
19 and preventative maintenance plan, and lowered it to a service quality failure?

20                   **MR. MARIO GUERRA:** That may be the case. But I don't recall  
21 every single work order.

22                   **MS. CATHERINE GLEASON-MERCIER:** So you don't have any  
23 knowledge about this work order one way or another?

24                   **MR. MARIO GUERRA:** I know there was a couple of work orders  
25 that I was made aware of. I'm going to agree with you, that's the case.

26                   **MS. CATHERINE GLEASON-MERCIER:** Well, that's fine, sir. If  
27 you don't recall, that's fine. We can take that down.

28                   I believe there's another work order for a cracked bathroom mirror,

1 if you'd like to see it. It is COMH67.

2 **--- EXHIBIT No. 295:**

3 COMH0000066 – Work Order No: 00089983 7 June 2021

4 **MS. CATHERINE GLEASON-MERCIER:** And this work order as it  
5 comes up, you'll see there it's for the public bathroom at Tunney's Pasture. This work  
6 order is currently under dispute between the parties, correct?

7 **MR. MARIO GUERRA:** If you say so.

8 **MS. CATHERINE GLEASON-MERCIER:** The parties -- the City  
9 and RTG /RTM -- they're currently reviewing and negotiating this work order?

10 **MR. MARIO GUERRA:** Again, I can't speak to a specific work  
11 order.

12 **MS. CATHERINE GLEASON-MERCIER:** You have no knowledge  
13 about this specific one? Okay. We can take that down.

14 Would you agree with me that the City has at times modified any  
15 disproportionate deductions under the work orders?

16 **MR. MARIO GUERRA:** They have at times, yes.

17 **MS. CATHERINE GLEASON-MERCIER:** And I just want to be  
18 clear. When we're talking about these deductions, under the PA it's deductions as a  
19 result of failure points being assigned, correct?

20 **MR. MARIO GUERRA:** Both, yes. Failure point assigned as well  
21 as monetary deductions.

22 **MS. CATHERINE GLEASON-MERCIER:** Right. And they're  
23 deductions, not penalties under the PA, correct?

24 **MR. MARIO GUERRA:** Some are both.

25 **MS. CATHERINE GLEASON-MERCIER:** I believe they're called  
26 deductions though? Is that fair?

27 **MR. MARIO GUERRA:** Yes, that's fair.

28 **MS. CATHERINE GLEASON-MERCIER:** Okay, I want to shift a

1 little bit into some of the early issues that were experienced on the system. You're  
2 aware that there were issues with both the vehicles and the infrastructure in the winter  
3 of late 2019 and early 2020, correct?

4 **MR. MARIO GUERRA:** I would have been aware of that through  
5 the Board, yes.

6 **MS. CATHERINE GLEASON-MERCIER:** Let's pull up  
7 COW0487417.

8 **--- EXHIBIT No. 296:**

9 COW0487417 – City of Ottawa Letter to RTG 18 December  
10 2019

11 **MS. CATHERINE GLEASON-MERCIER:** And this is a letter from  
12 the City dated December 18<sup>th</sup>, 2019, And at the bottom of the first page we see a  
13 heading “Interaction and availability impact”. And do you see the first paragraph states:

14 “Since the launch of the system RTG has generally  
15 failed to rectify ongoing issues with vehicle  
16 performance including with the TCMS and the door  
17 subsystems and with infrastructure performance due  
18 to switch failures.”

19 Do you see that?

20 **MR. MARIO GUERRA:** I see it.

21 **MS. CATHERINE GLEASON-MERCIER:** So then there were  
22 TCMS and door issues in December 2019?

23 **MR. MARIO GUERRA:** Again, not intimately involve but from what  
24 I can recall, yes, there were.

25 **MS. CATHERINE GLEASON-MERCIER:** And the same with  
26 switch failures? They were happening in December 2019?

27 **MR. MARIO GUERRA:** I believe so, yes.

28 **MS. CATHERINE GLEASON-MERCIER:** Okay. let's pull up



1 another document, COW0489797. This is a letter dated January 9, 2020. And if we  
2 scroll to the second page in the first paragraph we see under the bullet, it says:

3 “Based on the City’s preliminary assessment of the  
4 events of December 31, the root cause appears to be  
5 related to the long-term buildup of metallic dust on the  
6 vehicle rooftops.”

7 Do you see that?

8 **MR. MARIO GUERRA:** I see it.

9 **MS. CATHERINE GLEASON-MERCIER:** And there was a system  
10 event on December 31<sup>st</sup>, 2019, correct?

11 **MR. MARIO GUERRA:** I seem to recall one, yes.

12 **MS. CATHERINE GLEASON-MERCIER:** And it caused an  
13 extensive service disruption, correct?

14 **MR. MARIO GUERRA:** It caused a service disruption, yes.

15 **MS. CATHERINE GLEASON-MERCIER:** Okay. We can go to  
16 COW0523348.

17 **--- EXHIBIT No. 297:**

18 COW0489797 – City of Ottawa Letter to RTG 24 January  
19 2020

20 **MS. CATHERINE GLEASON-MERCIER:** And this is a letter dated  
21 January 24, 2020. And let’s turn to the second page of this letter, please. We’ll see  
22 there are three bullets. If we scroll down just a little bit. There we go. And you’ll see  
23 the second bullet there was an overhead catenary system in the St. Laurent tunnel  
24 failure, correct?

25 **MR. MARIO GUERRA:** I remember that happening, yes.

26 **MS. CATHERINE GLEASON-MERCIER:** And there were ongoing  
27 and repeated switch failures on the system? Do you see that underneath?

28 **MR. MARIO GUERRA:** I also recall being told about that as well,

1 yes.

2 **MS. CATHERINE GLEASON-MERCIER:** And those issues  
3 affected the service of the system, correct?

4 **MR. MARIO GUERRA:** Yes, that would be fair.

5 **MS. CATHERINE GLEASON-MERCIER:** Okay. Let's pull up  
6 COW0523248.

7 **--- EXHIBIT No. 298:**

8 COW0523348 – City of Ottawa Letter to RTG 24 January  
9 2020

10 **MS. CATHERINE GLEASON-MERCIER:** This is a letter dated  
11 March 10, 2020, and this is a notice of Project Co. event of default. Do you recall this  
12 letter, sir?

13 **MR. MARIO GUERRA:** I do.

14 **MS. CATHERINE GLEASON-MERCIER:** And if we scroll down to  
15 the second paragraph we see that that the narrative states:

16 "Simply put, the system RTG has supplied is not  
17 performing consistently or reliably."

18 Do you agree that as a result of the failures experienced during the  
19 winter of 2019 and 2020 that we just looked at, the City issued this Notice of Default?

20 **MR. MARIO GUERRA:** Again, I wouldn't be -- if that's what the  
21 letter says, then yes.

22 **MS. CATHERINE GLEASON-MERCIER:** And the failures that we  
23 just looked at -- the failures with the TCMS, the doors, the inductors, the switches, the  
24 OCS -- those are not a result of anything that the EROs were doing, correct?

25 **MR. MARIO GUERRA:** The EROs themselves or the City in  
26 general?

27 **MS. CATHERINE GLEASON-MERCIER:** The EROs themselves.

28 **MR. MARIO GUERRA:** I have no reason to believe that, no.

1                   **MS. CATHERINE GLEASON-MERCIER:** They were failures with  
2 the system and the infrastructure?

3                   **MR. MARIO GUERRA:** Yes.

4                   **MS. CATHERINE GLEASON-MERCIER:** And with the vehicles as  
5 well, I should say?

6                   **MR. MARIO GUERRA:** Yes.

7                   **MS. CATHERINE GLEASON-MERCIER:** And remedying or  
8 rectifying these issues, that was RTG's responsibility under the Project Agreement,  
9 correct?

10                  **MR. MARIO GUERRA:** Correct.

11                  **MS. CATHERINE GLEASON-MERCIER:** And let's look at this  
12 because it came up yesterday. If we could go to COW280; this is the Project  
13 Agreement.

14                  **--- EXHIBIT No. 299:**

15                                   COW0000280 – OLRT Amended and Restated Projects  
16                                   Agreement 12 February 2013

17                  **MS. CATHERINE GLEASON-MERCIER:** And if we could go to  
18 page 90 of the PDF, please, and we scroll down, we see, under section 20.1(b), it  
19 states, starting at the third line:

20                                   “If at any time during the project term any of the  
21                                   design and construction works, the system, or any  
22                                   parts thereof do not fully satisfy the output  
23                                   specifications and/or any term or condition of this  
24                                   project agreement other than the Project Co. proposal  
25                                   extracts, Project Co. shall, at its own cost and  
26                                   expense, rectify the design and construction works,  
27                                   the system, and any part thereof.” (As read)

28                  Do you see that, sir?

1 **MR. MARIO GUERRA:** Can I ask what schedule of the PA this is?

2 **MS. CATHERINE GLEASON-MERCIER:** This is in the body of the  
3 PA. This is in the main body.

4 **MR. MARIO GUERRA:** The main body. Okay. Yeah, I can see it.

5 **MS. CATHERINE GLEASON-MERCIER:** So just so that we  
6 understand, Project Co. -- that's a reference to RTG, correct?

7 **MR. MARIO GUERRA:** Yes.

8 **MS. CATHERINE GLEASON-MERCIER:** And the reference to the  
9 project term -- you'll agree with me that's the 30-year term, so it includes the design and  
10 construction as well as the 30-year maintenance term.

11 **MR. MARIO GUERRA:** Yeah. I mean, I don't have access to all  
12 the definitions, but that would make sense.

13 **MS. CATHERINE GLEASON-MERCIER:** Right. You have no  
14 reason to disagree that it's the entirety of the project?

15 **MR. MARIO GUERRA:** I do not.

16 **MS. CATHERINE GLEASON-MERCIER:** So then you'll agree with  
17 me that it doesn't matter when a defect arises, if it's in design and construction or in the  
18 maintenance period. From the City's perspective, the issue needs to be corrected  
19 pursuant to this term of the project agreement, fair?

20 **MR. MARIO GUERRA:** Fair.

21 **MS. CATHERINE GLEASON-MERCIER:** And the City is not going  
22 to investigate who needs to fix the problem, if it's OLRTC or RTM or Alstom. It all falls  
23 to RTG under this provision of the project agreement, fair?

24 **MR. MARIO GUERRA:** That's what it says. Yes, it's fair.

25 **MS. CATHERINE GLEASON-MERCIER:** And it's RTG's  
26 responsibility to ensure that that issue or defect is addressed, correct?

27 **MR. MARIO GUERRA:** Correct.

28 **MS. CATHERINE GLEASON-MERCIER:** Can we go to

1 COW0568420, please?

2 **--- EXHIBIT NO” 300:**

3 COW0568420 – RTG Letter to City of Ottawa 25 April 2020

4 **MS. CATHERINE GLEASON-MERCIER:** This is a letter from RTG  
5 dated April 25<sup>th</sup>, 2020, and if we scroll down, we’ll see that the subject is “RTG revised  
6 plan”.

7 So this is RTG’s plan to remedy the March 2020 default; is that  
8 correct?

9 **MR. MARIO GUERRA:** I think it’s a plan, as it says, to address  
10 comments, yes.

11 **MS. CATHERINE GLEASON-MERCIER:** And in fact, this was the  
12 revised plan. So there had been an earlier version, and this is the version that RTG  
13 sent revising its plan sent on March 31<sup>st</sup>, I believe, correct?

14 **MR. MARIO GUERRA:** Again, I didn’t have intimate involvement in  
15 that, but I believe that’s the case, yes.

16 **MS. CATHERINE GLEASON-MERCIER:** Okay. We can take that  
17 down.

18 I want to talk about the derailments now, which I believe occurred  
19 when you were GM and CEO of RTM. So you should have more knowledge, to be fair  
20 to you.

21 So let’s look at COW0494474, please.

22 **--- EXHIBIT No. 301:**

23 COW0494474 – RTG Letter to City of Ottawa 21 July 2021  
24 with attached Incident Report 28 June 2021

25 **MS. CATHERINE GLEASON-MERCIER:** And we’ll start first, Mr.  
26 Guerra, with the derailment in the yard. So this is a letter from RTG dated July 21<sup>st</sup>,  
27 2021, and we see the “Re” line is “final derailment report of the LRV1116 on March 14<sup>th</sup>  
28 2021”. And if we scroll through this, I think to page 4, we see that an Alstom report is

1 attached to the letter, correct?

2 **MR. MARIO GUERRA:** Correct.

3 **MS. CATHERINE GLEASON-MERCIER:** And if we turn to page 2  
4 of this report, under "Incident" we'll see the LRV16 was coupled to LRV17, and LRV17  
5 was the leading car, correct?

6 **MR. MARIO GUERRA:** Yes.

7 **MS. CATHERINE GLEASON-MERCIER:** And in the next  
8 paragraph, we see that the vehicles moved through curve 19 in the MSF -- and that's  
9 the maintenance storage facility -- and that IMC and LMC1 bogie on LRV16 derailed,  
10 correct?

11 **MR. MARIO GUERRA:** Yes.

12 **MS. CATHERINE GLEASON-MERCIER:** And let's turn to the next  
13 page. Under "event marker 2-3" -- so it's at the top -- we see that even after the LMC1  
14 bogie had climbed and derailed, LRV17 did not see any errors and continued, correct?

15 **MR. MARIO GUERRA:** Correct.

16 **MS. CATHERINE GLEASON-MERCIER:** And I just want to move  
17 through some pages of this document, so if we can just scroll through, please. So we're  
18 going to look at some pictures. So you'll agree with me, as we look at these pictures,  
19 that there was damage to the infrastructure, correct?

20 **MR. MARIO GUERRA:** There was some damage, yes.

21 **MS. CATHERINE GLEASON-MERCIER:** There was damage to  
22 the duct work and also to the switch, correct?

23 **MR. MARIO GUERRA:** Yes, the switch heater.

24 **MS. CATHERINE GLEASON-MERCIER:** And there was also  
25 damage to the vehicle, correct?

26 **MR. MARIO GUERRA:** Yes.

27 **MS. CATHERINE GLEASON-MERCIER:** And so if we can scroll  
28 through, please, to the next page, and the next, we see here there was significant

1 damage to the vehicle, correct?

2 **MR. MARIO GUERRA:** There was, yes.

3 **MS. CATHERINE GLEASON-MERCIER:** And LRV16 was out of  
4 service for an extended period of time; is that correct?

5 **MR. MARIO GUERRA:** Yes.

6 **MS. CATHERINE GLEASON-MERCIER:** Even as recently as  
7 spring of this year, correct?

8 **MR. MARIO GUERRA:** Yes.

9 **MS. CATHERINE GLEASON-MERCIER:** And this derailment, it  
10 occurred when an Alstom hostler was operating the train, correct?

11 **MR. MARIO GUERRA:** Correct.

12 **MS. CATHERINE GLEASON-MERCIER:** Okay, we can take that  
13 down. Thank you.

14 I want to talk now about the two mainline derailments, and we'll do  
15 this chronologically or sequentially. So let's start with the August derailment.

16 LRV19 derailed about 90 metres east of Tunney's Pasture station;  
17 is that right?

18 **MR. MARIO GUERRA:** That's right.

19 **MS. CATHERINE GLEASON-MERCIER:** And let's turn up  
20 COM218, please.

21 **--- EXHIBIT No. 302:**

22 COM0000218 – Transportation Safety Board Letter to City of  
23 Ottawa 27 September 2021

24 **MS. CATHERINE GLEASON-MERCIER:** And this is a letter from  
25 the TSB dated September 27, 2021. And if we scroll down to the third page, please,  
26 we'll see the accident, and it's referring to August 8<sup>th</sup>, 2021. So this is the August  
27 derailment, correct?

28 **MR. MARIO GUERRA:** Yeah.

1                   **MS. CATHERINE GLEASON-MERCIER:** And that derailment was  
2 caused by a failure in the axle bearing assembly; is that correct?

3                   **MR. MARIO GUERRA:** Yes.

4                   **MS. CATHERINE GLEASON-MERCIER:** And if we turn to page  
5 10 of this document, under the heading "Roller Bearing Heat Detection", the letter states  
6 that:

7                                   "...an overheated roller bearing within the cartridge  
8                                   assembly can potentially fail catastrophically without  
9                                   being observed or detected." (As read)

10                   Do you see that?

11                   **MR. MARIO GUERRA:** Sorry. Are you in the first paragraph?

12                   **MS. CATHERINE GLEASON-MERCIER:** Yeah. I think it's the  
13 third line down.

14                   **MR. MARIO GUERRA:**

15                                   "The condition of the roller bearings cannot be  
16                                   inspected." (As read)

17                   Is that where you're at? Sorry.

18                   **MS. CATHERINE GLEASON-MERCIER:** Sorry. It's in the third  
19 line from the bottom -- or fourth line from the bottom:

20                                   "...an overheated roller bearing within the cartridge  
21                                   assembly can potentially fail catastrophically without  
22                                   being observed or detected." (As read)

23                   Do you see that?

24                   **MR. MARIO GUERRA:** I see it.

25                   **MS. CATHERINE GLEASON-MERCIER:** And if we go to page 12  
26 of this PDF, we see the paragraph that's just at the top of your screen now. It starts:

27                                   "As demonstrated by this derailment, there can be  
28                                   serious consequences resulting from an overheated



1 roller bearing failure on an LRV and commuter  
2 passenger service.” (As read)

3 Do you see that?

4 **MR. MARIO GUERRA:** Yeah.

5 **MS. CATHERINE GLEASON-MERCIER:** And then the TSB  
6 makes a suggestion and says:

7 “OLRT may wish to ensure that it has heat detection  
8 systems in place to monitor temperatures of LRV  
9 cartridge roller bearing assemblies in order to detect  
10 overheated roller bearings in a timely manner and  
11 intervene before an in-service catastrophic roller  
12 bearing failure occurs.” (As read)

13 Do you see that?

14 **MR. MARIO GUERRA:** Yes.

15 **MS. CATHERINE GLEASON-MERCIER:** And the City did in fact  
16 request that RTG and its subcontractors undertake engineering to add on-board heat  
17 detection systems, as suggested by the TSB. Do you agree with that?

18 **MR. MARIO GUERRA:** Yes.

19 **MS. CATHERINE GLEASON-MERCIER:** Let’s look at  
20 COW0523362.

21 **--- EXHIBIT No. 303:**

22 COW0523362 – RTG Letter to City of Ottawa 18 October  
23 2021

24 **MS. CATHERINE GLEASON-MERCIER:** And this is a letter from  
25 RTG dated October 18<sup>th</sup>, 2021, and the subject line is “Additional on-board monitors”.  
26 And if we scroll to the first paragraph, please -- second paragraph, we see that RTG is  
27 advising the City that:

28 “Alstom is continuing to look in the heart sensors as

1 one of the possible long-term mitigation measures,  
2 but it feels it is premature to conclude on any  
3 measure until the root cause analysis is completed.”

4 (As read)

5 So is it fair to say that Alstom thought it was premature at this point  
6 to commence the engineering work for any on-board heat detection systems? Is that  
7 fair?

8 **MR. MARIO GUERRA:** I think for any detection systems in  
9 general, yes.

10 **MS. CATHERINE GLEASON-MERCIER:** And that's because  
11 according to Alstom, the root cause analysis was still outstanding?

12 **MR. MARIO GUERRA:** Yes.

13 **MS. CATHERINE GLEASON-MERCIER:** Alstom eventually did  
14 agree to undertake some heat detection work, though, correct?

15 **MR. MARIO GUERRA:** I think they agreed to look at detection  
16 methods.

17 I think the use-of-heat detection -- and I'm not an expert but, from  
18 what I recall, was deemed as something that would not have prevented the derailment,  
19 so they agreed to look at other methods of detection.

20 **MS. CATHERINE GLEASON-MERCIER:** So that was also at the  
21 City's request; is that fair?

22 **MR. MARIO GUERRA:** Yes.

23 **MS. CATHERINE GLEASON-MERCIER:** So let's look at  
24 COW0593900.

25 **--- EXHIBIT No. 304:**

26 COW0593900 - City of Ottawa Letter to RTG 3 November  
27 2021

28 **COMMISSIONER HOURIGAN:** Say the number again, please.

1 **MS. CATHERINE GLEASON-MERCIER:** Of course, 0593900

2 **COMMISSIONER HOURIGAN:** Stand by.

3 **MS. CATHERINE GLEASON-MERCIER:** Thank you. Thank you  
4 very much. So this is a letter date November 3<sup>rd</sup>, 2021. Do you see that, sir?

5 **MR. MARIO GUERRA:** Yes.

6 **MS. CATHERINE GLEASON-MERCIER:** And if we turn to the  
7 second page of this letter, we see in the first paragraph that:

8 "Alstom disagrees with proceeding to immediately  
9 undertaking the necessary design and engineering in  
10 order to install heat-detection system on the vehicles  
11 as requested by the City." (As read).

12 And I believe that's what you just said, which is that Alstom didn't  
13 think it was necessary for the heat-detection systems, correct?

14 **MR. MARIO GUERRA:** Alstom didn't think that the heat-detection  
15 system would have prevented the incident, yes.

16 **MS. CATHERINE GLEASON-MERCIER:** And then, further down  
17 the page, we'll that the City requests that RTG -- in the third paragraph -- sorry, in the  
18 first paragraph that starts, "Further to the onboard heat-detection systems...", we see  
19 that:

20 "...the City request that RTG undertake the necessary  
21 design and engineering for some early-detection  
22 methods." (As read).

23 Which I believe you had spoke to earlier, correct?

24 **MR. MARIO GUERRA:** Yes.

25 **MS. CATHERINE GLEASON-MERCIER:** And those methods are  
26 on-board wheel excessive slip/slide notification, purpose-built and/or customized  
27 wayside solution for detection of axle and bearing failures, and then a wheel back-to-  
28 back measurement tool, correct?

1 **MR. MARIO GUERRA:** Yes.

2 **MS. CATHERINE GLEASON-MERCIER:** And Alstom does  
3 eventually agree to undertake the work for the first and third options, the on-board  
4 wheel excessive slip/slide notifications and the wheel back-to-back measurement tool,  
5 correct?

6 **MR. MARIO GUERRA:** Yeah, and I believe the second on as well  
7 once the root cause was determined. It is part of our return-to-service plan.

8 **MS. CATHERINE GLEASON-MERCIER:** And the root cause for  
9 the September derailment, that's only been recently delivered, correct?

10 **MR. MARIO GUERRA:** That's correct.

11 **MS. CATHERINE GLEASON-MERCIER:** And that root cause is  
12 preliminary in nature; it's not a final root-cause analysis?

13 **MR. MARIO GUERRA:** I wouldn't characterize it as final. No, it's  
14 missing some information, correct.

15 **MS. CATHERINE GLEASON-MERCIER:** And I believe -- is it fair  
16 to say that OLRTC and RTG don't accept the findings in this preliminary root-cause  
17 analysis?

18 **MR. MARIO GUERRA:** In its current form, I think they require  
19 more information, I believe. That's my understanding of the situation.

20 **MS. CATHERINE GLEASON-MERCIER:** Because it's preliminary  
21 in nature?

22 **MR. MARIO GUERRA:** Well, you'd have to ask RTG, but I would  
23 assume, yes.

24 **MS. CATHERINE GLEASON-MERCIER:** Okay. We can take this  
25 down, please. Let's move to the September derailment now, please. So on September  
26 19<sup>th</sup>, there was a derailment on the main line, and this time there were passenger on  
27 board; is that correct?

28 **MR. MARIO GUERRA:** Yes.

1                   **MS. CATHERINE GLEASON-MERCIER:** And there was  
2 significant damage to both the vehicle and the infrastructure caused by that derailment?

3                   **MR. MARIO GUERRA:** Yes.

4                   **MS. CATHERINE GLEASON-MERCIER:** And I think we can all  
5 agree that the derailment was caused by a bolt that was not retorqued properly and not  
6 caught by the maintenance at Alstom?

7                   **MR. MARIO GUERRA:** Yes, several bolts.

8                   **MS. CATHERINE GLEASON-MERCIER:** And the failure to torque  
9 the bolt, that occurred after the refurbishment operation that Alstom undertook in  
10 response to the first derailment, correct?

11                  **MR. MARIO GUERRA:** Correct.

12                  **MS. CATHERINE GLEASON-MERCIER:** And you'll agree with me  
13 that there was nothing in terms of the ERO that caused the derailment, correct?

14                  **MR. MARIO GUERRA:** That caused it?

15                  **MS. CATHERINE GLEASON-MERCIER:** Yes.

16                  **MR. MARIO GUERRA:** Not necessarily, no. I would necessarily  
17 agree with that, no.

18                  **MS. CATHERINE GLEASON-MERCIER:** You think the ERO  
19 caused the bolt not to be retorqued?

20                  **MR. MARIO GUERRA:** No, but I think the RO should have noticed  
21 the problem and stopped the vehicle sooner than it did.

22                  **MS. CATHERINE GLEASON-MERCIER:** The ERO should have  
23 noticed the problem and stopped the vehicle, but the vehicle had already derailed,  
24 correct?

25                  **MR. MARIO GUERRA:** But it would have minimized the impact to  
26 the damage to the vehicle and the infrastructure.

27                  **MS. CATHERINE GLEASON-MERCIER:** Right. But my question  
28 was, the ERO couldn't have prevented the derailment, correct?

1                   **MR. MARIO GUERRA:** From happening in the first instance, no,  
2 he couldn't -- he or she.

3                   **MS. CATHERINE GLEASON-MERCIER:** Let's look at  
4 COW0104775. This is the letter from the TSB dated November 2<sup>nd</sup>; do you see that?

5                   **MR. MARIO GUERRA:** Yes.

6                   **MS. CATHERINE GLEASON-MERCIER:** And I don't think we  
7 need to walk through this entire letter because we've done this with other witnesses, but  
8 if we could look at the last page, please -- the last page of the letter, sorry. Scroll up.  
9 And up a bit. Thank you. We see in the final paragraph that the TSB concludes that:

10    "This accident has demonstrated that there could be  
11    serious consequences resulting from the inconsistent  
12    and incomplete maintenance of safety-critical  
13    components on an LRV in commuter passenger  
14    service." (As read).

15                   Correct?

16                   **MR. MARIO GUERRA:** That's what it says, yes.

17                   **MS. CATHERINE GLEASON-MERCIER:** And the TSB says:

18    "OLRT may wish to conduct an in-depth review of all  
19    work performed on safety-critical components to  
20    confirm that procedures are followed and that there is  
21    sufficient oversight in place to prevent a similar  
22    occurrence from happening again." (As read).

23                   Correct?

24                   **MR. MARIO GUERRA:** That's what it says, yes.

25                   **MS. CATHERINE GLEASON-MERCIER:** And so isn't it fair to say  
26 that it's not just the lack of tightening a bolt; there was a -- the TSB was concerned with  
27 the overall oversight that led to the bolt not being tightened, correct?

28                   **MR. MARIO GUERRA:** On some levels, yes.

1                   **MS. CATHERINE GLEASON-MERCIER:** I'd like to now show you  
2 a video of the derailment so that we can talk a little bit about what happened. So we  
3 can pull up COW0593795.

4 **--- EXHIBIT No. 305:**

5                                   COW0593795 – OLRT Video 19 September 2021

6                   **MS. CATHERINE GLEASON-MERCIER:** And for context, this is  
7 from the westbound platform facing east at Tremblay Station, and it's dated September  
8 19<sup>th</sup>, which is the date of the derailment. Okay, so we can plan that, please. So we see  
9 the train arrive in the station, correct?

10                   **MR. MARIO GUERRA:** Yes.

11                   **MS. CATHERINE GLEASON-MERCIER:** And we see a group of  
12 people leaving the train, correct?

13                   **MR. MARIO GUERRA:** Yes.

14                   **MS. CATHERINE GLEASON-MERCIER:** And do you recognize  
15 the gentlemen who has just stepped off the train?

16                   **MR. MARIO GUERRA:** Yes, I do.

17                   **MS. CATHERINE GLEASON-MERCIER:** That's Mr. Steve Nadon,  
18 the RTM Maintenance Director, correct?

19                   **MR. MARIO GUERRA:** Yes.

20                   **MS. CATHERINE GLEASON-MERCIER:** And we see him pulling  
21 out his phone, correct?

22                   **MR. MARIO GUERRA:** Correct.

23                   **MS. CATHERINE GLEASON-MERCIER:** And we see the train  
24 departing the station, correct?

25                   **MR. MARIO GUERRA:** Yes.

26                   **MS. CATHERINE GLEASON-MERCIER:** You'll agree with me that  
27 Mr. Nadon got off the train, but he didn't take any actions to stop this train. He didn't hit  
28 the passenger emergency intercom, did he?

1                   **MR. MARIO GUERRA:** There was no reason for him to do that, so  
2 no.

3                   **MS. CATHERINE GLEASON-MERCIER:** He didn't put his door --  
4 foot in the door to stop the train?

5                   **MR. MARIO GUERRA:** Again, I don't see the reason why he  
6 would have.

7                   **MS. CATHERINE GLEASON-MERCIER:** Well, Mr. Nadon told  
8 Commission counsel in his interview that he heard a clanging sound beneath him and  
9 he thought a cable had come loose or that something was dragging and, as such, he  
10 told his wife to get off at the next station because he didn't think the train was going to  
11 make it. Don't you think that's reason enough for him to alert the driver that there might  
12 be something wrong with the train?

13                   **MR. MARIO GUERRA:** I mean I'm not going to speak for Mr.  
14 Nadon, but my understanding is that's the reason why he pulled out the phone, was to  
15 let control know that there may be a problem with the vehicle.

16                   **MS. CATHERINE GLEASON-MERCIER:** But he didn't take any  
17 other actions; you'll agree with me?

18                   **MR. MARIO GUERRA:** There was no known incident to take  
19 actions. It was just that he heard something that wasn't right?

20                   **MS. CATHERINE GLEASON-MERCIER:** Mr. Guerra, my question  
21 was pretty simple. He didn't take any other actions; he pulled out his phone, and that's  
22 it, correct?

23                   **MR. MARIO GUERRA:** Again, I didn't think -- I don't believe he  
24 needed to take any other actions.

25                   **MS. CATHERINE GLEASON-MERCIER:** Sir, I'm not asking -- I'm  
26 sorry. I'm not asking what you believed he needed to do. I'm asking what he did or  
27 didn't do and I think it's clear from the video. He didn't put his foot in the door. He didn't  
28 pull the passenger alarm; correct?



1 **MR. MARIO GUERRA:** He did not.

2 **MS. CATHERINE GLEASON-MERCIER:** Can we go to  
3 COW0523375? This is a letter dated September 24<sup>th</sup>, 2021 and this is a notice of  
4 Project Co. event of default. Do you see that?

5 **--- EXHIBIT No. 306:**

6 COW0523375 – City of Ottawa Letter to RTG 24 September  
7 2021

8 **MR. MARIO GUERRA:** I see it.

9 **MS. CATHERINE GLEASON-MERCIER:** And you'll agree that the  
10 City issued a second Notice of Project Co. Event of Default in response to the two  
11 derailments, correct?

12 **MR. MARIO GUERRA:** I believe so.

13 **MS. CATHERINE GLEASON-MERCIER:** And RTG is still under --  
14 is still in default correct?

15 **MR. MARIO GUERRA:** I mean, that's a contractual legal term that  
16 I have no -- I can't speak to and I believe it's still in litigation anyway so I'm not going to  
17 comment on that.

18 **MS. CATHERINE GLEASON-MERCIER:** Okay. So you don't  
19 know one way or the other? That's fine.

20 In 2021 -- we can take this down -- prior to the derailments, RTG  
21 was running reduced service, I believe you told Commission counsel this morning?

22 **MR. MARIO GUERRA:** Reduced service?

23 **MS. CATHERINE GLEASON-MERCIER:** I was running 11 trains;  
24 is that correct?

25 **MR. MARIO GUERRA:** Prior to what? Sorry, I didn't hear the ---

26 **MS. CATHERINE GLEASON-MERCIER:** I'm sorry, in 2021 RTG  
27 was running reduced service; is that correct?

28 **MR. MARIO GUERRA:** At some points, yes.

1                   **MS. CATHERINE GLEASON-MERCIER:** Okay. So let's look at  
2 COW0523357. And this is a letter dated March 16<sup>th</sup>, 2021. And if we go to the  
3 attachment, please? It attaches a term sheet regarding a variation for temporary  
4 service level decrease. Do you see that?

5 **--- EXHIBIT No. 307:**

6                                   COW0523357 – RTG Letter to City of Ottawa 16 March  
7                                   2021

8                   **MR. MARIO GUERRA:** Yes.

9                   **MS. CATHERINE GLEASON-MERCIER:** And we see under the  
10 purpose in the beginning, the last sentence in that paragraph states:

11                                    "This temporary service level decrease is being  
12                                    implemented to take advantage of the period of low  
13                                    ridership and in order to improve reliability of the  
14                                    system,"

15                   Correct?

16                   **MR. MARIO GUERRA:** Yes, that's what it says.

17                   **MS. CATHERINE GLEASON-MERCIER:** So this allows RTG and  
18 RTM to take advantage of low ridership because of COVID, correct?

19                   **MR. MARIO GUERRA:** Yes,

20                   **MS. CATHERINE GLEASON-MERCIER:** And improve the  
21 reliability of the system, correct?

22                   **MR. MARIO GUERRA:** Yes.

23                   **MS. CATHERINE GLEASON-MERCIER:** And I think if we just  
24 scroll down we'll see under "Temporary service level decrease" on the next page, I  
25 believe, the parties agreed that RTG could put into service 11 double-car trains,  
26 correct?

27                   **MR. MARIO GUERRA:** Yes.

28                   **MS. CATHERINE GLEASON-MERCIER:** And let's look at

1 COW0495244. This is a letter dated May 12<sup>th</sup>, 2021 and again if we scroll down to the  
2 attachment it attaches an amendment to the term sheet regarding the variation for  
3 temporary service level decrease, correct?

4 **--- EXHIBIT No. 308:**

5 COW0495244 – RTG Letter to City of Ottawa 12 May 2021

6 **MR. MARIO GUERRA:** Yes.

7 **MS. CATHERINE GLEASON-MERCIER:** And if we scroll down to  
8 section 2 we see that it extends the date for return to prior service level from May 3<sup>rd</sup>,  
9 2021 to August 16<sup>th</sup>, 2021, correct?

10 **MR. MARIO GUERRA:** Correct.

11 **MS. CATHERINE GLEASON-MERCIER:** So that in effect means  
12 that RTG was running this 11 car service up until August 16<sup>th</sup>, 2021, correct?

13 **MR. MARIO GUERRA:** That's what was agreed to, yes.

14 **MS. CATHERINE GLEASON-MERCIER:** And you'll agree with me  
15 that it was easier for RTG to ensure 11 trains were in service?

16 **MR. MARIO GUERRA:** I think it was easier for everybody, yes,  
17 including the City.

18 **MS. CATHERINE GLEASON-MERCIER:** And including RTG?

19 **MR. MARIO GUERRA:** And including RTG.

20 **MS. CATHERINE GLEASON-MERCIER:** And this reduced service  
21 extended up until the time of the August derailment, correct?

22 **MR. MARIO GUERRA:** That's correct.

23 **MS. CATHERINE GLEASON-MERCIER:** And let's look at  
24 COW0505470. And this is a term sheet for a variation for temporary service level  
25 decrease and it's dated December 24<sup>th</sup>, 2021. Do you see that, sir?

26 **--- EXHIBIT No. 309:**

27 COW0505470 – Term Sheet Regarding Variation for  
28 Temporary Service Level Decrease 24 December 2021

1 **MR. MARIO GUERRA:** I do.

2 **MS. CATHERINE GLEASON-MERCIER:** And again if we scroll  
3 down the temporary service level decrease, there we go, we see that RTG is putting in  
4 no fewer than 11 double-car trains, correct?

5 **MR. MARIO GUERRA:** Correct.

6 **MS. CATHERINE GLEASON-MERCIER:** So then again, RTG --  
7 and I believe you had said this earlier -- was running 11 double-car trains for the  
8 morning peak period, correct?

9 **MR. MARIO GUERRA:** Yes, and being paid accordingly.

10 **MS. CATHERINE GLEASON-MERCIER:** Yes, that's right. And  
11 we can scroll down to the next page, please. And the failure points are -- sorry, the  
12 next page. Monthly service payments. So it's being paid for putting in the 11 car  
13 service, correct?

14 **MR. MARIO GUERRA:** That was pro-rated, yes.

15 **MS. CATHERINE GLEASON-MERCIER:** We can take that down,  
16 please. And so you'll agree with me that these service reductions were examples of the  
17 City and RTG working collaboratively together to ensure service for the customers?

18 **MR. MARIO GUERRA:** I would say yes, I agree.

19 **MS. CATHERINE GLEASON-MERCIER:** Okay. Are you aware  
20 that the City's independent expert Mott MacDonald issued a report in April 2022  
21 regarding the Confederation Line?

22 **MR. MARIO GUERRA:** I am.

23 **MS. CATHERINE GLEASON-MERCIER:** Let's look at the report.  
24 It's at COM0010116. And I'd like to look at the second on vehicles in volume 5 so that's  
25 page 180 of the PDF, please. And we'll just see under the Summary:

26 "The purpose of this volume is to summarize Mott  
27 MacDonald's findings regarding the review of revenue  
28 service vehicles as well as providing a summary of

1 recommended changes or repairs or upgrades that  
2 are required to improve the performance of the project  
3 systems and project operations and maintenance.”

4 Do you see that?

5 **MR. MARIO GUERRA:** Yes.

6 **MS. CATHERINE GLEASON-MERCIER:** So let's turn to page 185  
7 of the PDF, still in this section. If we scroll down to section 3.1.2.3., this subsection is  
8 titled “Backlog of deferred maintenance.” Do you see that?

9 **MR. MARIO GUERRA:** I do.

10 **MS. CATHERINE GLEASON-MERCIER:** And the first sentence in  
11 this paragraph states that:

12 “The backlog of deferred maintenance is included in  
13 the MSC monthly reliability and maintainability  
14 reports, September 2019 to January 2021.”

15 Do you see that?

16 **MR. MARIO GUERRA:** Yes.

17 **MS. CATHERINE GLEASON-MERCIER:** And just before we go  
18 on, those reports, those are Alstom documents; are you aware of that?

19 **MR. MARIO GUERRA:** I believe so, yes.

20 **MS. CATHERINE GLEASON-MERCIER:** Yeah. So then  
21 according to those Alstom reports in January 2020 there were 235 deferred items for  
22 maintenance, correct?

23 **MR. MARIO GUERRA:** That's what it says, yes.

24 **MS. CATHERINE GLEASON-MERCIER:** And then in January  
25 2021 there are 575 deferred items so that's more than double, correct?

26 **MR. MARIO GUERRA:** That's what it says, yes.

27 **MS. CATHERINE GLEASON-MERCIER:** Is it fair to say that's not  
28 a downward trend that one would have expected of the maintenance provider?

1 **MR. MARIO GUERRA:** Obviously.

2 **MS. CATHERINE GLEASON-MERCIER:** Yeah. They were  
3 deferring more and more maintenance. There's an increasing backlog, correct?

4 **MR. MARIO GUERRA:** That's not uncommon though in the  
5 industry.

6 **MS. CATHERINE GLEASON-MERCIER:** It's not uncommon for  
7 backlog of maintenance to pile up?

8 **MR. MARIO GUERRA:** No, it's not uncommon. It depends. You  
9 have to take debriefs and find out why, what the maintenance is. In some cases -- I'll  
10 give you an example. If you're talking about preventative maintenance you could open  
11 work orders in the system for preventative maintenance activities for a year. Those  
12 would come up as backlog but in actual fact the work hasn't been done because it's not  
13 scheduled to be done yet. The work order stays open. So you really need to look and  
14 dig deep into why those items are there. It could have been that in January they  
15 inputted a lot of preventative maintenance work orders and that's why the numbers  
16 grew. So just to make a statement based on the numbers alone, I don't think is  
17 sufficient.

18 And in my years of experience in the industry, it's quite common to  
19 carry a level of backlog that is not safety or service critical; it's normal that that be done.  
20 And I believe that if you look at the numbers today they're probably in the 100 to 200  
21 item range. So no longer there.

22 **MS. CATHERINE GLEASON-MERCIER:** Okay. So let's unpack  
23 that a little bit.

24 **MR. MARIO GUERRA:** Sure.

25 **MS. CATHERINE GLEASON-MERCIER:** I believe you told  
26 Commission counsel that Alstom had inadequate staffing levels until after the second  
27 derailment so that would have been until after September 2021, correct?

28 **MR. MARIO GUERRA:** In my opinion, yes.

1                   **MS. CATHERINE GLEASON-MERCIER:** And so when there's this  
2 volume of deferred work or backlog of work being done in January 2020 and January  
3 2021, that's at a time when, in your opinion, Alstom had insufficient resources, correct?

4                   **MR. MARIO GUERRA:** Yes.

5                   **MS. CATHERINE GLEASON-MERCIER:** And now I believe you  
6 just told me that the number is closer to 100 in terms of deferred or backlog of  
7 maintenance and that's consistent with Alstom having more resources on the project?

8                   **MR. MARIO GUERRA:** No, I think it's consistent with the vehicles  
9 being more reliable and overall being better managed. And a backlog is also a matter  
10 of timing, as I said earlier. You could open a whole bunch of preventative maintenance  
11 work orders tomorrow and your numbers will jump. So the 100 number that I'm giving  
12 you right now is after factoring in the exclusion of preventative maintenance work  
13 orders. The actual number is probably larger than that.

14                   **MS. CATHERINE GLEASON-MERCIER:** Is it fair to say that the  
15 575 number of deferred items -- that's not all preventative maintenance?

16                   **MR. MARIO GUERRA:** Yes. Oh, sure. There are open work  
17 orders for items that need to be addressed, no doubt, but it's also fair to say that none  
18 of them are safety- or service-critical.

19                   **MS. CATHERINE GLEASON-MERCIER:** Right. That wasn't my  
20 question, though. My question was globally about deferred maintenance, and that in  
21 January 2021, there was more deferred maintenance than in January 2020, fair?

22                   **MR. MARIO GUERRA:** On the face, without looking at the  
23 numbers, yes, that seems to be accurate.

24                   **MS. CATHERINE GLEASON-MERCIER:** And if we turn to page  
25 243, I believe, these are recommendations coming out of volume 5, which we were just  
26 in, on the vehicles. And we'll see the first recommendation from Mott MacDonald is  
27 dealing with the backlog of deferred maintenance. And in fact, they indicate that:

28   "...an independent review of the long-term stopped

1 and cannibalized vehicles...associated  
2 materials/equipment...carried out as part of an overall  
3 asset condition assessment, as [it is] likely these  
4 assets may deteriorate if left in an inoperable  
5 condition for long periods of time.”

6 Do you see that?

7 **MR. MARIO GUERRA:** I do.

8 **MS. CATHERINE GLEASON-MERCIER:** And then Mott also  
9 recommends that:

10 “...a detailed independent analysis be conducted of  
11 [all] items of equipment suffering from premature  
12 failure.”

13 Correct?

14 **MR. MARIO GUERRA:** I see it, yes.

15 **MS. CATHERINE GLEASON-MERCIER:** And then:

16 “It is recommended, possibly in conjunction with  
17 [those two] items...that an independent review is  
18 carried out in order to understand the root cause of  
19 the deferred maintenance backlog.”

20 Do you see that?

21 **MR. MARIO GUERRA:** I see it.

22 **MS. CATHERINE GLEASON-MERCIER:** So Mott is  
23 recommending that there’s an independent assessment to understand why there’s the  
24 deferred maintenance backlog, which I think is consistent with what you were saying:  
25 you have to dig into the numbers, correct?

26 **MR. MARIO GUERRA:** Yes.

27 **MS. CATHERINE GLEASON-MERCIER:** Are you aware that Mott  
28 MacDonald made a number of requests for information from RTG in order to obtain



1 information for its report?

2 **MR. MARIO GUERRA:** I'm aware that requests were made, yes.

3 **MS. CATHERINE GLEASON-MERCIER:** And are you aware that  
4 many of those requests were not answered?

5 **MR. MARIO GUERRA:** I believe so, but it's hard to remember  
6 specifics.

7 **MS. CATHERINE GLEASON-MERCIER:** Okay. We can take this  
8 document down. Thank you.

9 This morning you discussed with Commission counsel some SNC-  
10 Lavalin lessons learned documents. Do you recall that?

11 **MR. MARIO GUERRA:** I do.

12 **MS. CATHERINE GLEASON-MERCIER:** And I believe in one of  
13 the early ones, you told Commission counsel that you had some discussion with the  
14 City regarding a hybrid vehicle and the fact that it was a prototype, and the City was  
15 concerned when you had that discussion with them. Do you recall saying that?

16 **MR. MARIO GUERRA:** Yeah. Informal discussions, yes.

17 **MS. CATHERINE GLEASON-MERCIER:** And based on what  
18 you've told us and your involvement, that would have been post-RSA, correct?

19 **MR. MARIO GUERRA:** That would have been more so when I  
20 took over as CEO, yes.

21 **MS. CATHERINE GLEASON-MERCIER:** So it would have been  
22 closer to the June 2020 period?

23 **MR. MARIO GUERRA:** Soon after that, yes, probably.

24 **MS. CATHERINE GLEASON-MERCIER:** Regarding the minor  
25 deficiencies list, you'll agree with me that the items on that list were for RTG to address  
26 correct?

27 **MR. MARIO GUERRA:** Yes.

28 **MS. CATHERINE GLEASON-MERCIER:** And it would be work

1 that OLRTC, as the construction contractor, had to complete?

2 **MR. MARIO GUERRA:** Or the subcontractors for the most part,  
3 yes.

4 **MS. CATHERINE GLEASON-MERCIER:** Right. It's not  
5 maintenance deficiencies, because it's at the time of substantial completion, correct?

6 **MR. MARIO GUERRA:** Correct.

7 **MS. CATHERINE GLEASON-MERCIER:** And under the project  
8 agreement, those have to be completed by final completion, correct?

9 **MR. MARIO GUERRA:** I believe so, yes.

10 **MS. CATHERINE GLEASON-MERCIER:** And final completion still  
11 hasn't been achieved by RTG on this project, right?

12 **MR. MARIO GUERRA:** I wouldn't be privy to that, but I believe  
13 you're right.

14 **MS. CATHERINE GLEASON-MERCIER:** Okay. With regard to  
15 the launch of the system, are you aware, from your position on the board and your  
16 oversight role, that the first two weeks between RSA and the public launch -- so  
17 between August 30<sup>th</sup> and September 14<sup>th</sup> -- the system was being exercised?

18 **MR. MARIO GUERRA:** I'm aware the City was conducting various  
19 exercises, yes.

20 **MS. CATHERINE GLEASON-MERCIER:** And so that would have  
21 given the opportunity for the City and RTG to sort out issues and assess things like  
22 KPIs; is that fair?

23 **MR. MARIO GUERRA:** No, I don't think that's fair. I think the  
24 exercises were more from an operational perspective, rather than a technical or  
25 contractual perspective.

26 **MS. CATHERINE GLEASON-MERCIER:** Did RTM raise with the  
27 City that it wanted to exercise from, for instance, the KPI perspective?

28 **MR. MARIO GUERRA:** Oh, we objected to the way that the KPIs

1 were interpreted and the numbers. I believe ---

2 **MS. CATHERINE GLEASON-MERCIER:** During ---

3 **MR. MARIO GUERRA:** From what was being reported to me at  
4 the board, we were ---

5 **MS. CATHERINE GLEASON-MERCIER:** During these first two  
6 weeks of exercising the system before public launch?

7 **MR. MARIO GUERRA:** I believe during the first month, yes, which  
8 would have included those two weeks.

9 **MS. CATHERINE GLEASON-MERCIER:** Will you agree with me  
10 that deficiencies that are latent deficiencies -- those were for RTG to identify under the  
11 latent deficiencies regime in the project agreement?

12 **MR. MARIO GUERRA:** I believe that's what the project agreement  
13 says, yes.

14 **MS. CATHERINE GLEASON-MERCIER:** And RTG delivers the  
15 substantial completion notice and the RSA notice under the project agreement, correct?

16 **MR. MARIO GUERRA:** Again, you're asking me questions I  
17 believe are true, but I wouldn't know them -- I couldn't speak directly to the project  
18 agreement, but I believe that's correct, yes.

19 **MS. CATHERINE GLEASON-MERCIER:** Okay. And on that  
20 basis, you'll agree with me, then, if there are too many deficiencies, then RTG really  
21 shouldn't have delivered its notices, should it. It's not in the City's control, is it?

22 **MR. MARIO GUERRA:** I think ultimately the City has control over  
23 making the decision to go into revenue service, from my understanding.

24 **MS. CATHERINE GLEASON-MERCIER:** But it's RTG that  
25 delivers the RSA notice saying it's ready to go, correct?

26 **MR. MARIO GUERRA:** Yes. I believe so, yes.

27 **MS. CATHERINE GLEASON-MERCIER:** And then from the City's  
28 perspective -- and I think we already covered this -- under the project agreement, those

1 deficiencies -- that's for RTG to address, correct?

2 **MR. MARIO GUERRA:** I believe that's what the PA states, yes.

3 **MS. CATHERINE GLEASON-MERCIER:** Just one last topic for  
4 you, Mr. Guerra.

5 I believe you told Commission counsel that you've worked on P3  
6 bids; is that correct?

7 **MR. MARIO GUERRA:** I did, yes.

8 **MS. CATHERINE GLEASON-MERCIER:** And given your P3 work,  
9 you'll agree with me that owners don't have the ability to look behind the face of the bids  
10 that they receive, correct?

11 **MR. MARIO GUERRA:** Sorry. Can you maybe explain that a little  
12 bit more?

13 **MS. CATHERINE GLEASON-MERCIER:** Sure. The owners  
14 receive a bid from the proponents, but they don't have the opportunity to go in and, let's  
15 say, look at the risk analysis that went into preparing that bid, correct?

16 **MR. MARIO GUERRA:** Well, it's been a while, but believe you're  
17 correct.

18 **MS. CATHERINE GLEASON-MERCIER:** They look at the prices  
19 that they're given and they follow their procurement practices and apply their financial  
20 evaluation criteria based on what they're given from the proponent, correct?

21 **MR. MARIO GUERRA:** Again, my experience in bidding projects is  
22 from a maintenance perspective, but it sounds right.

23 **MS. CATHERINE GLEASON-MERCIER:** Okay. And so then  
24 you'll agree with me that if a company was willing to bid aggressively so that they could  
25 have an advantage in the procurement process -- because the owner can only see what  
26 they're providing, it has no knowledge about how the bidder came to the prices in its  
27 bid, correct?

28 **MR. MARIO GUERRA:** Again, you're talking about things that are

1 outside my purview, but I believe you're right.

2 **MS. CATHERINE GLEASON-MERCIER:** Based on your  
3 experience with P3 bids.

4 **MR. MARIO GUERRA:** Yes. Understand my experience was  
5 purely to provide information to bid the maintenance aspect of the business.

6 **MS. CATHERINE GLEASON-MERCIER:** And you'll agree that it's  
7 important to the proponents that that information -- how they're pricing, even on the  
8 maintenance side -- that's confidential information to the proponents. They don't want  
9 their opponents in the bidding process to know that information.

10 **MR. MARIO GUERRA:** Yeah. I think there's some clarity, but for  
11 the most part, yes.

12 **MS. CATHERINE GLEASON-MERCIER:** Okay, sir. Thank you  
13 very much for your time today. Those are all my questions.

14 Thank you, Mr. Commissioner.

15 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.

16 Next up is Alstom.

17 **--- CROSS-EXAMINATION BY MR. MICHAEL VALO:**

18 **MR. MICHAEL VALO:** Good afternoon, Mr. Commissioner, and  
19 good afternoon, Mr. Guerra. I'm Michael Valo. I'm a lawyer for Alstom.

20 **MR. MARIO GUERRA:** Hello.

21 **MR. MICHAEL VALO:** For the record, that's V-A-L-O.

22 So Mr. Guerra, I have a few questions for you. I'm going to bounce  
23 around a little bit because I want to address some of the evidence that's come out this  
24 morning.

25 If I could ask the court operator to queue up COW593793, this is  
26 another CCTV video, Mr. Guerra, from Tremblay station that recorded the derailment  
27 incident in the departing of the train. And if you recall, counsel for the City had asked  
28 you about Mr. Nadon and what, if anything, Mr. Nadon could do, and had asked you

1 about whether or not you had a view of whether the ERO had caused the derailment.  
2 Do you recall that?

3 **--- EXHIBIT No. 310:**

4 COW0593793 – OLRT Video 19 September 2021

5 **MR. MARIO GUERRA:** I do.

6 **MR. MICHAEL VALO:** And your evidence, if I understood it  
7 correctly, was certainly not the ERO caused the derailment -- the vehicle was derailed in  
8 the station -- but that he may have contributed to the excessive damage to the  
9 infrastructure. Do I have that right?

10 **MR. MARIO GUERRA:** That's correct.

11 **MR. MICHAEL VALO:** And the video we saw -- I'm going to ask  
12 the court operator to start the video. It's really around 50 seconds that it becomes of  
13 interest, but we'll see the train operator here. You'll see, sir, this view we have is much  
14 further down the platform than the one you had just been shown; is that right?

15 **MR. MARIO GUERRA:** That's right.

16 **MR. MICHAEL VALO:** And we -- I'm not sure whether we'd be  
17 able to see Mr. Nadon because we're now at the other end of the platform, but I think  
18 what we'll see in this video, which we did not see in the first video, was the actual  
19 vehicle scraping against the platform, all of the ballast that had been thrown up.

20 Have you seen this video before, sir?

21 **MR. MARIO GUERRA:** I believe I have, yes.

22 **MR. MICHAEL VALO:** Okay. I'm sorry for the wait here. You  
23 know, it shouldn't be long. I don't see the time, but I know it's around 50 seconds. So  
24 here we see the train departing.

25 I think your evidence, sir, was that again, the -- what you're talking  
26 about in terms of the contribution is had the ERO recognized all that ballast and dust  
27 being thrown up and the vehicle scraping against the side like that, he could have  
28 stopped the train there, right, at that time?

1                   **MR. MARIO GUERRA:** Yeah. I believe that the operators were  
2 trained to look at the cameras that show the side view.

3                   **MR. MICHAEL VALO:** And had the operator been looking at this --  
4 and the cameras stay on for a period of time after the train leaves the station?

5                   **MR. MARIO GUERRA:** I believe that that -- the dust that it flare up  
6 should have been visible, because it's quite straight in that area, and -- yes.

7                   **MR. MICHAEL VALO:** And you're aware, this is, of course, a silent  
8 video, but the spotters had described all that ballast and dust and scraping as "very loud  
9 noise". You're aware of that?

10                  **MR. MARIO GUERRA:** I'm not aware, but that makes sense, yes.

11                  **MR. MICHAEL VALO:** Right. And if the window of the cab had  
12 been open, presumably, someone in the cab could have heard the very loud noise?

13                  **MR. MARIO GUERRA:** I can't speak to that.

14                  **MR. MICHAEL VALO:** Sir, have you read OC Transpo's  
15 investigation report on this incident?

16                  **MR. MARIO GUERRA:** I believe I did. It's been a while, but yes.

17                  **MR. MICHAEL VALO:** Can we pull up TRN75, please? And what  
18 you can see here, sir, is that this is the investigation report of the incident prepared by  
19 OC Transpo. Do you see that?

20                  **--- EXHIBIT No. 311:**

21   TRN00000075 – CleverCAD Incident Report 23 September  
22   2021 (Exhibit #2 Brandon Richards)

23                  **MR. MARIO GUERRA:** I see it.

24                  **MR. MICHAEL VALO:** And if I could ask the operator to take us to  
25 page 13, please, and in particular, toward the bottom. And what -- oh, I'm sorry, just a  
26 little further up so we can see the top of -- and what we see here, sir, is these are the  
27 contributing factors identified by OC Transpo. And to be perfectly fair to you, this is not  
28 the cause, but as you say, contributing factor. And if you see Number 3 there, it says,

1 "Inattention."

2 And this is OC Transpo's conclusion:

3 "ERO Adam was troubleshooting with NOC for the human waste smell inside LRV 38.

4 The following is a portion of the radio transcript." (As read)

5 And that's, of course, how we know.

6 And if you scroll down a little further, and could we just pause right  
7 there, you can see in the last line of the box at page 3, ERO Adam, "It's not burning. It  
8 smell ---"

9 And then in brackets, "background noise on rails," indicating that it  
10 was audible to those listening through the radio that something was amiss.

11 But then I want to take your attention to the last paragraph at the  
12 top of page 4.

13 "The determination placed on determining the human  
14 waste smell inside of LRV 1138 may have prevented  
15 ERO Adam from identifying possible signs of  
16 derailment or mechanical issues with LRV 2138." (As  
17 read)

18 Would you agree that that's consistent with what you were  
19 explaining to City's counsel?

20 **MR. MARIO GUERRA:** I think yes, I would agree.

21 **MR. MICHAEL VALO:** Thank you, sir. We can take this down,  
22 please.

23 I want to turn back, sir, to a document that Commission counsel  
24 took you to this morning, a lessons learned document. It's RTM592807.0001. And if we  
25 could just scroll down a little bit, please, that would be very helpful, just so we see the  
26 findings.

27 Sir, you see there in the second line of the findings, per the prime  
28 agreement that Canadian content requirement was required, are you familiar with the



1 Canadian content requirements?

2 **MR. MARIO GUERRA:** Again, I'm not -- it's definitely outside my  
3 level of expertise, but I believe that projects that are funded need to be a certain  
4 percentage of Canadian content, yes.

5 **MR. MICHAEL VALO:** Right. And just further down in the same  
6 paragraph, it says, "However, the provider failed to meet such contractual criteria."

7 Are you aware, sir, of Alstom failing to meet the Canadian content  
8 criteria in this project?

9 **MR. MARIO GUERRA:** Again, as I said, I think, earlier to  
10 Commission counsel, this is -- I was on the Board of Maintenance. This would have  
11 been things that would have been discussed with OLRTC and Alstom supply, and even  
12 RTG. It would have been outside my purview, so ---

13 **MR. MICHAEL VALO:** Had you -- I'll leave the question then, if you  
14 don't have direct knowledge. Certainly, it's not something we've heard about in this  
15 inquiry.

16 So let me direct your attention then to the first bullet, if I could,  
17 under "It was also noted".

18 You'll see there it says, "No involvement from the rolling stock  
19 provider for the first two years."

20 I take it, sir, that that is not in reference to the first two years of  
21 Revenue Service, is it?

22 **MR. MARIO GUERRA:** I don't know, to be honest with you.

23 **MR. MICHAEL VALO:** Well, let me come at it this way. You are  
24 aware that in addition to Alstom's maintenance service team, there was also a warranty  
25 team under rolling stock co-located at the MSF at the start of Revenue Service, correct?

26 **MR. MARIO GUERRA:** Yes, I'm aware of that.

27 **MR. MICHAEL VALO:** And that team remained there and  
28 continues to remain there in order to perform retrofits and other kinds of work?

1 **MR. MARIO GUERRA:** Yes, it does.

2 **MR. MICHAEL VALO:** And so at least that bullet can't apply to the  
3 maintenance period; you'd agree with that?

4 **MR. MARIO GUERRA:** Not as it's current -- no, I would say -- I  
5 would agree that's true, yes.

6 **MR. MICHAEL VALO:** Okay. And I suppose you have -- you  
7 wouldn't be aware of the evidence we've heard in this inquiry that detailed design work,  
8 for example, on the supply side, started as early as 2012 and at least by 2013?

9 **MR. MARIO GUERRA:** I'm aware of that. I've read that, yes.

10 **MR. MICHAEL VALO:** Right. So it can't be that there was no  
11 involvement from the rolling stock provided in the first years of the supply contract  
12 either, could it?

13 **MR. MARIO GUERRA:** Based on that, no, it couldn't.

14 **MR. MICHAEL VALO:** Right. So we have -- as we said here  
15 today, we don't know what that bullet means?

16 **MR. MARIO GUERRA:** I couldn't tell you, no.

17 **MR. MICHAEL VALO:** Okay, thank you.

18 I'll ask that to be taken down, please.

19 You had -- you told Commission counsel this morning, Mr. Guerra,  
20 that from your perspective, Alstom had not appropriately staffed the project until after  
21 derailment number 2. Do you recall that?

22 **MR. MARIO GUERRA:** I do.

23 **MR. MICHAEL VALO:** Sir, do you have the figures in your mind of  
24 what Alstom's staff naturally look like?

25 **MR. MARIO GUERRA:** At this point, I do not.

26 **MR. MICHAEL VALO:** Right. So if I told you as of July 2019, just  
27 before Revenue Service, the maintenance services group had 90 staff, would you know  
28 one way or the other?

1                   **MR. MARIO GUERRA:** Are you talking just for maintenance, not  
2 including ---

3                   **MR. MICHAEL VALO:** No, just the maintenance staff.

4                   **MR. MARIO GUERRA:** I would have no reason to dispute that.

5                   **MR. MICHAEL VALO:** And if I told you by November 2019 -- so  
6 just after the start of Revenue Service -- that number had grown to 130 staff, would that  
7 sound right to you?

8                   **MR. MARIO GUERRA:** I'm not in a position to dispute it. I ---

9                   **MR. MICHAEL VALO:** And if I told you that from November 2019  
10 through October 2021 -- so just after the derailment -- Alstom's maintenance services  
11 staffing levels remain between 130 and 140 individuals, would you have reason to doubt  
12 that?

13                   **MR. MARIO GUERRA:** No. I think my opinion is based on the lack  
14 of resources available at times to react to incidents. That led me to believe that they  
15 were insufficiently staffed, whether that be incidents on the line or incidents related to  
16 the infrastructure. In my mind, and based on my years of experience, if Alstom had  
17 been adequately staffed, then they would have been able to react to these incidents in a  
18 more timely manner, so that's where that comes from.

19                   **MR. MICHAEL VALO:** I see. So your comments are related to  
20 certain anecdotal incidents where you felt there wasn't sufficient response?

21                   **MR. MARIO GUERRA:** No, no. They're not anecdotal. When you  
22 have a failure on the line and it takes an hour for a mechanic to react to that failure, to  
23 me, that is not an organization that's sufficiently staffed, and that's what my opinion was  
24 based on, those types of incidents.

25                   **MR. MICHAEL VALO:** Okay. I'd like to, if we could, pivot to a new  
26 topic, sir.

27                   I take it you're familiar with the term "hostler"?

28                   **MR. MARIO GUERRA:** I am.

1                   **MR. MICHAEL VALO:** They're the folks who move trains around  
2 the yard; is that correct?

3                   **MR. MARIO GUERRA:** That's correct, yes.

4                   **MR. MICHAEL VALO:** And originally, there actually were not  
5 supposed to be hostlers the trains were intended to move around the yard under  
6 unmanned train operation, or UTO?

7                   **MR. MARIO GUERRA:** That's not entirely true. The yard is  
8 intended to be fully automated but, in order to get vehicles in and out the maintenance  
9 bays, you would still need somebody to actually move the vehicles. Because of safety  
10 reasons, the trains do not go in automatic mode into the maintenance facilities.

11                   **MR. MICHAEL VALO:** Okay.

12                   **MR. MARIO GUERRA:** So there will be still some need for some  
13 hostlers.

14                   **MR. MICHAEL VALO:** Okay. But you'd agree, certainly, that UTO,  
15 the UTO system, was not ready at the time of revenue service?

16                   **MR. MARIO GUERRA:** That's correct, yes.

17                   **MR. MICHAEL VALO:** And so it was necessary for RTG to provide  
18 a different solution for moving vehicles around the yard and so they entered into a  
19 variation agreement with Alstom for Alstom to provide the hostlers; is that right?

20                   **MR. MARIO GUERRA:** That's correct.

21                   **MR. MICHAEL VALO:** Now, I don't know what, if any, opportunity  
22 you've had to watch or read some of what's taken place at the inquiry, but perhaps  
23 you're familiar with the examination of Mr. Larry Gaul of STV that took place earlier this  
24 week?

25                   **MR. MARIO GUERRA:** I believe I managed to read some of his  
26 comments, yes.

27                   **MR. MICHAEL VALO:** And you know Mr. Gaul was, sir?

28                   **MR. MARIO GUERRA:** I do.

1                   **MR. MICHAEL VALO:** He was an STV consultant concerned with  
2 operations?

3                   **MR. MARIO GUERRA:** Yes.

4                   **MR. MICHAEL VALO:** Okay. And Mr. McLuckie, who is one of the  
5 lawyers for the ATU in this inquiry asked Mr. Gaul about the hostlers in the yard and he  
6 suggested to them that Alstom did have enough hostlers to move trains around to  
7 position it for revenue service which, to be fair, Mr. Gaul also agreed with. Are you  
8 familiar Mr. Gaul's evidence in that regard?

9                   **MR. MARIO GUERRA:** I believe I may have read it, yes.

10                  **MR. MICHAEL VALO:** Okay. I'd like to put up, if we could, a  
11 document. It's ALS13967.

12 **--- EXHIBIT No. 312:**

13                                   ALS0013967 – Alstom Letter to RTG 2 August 2018

14                  **MR. MICHAEL VALO:** And what we should be looking -- oh, here it  
15 is. Marvellous. So this is an Alstom letter, sir. It is from 29 August 2018, as you can  
16 see, and this -- if we scroll, Mr. Court Operator, we'll see that that this, subject line,  
17 "Train hostlers", and what we're looking at is Alstom's proposal to provide hostlers. And  
18 what we can see from the third paragraph there -- is where I'm reading:

19                                   "As a result of this, RTM requested Alstom to provide  
20 personnel and to manage this activity in preparation  
21 for trial running currently scheduled for October 14.  
22 Alstom has reviewed with RTM and determined the  
23 following personnel are required." (As read).

24                  And then the next paragraph is:

25                                   "Alstom and RTM can review from time to time the  
26 number of people needed and, if both parties, adjust  
27 the number accordingly." (As read).

28                  And if I could just ask the court operator to take us down a little

1 further to the second page, you'll see here, sir, Alstom has prepared an estimate of  
2 people it required in order to provide those hostler services, right?

3 **MR. MARIO GUERRA:** It looks that way, yes.

4 **MR. MICHAEL VALO:** And it's 19 total with two supervisors for 21  
5 people.

6 **MR. MARIO GUERRA:** That's what it states, yes.

7 **MR. MICHAEL VALO:** Okay. And if we look -- if we can queue up  
8 another document, please, it's ALS17674.

9 **--- EXHIBIT No. 313:**

10 ALS0017674 – RTM Letter to Alstom 13 September 2018

11 **MR. MICHAEL VALO:** We'll see here, this is an RTM letter that  
12 follows just afterward, September 13, 2018. And if we could scroll down, please, I'm  
13 focused on the third paragraph, sir, where RTM acknowledges to Alstom:

14 "It's acknowledged by all parties that the number of  
15 staff and specific positions indicated in your above-  
16 referenced letter are estimated and subject to  
17 adjustment, as mutually agreed. The duration of this  
18 agreement is indeterminate at this time and shall end  
19 upon the implementation of the full UTO." (As read).

20 So you'd agree this letter represents the agreement by RTM to  
21 accept Alstom's proposal for the supply of hostlers?

22 **MR. MARIO GUERRA:** Yes. That's what it states, yes.

23 **MR. MICHAEL VALO:** And the supply of those hostlers were  
24 provided on a cost-reimbursable basis; is that right? A unit rate was applied for the  
25 hours of each hostler and that's how Alstom was compensated?

26 **MR. MARIO GUERRA:** Correct.

27 **MR. MICHAEL VALO:** Right. And to the extent additional hostlers  
28 were required, that could be agreed by the parties, and the unit rate that had been

1 agreed would apply to any additional hostler that worked?

2 **MR. MARIO GUERRA:** That's correct.

3 **MR. MICHAEL VALO:** So you'd agree with me, also, Mr. Guerra,  
4 that any increase in the number of hostlers required RTM's approval?

5 **MR. MARIO GUERRA:** Yes.

6 **MR. MICHAEL VALO:** And are you aware, sir, that, in fact,  
7 subsequent to this agreement, Alstom did propose to RTM that the number of hostlers  
8 needed to increase but RTM refused to add hostlers?

9 **MR. MARIO GUERRA:** I seem to recall that. I can't remember  
10 specifics, but yes.

11 **MR. MICHAEL VALO:** Okay, I'll help with specifics. Happy to do  
12 that. If we could open ALS ---

13 **MR. MARIO GUERRA:** Mr. Commissioner, I was wondering if we  
14 can maybe take a five-minute break.

15 **COMMISSIONER HOURIGAN:** That's fine. We'll do that. Stand  
16 by.

17 **MR. MARIO GUERRA:** Thank you, sir.

18 **THE REGISTRAR:** All rise. The Commissioner will recess for five  
19 minutes.

20 --- Upon recessing at 12:25 p.m.

21 --- Upon resuming at 12:32

22 **--- MR. MARIO GUERRA, Resumed:**

23

24 **THE REGISTRAR:** The Commission has resumed.

25 **COMMISSIONER HOURIGAN:** All right, are we all set? Very  
26 good.

27 **--- CROSS-EXAMINATION BY MR. MICHAEL VALO, (cont'd):**

28 **MR. MICHAEL VALO:** Okay. Welcome back. I had just asked the

1 court operator just before we broke to queue up ALS14144, so if we could do that,  
2 please, that would be helpful.

3 **--- EXHIBIT No. 314:**

4 ALS0014144 – Alstom Letter to RTM 18 February 2020

5 **MR. MICHAEL VALO:** And just to reorient ourselves, Mr. Guerra,  
6 we were talking about hostlers. We had just seen how the hostler variation came into  
7 being. And now what I wanted to look at is a slightly later correspondence from Alstom.  
8 We can see this a February 18, 2020, letter. And I'm interested in the second  
9 paragraph, if we could scroll to the one just below. So that -- that's perfect right there.  
10 And what you can see here, Mr. Guerra, is -- and I'm focused now on the second line of  
11 paragraph 2:

12 "Alstom further notified RTM on June 28, 2019, under  
13 letter ALSMNTRTM118, that additional hostlers were  
14 required because the scope of operations had  
15 changed. Additional time was taken to get train  
16 positioning when decoupling and recoupling trains  
17 and, due to safety concerns, there was a need to add  
18 support." (As read).

19 And then Alstom goes on to say that:

20 "RTM failed to provide an official response." (As  
21 read).

22 Do you see that, sir?

23 **MR. MARIO GUERRA:** That's what it says.

24 **MR. MICHAEL VALO:** Now, did you -- were you aware in June  
25 2019, so just before the trial running-period started, that Alstom had requested  
26 additional hostlers?

27 **MR. MARIO GUERRA:** I wouldn't have been involved in the  
28 intimate details such as these at the time. I was on the board so I wouldn't have had



1 intimate knowledge of this, no.

2 **MR. MICHAEL VALO:** Okay. And so you weren't aware, then, as  
3 Alstom reports here that:

4 "Notwithstanding RTM failed to respond, Altstom, of  
5 concern for safety risks and in order to secure trial  
6 running, on its own accord, increased the number of  
7 hostlers"? (As read).

8 **MR. MARIO GUERRA:** I remember the issue in general being  
9 discussed at the board level, vaguely. I remember there was an issue about Alstom  
10 justifying why they needed them. I don't know if that was ever done or not other than  
11 the simple statement like that.

12 **MR. MICHAEL VALO:** Okay.

13 **MR. MARIO GUERRA:** But that's from the board level, so -- I'm  
14 much higher level; I wasn't involved in the detailed discussions such as these.

15 **MR. MICHAEL VALO:** Well, let's fast-forward, and we'll go to May  
16 2021. And it's a letter, ALS16399.

17 **--- EXHIBIT No. 315:**

18 ALS0016399 – Alstom Letter to RTM 14 May 2021

19 **MR. MICHAEL VALO:** And as I said, this is a 24 May 2021 letter in  
20 which Alstom comes back to RTM again to request the number of hostlers be  
21 increased. And if we scroll down, please, I want to just look at that first paragraph there.  
22 I'm looking in the:

23 "In light of recent safety measure implemented  
24 following the recent LRV derailments, as detailed  
25 below, the number of hostlers is becoming severely  
26 insufficient to attend to train movements." (As read).

27 And Mr. Operator, if we could just scroll down a little further, the  
28 little final bullet there:

1 "The current shift in workload of the hostlers is over  
2 loaded." (As read).

3 And then the paragraph below:

4 "The current number of hostlers is insufficient. Alstom  
5 requests RTM immediately approve to increase the  
6 hostlers to 28 hostlers in two leads/supervisors." (As  
7 read).

8 So you'd agree with me with that this is at least the second  
9 incidence where we see Alstom requesting RTM to agree to increase the number of  
10 hostlers?

11 **MR. MARIO GUERRA:** Yes, I remember. I remember this letter. I  
12 also seem to recall requiring -- asking Alstom for a more detailed explanation or  
13 justification. And I'm not sure if that was ever provided or not, to be honest with you.

14 **MR. MICHAEL VALO:** Well, let's -- so let's look at the next letter in  
15 the sequence here because that -- and to be fair to you, it's your letter. It's ALS14889,  
16 and this is a few days later, on 28 May 2021.

17 **--- EXHIBIT No. 316:**

18 ALS0014889 – RTM Letter to Alstom 28 May 2021

19 **MR. MICHAEL VALO:** And if we can scroll down, you can see here  
20 in the second paragraph, sir:

21 "Alstom's proposal for holsters received -- that's the  
22 2018 version -- and approved by RTM provided for 21  
23 full-time hostlers to perform the work related to the  
24 lack of UTO functionality, as has been stated. The  
25 calculations demonstrated that 21 full-time hostlers  
26 would be sufficient. Prior requests for additional  
27 hostlers from Alstom have been rejected by RTM."  
28 (As read).

1                   So here, I think you're validating that Alstom has been making  
2 requests but they've been denied by Alstom, and the basis appears to me to be that  
3 original calculation of 21 hostlers done in August 2018; do you agree with that?

4                   **MR. MARIO GUERRA:** Yes.

5                   **MR. MICHAEL VALO:** But surely, you would agree that since  
6 August 2018, circumstances in the yard had changed, hadn't they, certainly by May  
7 2021?

8                   **MR. MARIO GUERRA:** I think we acknowledge that in the next  
9 paragraph.

10                  **MR. MICHAEL VALO:** Well, let's -- before we get to May 2021,  
11 focusing just around trial running, you're aware Mr. Gaul reported to Mr. McLuckie this  
12 week that there weren't even enough hostlers for trial running; do you agree with that?  
13 Do you recall that?

14                  **MR. MARIO GUERRA:** I recall reading that was Mr. Gaul's  
15 statement, yes.

16                  **MR. MICHAEL VALO:** Right, as -- in his role as consultant to the  
17 City. Did you have an opportunity to speak with Mr. Gaul at the time, or anyone from  
18 STV, during trial running about the need for additional hostlers?

19                  **MR. MARIO GUERRA:** I mean Mr. Gaul and we've probably  
20 spoken on occasion. I couldn't recall if we spoke about this issue, specifically. I don't  
21 recall.

22                  **MR. MICHAEL VALO:** At the very least, would you agree with me,  
23 sir, that when Mr. Gaul told my friend, Mr. McLuckie, that Alstom was short-staffed on  
24 hostlers, that was because RTM decided Alstom didn't need more hostlers?

25                  **MR. MARIO GUERRA:** No, I would agree that that was Mr. Gaul's  
26 opinion.

27                  **MR. MICHAEL VALO:** Right, sorry.

28                  **MR. MARIO GUERRA:** Yeah.

1                   **MR. MICHAEL VALO:** Maybe you misunderstood my question.  
2 No doubt about it, that's Mr. Gaul's opinion. I'm just wondering whether you'd agree  
3 with me that the reason the numbers did not increase was not because Alstom didn't  
4 request more hostlers; it was because RTM decided that Alstom didn't require more  
5 hostlers?

6                   **MR. MARIO GUERRA:** Yeah, there was insufficient evidence  
7 provided that they needed them.

8                   **MR. MICHAEL VALO:** Okay. We can take this down, Mr.  
9 Operator. Thank you very much.

10                   I want to turn, sir, to another issue, one you actually addressed with  
11 Commission counsel this morning, and that's the issue of handover documentation. But  
12 before we get there, can you tell us, sir, what is RTM's executive committee?

13                   **MR. MARIO GUERRA:** That's the board of directors, which is  
14 comprised of members of the three companies in the joint venture.

15                   **MR. MICHAEL VALO:** That's helpful. So board of directors,  
16 EXCOM -- those are used interchangeably by RTM?

17                   **MR. MARIO GUERRA:** Executive committee, board of directors,  
18 yes.

19                   **MR. MICHAEL VALO:** Okay. Thank you. And as a senior officer  
20 for RTM -- so for example, when you became CEO, you were obligated to report to the  
21 EXCO at their monthly meetings.

22                   **MR. MARIO GUERRA:** Yeah. On a regular basis, yes.

23                   **MR. MICHAEL VALO:** Right. And your reports were honest and  
24 fulsome, I take it.

25                   **MR. MARIO GUERRA:** To the best of my knowledge, yes.

26                   **MR. MICHAEL VALO:** And you wouldn't report on every trivial  
27 matter that occurred in between meetings. You would focus primarily on the issues that  
28 mattered.

1                   **MR. MARIO GUERRA:** No. There are certain duties that are  
2 delegated down to mean, so on those day-to-day duties I would not report everything to  
3 the board; that's correct.

4                   **MR. MICHAEL VALO:** Right. And I think it's non-controversial --  
5 because you acknowledged it this morning -- that OLRTC was late or failed altogether  
6 to hand over critical information to RTM, prior to and even after RSA, that was  
7 necessary for the maintainers to properly plan and execute their work.

8                   **MR. MARIO GUERRA:** I don't think those were my words. I think  
9 it was more along the lines that the manner in which the documents were delivered  
10 could have been done a lot differently and more effectively.

11                   **MR. MICHAEL VALO:** So that is a little different. You're saying it's  
12 not that they didn't turn over the documents; they just did it in a manner that you found  
13 challenging.

14                   **MR. MARIO GUERRA:** In a manner that we found challenging to  
15 be able to access documents, yes.

16                   **MR. MICHAEL VALO:** Okay. And would you agree with me, in  
17 terms of the timing of getting this information, RTM doesn't just get this information and  
18 absorb it right away? It needs to review it, digest it, and incorporate it into their  
19 preventative maintenance plans, for example.

20                   **MR. MARIO GUERRA:** Yes, I would characterize that as being  
21 accurate.

22                   **MR. MICHAEL VALO:** Okay. I'm going to ask a document to be  
23 pulled up. It's RTM661110.0001. And while this is coming up, I'll just provide the  
24 context. It's an April 2021 EXCO meeting minutes. Do you see that, sir?

25 **--- EXHIBIT No. 317:**

26   RTM00661110.0001 – RTM Minutes of Meeting 27 April  
27   2021

28                   **MR. MARIO GUERRA:** I do.

1                   **MR. MICHAEL VALO:** And at this meeting -- if we could go to  
2 page 7, please -- you report to RTM's executive committee that you had only just  
3 received a large second tranche of handover documentation from OLRTC, right? And I  
4 will take us to the last bullet of 5.5:

5                                   “RTM received large second batch of handover  
6                                   documentation from OLRTC, forwarding relevant  
7                                   documents to Alstom, and notified OLRTC of  
8                                   remaining gaps in handover documentation done  
9                                   poorly during handover stage. Still recovering but  
10                                  making good progress.” (As read)

11                   So coming back to the evidence you just gave, sir, at least to your  
12 EXCO you were reporting there were in fact gaps in the information, not just that the  
13 information was provided poorly.

14                   **MR. MARIO GUERRA:** Yeah. The information was provided in  
15 one big -- excuse the term -- “dump” of information, and in some cases, it was very hard  
16 to find the documentation. So we required OLRTC to kind of go through this again and  
17 make sure that the documentation was easily accessible. Now, in some cases you're  
18 right; there might have been things missing as well, but it was more about the way that  
19 the information was provided.

20                   **MR. MICHAEL VALO:** And just for context, we're looking at  
21 meeting minutes from April 2021, so we're well into revenue service by now. Would you  
22 agree?

23                   **MR. MARIO GUERRA:** That's correct, sir.

24                   **MR. MICHAEL VALO:** And if we could just go to another  
25 document, it's RTM659452.0001.

26 **--- EXHIBIT No. 318:**

27                                   RTM00659452.0001 – RTM Board of Directors Presentation  
28                                   September 2021

1                   **MR. MICHAEL VALO:** And this, sir, is -- we're going to fast-forward  
2 five months to September 2021, as you can see, and I'll ask the court operator to take  
3 us to page 33. So September 2021 -- we're now a full two years into revenue service.  
4 You'd agree with that, sir?

5                   **MR. MARIO GUERRA:** Yes.

6                   **MR. MICHAEL VALO:** And the final bullet here says:

7                                   "Alstom and RTM have notified OLRTC of several  
8                                   remaining gaps in the handover documentation. RTM  
9                                   continues to expend considerable effort searching for  
10                                  paper documents needed to perform the maintenance  
11                                  services." (As read)

12                   And I think that really, sort of, validates what you're saying. There  
13 is a database somewhere of all these documents, but it's difficult or impossible for RTM  
14 and Alstom to make actual use of it.

15                   **MR. MARIO GUERRA:** That's correct. And as the system is being  
16 maintained and you come across issues and then you realize you need document A,  
17 you'd go search for it and it would be very hard to find. So yes, that's true.

18                   **MR. MICHAEL VALO:** Right. And we're coming out of the  
19 warranty period now, aren't we, by September 2021, the two-year warranty period?

20                   **MR. MARIO GUERRA:** On the infrastructure you're well into it,  
21 yes.

22                   **MR. MICHAEL VALO:** Yeah. Let's change topics again, if we  
23 could -- related but a little different. And it's got to do with what you described to  
24 Commission counsel as "crossover issues", which under the contract might be termed  
25 "CC defects". But these are issues that -- or defects that arose in the construction  
26 period that had to be addressed during the maintenance period. You'd agree with that?

27                   **MR. MARIO GUERRA:** Deficiencies?

28                   **MR. MICHAEL VALO:** Yeah. And when you talk about crossover

1 issues, those are deficiencies originating from the construction contractor but having to  
2 be dealt with during the maintenance term, right?

3 **MR. MARIO GUERRA:** That's correct, yes.

4 **MR. MICHAEL VALO:** Okay. I just want to have our terminology  
5 clear; that's all.

6 **MR. MARIO GUERRA:** Yes.

7 **MR. MICHAEL VALO:** And you acknowledged to Ms. McGrann in  
8 your Commission interview, and I think this morning as well, that certain of those  
9 crossover issues, or CC defects, resulted in KPI deductions.

10 **MR. MARIO GUERRA:** I may have acknowledged that it in my  
11 transcripts, but I don't recall it being discussed. But that's correct, yes.

12 **MR. MICHAEL VALO:** Right. And you gave examples in your  
13 interview of things like the frozen switch heaters, which ultimately needed to be  
14 replaced, and failed OCS wires that required a shutdown for corrective maintenance.  
15 Do you recall giving that evidence?

16 **MR. MARIO GUERRA:** I believe so, yes.

17 **MR. MICHAEL VALO:** Okay. And your evidence to Commission  
18 counsel was that those sorts of issues were the result of deficiencies inherited from the  
19 construction contractor; is that right?

20 **MR. MARIO GUERRA:** Some were, yes.

21 **MR. MICHAEL VALO:** Right. The OCS, for example -- the parafilms  
22 that fell.

23 **MR. MARIO GUERRA:** Yes.

24 **MR. MICHAEL VALO:** And it's true, isn't it, that in addition to the  
25 KPI deductions, which are the service and quality failure deductions, those deficiencies,  
26 those crossover issues, also did have an impact on service availability? Isn't that right?

27 **MR. MARIO GUERRA:** Yeah, I would characterize that as being  
28 correct. Switch incidents and things of that nature, yes, would have an impact on



1 service.

2 **MR. MICHAEL VALO:** Right. That, of course, impacts the  
3 reliability of the system. Would you agree with that?

4 **MR. MARIO GUERRA:** Of course, yes.

5 **MR. MICHAEL VALO:** And it of course attracts -- from RTM and  
6 Alstom's perspective, any lost kilometres, for example, would attract additional  
7 deductions. Would you agree with that?

8 **MR. MARIO GUERRA:** Yes, I would.

9 **MR. MICHAEL VALO:** Okay. I want to talk about a specific CC  
10 defect. And it's really just because it came up yesterday, so I just wanted to make sure  
11 the record was perfectly clear about it.

12 RTG's counsel raised the IndigoVision issue with Mr. France  
13 yesterday. Did you happen to see Mr. France's evidence?

14 **MR. MARIO GUERRA:** I haven't had a chance to review it, no.

15 **MR. MICHAEL VALO:** Okay. So I'll just bring you up to speed.  
16 Counsel for RTG showed Mr. France a letter from Alstom claiming that a deficiency in  
17 the IndigoVision CCTV system was a CC defect that required OLRTC to fix it. Are you  
18 familiar with that issue?

19 **MR. MARIO GUERRA:** I'm familiar with the issue, but ---

20 **MR. MICHAEL VALO:** Maybe you could just help. Do you know  
21 what the IndigoVision CCTV system is?

22 **MR. MARIO GUERRA:** I believe it's the system on the vehicles  
23 that provides a visual of the wayside for the operator.

24 **MR. MICHAEL VALO:** Actually, I believe it's the software for all of  
25 the CCTV on the wayside, so in ---

26 **MR. MARIO GUERRA:** Right.

27 **MR. MICHAEL VALO:** --- the control room to be able -- it's not to  
28 do with the vehicles. Does that sound ---

1                   **MR. MARIO GUERRA:** Okay.

2                   **MR. MICHAEL VALO:** Okay. And counsel for OLRTC suggested  
3 that there was no reason to believe that a software upgrade for the CCTV system  
4 should be considered a CC defect, and I just wanted to ask whether you agreed with  
5 that or not?

6                   **MR. MARIO GUERRA:** Oh, I don't know. I'd have to look at the  
7 specifics more clearly.

8                   **MR. MICHAEL VALO:** Let me see if I can help. I'm going to ask  
9 the Court operator to bring up RTM166056, and while this is coming up, I'll just  
10 introduce the document. It is an August 2021 set of meeting minutes for RTM's Board  
11 for ExCo.

12 **--- EXHIBIT No. 319:**

13                                   RTM00166056 – RTM Minutes of Meeting 31 August 2021

14                   **MR. MARIO GUERRA:** Okay.

15                   **MR. MICHAEL VALO:** Do you recognize these, sir?

16                   **MR. MARIO GUERRA:** I do.

17                   **MR. MICHAEL VALO:** And you're identified as being present.

18                                   And if we could scroll please to page 3 of the PDF, and in  
19 particular, I would like to look at 4.3, "Systems", and the final bullet there, sir, I'll draw  
20 your attention to. It says:

21   "CCTV. IndigoVision software required, product of  
22   bad handover from OLRTC to us. Software is about  
23   three versions behind where it needs to be. Need to  
24   figure out what happened during --- "

25                   **MR. MARIO GUERRA:** Yes.

26                   **MR. MICHAEL VALO:**

27   "--- handover." (As read)

28                                   So you'd agree with me, this is ---

1                   **MR. MARIO GUERRA:** Thank you. I now recall what it's about,  
2 thank you. Yes.

3                   **MR. MICHAEL VALO:** And your view is, like Mr. France's, that this  
4 was an OLRTC issue, a CC defect that was to be corrected by them?

5                   **MR. MARIO GUERRA:** That was our belief, yes.

6                   **MR. MICHAEL VALO:** Right. So this is another case, isn't it,  
7 where RTM and Alstom are aligned, but the relationship between RTM and OLRTC  
8 creates -- can create a challenge in the resolution of these issues, right?

9                   **MR. MARIO GUERRA:** There's a possibility for that to happen,  
10 yes, depending on the incident.

11                   **MR. MICHAEL VALO:** And -- right, depending on the incident.  
12 And this is something that the parties have struggled with over the period of Revenue  
13 Service to date, haven't they?

14                   **MR. MARIO GUERRA:** It is. It is. And -- but let me clarify this  
15 situation a little bit. It's -- you know, as maintainers, we have a duty to deal with and  
16 mitigate issues when required, and then use the process to determine whether it's a CC  
17 defect or not. We can't just put up our hands and say, "We're not doing anything  
18 because it's a CC defect." So it can cause problems, but if things are done as they  
19 should, which is for whoever is responsible for that work to do the work, then the work  
20 gets done and we live to fight another day about whose fault it is. That's the way it  
21 should work, in my mind.

22                   **MR. MICHAEL VALO:** And that sounds perfectly reasonable. And  
23 I think you'd agree that in the case of the IndigoVision and the software upgrade, neither  
24 RTM nor Alstom, nor, frankly, even OLRTC themselves, have the ability to create  
25 updates to this software. That's something that has to come through IndigoVision, the  
26 subcontractor, to OLRTC?

27                   **MR. MARIO GUERRA:** No, no, but we have the ability -- Alstom  
28 does and RTM and OLRTC, as you pointed out -- has the ability to engage such

1 subcontractors to get the work done ---

2 **MR. MICHAEL VALO:** So ---

3 **MR. MARIO GUERRA:** --- in the first instance, and then deal with  
4 whose problem it is later.

5 **MR. MICHAEL VALO:** Right, okay. So in your view, Alstom  
6 should contact the subcontractors during the warranty of the construction contractor to  
7 have this issue done rather than just ask OLRTC, who is in your camp, sir, and  
8 available, to assist here?

9 **MR. MARIO GUERRA:** No. I mean, in my view, as I think I  
10 testified earlier to the Commission lawyer, the goal should be to fix the problem, and  
11 you don't always have the luxury of waiting for the commercial steps to be challenging  
12 the letters back and forth determining whether this is a CC defect or not. We have the  
13 responsibility to keep the systems going in a safe manner and reliable manner, so  
14 sometimes you just have to get the work done and fight about it later rather than just  
15 writing letters about whether it's a CC defect.

16 **MR. MICHAEL VALO:** I don't disagree with you, sir. It's -- and it's  
17 not exactly what I'm talking about. But there are instances, as Mr. France testified to  
18 yesterday, where it may not be a service or safety critical system, and so it can wait for  
19 OLRTC to do it.

20 You'd agree with me, for example, that IndigoVision would have  
21 obligations to OLRTC to correct errors in their system within their warranty period, right?

22 **MR. MARIO GUERRA:** I'm not party to the contracts between  
23 Indigo and OLRTC, so I wouldn't know that.

24 **MR. MICHAEL VALO:** But if that were the case, it wouldn't make  
25 sense for a third party like Alstom or RTM to engage IndigoVision, pay for a correction  
26 that they were obligated to make to OLRTC, and then fight about who has to pay for it.  
27 That doesn't -- it's not particularly sensible, is it?

28 **MR. MARIO GUERRA:** No, it might not be what is sensible is, it

1 should be the way that it works, in my mind, rather than fighting about whether it's a CC  
2 defect or not. In the meantime, you know, our exposure to an issue happening  
3 increases.

4 **MR. MICHAEL VALO:** Okay. Mr. Guerra, those are all my  
5 questions for you today. Thank you very much for your time.

6 **MR. MARIO GUERRA:** Thank you.,

7 **MR. MICHAEL VALO:** Thank you, Mr. Commissioner.

8 **COMMISSIONER HOURIGAN:** All right. Next up is STV.

9 **MR. MICHAEL O'BRIEN:** Thank you, Mr. Commissioner.  
10 Michael O'Brien for STV. We don't have any questions for Mr.  
11 Guerra.

12 **COMMISSIONER HOURIGAN:** So we've -- yeah, I didn't hear it  
13 very well, but I believe counsel said that they don't have questions; is that correct?

14 **MR. MICHAEL O'BRIEN:** Yes, that's correct.

15 **COMMISSIONER HOURIGAN:** All right, thank you.

16 Next is Thales.

17 **MS. MARIA BRAKER:** Hello. Maria Braker for Thales. We have  
18 no questions for this witness.

19 **COMMISSIONER HOURIGAN:** All right.

20 Next is Amalgamated Transit Union.

21 **MR. JOHN McLUCKIE:** Good morning, Mr. Guerra.

22 **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

23 **MR. JOHN McLUCKIE:** Good morning, Mr. Guerra.

24 **MR. MARIO GUERRA:** Good morning.

25 **MR. JOHN McLUCKIE:** So I represent the Amalgamated Transit  
26 Union. You've had some contact with ATU over your career, sir?

27 **MR. MARIO GUERRA:** Quite a bit, yes.

28 **MR. JOHN McLUCKIE:** And you spent about 30 years at the TTC,

1 I understood, correct?

2 **MR. MARIO GUERRA:** I did.

3 **MR. JOHN McLUCKIE:** And I understood from your resume that  
4 was provided through Commission counsel that you had held a number of positions with  
5 the TTC and you ultimately ended up as the manager of their rail fleet maintenance?

6 **MR. MARIO GUERRA:** Yes.

7 **MR. JOHN McLUCKIE:** And how long did you hold that position for  
8 rail fleet maintenance, sir?

9 **MR. MARIO GUERRA:** Oh, a year and a half, two years,  
10 something like that.

11 **MR. JOHN McLUCKIE:** And what was involved in that job, sir?  
12 What did you do as the manager of rail fleet?

13 **MR. MARIO GUERRA:** I was in charge of the maintenance for all  
14 the rail vehicles, streetcars, subways, SRT vehicles.

15 **MR. JOHN McLUCKIE:** I was just going to ask you, what vehicles  
16 are involved? So the TTC runs subways, runs streetcars, runs an LRT in Scarborough,  
17 does it not, sir?

18 **MR. MARIO GUERRA:** Yes, it does.

19 **MR. JOHN McLUCKIE:** You could all broadly describe those as  
20 light rail vehicles?

21 **MR. MARIO GUERRA:** Subway would be more of a heavy rail, I  
22 believe.

23 **MR. JOHN McLUCKIE:** Okay. And in terms of the people that  
24 carried out that instruction, I'm assuming you had people that worked under you that  
25 actually performed the maintenance, sir?

26 **MR. MARIO GUERRA:** Yes, quite a few.

27 **MR. JOHN McLUCKIE:** And who did they work for, sir? Who was  
28 their ---

1 **MR. MARIO GUERRA:** Sorry?

2 **MR. JOHN McLUCKIE:** Who did those mechanics work for, sir?

3 **MR. MARIO GUERRA:** The TTC.

4 **MR. JOHN McLUCKIE:** And so they were direct employees of the  
5 TTC?

6 **MR. MARIO GUERRA:** Yes, they were.

7 **MR. JOHN McLUCKIE:** And the TTC doesn't subcontract out its  
8 maintenance for its subways; it performs that with its own people, correct?

9 **MR. MARIO GUERRA:** I believe so. Yeah.

10 **MR. JOHN McLUCKIE:** And it does the same for the Scarborough  
11 LRT?

12 **MR. MARIO GUERRA:** Yes.

13 **MR. JOHN McLUCKIE:** And it does the same for its streetcar  
14 fleet?

15 **MR. MARIO GUERRA:** That's correct.

16 **MR. JOHN McLUCKIE:** And that's the same as it does for its bus  
17 fleet? It has its own in-house people that maintain its bus fleet?

18 **MR. MARIO GUERRA:** I believe they may subcontract some  
19 cleaning activities, but for the most part, they're all TTC employees.

20 **MR. JOHN McLUCKIE:** And they're under the same umbrella as  
21 the operational people? So the TTC runs the subway, and the TTC maintains the  
22 subway, correct?

23 **MR. MARIO GUERRA:** Correct.

24 **MR. JOHN McLUCKIE:** And there's advantages to that, having the  
25 operational side and the maintenance staff being part of one operation, isn't there, sir?

26 **MR. MARIO GUERRA:** Definitely, yes. I would agree with that.

27 **MR. JOHN McLUCKIE:** And in the 30 years that you were with the  
28 TTC, you saw those advantages, didn't you, sir?

1 **MR. MARIO GUERRA:** I did.

2 **MR. JOHN McLUCKIE:** And beyond just the vehicles, the TTC  
3 staff, they also maintain the subway infrastructure, don't they, sir? They have right-of-  
4 way employees?

5 **MR. MARIO GUERRA:** Everything, yes.

6 **MR. JOHN McLUCKIE:** So the tracks, the ballasts, the signalling,  
7 that's all TTC employees, primarily, isn't it?

8 **MR. MARIO GUERRA:** Yes, it is, on the maintenance basis, yes.

9 **MR. JOHN McLUCKIE:** Right. So other people build it, but the  
10 TTC employees maintain it, correct?

11 **MR. MARIO GUERRA:** Yeah. I mean, and when it comes to  
12 expansion or special capital projects, sometimes some of them were subcontracted, but  
13 for the most part, the system is maintained by TTC staff.

14 **MR. JOHN McLUCKIE:** And you found that worked well, right?  
15 The TTC provides a reliable public service?

16 **MR. MARIO GUERRA:** I would say it does, yes.

17 **MR. JOHN McLUCKIE:** And in your 30 years there, the subway  
18 has worked well?

19 **MR. MARIO GUERRA:** Yeah. We had our challenges like any  
20 other system, but for the most part, yes.

21 **MR. JOHN McLUCKIE:** So you found having in-house staff was an  
22 effective way of providing a public transit system?

23 **MR. MARIO GUERRA:** I would say yes, we performed well. We  
24 did well.

25 **MR. JOHN McLUCKIE:** And I understand that you stopped off in  
26 New York at some point in your career?

27 **MR. MARIO GUERRA:** Yes, for a short period of time.

28 **MR. JOHN McLUCKIE:** And they have a fairly large subway



1 system as well, correct, sir?

2 **MR. MARIO GUERRA:** Very large, yes.

3 **MR. JOHN McLUCKIE:** And I understand as well that they also  
4 perform most of their own in-house maintenance, true, sir?

5 **MR. MARIO GUERRA:** It's all in house, yes.

6 **MR. JOHN McLUCKIE:** So two large systems that run well, in your  
7 view?

8 **MR. MARIO GUERRA:** Yes.

9 **MR. JOHN McLUCKIE:** And both use all of their own internal  
10 maintenance staff?

11 **MR. MARIO GUERRA:** Yes.

12 **MR. JOHN McLUCKIE:** And even recently, when the TTC  
13 expanded their system, they went up to York University in Vaughan, it's TTC staff that  
14 maintain that line, isn't it, sir? It's an extension of Line 1?

15 **MR. MARIO GUERRA:** I believe it is, yes.

16 **MR. JOHN McLUCKIE:** And that just opened in 2017, I  
17 understand, correct?

18 **MR. MARIO GUERRA:** That's correct, yes, I believe.

19 **MR. JOHN McLUCKIE:** So even in their very most recent  
20 expansion, the TTC has still decided that makes the most sense to use their own  
21 internal staff to maintain their system.

22 **MR. MARIO GUERRA:** That's correct.

23 **MR. JOHN McLUCKIE:** And a different decision was made here  
24 though. You're the maintainer for this system, sir?

25 **MR. MARIO GUERRA:** For the asset, yes.

26 **MR. JOHN McLUCKIE:** Right. And I understood from your  
27 resume that you got involved with SNC Lavalin when P3 transit projects took off in  
28 Ontario; is that true, sir?

1 **MR. MARIO GUERRA:** Yeah, initially with EllisDon and then SNC  
2 Lavalin, yes.

3 **MR. JOHN McLUCKIE:** So P3 transit projects -- that's not the  
4 historic norm in Ontario, right? This is a new invention?

5 **MR. MARIO GUERRA:** That's correct.

6 **MR. JOHN McLUCKIE:** And previously ---

7 **MR. MARIO GUERRA:** On the transit side.

8 **MR. JOHN McLUCKIE:** On the transit side. So previously when  
9 anybody wanted to build a transit system in Ontario it was public assets and public  
10 employees, right?

11 **MR. MARIO GUERRA:** Yes.

12 **MR. JOHN McLUCKIE:** And that's how the TTC did it as the  
13 largest transit system in Ontario?

14 **MR. MARIO GUERRA:** That's correct.

15 **MR. JOHN McLUCKIE:** And in fact, I think they're the fourth  
16 largest transit system in North America, aren't they?

17 **MR. MARIO GUERRA:** Sounds about right.

18 **MR. JOHN McLUCKIE:** Right.

19 **MR. MARIO GUERRA:** The number of people moved, yes.

20 **MR. JOHN McLUCKIE:** And New York, I understand, is the largest  
21 transit system in North America.

22 **MR. MARIO GUERRA:** Yes, by far.

23 **MR. JOHN McLUCKIE:** So two of the top five systems and they do  
24 all their own in-house maintenance and infrastructure maintenance with their own  
25 crews?

26 **MR. MARIO GUERRA:** They do, yes, sir.

27 **MR. JOHN McLUCKIE:** And they find that to be effective?

28 **MR. MARIO GUERRA:** It's worked, yes.

1                   **MR. JOHN McLUCKIE:** Okay. And here the public private  
2 partnership works in the sense that there is a corporation that is responsible for the  
3 maintenance, RTM, right?

4                   **MR. MARIO GUERRA:** Correct.

5                   **MR. JOHN McLUCKIE:** And you're essentially a subcontractor to  
6 RTG?

7                   **MR. MARIO GUERRA:** Correct.

8                   **MR. JOHN McLUCKIE:** And Alstom in turn is a subcontractor of  
9 RTM?

10                  **MR. MARIO GUERRA:** Correct.

11                  **MR. JOHN McLUCKIE:** And is it fair to say that all of you have the  
12 objective of turning a profit on this contract, sir?

13                  **MR. MARIO GUERRA:** That would be fair, yes.

14                  **MR. JOHN McLUCKIE:** And that's ---

15                  **COMMISSIONER HOURIGAN:** Counsel, I'm going to interrupt.  
16 It's one o'clock; it's the lunch break. All right? Down til 2:00.

17                  **MR. JOHN McLUCKIE:** Sure.

18                  **THE REGISTRAR:** All rise. The Commission is adjourned until  
19 2:00 p.m.

20 ---- Upon recessing at 1:00 p.m.

21 ---- Upon resuming at 2:00 p.m.

22                  **THE REGISTRAR:** Order. All rise. The hearing has resumed.

23                  **COMMISSIONER HOURIGAN:** All right. Let's continue, please.

24 **--- MARIO GUERRA, Resumed:**

25                  **MR. JOHN McLUCKIE:** Thank you, sir.

26 **---- CROSS-EXAMINATION BY MR. JOHN McLUCKIE (cont'd):**

27                  **MR. JOHN McLUCKIE:** So Mr. Guerra, as we broke for lunch I  
28 was just putting to you the idea that each of the parties, the private parties to this

1 contract, their ideal is to make money, correct?

2 **MR. MARIO GUERRA:** Correct.

3 **MR. JOHN McLUCKIE:** And you do that by delivering the service  
4 at the lowest possible cost?

5 **MR. MARIO GUERRA:** I wouldn't characterize it that way. "In the  
6 most effective manner," I think would be a better way to characterize it.

7 **MR. JOHN McLUCKIE:** Okay. You make money if you can deliver  
8 the service cheaper than what the City is paying you, correct?

9 **MR. MARIO GUERRA:** Yes, that's what profit is, yes.

10 **MR. JOHN McLUCKIE:** Right. So let's talk about Alstom's staff.  
11 Does Alstom similarly want to make profit on this deal?

12 **MR. MARIO GUERRA:** I believe so.

13 **MR. JOHN McLUCKIE:** So having less staff involves less costs,  
14 doesn't it, sir?

15 **MR. MARIO GUERRA:** Yes.

16 **MR. JOHN McLUCKIE:** So having less cost would tend to  
17 increase your profits, sir?

18 **MR. MARIO GUERRA:** Not necessarily. It could lead to other  
19 issues that increase your costs.

20 **MR. JOHN McLUCKIE:** Such as penalties. But in general cutting  
21 your cost leads to higher profits, right?

22 **MR. MARIO GUERRA:** If you reduce your expenditure, yes, your  
23 margins increase.

24 **MR. JOHN McLUCKIE:** So I won't spend a lot of time on staffing  
25 because one of my colleagues has done that quite well this morning. But I do just want  
26 to put to you that your view of the staffing at Alstom continued to be they were  
27 understaffed up to the time of the second derailment?

28 **MR. MARIO GUERRA:** I believe so, yes.

1                   **MR. JOHN McLUCKIE:** And what experience or past experience  
2 in transit did you rely on to come to that opinion?

3                   **MR. MARIO GUERRA:** In my experience in terms of what it takes  
4 to respond to incidents in an effective and timely manner. For example, incidents on the  
5 line, having technicians on the line that can respond to incidents. That's one example.

6                   **MR. JOHN McLUCKIE:** You indicated in your interview with  
7 Commission counsel that you had brought up with Alstom that you felt they were  
8 understaffed and in particular in tht area. Is that true, sir?

9                   **MR. MARIO GUERRA:** This is true, yes.

10                  **MR. JOHN McLUCKIE:** And you indicated that they disagreed with  
11 you and did not provide additional staff as you had suggested, right?

12                  **MR. MARIO GUERRA:** Initially, no they did not.

13                  **MR. JOHN McLUCKIE:** And that led to unreliability on the system  
14 because it took longer to recover dead trains, didn't it, sir?

15                  **MR. MARIO GUERRA:** Yes, you can make that link.

16                  **MR. JOHN McLUCKIE:** In fact, would you make that link?

17                  **MR. MARIO GUERRA:** I did and I would, yes.

18                  **MR. JOHN McLUCKIE:** And I just want to ask a couple of  
19 questions about the P3 then that you had said that, in your interview with Commission  
20 counsel, that Alstom didn't seem to understand the implications of the P3 and in  
21 particular the penalties that applied to poor performance. Do you recall telling her that?

22                  **MR. MARIO GUERRA:** I recall that, yes.

23                  **MR. JOHN McLUCKIE:** So the P3 is structured on the idea that if  
24 you don't provide good service there's a penalty that applies to you, right?

25                  **MR. MARIO GUERRA:** Yes, it's performance based, yes.

26                  **MR. JOHN McLUCKIE:** Right. And your testimony was to  
27 Commission counsel that that system didn't seem to be working to generate good  
28 performance on the part of Alstom, correct?

1                   **MR. MARIO GUERRA:** Yeah, I think you're referring to my  
2 characterization that Alstom wasn't aware of the implications of not doing so.

3                   **MR. JOHN McLUCKIE:** Right. So they weren't aware that not  
4 performing well would provide a penalty to them?

5                   **MR. MARIO GUERRA:** Not to the extent that it did, no. I don't  
6 think they were.

7                   **MR. JOHN McLUCKIE:** And so the P3 contract wasn't effective  
8 then in motivating their behaviour at least until the terms of the second derailment then?

9                   **MR. MARIO GUERRA:** I would say yeah, you can characterize it  
10 like that, yes.

11                   **MR. JOHN McLUCKIE:** Okay. So notwithstanding the penalties,  
12 you still didn't provide good service up until that point?

13                   **MR. MARIO GUERRA:** Oh, I think we provided good service at  
14 times other than the times where we had the incidents but there was ---

15                   **MR. JOHN McLUCKIE:** You were -- sorry. I didn't mean to speak  
16 over you, sir.

17                   **MR. MARIO GUERRA:** No, that's fine. But there was still  
18 concerns around the workforce levels, yes.

19                   **MR. JOHN McLUCKIE:** So you've been around transit a long time.  
20 Yesterday or two days ago we heard from Mr. Troy Charter. I think you've met Mr.  
21 Charter?

22                   **MR. MARIO GUERRA:** I have.

23                   **MR. JOHN McLUCKIE:** And he's been around transit for a long  
24 time too. And he described transit as a grind. You have to do it day after day in order  
25 to show the public that your system is reliable. Would you agree with that?

26                   **MR. MARIO GUERRA:** Yeah, there's challenges every day to  
27 keep it going. Absolutely.

28                   **MR. JOHN McLUCKIE:** And the public is going to take this system

1 only if they know it's reliable and can count on it, right sir?

2 **MR. MARIO GUERRA:** Of course, yes.

3 **MR. JOHN McLUCKIE:** So Alstom wasn't providing that reliable  
4 day after day service, were they, sir?

5 **MR. MARIO GUERRA:** No, there were certainly a lot of issues, a  
6 lot of breakdowns, yes.

7 **MR. JOHN McLUCKIE:** And as part of the consortium that they're  
8 a part of -- RTG/RTM -- the consortium was not providing that reliable service that the  
9 public could rely on, were they, sir?

10 **MR. MARIO GUERRA:** Ultimately the consortium is accountable,  
11 yes.

12 **MR. JOHN McLUCKIE:** And just going to cooperation, because  
13 you mentioned that with my friend this morning, you would agree that it's important  
14 there's cooperation between the maintenance the operations side?

15 **MR. MARIO GUERRA:** Yes, absolutely.

16 **MR. JOHN McLUCKIE:** And you'd agree from the evidence you've  
17 given this morning there are quite a few times that there wasn't a lot of cooperation or  
18 coordination between the consortium and the City?

19 **MR. MARIO GUERRA:** Early on, yes, I would say that was true.

20 **MR. JOHN McLUCKIE:** And there wasn't even a lot of cooperation  
21 and coordination sometimes between the partners in the consortium, RTM, RTG,  
22 Alstom?

23 **MR. MARIO GUERRA:** I would say at times, yeah.

24 **MR. JOHN McLUCKIE:** And wouldn't you agree, sir, that that  
25 served to undermine the reliability of the system?

26 **MR. MARIO GUERRA:** I mean, it's hard to make a direct link but it  
27 certainly didn't help matters. That's for sure.

28 **MR. JOHN McLUCKIE:** Thank you for the indulgence, Mr.

1 Commissioner. Those are all my questions.

2 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.

3 Next up is Transportation Action Canada, Mr. David Jeanes?

4 **MR. DAVID JEANES:** Thank you, Mr. -- hang on. You do see me  
5 now, I hope?

6 **COMMISSIONER HOURIGAN:** I do see you and we hear you. Go  
7 ahead.

8 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

9 **MR. DAVID JEANES:** Okay. David Jeanes, J-e-a-n-e-s, Transport  
10 Action Canada. I only have a few minutes, Mr. Guerra, and I don't think I was actually  
11 scheduled to ask you questions today. But I would like to talk to you about your views  
12 on a soft start. We've certainly had a lot of discussion of that from witnesses throughout  
13 these hearings and it seems that the City had a very strong view that a soft start was  
14 inappropriate because it could not actually mimic the full transit service. In other words,  
15 it would be -- if, for example, it was only a portion of the route, it would be requiring  
16 passengers to make extra transfers; because of those extra transfers, it would be  
17 inconvenient and slower for them to get to their destinations; and therefore, from the  
18 user point of view, a soft start was a bad idea. But the question that I have to ask you is  
19 more about, what is the benefit of soft start to the operator of the system?

20 **MR. MARIO GUERRA:** I think, especially given that a system like  
21 this is brand-new, brand-new vehicles, brand-new with the structure -- it's not a legacy  
22 system, so it is of utmost importance to be able to test the system and stress it from a  
23 usage perspective, whether that be elevators, or escalators, or vehicles, or whatever, to  
24 weed out any issues that might come up. In order to do that, you have to actually run  
25 the system and also test the system, as I said earlier, from a commercial perspective to  
26 see if the Project Agreement is being applied properly because there's always room for  
27 interpretation and for subjectivity, so it would offer you opportunity to stress the assets  
28 but also to check the system is working properly as well.



1                   **MR. DAVID JEANES:** Right. And you'll agree that there are  
2 various different kinds of soft start, possibly shorter hours than full service, only a  
3 portion of the route or a certain number of stations, lower frequency, therefore fewer  
4 trains, and so on. But there are different aspects a soft start where you can still get  
5 some of the benefits of experience with real passengers as opposed to running empty  
6 trains, as they did during the trial running, or operating only -- well, basically, with no  
7 passengers versus real-life passengers?

8                   **MR. MARIO GUERRA:** Absolutely, you could have done it in many  
9 different ways, absolutely.

10                  **MR. DAVID JEANES:** Okay. Now, another question I have to ask  
11 you about is the very large number of reports that were submitted based on the  
12 intervention of City personnel. You had quite a long discussion of that during your  
13 testimony today. And I'm wondering, apart from the workload that that generated, do  
14 you think that any actual failures that were service-affecting resulted from those types of  
15 interventions? We don't know exactly what those people were supposed to do, but it  
16 was certainly mentioned by Mr. Charter that they were supposed to be, you know,  
17 testing emergency intercom systems and so on. And I'm wondering whether, in your  
18 view, any of those interventions might, for example, have caused a door fault, or caused  
19 a delay to the operation of a train, or some such service-affecting aspect?

20                  **MR. MARIO GUERRA:** I mean it's highly possible. None that I can  
21 think of where you can make a direct link between the two, but it's possible.

22                  **MR. DAVID JEANES:** Okay. I'm just trying to see whether, you  
23 know, the users might have had a better initial experience if that parallel troubleshooting  
24 hadn't been going on during the ---

25                  **MR. MARIO GUERRA:** Yeah.

26                  **MR. DAVID JEANES:** --- initial service period.

27                  **MR. MARIO GUERRA:** I mean I can only speculate, if you're  
28 pushing that elevator button a hundred times an hour or whatever -- I'm exaggerating,

1 but if you're doing something a lot more often, it increases the likelihood that something  
2 might fail.

3 **MR. DAVID JEANES:** Yeah.

4 **MR. MARIO GUERRA:** But I can't make a direct link between the  
5 two.

6 **MR. DAVID JEANES:** Okay. You did also talk about user training  
7 as an aspect. And maybe your experience on other systems -- is there usually a break-  
8 in period where you expect the users to be making mistakes, to be pressing the wrong  
9 buttons, and so on? I know that in the first days of operation, there was at least one  
10 incident where a user stopped that very long escalator at Rideau Station by pressing the  
11 shutdown button and it actually took intervention by a technician before it could be  
12 restarted.

13 **MR. MARIO GUERRA:** Yeah, definitely, that's the case. We had a  
14 lot of problems with vehicles doors where people were prying the doors open or holding  
15 them open and causing incidents with the doors, so there is a period of time where  
16 there is an educational process with regards to the public in terms of the dos and don'ts  
17 and how that impacts the reliability of the system.

18 **MR. DAVID JEANES:** Yeah.

19 **MR. MARIO GUERRA:** So yes.

20 **MR. DAVID JEANES:** I'm aware of one system where, before  
21 start-up -- this was in Houston, Texas where they actually mounted a major education  
22 campaign in the schools to basically teach schoolkids what light rail was all about. Are  
23 you aware of whether there was any kind of educational or promotional activity or  
24 information used in Ottawa prior to the start-up?

25 **MR. MARIO GUERRA:** I wouldn't know, sorry. I wouldn't know.

26 **MR. DAVID JEANES:** Okay. Those are all my questions. Thank  
27 you very much, Mr. Guerra.

28 **MR. MARIO GUERRA:** Thank you.

1                   **COMMISSIONER HOURIGAN:** And Mr. Jeanes, I sincerely  
2 apologize if we caught you off guard but, I must say, you did your usual excellent job,  
3 even unprepared. So thank you very much for those questions.

4                   **MR. DAVID JEANES:** Well, I apologize for the loose tie.

5                   **COMMISSIONER HOURIGAN:** Yeah, that's fine. That's fine.

6                   Next up is witness counsel, RTM.

7                   **--- CROSS-EXAMINATION BY MR. JEAN-CLAUDE KILLEY:**

8                   **MR. JEAN-CLAUDE KILLEY:** Good afternoon, Mr. Guerra. I'm  
9 going to start out asking you about Mr. Nadon. The City has asked a number of  
10 witnesses to confirm that, in the incident where he exited the train derail, he didn't pull  
11 an emergency alarm or try to stop the train from moving with his body. Do you recall  
12 being asked those questions by the City morning?

13                   **MR. MARIO GUERRA:** I do.

14                   **MR. JEAN-CLAUDE KILLEY:** I'd like, just -- just for reference, to  
15 bring up Mr. Nadon's description that incident and what he did. None of us were there,  
16 of course. It's in his -- the transcript of his formal interview, which is TRN00000169.  
17 And then, we're looking for page 109 of the transcript. There it is. So here's what he  
18 describes, about the middle of the paragraph. He had his family on there, and his  
19 grandchildren.

20                                     "We took it from Blair and then, right after, between  
21                                     St. Laurent and Tremblay, I'd heard a clinging sound  
22                                     beneath and I thought a cable had come loose or  
23                                     something was dragging, and so I told my wife." (As  
24                                     read).

25                   And you were read a partial excerpt of this sentence here, but not  
26 the whole thing:

27                                     "We're going to get off at the next station because I  
28                                     don't think this train is going to make it to our final

1 destination. It's going to get pulled out of service.  
2 We'll just take the next one.' So we got off the train at  
3 the station and I was on my phone calling the control  
4 centre to say, 'Take this train out of service' when the  
5 train departed." (As read)

6 So we -- knowing what you know about the situation, as Mr. Nadon  
7 described it, would you, as the CEO of RTM, have thought it appropriate for your  
8 maintenance director to pull and emergency alarm or to try to stop the train with his  
9 body somehow in those circumstances?

10 **MR. MARIO GUERRA:** No, I would not. I think he acted  
11 appropriately. Those sorts of measures for known emergency procedures. At that time,  
12 there was nothing wrong. I think Mr. Nadon did everything right in what he did.

13 **MR. JEAN-CLAUDE KILLEY:** All right. We can take that down.  
14 Thank you. You were also asked by counsel for the City this morning some questions  
15 about deductions related to specific workorders. I believe you said you had one in mind  
16 involving an \$800,000 deduction. In fairness, you said you were not in a good position  
17 to speak to specific individual workorders. So instead, let me ask you the general  
18 question. What are we talking about when we're talking about these things? How does  
19 a workorder lead to a deduction?

20 **MR. MARIO GUERRA:** So, typically -- so something is reported  
21 our helpdesk and we open a workorder, and there's an assessment at that point as to  
22 whether there is a KPI associated with that workorder. Typically, anything that's safety-  
23 critical or service-critical would have a KPI applied to it. And obviously, if there's a KPI  
24 applied to it -- depending on the nature of the KPI, some KPIs require a response and  
25 rectification plan sooner -- that workorder would get prioritized and we would -- you  
26 know, we would deal with it. Other workorders are left to be dealt with when the time  
27 arises or when we happen to be in the vicinity to do the work.

28 I believe, in these particular cases, these workorders were opened.

1 There was no KPI assigned because we believed none was warranted. The workorder  
2 then gets closed some time later, a week, or two, or three, whatever that may be. The  
3 City then notices that the workorder's been closed, assesses it, says -- stipulates that  
4 KPI should have been assigned usually the most punitive of all KPIs, and applies that  
5 KPI to the entire period that it took, from when the work order was open to closed. And  
6 if you assume the most stringent of KPIs, which is maybe half an hour response time,  
7 you could be looking at thousands of dollars each hour, times 24, times the number of  
8 days. You could see how the numbers, as far as deductions, quickly escalate to  
9 \$600,000 or \$800,000. And that's done because the City applies KPIs after the fact.

10 **MR. JEAN-CLAUDE KILLEY:** Thank you, Mr. Guerra. Let me ask  
11 you also about maintenance backlog/deferred maintenance. First of all, in terms of  
12 terminology, is deferred maintenance the same thing as a backlog of maintenance? Are  
13 they different things?

14 **MR. MARIO GUERRA:** They can be different things, but in  
15 generality, people use the two terms to refer to maintenance that is put off to a later  
16 time.

17 **MR. JEAN-CLAUDE KILLEY:** Okay. You're aware of evidence  
18 that Mr. Kanellakos gave earlier in these proceedings -- earlier this week, I believe.  
19 What he said in particular was that he was concerned with the level of deferred  
20 maintenance that they have on those trains, and that even though they're improving --  
21 he said they have improved recently in the last little while -- the concern is that if they  
22 don't get ahead of that deferred maintenance, eventually that maintenance will catch up  
23 under the reliability of the trains and start impacting that reliability again.

24 Were you aware of that evidence before I just read it to you?

25 **MR. MARIO GUERRA:** I was, yes.

26 **MR. JEAN-CLAUDE KILLEY:** Do you have any comment on the  
27 idea that there is a problematic level of deferred maintenance on the books at the  
28 moment?

1                   **MR. MARIO GUERRA:** I don't think the current level is  
2 problematic. I think it's normal in any transit system, based on my 40 years of  
3 experience. You're always going to have backlogs associated with vehicles or  
4 infrastructure.

5                   Other than safety-critical and service-critical, which is dealt with,  
6 obviously, in an immediate fashion, backlog -- for example, let's say a vehicle -- there's  
7 a scratch on the car, right? -- which needs to be dealt with, but it's minor in nature and  
8 not impacting the safety or reliability of the vehicle. Rather than calling that vehicle in  
9 specifically to deal with that scratch, we wait until the vehicle comes in for an inspection  
10 and we deal with that backlog item then. That's why the backlog exists.

11                  The other manner in which a backlog might exist -- which I think I  
12 explained earlier, but I'll say it again -- is when it comes to preventative maintenance  
13 activity, for example inspections. So in many cases, you may schedule inspections  
14 ahead of time, and the way to schedule it is by opening work orders. So you may look  
15 at a particular car, and if you're scheduling preventative maintenance activities for the  
16 entire year and multiply that by 40 cars, you're going to have a lot of open work orders,  
17 which people will look at and believe that it's backlog. So you need to filter that out  
18 because it's not truly backlog. It's work that has been scheduled to be done but is not  
19 yet due to be done. That's why I said you really have to dig into the numbers to figure  
20 out what the true backlog is. But the priority always is safety and service criticality by  
21 far.

22                  **MR. JEAN-CLAUDE KILLEY:** So what is the current level of  
23 backlog on maintenance work orders?

24                  **MR. MARIO GUERRA:** The current level I believe is somewhere  
25 between 100 and 200. It fluctuates a little bit. When you put that in perspective, you  
26 have 39 vehicles in all -- quite an extensive amount of infrastructure. To me, that's  
27 actually quite good, based on my experience.

28                  **MR. JEAN-CLAUDE KILLEY:** Okay. Thank you. I will move on

1 now to ask you a bit about the cause of the first derailment specifically. As far you're  
2 aware, has the root cause of the first derailment been determined?

3 **MR. MARIO GUERRA:** No, I don't think it has.

4 **MR. JEAN-CLAUDE KILLEY:** What steps has RTM been  
5 engaged in to determine the root cause of the first derailment?

6 **MR. MARIO GUERRA:** Well, we were relying on Alstom's root  
7 cause analysis, which took seven months. It came in three weeks prior to these  
8 hearings, and at the end of the day really didn't provide much information in terms of  
9 what the root cause was. It just served to point fingers at various things.

10 **MR. JEAN-CLAUDE KILLEY:** I mean, in a way, a root cause  
11 analysis is a finger-pointing exercise. What do you disagree with about that root cause  
12 analysis?

13 **MR. MARIO GUERRA:** Well, there's some things I agree with and  
14 some things I don't. The report points to design as an issue but really does not provide  
15 any details around what that means. It just makes a statement, so it leaves a lot of  
16 unanswered questions in terms of what is meant by that.

17 On a couple of occasions, the report pointed to a few things that we  
18 were already aware of and were already working, which is the wheel-to-rail interface,  
19 lubrication of the track. I'm not an expert. I'm not sure how much of a contributing  
20 factor those things were, but they are issues that need to be dealt with in the system,  
21 and we are dealing with them.

22 **MR. JEAN-CLAUDE KILLEY:** You mentioned you were already  
23 aware of the wheel-rail interface being a problem. How were you already aware of that?

24 **MR. MARIO GUERRA:** We had commissioned a study by the  
25 NRC, the National Research Council, and they did a study of the track. It's their  
26 expertise. And they had come to the conclusion that one of the reasons why there was  
27 so much coordination was the wheel-to-rail interface was not being optimized, and there  
28 was a lack of lubrication in certain areas of the track.

1                   **MR. JEAN-CLAUDE KILLEY:** I'll ask you a bit more about those  
2 points in detail and what you're doing about them. Just before I do, what are the next  
3 steps in the analysis of the root cause of that derailment if I hasn't yet been determined?

4                   **MR. MARIO GUERRA:** Well, I think RTG has engaged -- I think  
5 NRC as well -- to solicit information from Alstom to try and get to the root cause of what  
6 caused it. The report points to the axle being an issue, but really it stops way short of  
7 determining what the issue was and how it gets resolved. So I think the vehicle portion  
8 needs to be thoroughly thought out, and there needs to be some sort of long-term  
9 mitigation for the problem with the axle and the axle bearing.

10                  **MR. JEAN-CLAUDE KILLEY:** So in terms of the wheel-rail  
11 interface, you mentioned specifically corrugation and lubrication. First of all, who's  
12 responsible as between RTM versus Alstom? Who's responsible for addressing those  
13 items, corrugation and lubrication?

14                  **MR. MARIO GUERRA:** Alstom is responsible for maintenance of  
15 the track.

16                  **MR. JEAN-CLAUDE KILLEY:** And lubrication, just so I'm clear, is  
17 applied to the track, not the wheel, right?

18                  **MR. MARIO GUERRA:** The lubrication currently is supplied by the  
19 vehicles, but the report has shown that it's not being consistently applied in the right  
20 areas, because the vehicles apply lubrication on a timely basis. So that's something  
21 that needs to be dealt with as well.

22                  **MR. JEAN-CLAUDE KILLEY:** Right. And we're talking about  
23 lubricating the track is what I mean. We're not talking about lubricating parts of the  
24 vehicle.

25                  **MR. MARIO GUERRA:** No. The track, yes.

26                  **MR. JEAN-CLAUDE KILLEY:** Okay. So in terms of maintenance  
27 of the track, let me ask you this. Before you come on board as -- or at the time, sorry,  
28 rather, that you came on board as CEO in June of 2020, how involved was RTM in



1 managing Alstom's maintenance of the track?

2 **MR. MARIO GUERRA:** Honestly, not as involved as we currently  
3 are.

4 **MR. JEAN-CLAUDE KILLEY:** You anticipated my next question. I  
5 was going to ask if that had changed. How involved are you now, then?

6 **MR. MARIO GUERRA:** Very much so. I think speaking to the  
7 Commission counsellor and saying that -- we have reorganized RTM so that we're  
8 providing technical and management oversight on a much more consistent basis to  
9 ensure that the activities that are required are performed in a timely and efficient  
10 manner.

11 **MR. JEAN-CLAUDE KILLEY:** What are some of the activities that  
12 you're currently engaged in -- or rather, that Alstom is engaged in -- in terms of track  
13 maintenance?

14 **MR. MARIO GUERRA:** Oh. They do visual inspections. They do  
15 measurements. They've done ultrasonic inspections. There's a whole gamut of  
16 activities that need to be done from a track maintenance perspective. We simply  
17 monitor to make sure they're getting done and that they're getting done correctly, and in  
18 a timely manner.

19 **MR. JEAN-CLAUDE KILLEY:** And how about grinding when it  
20 comes to the issue of corrugation?

21 **MR. MARIO GUERRA:** Yeah. So grinding, Alstom did grinding  
22 last year, but it was more to clean up the track, grinding to re-profile the track has yet to  
23 be done, and we're looking to get that done this year.

24 **MR. JEAN-CLAUDE KILLEY:** When you mentioned lubrication,  
25 and you mentioned something about it not being applied in the right places, can you  
26 elaborate on what you're talking about?

27 **MR. MARIO GUERRA:** Yeah. So the vehicles apply lubrication.  
28 They have on-board lubricators for the track, to lubricate the track. But unfortunately,

1 they're based on time, not -- they're not location specific, so were applying grease in the  
2 wrong places. So we then engaged NRC to also look a lubrication needs with regards  
3 to the system because you know, you need to apply lubrication, for example, coming  
4 into a curve so that you go through the curve much more smoothly, you don't wear the  
5 track and you don't make as much noise. So that's what we mean. And we need --  
6 more than likely, we will need to look at wayside lubricators by the time this is done.

7 **MR. JEAN-CLAUDE KILLEY:** And a wayside lubricator would be  
8 positioned in a specific place on the ---

9 **MR. MARIO GUERRA:** Yes.

10 **MR. JEAN-CLAUDE KILLEY:** --- on the ---

11 **MR. MARIO GUERRA:** And it would apply lubrication, yes.

12 **MR. JEAN-CLAUDE KILLEY:** Okay. Could I -- I'm going to ask  
13 you a little bit about a National Rail Council report. It's Document NRC0000001, six  
14 zeroes, I think, NRC six zeroes 1.

15 Do you recognize this document, Mr. Guerra?

16 **MR. MARIO GUERRA:** I do.

17 **MR. JEAN-CLAUDE KILLEY:** Were you involved in hiring NRC to  
18 prepare this?

19 **MR. MARIO GUERRA:** I was.

20 **MR. JEAN-CLAUDE KILLEY:** I just want to turn you to page 7 of  
21 the PDF, so this is an executive summary. Toward the bottom is a set of paragraphs  
22 under "Our Findings", one that reads:

23 "Having undertaken maintenance assessments on the  
24 arrangements for newly-commissioned railways  
25 before, we've identified the teams on these types of  
26 projects are balancing three priorities, project closeout  
27 (mainly management of defects and the collation of  
28 documentation such as technical drawings and

1 manuals); O&M start up --- "

2 I take O&M to refer to operations and maintenance.

3 "--- creation of procedures and processes; finalization  
4 of maintenance contracts; and one-off activities such  
5 as population of assets and maintenance plans under  
6 the asset information system; and steady state  
7 operation of management oversight and monitoring of  
8 maintenance contracts giving the arising issues." (As  
9 read)

10 And then the closing paragraph:

11 "These priorities interact with one another so that  
12 oversight is difficult in the absence of defined  
13 processes, and the definition of processes is  
14 hampered by the need to resolve outstanding issues  
15 from the construction phase whilst the outstanding  
16 issues themselves impede the ability to deliver  
17 reliable service." (As read)

18 How would you say that these are general observations being  
19 made here about these types of projects? How would you say these observations  
20 relate to your experience on Stage 1 of the Confederation Line?

21 **MR. MARIO GUERRA:** I would say they're bang on.

22 **MR. JEAN-CLAUDE KILLEY:** If we scroll down to page 8, under  
23 the heading "Supervision and Oversight", they observe here, just in a summary way,  
24 that:

25 "The structure of the preventative maintenance  
26 process is quite thin. All the inspections are  
27 completed by frontline staff and there are no  
28 documented requirements for anyone else to review

1 asset conditions. There does not appear to be a  
2 particularly strong oversight of the work done by  
3 frontline staff. The shift supervisors are  
4 predominately office based, and their role in the  
5 verification of completed work appears to be limited to  
6 confirming that the type of work is complete." (As  
7 read)

8 This is, so we're clear, the frontline staff doing preventative  
9 maintenance, would these be RTM staff or Alstom staff?

10 **MR. MARIO GUERRA:** Both.

11 **MR. JEAN-CLAUDE KILLEY:** Both. And I know you addressed  
12 some of this in Commission counsel's questioning. This report is dated December  
13 2021. Am I right that since then, RTM has made a number of changes to address these  
14 observations?

15 **MR. MARIO GUERRA:** Yes, we have, and to be fair, so has  
16 Alstom, so we now have the, you know, structure that provides both management and  
17 technical oversight, and Alstom themselves have beefed up their QC to ensure that the  
18 procedures are reviewed regularly and that there's more oversight in terms of the  
19 performance of work.

20 **MR. JEAN-CLAUDE KILLEY:** Can we just scroll one further page,  
21 under the heading, "Relationships" there?

22 This is quite a lengthy passage that I won't read the entirety of, but  
23 NRC bothers to observe here that while it was not strictly within their scope, they  
24 wanted to make reference to the issue of relationships, and really, just the second  
25 paragraph, I think is the one to highlight.

26 "The City of Ottawa, understandably, having difficulty  
27 gaining confidence in the delivery of maintenance, but  
28 by imposing penalties outside the contractual

1 performance regime is creating problems for those  
2 trying to make improvements. RTM have a poor  
3 impression of Alstom but does not seem to have sight  
4 of some of the good things we have seen. Alstom are  
5 content to wait on responses from RTM to issues,  
6 rather than seeking to work together to mitigate and  
7 resolve them." (As read)

8 Do those -- how do those observations resonate with you as  
9 describing the state of things in about December 2021?

10 **MR. MARIO GUERRA:** Yeah. I mean, the relationships were very  
11 contractual at the end of the day. You know, you needed to write a letter for everything  
12 to get things done. There was no sense of partnership. It was just -- excuse my  
13 language -- but just people trying to cover their you-know-whats, rather than trying to  
14 build relationships and work together to do what's best for the system.

15 We're there now. We've done a lot of work to get there, but at that  
16 point, I don't think we were there.

17 **MR. JEAN-CLAUDE KILLEY:** And I think you described to  
18 Commission counsel the -- that your current relationship with the City being perhaps the  
19 best it's ever been. And do I recall that right?

20 **MR. MARIO GUERRA:** That's correct, yes.

21 **MR. JEAN-CLAUDE KILLEY:** How about with Alstom?

22 **MR. MARIO GUERRA:** As well. To be fair to Alstom, they've  
23 made a lot of changes too in their organization. They brought in some new people,  
24 people with experience, and that's really proven to contribute to the success that we're  
25 having.

26 There's also a lot more visibility around issues, a lot more  
27 discussion about issues to try and bring them to resolve. So I think that's helped a lot  
28 too.

1                   **MR. JEAN-CLAUDE KILLEY:** Thanks, Mr. Guerra. I have no  
2 further questions for you.

3                   **MR. MARIO GUERRA:** You're welcome.

4                   **COMMISSIONER HOURIGAN:** Any re-examination?

5                   **MS. KATE McGRANN:** No, thank you.

6                   **COMMISSIONER HOURIGAN:** All right, sir. Thank you for  
7 testifying today and providing your information. It's very helpful to the Commission and  
8 its work.

9                   We'll stand down for a couple of minutes while we get ready for the  
10 next witness.

11                  **MR. MARIO GUERRA:** Thank you.

12                  **THE REGISTRAR:** Order. All rise. The hearing will recess.

13 --- Upon recessing at 2:35 p.m.

14 ---- Upon resuming at 2:40 p.m.

15                  **COMMISSIONER HOURIGAN:** My apologies, sir. You're going to  
16 asked some questions by counsel. Before we do that, we need you either to swear to  
17 tell the truth or to affirm to tell the truth. Which would you prefer.

18                  **MR. NICOLAS TRUCHON:** I'm comfortable swearing.

19                  **COMMISSIONER HOURIGAN:** All right. Stand by.

20 **--- MR. NICOLAS TRUCHON, Sworn:**

21                  **COMMISSIONER HOURIGAN:** All right. Thank you.

22                  Mr. Adair, Commission counsel, will begin the examinations. Go  
23 ahead, Mr. Adair.

24                  **MR. JOHN ADAIR:** Thank you, Mr. Commissioner, and good  
25 afternoon, sir.

26 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR:**

27                  **MR. JOHN ADAIR:** May I just start by asking you how I pronounce  
28 your surname so I don't get that wrong?

1 **MR. NICOLAS TRUCHON:** Truchon.

2 **MR. JOHN ADAIR:** Truchon, thank you. If I get it wrong, I  
3 apologize in advance.

4 **MR. NICOLAS TRUCHON:** No worries.

5 **MR. JOHN ADAIR:** Mr. Truchon, I understand in terms of your  
6 background that you up until in or around 2015 you were a partner with Grant Thornton?

7 **MR. NICOLAS TRUCHON:** That is correct.

8 **MR. JOHN ADAIR:** And your work was focused on financial  
9 advisory services and in particular with respect to P3 projects?

10 **MR. NICOLAS TRUCHON:** That is correct.

11 **MR. JOHN ADAIR:** And then you worked on a particular  
12 infrastructure project before coming to the Confederation Line as CEO of RTG in July of  
13 2020?

14 **MR. NICOLAS TRUCHON:** That is correct.

15 **MR. JOHN ADAIR:** And took over from Peter Lauch, as I  
16 understand it.

17 **MR. NICOLAS TRUCHON:** That is correct.

18 **MR. JOHN ADAIR:** Prior to taking over in July of 2020 as CEO of  
19 RTG had you had any involvement in this particular project?

20 **MR. NICOLAS TRUCHON:** None.

21 **MR. JOHN ADAIR:** Okay. Can you just start, sir, by helping us  
22 understanding, just at a very high level, the role of RTG at least as of July 2020 when  
23 you became CEO?

24 **MR. NICOLAS TRUCHON:** So RTG is the -- what we refer to as  
25 the Project Company. It's the contractual entity that entered into the public partnership  
26 agreement which we refer to as the Project Agreement with the City of Ottawa for the  
27 delivery of Confederation Line. RTG is structured with two main subcontractors, one  
28 that covers the construction phase and that's OLRTC; and then the other subcontractor

1 that covers the operating phase of the project which covers from revenue service all the  
2 way up to the expiry date on the contract.

3 RTG is the commercial entity that is structured to support the  
4 financing of the project but also the commercial relationships with the City as our client.

5 **MR. JOHN ADAIR:** So fair to say then that RTG's role is find and  
6 manage the financing and also manage the relationship in terms of, on the one hand  
7 having the subcontracts with RTM and OLRTC, and on the other hand having the  
8 Project Agreement with the City?

9 **MR. NICOLAS TRUCHON:** That is correct.

10 **MR. JOHN ADAIR:** And when things are structured in that fashion,  
11 when a project is structured in that fashion where you have a company that stands as  
12 the counterparty to the public entity but doesn't actually execute the work itself -- it  
13 subcontracts out the work. Is it part of the bid pitch to your knowledge to the public  
14 entity customer that the customer will get one single point of contact? You know, one of  
15 the benefits of having an RTG in the mix is the customer gets one single point of contact  
16 and that helps with things like integration and communication. Is that part of the  
17 presentation that's made to the customer?

18 **MR. NICOLAS TRUCHON:** Yes, but it's also driven by private  
19 sector financing requirements that effectively want to have a single entity with a  
20 subcontract structure to essentially support the financing elements of the project.

21 **MR. JOHN ADAIR:** Sure. And my question wasn't trying to  
22 suggest that there were no other reasons things are structured that way. But in terms of  
23 the bid that's made for significant infrastructure contracts like this, I gather that one of  
24 the talking points for the proponent such as RTG is that by having RTG as the single  
25 counterparty to one Project Agreement and then RTG being responsible for the various  
26 subcontracts, it provides those benefits to the public entity customer that I've described.

27 **MR. NICOLAS TRUCHON:** I'm sorry. Perhaps I misunderstood  
28 your initial question. The reason RTG is structured this way is the design and



1 construction activity caters to a very specific skill set so in order to have the robust  
2 agreement that usually goes with a single entity that does focus and does design and  
3 construction on its own, and then the operation and maintenance structure caters to a  
4 completely different skill set.

5 So by having this kind of structure that we have in RTG which is a  
6 common structure on P3 projects, it does give us the ability to reallocate the scope of  
7 work to the parties that are effectively capable of performing that work. But as far as  
8 our interface with the City, we do act as the single interface, supporting the delivery by  
9 OLRTC of their scope as the interface with the City and the same thing with RTM as the  
10 interface with the City.

11 **MR. JOHN ADAIR:** Right. And when that single entity that stands  
12 as the proponent and the counterparty in the Project Agreement is making its bid to the  
13 City for the work, typically what you would see is that single proponent entity in this case  
14 RTG, I assume would say to the City, "Look, here's the structure we're using and the  
15 benefits to you include -- there may be others. But they include having one single point  
16 of contact. There's better integration. There's better communication, et cetera."

17 **MR. NICOLAS TRUCHON:** That is correct.

18 **MR. JOHN ADAIR:** Okay. And then I'm going to no drill down. It  
19 will be into some of the sort of contractual and structuring aspects of how RTG  
20 manages a situation like this.

21 I understand that there is what's called an interface agreement  
22 between OLRTC and RTM?

23 **MR. NICOLAS TRUCHON:** Correct.

24 **MR. JOHN ADAIR:** And RTM. And that's because each of  
25 OLRTC and RTM have their main contracts with RG but they also need to speak to  
26 each other. And so that's -- it's the speaking to each other that is intended to be  
27 accomplished or governed by that interface agreement.

28 **MR. NICOLAS TRUCHON:** That is correct.

1                   **MR. JOHN ADAIR:** All right. I'm going to ask that we call up a  
2 document, sir, that I want to ask you a few questions about. It's RTM592807.8.

3                   And Mr. Truchon, just by way of background, are you familiar, sir,  
4 with the lessons learned workshops that were done, conducted by the RTG partners in  
5 the spring of 2021?

6                   **MR. NICOLAS TRUCHON:** I was not aware until we saw those  
7 documents today. I understand these are documents that are specific to one of the  
8 three partners. But this one today was the first time I'm reading those documents.

9                   **MR. JOHN ADAIR:** All right. And I just want to make sure we're  
10 understanding one another properly. My question was whether you were aware that the  
11 workshops took place. And then you were talking about the documents. I just want to  
12 make sure we're talking about the same thing.

13                   Were you aware that the workshops took place at all?

14                   **MR. NICOLAS TRUCHON:** No.

15                   **MR. JOHN ADAIR:** Okay. So obviously then not aware of the  
16 documents either.

17                   Let me use the documents nonetheless to try to understand your  
18 perspective on some of the issues that arise in the course of the documents. This one  
19 deals with that interface agreement between OLRTC and RTM. So you'll see there, sir,  
20 under "Issue" it refers to the current status of both the interface agreement and the  
21 relationship between OLRTC and RTM as being adversarial.

22                   Do you see that?

23                   **MR. NICOLAS TRUCHON:** I do.

24                   **MR. JOHN ADAIR:** And that among other things problems include  
25 that there is a lack of alignment and separate objectives in cost centres, right?

26                   **MR. NICOLAS TRUCHON:** That is correct.

27                   **MR. JOHN ADAIR:** And was it your experience when you came on  
28 the scene in 2020, and then as you carried forward even until today, that, at times, the

1 relationship between OLRTC and RTM has been adversarial?

2 **MR. NICOLAS TRUCHON:** There's been instances where  
3 there's been issues of contention between the parties, yes.

4 **MR. JOHN ADAIR:** And I -- what do you say about the statement  
5 in this document that there was a lack of alignment?

6 **MR. NICOLAS TRUCHON:** That could be -- that is -- that is  
7 correct.

8 **MR. JOHN ADAIR:** All right. If we just scroll down to the  
9 "Overview" heading. Thank you. Under "Overview", sir -- and I appreciate, sir, that this  
10 is not document that you were involved in authoring or reviewing at the time, and you  
11 only saw it for the purposes of preparing for your evidence here today, so let me just be  
12 clear that I'm not asking you to interpret the document, per se. What I'm really trying to  
13 do is try to understand whether you agree with some of the statements or disagree, and  
14 if so, why, and try to get a little bit more specificity around some of these statements,  
15 okay?

16 **MR. NICOLAS TRUCHON:** Got it.

17 **MR. JOHN ADAIR:** So under "Overview", it says:

18 "By changing the commercial profile and agreement  
19 between construction and maintenance to an alliance  
20 model, both parties become an integral part and  
21 impact the results, et cetera." (As read).

22 And you know I don't need to read it you, obviously. Do you have a  
23 sense of, sir, whether there would be reason to conclude, based on your perspective on  
24 the relationship between OLRTC and RTM, that there would be reason to conclude that  
25 there needed to be changes to the commercial profile and agreement between them?

26 **MR. NICOLAS TRUCHON:** Yes.

27 **MR. JOHN ADAIR:** Tell us a little bit, please, if you would, about  
28 both why you say that there needed to be changes and what changes you would

1 recommend.

2                   **MR. NICOLAS TRUCHON:** The -- well, I see the words “alliance  
3 model”. We need to put things in perspective. The concept of “alliance model” is fairly  
4 new. Back when this project was bid by our sponsors and signed with the City, that  
5 concept was not around. So that’s, I guess, my first comment. My second comment  
6 would be that I can see a reason how we -- how we can -- we wished to break silos  
7 when it comes to troubleshooting issues in the earlier years of operation and, more  
8 specifically, during what we would refer to as “the warranty period”. And having the --  
9 you know, finding a way to break that silo through -- those silos between the  
10 construction and the maintenance side through a form of additional collaboration  
11 between the parties, I could see how this would be beneficial in resolving issues.

12                   **MR. JOHN ADAIR:** Have there been changes over the last couple  
13 of years to the contracts and/or relationships among the group of RTG, RTM, and  
14 OLRTC that are intended to achieve some of these objectives?

15                   **MR. NICOLAS TRUCHON:** Not that I’m aware of.

16                   **MR. JOHN ADAIR:** Do you know whether those -- any changes  
17 have been suggested, or discussed, or raised for consideration and just rejected, or the  
18 issue just hasn’t been tabled?

19                   **MR. NICOLAS TRUCHON:** I read this statement and these  
20 lessons learned more as forward-looking on future projects more than the -- a specific  
21 measure to deployed on -- in the context of the OLRT Project.

22                   **MR. JOHN ADAIR:** I appreciate that. And certainly, the statement  
23 is forward-looking and, in that respect, would no doubt apply to future projects but,  
24 leaving aside the document and just talking about the concept of lack of alignment and  
25 adversarial relationship, there’s a huge amount of overlap in ownership between RTG,  
26 RTM, and OLRTC. And we’re going to talk about that little bit but, given the extent of  
27 the overlap, I would ask, and posit, that perhaps there would be reason to have that  
28 kind of consideration of, “Do we need to change the contractual arrangements? Do we

1 need to change the structures? Is there some way to bring these companies into more  
2 alignment?" Has that happened at all? Has it not happened? And if not, why not?

3 **MR. NICOLAS TRUCHON:** I think it happens at a certain level  
4 within the organizations, and I wouldn't want to come across as saying it is a  
5 widespread problem. There are issues that do get resolved, so let's be clear about that,  
6 between -- under the interface agreement. But when issues become a little more  
7 significant, these issues do need to be escalated, and these would be escalated in  
8 bilateral discussions between the leadership team of the -- what we would refer to as  
9 the EXCO of OLRTC and the EXCO of RTM. And if these issues cannot be resolved at  
10 that level, then they get escalated to -- at the corporate level, to the highest level in the  
11 organization.

12 **MR. JOHN ADAIR:** Right. So what I understand you to be saying  
13 is that, when issues arise -- and I appreciate your comment that there are times where  
14 issues don't arise or where they're resolved relatively easily and quickly, but when  
15 issues that aren't easy to resolve arise, they will get escalated as you've described, and  
16 I accept that. But why not revisit the contractual structure of the relationship and see  
17 what can be done to create alignment structurally and institutionally rather than just  
18 escalating issues one by one?

19 **MR. NICOLAS TRUCHON:** The -- we need to put -- obviously,  
20 this document was, I believe, generated from discussions in 2021. Back in 2021, we  
21 were well into the end of the warranty period, so the benefits of probably transitioning to  
22 -- this would probably be more relevant in terms of discussion if we were early into the  
23 warranty period, or very close to the revenue service date, but I'm not aware of any  
24 specific discussions at my level that would have led us to consider potentially amending  
25 those agreements to try to find another way to better collaborate.

26 **MR. JOHN ADAIR:** Okay. And then, with respect to future  
27 projects, that's not really the -- squarely within the mandate of the mandate of the  
28 Commission, but it helps us understand, when we're thinking about -- when the

1 Commissioner's thinking about making recommendations for the future, it helps us  
2 understand, you know, what's being done. And you mentioned, for example, that there  
3 are now models that exist that didn't exist before.

4 With respect to future projects, is the industry sort of taking a  
5 different approach to how to manage this relationship where you have the single  
6 proponent with the two main subcontractors and the interface agreement? And can you  
7 just tell us, at a high level, your experience with that and how things might have  
8 changed for the better?

9 **MR. NICOLAS TRUCHON:** I'm afraid my personal experience is  
10 mostly at the project level, so I don't have much visibility, but I do understand from the  
11 industry that there is a desire to transition the P3 model towards a more collaborative  
12 model, but that would be -- that would be between the public-sector client and the  
13 private sector. But I'm not -- you know, I'm not personally involved in those discussions.  
14 I wish I would, but it's difficult for me to provide feedback on that.

15 **MR. JOHN ADAIR:** Okay. And then leaving aside for a moment  
16 the relationship between the public sector entity and the private sector proponent, within  
17 the private-sector proponent side of things, is there an effort underway to ensure better  
18 alignment and better collaboration; are you aware of that?

19 **MR. NICOLAS TRUCHON:** I can speak from personal  
20 experience on other projects where the issues between and the maintenance side are a  
21 little smoother to get resolved. I think, in this specific -- in the case of Confederation  
22 Line, because of all the issues that have taken place during construction, the delays, the  
23 transition into revenue service, it did -- it did put the parties into a polarized situation  
24 very early on, which is unfortunate.

25 **MR. JOHN ADAIR:** So then -- would it be fair to say, then, that the  
26 model that's used whereby you have RTG as the single proponent and OLRTC and  
27 RTM as the main subs, and the interface agreement works well when the projects are  
28 going smoothly, but when things start to break down with the project, those breakdowns

1 can be exacerbated by that model?

2 **MR. NICOLAS TRUCHON:** I think Confederation Line OLRT was  
3 certainly on that wire in terms of delays and difficult circumstances. I wouldn't want to  
4 make a general statement about other projects that I'm clearly not involved with. I can  
5 only speak to the ones -- specific to the ones I've encountered before.

6 **MR. JOHN ADAIR:** Okay. On this particular project, do you think  
7 that the contractual structure and the corporate structure exacerbated the difficulties  
8 that were encountered as opposed to facilitating improvement and change for the  
9 better?

10 **MR. NICOLAS TRUCHON:** I think the difficulty with the City  
11 relationship on some of the delay issues that -- again, that was way before my time, but  
12 having been involved on the project for the last two years, I do have a personal opinion.  
13 Some of the issues and difficulties that were encountered throughout the construction  
14 phase has led to a number of financial impacts on the consortium, putting -- I think  
15 testing financial reliance and requiring the sponsors to deploy significant financial  
16 support to see the job to revenue service, and then into transitioning into operation.  
17 Some of the positions that have been taken in terms of disputes between OLRTC  
18 through RTG with the City have significant financial implications that kind of limit the  
19 flexibility in terms of addressing other issues that may come up subsequent to that.

20 **MR. JOHN ADAIR:** Okay. And just on the private side for a  
21 moment, ignoring what the City does or doesn't do, is it the case that the contractual  
22 structure and the misalignment that's described in this document made it harder for  
23 RTG to solve problems that were raised by the City -- sorry, that arose in the project?

24 **MR. NICOLAS TRUCHON:** I would agree with that statement.

25 **MR. JOHN ADAIR:** All right. Can we take that document down?  
26 I'm just going to ask for a different one, please, which is almost the same document ID.  
27 It's RTM592807.7, please.

28 --- **EXHIBIT No. 320:**

1 RTM00592807.0007 – O&M Lessons Learned Workshop  
2 spreadsheet 22 March 2021

3 **MR. JOHN ADAIR:** And if we could just go to the tab that's "ONM  
4 lessons learned", please. Thank you. It's not super easy to work with this document,  
5 but it's probably best to leave it as zoomed in as it is. Otherwise, it's going to be very  
6 difficult to see, and we'll work our way through it.

7 Mr. Truchon, again, not a document -- well, I should just ask you. I  
8 take it you haven't seen this document, other than preparing for your evidence.

9 **MR. NICOLAS TRUCHON:** That is correct.

10 **MR. JOHN ADAIR:** And although the format is a little awkward for  
11 our purposes, this is, in many respects, a summary or grabbing bits and pieces of some  
12 of these other lessons learned -- Word documents that we've looked at -- Word and  
13 PDF documents that we've looked at. I'm going to ask you to look at line 6 using the  
14 Excel spreadsheet line numbers. So it should be on the bottom of your screen now.

15 And if you just take a minute to read to yourself columns D and E  
16 with respect to the leadership and alignment of the different entities. I'm particularly  
17 interested in column E with respect to how the partners of OLRTC, RTM, and RTG  
18 interact and what their alignment may be. So just let me give you a minute to read that  
19 and tell me when you're done.

20 **(SHORT PAUSE)**

21 **MR. NICOLAS TRUCHON:** I've completed the reading.

22 **MR. JOHN ADAIR:** Help us understand the extent to which the  
23 three main corporations that are behind RTG, OLRTC, and RTM -- help us understand  
24 the extent to which the different financial interests in each of those entities has created  
25 difficulty.

26 **MR. NICOLAS TRUCHON:** I think what I read in there is a  
27 discussion about one of the specific partners and how that entity is structured differently  
28 than the other two partners. It's all about at what level does the organization become



1 one. And specific to the other two partners, they do connect way quicker, from an  
2 organizational perspective, to a joint CEO, whereas specific to Dragados and ACS,  
3 those are two very separate and standalone organizations. They do collaborate on joint  
4 pursuits, but the corporate entity is a couple of levels above what would be otherwise  
5 expected on the other two partners.

6 **MR. JOHN ADAIR:** And if you just look up at line 5 as well, you'll  
7 see:

8 "Partner stakes must be consistent for both  
9 construction and maintenance contractors." (As read)

10 And then in column E, it references the fact that it's a 40-40-20 split  
11 on OLRTC, and on the maintenance side a 33-33-33 split.

12 How does that difference in financial stakes create, if at all, difficulty  
13 for the project?

14 **MR. NICOLAS TRUCHON:** I don't believe it does, because at the  
15 end of the day, the major -- the significant element between the three entities still  
16 represents a significant commitment. I'm not aware of specific arbitrage between one  
17 organization favouring one side of the business versus the other. At the end of the day  
18 -- and I can speak from personal experience -- when issues become serious and  
19 material, they get escalated and they get dealt with, irrespective of the partners'  
20 percentages within their respective -- whether it's their percentage on the construction  
21 side versus the maintenance side.

22 **MR. JOHN ADAIR:** Does it at least create the risk that one of the  
23 partners on the construction side has an incentive to push issues onto the maintenance  
24 side?

25 **MR. NICOLAS TRUCHON:** I would say yes, but it's not a risk that I  
26 would see as materializing frequently.

27 **MR. JOHN ADAIR:** When you say that do you mean in other  
28 projects or in this project specifically?

1                   **MR. NICOLAS TRUCHON:** In this project specifically. My  
2 personal opinion is I don't believe that percentages have driven behaviour.

3                   **MR. JOHN ADAIR:** Okay. So to the extent that SNC and its  
4 lessons learned workshops that it did came to the conclusion that the partner stakes  
5 should be consistent on both the construction and the maintenance side, you would  
6 disagree with that?

7                   **MR. NICOLAS TRUCHON:** No, that's not what I'm saying. What  
8 I'm saying is that is a legitimate objective, but sometimes the realities with respect to  
9 projects make it difficult because perhaps some of the partners might want to take a  
10 bigger piece of one part or have more expertise or more to contribute on one side of the  
11 equation as opposed to the other one.

12                  **MR. JOHN ADAIR:** Okay. We can take that down. Thank you,  
13 Mitchell.

14                  Recognizing we're stepping now outside of RTG, in terms of the  
15 relationship between RTM and Alstom, I take it you'd agree with me that there have  
16 been times where that relationship has struggled significantly post-launch.

17                  **MR. NICOLAS TRUCHON:** I would agree with that.

18                  **MR. JOHN ADAIR:** And the parties, as I understand it -- parties  
19 being RTM and Alstom -- ultimately had to enter into an MOU in May of 2021.

20                  **MR. NICOLAS TRUCHON:** I am aware, yes.

21                  **MR. JOHN ADAIR:** I'm happy to call it up, sir, so if you think the  
22 questions I'm asking require you to see the document, please let me know, okay? I  
23 want to make sure you have that opportunity. But if you recall, the MOU included a  
24 commitment to working together in good faith.

25                  **MR. NICOLAS TRUCHON:** I'm aware of the MOU. I haven't read  
26 it, but I'm not shocked by the statement you just made.

27                  **MR. JOHN ADAIR:** And is it surprising to you, sir, that RTM and  
28 Alstom, as the two main parties that are responsible for maintenance on this project,

1 had to enter into a written agreement whereby they committed to work in good faith?  
2 Was that a sign of how bad things had gotten?

3 **MR. NICOLAS TRUCHON:** If you allow me, maybe just a bit of  
4 context. A significant portion of the tensions between RTM and Alstom -- RTM and their  
5 main subcontractor -- is a direct consequence of the financial impacts and deductions  
6 that have been levied by the City over the course of the project, at least leading up to  
7 May of 2021, in the sense that performance for the first few months has been  
8 challenging and the City has held back payments. When the City holds back payments,  
9 then that means RTG doesn't get paid, RTG can't pay RTM, and RTM and can't pay  
10 Alstom. So those deductions are significant; they're material. There are commercial  
11 provisions within their agreements where deductions are allocated to the party that's  
12 responsible ultimately for the deduction, but we can't ignore the potential value of  
13 deductions that were being levied by the City, and those were being reallocated. And  
14 that's what create the bulk of the issues between RTM and Alstom, and that essentially  
15 led to that MOU where the parties had to re-establish that -- "Let's try to put the past  
16 behind, and let's focus on fixing it and moving forward."

17 **MR. JOHN ADAIR:** Okay. Let me just follow up on that, because  
18 I'm not sure, with the greatest of respect, that that's quite fair.

19 It's clearly the case that the City imposed deductions, and there's  
20 no doubt that that would make things hard for RTM and Alstom, but there were also  
21 issues as between RTM and Alstom -- for example, fighting about who was responsible  
22 for what, correct?

23 **MR. NICOLAS TRUCHON:** Yes, but in the background, I think the  
24 financial implications of those discussions -- or I would call them disputes or  
25 disagreements between Alstom and RTM -- the source of that starts from the absence  
26 of payments in the early days of the project and the ---

27 **MR. JOHN ADAIR:** So ---

28 **MR. NICOLAS TRUCHON:** Sorry.

1                   **MR. JOHN ADAIR:** No, go ahead.

2                   **MR. NICOLAS TRUCHON:** The fact that deductions had to be  
3 reallocated and further contract -- my understanding of the RTM subcontract with  
4 Alstom is when deductions are specific to elements of the scope of Alstom, RTM has  
5 taken the position that those deductions need to be applied against the Alstom contract.  
6 And that's I think the fundamental issue of disagreement between the parties.

7                   **MR. JOHN ADAIR:** I think in fairness we would say there has been  
8 a failure to perform at the maintenance level, right? I'm not suggesting a complete  
9 failure. I'm not suggesting every single thing went wrong. But I think we can agree with  
10 each other that there hasn't been a meeting of the requirements of the Project  
11 Agreement on the maintenance side; is that fair?

12                   **MR. NICOLAS TRUCHON:** That is correct.

13                   **MR. JOHN ADAIR:** And then there have been deductions and  
14 penalties and financial consequences imposed, right?

15                   **MR. NICOLAS TRUCHON:** Correct.

16                   **MR. JOHN ADAIR:** And whether you agree with all of the  
17 deductions and financial consequences, and whether you say the City took an overly  
18 punitive approach or not, certainly some degree of deductions and financial  
19 consequences would be appropriate given the failure to perform, correct?

20                   **MR. NICOLAS TRUCHON:** I'm not challenging that.

21                   **MR. JOHN ADAIR:** Right. And so when you have a failure to  
22 perform and the parties who are responsible for performing are RTM and Alstom, it  
23 creates some degree of conflict, independent of the of the financial consequences,  
24 correct?

25                   **MR. NICOLAS TRUCHON:** That is correct.

26                   **MR. JOHN ADAIR:** And then the financial consequences  
27 exacerbate that conflict?

28                   **MR. NICOLAS TRUCHON:** I would agree with that statement.

1                   **MR. JOHN ADAIR:** Right. So I think that's respectfully, maybe a  
2 more complete description of the situation. But in any case, was it a concern for you  
3 that RTM and Alstom had to go so far as to sign a contract whereby they committed to  
4 one another to working in good faith?

5                   **MR. NICOLAS TRUCHON:** I think it was a healthy thing that the  
6 parties tried to find a way to park the past and work on the future, and find a way to  
7 press the reset button and to try to get into an environment. And if I recall correctly, as  
8 part of that term sheet there was an undertaking by RTM to stop holding back Alstom's  
9 payments for deductions levied by the City, and start effectively resume payments to  
10 Alstom for their performance, to try to see if we could find a way to, you know, stabilize  
11 the payment situation so that all parties would be in the position to cover their costs.

12                   **MR. JOHN ADAIR:** Okay. And if I can just take you back for a  
13 minute away from RTM and Alstom and back to OLRTC and RTM and RTG, I believe  
14 you told Commission counsel during your formal interview that RTG tries to manage its  
15 relationships with OLRTC and RTM on an arm's length basis?

16                   **MR. NICOLAS TRUCHON:** That is correct.

17                   **MR. JOHN ADAIR:** Meaning that RTG, despite overlapping  
18 ownership, treats each of OLRTC and RTM as arm's length parties from RTG?

19                   **MR. NICOLAS TRUCHON:** That is correct.

20                   **MR. JOHN ADAIR:** And why is that, sir?

21                   **MR. NICOLAS TRUCHON:** When we have -- the issues when  
22 they materialize -- when we're lucky they're clearly a warranty issue or a maintenance  
23 issue. So when they're simple to be established then that makes it easier for the party  
24 to take ownership of that issue. When issues tend to be a little more complicated, what  
25 we have as a problem is perhaps there's a maintenance issue but perhaps there's a CC  
26 defect issue. And, you know, when the parties try to resolve the issue between  
27 themselves if they can't get to a resolution per the interface agreement, the issue gets  
28 escalated to RTG and RT needs to make a determination as to who is ultimately

1 responsible so that we can continue to work and progress.

2                   And there's been instances in the past over the past two years  
3 where RTG effectively had to step in, get some work completed, support the financial  
4 cost, and then make a determination to reallocate those costs between the two entities  
5 because we could not afford to have those disputes disrupt the delivery of service.

6                   So then as per the interface agreement the issue can get escalated  
7 and proceed through the internal dispute mechanisms that are in place, but the desire is  
8 to keep the trains running and ensure that no issue should disrupt the safe delivery of  
9 service.

10                   **MR. JOHN ADAIR:** So I gather it's important to RTG  
11 philosophically to act as though RTM and OLTRC are at arm's length third parties.

12                   **MR. NICOLAS TRUCHON:** That is correct.

13                   **MR. JOHN ADAIR:** And I wonder, sir, how that plays out in terms  
14 of RTG's relationship with the City. So if the City comes to RTG with a concern, and  
15 let's assume it's a valid concern or complaint, and the City comes to RTG with that,  
16 RTG then treats that as something that it has to address. Because it has the contract  
17 with the City, it then has to address with an arm's length third party, correct?

18                   **MR. NICOLAS TRUCHON:** That is correct.

19                   **MR. JOHN ADAIR:** Being either RTM or OLRTC?

20                   **MR. NICOLAS TRUCHON:** Depending on what the issue is.

21                   **MR. JOHN ADAIR:** And RTG approaches that on the basis that  
22 RTM, if it's a maintenance issue, is a third party over which RTG has no control beyond  
23 the contract between the two parties?

24                   **MR. NICOLAS TRUCHON:** There is -- the challenge we have is  
25 RTG obviously does the transition between OLTRC and RTM. As we get -- for the  
26 period I was involved with the project, obviously more than involved with RTM than I  
27 would be with OLRTC just because RTM does -- is the primary contractor for the current  
28 term. We try to deal with them on an arm's length basis but we still need to realize that

1 we depend on each other to deliver the service.

2 When there are issues between RTM and OLRTC they're invited to  
3 address those issues directly between themselves and only escalate when they're  
4 unable to get to a resolution. And that's when they bring in RTG.

5 **MR. JOHN ADAIR:** I'm actually more interested in if the City has a  
6 problem and ignore OLRTC. Let's just say it's maintenance. Ignore warranty claims.  
7 It's just a maintenance issue. If the City has a problem, they go to RTG?

8 **MR. NICOLAS TRUCHON:** Yes.

9 **MR. JOHN ADAIR:** That's the way it's supposed to work?

10 **MR. NICOLAS TRUCHON:** That is the way it's supposed to  
11 work.

12 **MR. JOHN ADAIR:** And then RTG goes to RTM which RTG treats  
13 as an arm's length third party?

14 **MR. NICOLAS TRUCHON:** That is correct.

15 **MR. JOHN ADAIR:** So RTG's perspective is no different than if it  
16 were a completely unrelated company?

17 **MR. NICOLAS TRUCHON:** In principle, yes.

18 **MR. JOHN ADAIR:** And then RTM goes to Alstom if it's a train  
19 issue, for example?

20 **MR. NICOLAS TRUCHON:** If it's a --- RTM would go to Alstom if  
21 it's an Alstom maintenance issue and that could be -- that could involve a train but it  
22 could also involve elements of the infrastructure which are in the Alstom maintenance.

23 **MR. JOHN ADAIR:** And so I'm just curious from the City's  
24 perspective, does it create a problem that the City's maintenance issue, assuming it's a  
25 train issue and one that ultimately falls within Alstom's responsibility -- does it create a  
26 problem for the City that rather than just being able to go directly to Alstom, it has to go  
27 through RTG which then goes through RTM which then goes to Alstom?

28 **MR. NICOLAS TRUCHON:** We need to follow the Project

1 Agreement and we need to follow the subcontracts that are in place so that if we follow  
2 the process -- and we're more than happy to make RTM -- and we've made RTM  
3 available directly to the City with RTG in presence. And the same thing with Alstom  
4 maintenance in terms of participating all three entities in discussions with the City to  
5 address issues.

6 We certainly don't want to be locked up in the situation where  
7 everything happens in the letter by way of a formal correspondence because organically  
8 the parties need to talk to each other in order to resolve and ensure that issues properly  
9 get dealt with. And if some issues need to be documented then they are documented  
10 through the formal channels.

11 **MR. JOHN ADAIR:** So I have no doubt that you have to follow the  
12 Project Agreement. My question is a little bit different. Is the fact that there are so  
13 many layers between the City and the key party like Alstom -- does that create difficulty  
14 from a communications and relationship management perspective? It seems to me that  
15 it would. But you're in the project; I'm not.

16 **MR. NICOLAS TRUCHON:** It is -- it does add a layer of  
17 complexity. But when it comes to the full scope of operation, you know, RTG has  
18 subcontracted the full scope of operations to RTM. And that is the mechanism that we  
19 do. So RTM does deal with the City on a daily basis to keep the system operating and  
20 address operating issues. And so there is some measure of bilateral discussion. I don't  
21 think RTG should be seen as a step in the road for the City to have discussions with  
22 RTM directly and with RTM through to Alstom maintenance.

23 **MR. JOHN ADAIR:** Okay. Just sticking with the theme of sort of  
24 communication and relationship management and alignment here, but also circling back  
25 to where I was at the outset when I was asking you about a bid proponent making it  
26 clear to the public entity partner, the City, that there is a benefit in terms of alignment  
27 and single point of contact in communication and integration. It seems to me, sir -- and  
28 I'm asking you for your view on this -- that that aspect of this project really failed in terms



1 of the communication and alignment one would hope to see where it's a single  
2 proponent rather than the City having contracts with different parties.

3 And I'll just give you an example.

4 Mr. Guerra testified earlier today that RTM was not aware that the  
5 system wasn't ready to be opened when it was, in fact, open for the public, and that  
6 seems like a real failure of communication and a failure of relationship management.  
7 I'm wondering if you can comment on both whether you agree with me that that's a  
8 failure of communication or relationship management, and also whether you think that  
9 that perceived benefit was actually borne out in this project?

10 **MR. NICOLAS TRUCHON:** The -- I'm afraid I was not there at that  
11 time, so it's hard for me to comment. But based on the information that's been made  
12 available to me, I would say that the transition into Revenue Service could have been  
13 done very differently for the benefit of all parties. So if there -- you know, the concerns  
14 that are voiced by Mr. Guerra, I think, are legitimate, based from an RTM perspective,  
15 as well as from an OLRTC perspective.

16 If we get back into context, the transition into Revenue Service  
17 occurred after 15 months of delay with significant financial implications on the  
18 consortium. There was a clear desire to meet all the PA requirements and tick all the  
19 boxes, and now -- and to try to do it on a timely basis.

20 So then -- and I'm -- but I'm clear in my mind that things could have  
21 been done a whole lot differently for the benefit of the project.

22 **MR. JOHN ADAIR:** Yes. So let me just follow up on two parts of  
23 your answer. One, when you say that there was a 15-month delay and a clear financial  
24 impetus to get to RSA, are you acknowledging that RTG's decision making with respect  
25 to RSA was significantly affected by the fact that it was waiting for payment?

26 **MR. NICOLAS TRUCHON:** What I would say is, the Project  
27 Agreement was very clear as to what conditions needed to be satisfied, and the parties  
28 worked towards satisfying all these conditions. And you know, the system was

1 accepted by -- well, was submitted to all the parties, whether they are the City or the  
2 independent certifier or RTM, as being ready to start Revenue Service, and that's the  
3 big -- at the end of the day, there's very little discussion. Those are conditions. If the  
4 conditions are met, then we can progress to the next phase, whether or not -- I think the  
5 question should be whether or not those conditions should have been a little more all-  
6 encompassing, perhaps that is more of the question. But I wasn't there at that time to  
7 address that. But if OLRTC satisfied the condition and it was certified by all the  
8 governments that was involved around that date, there was little room for anybody to  
9 raise the hand and say, "Well, I'm sorry, I don't think we're ready." You know, it's all  
10 about the -- it's all about satisfying the conditions for Revenue Service.

11 **MR. JOHN ADAIR:** Let me just put it to you very directly. Is it your  
12 view -- and I appreciate you weren't there -- but when you do come on the scene,  
13 there's a little bit of retrospective work that has to happen to understand where things  
14 are and why they are where they are -- is it your view that on the RTG side, that better  
15 decisions should have been made and would have been made, were it not for the desire  
16 to achieve the financial component of RSA?

17 **MR. NICOLAS TRUCHON:** Yes.

18 **MR. JOHN ADAIR:** Okay. And then just coming back to where my  
19 question was a couple of minutes ago before I took us on that little tangent as a result of  
20 your answer, how does it happen that where you have this intention that you're going to  
21 have a single point of contact and that's going to improve integration, and that's going to  
22 improve communication, how does it happen that the maintenance side doesn't know  
23 that the system's not ready for opening when it's open?

24 **MR. NICOLAS TRUCHON:** I don't know. I don't think I have an  
25 answer for that.

26 **MR. JOHN ADAIR:** Okay. You'd agree with me that that's a  
27 serious problem?

28 **MR. NICOLAS TRUCHON:** It is concerning.

1                   **MR. JOHN ADAIR:** And do you have any sense of whether that  
2 failure was caused by structural issues as opposed to just things not being done  
3 particularly well within a structure that was otherwise fine?

4                   **MR. NICOLAS TRUCHON:** What I would say is, again, based on  
5 my personal experience, is when you have a line of sight on the substantial completion  
6 date, things can happen really quickly. And you know, as you approach those  
7 conditions, it's not -- you know, you work really hard to get the final conditions ticked off,  
8 and then it's handed over and the other party takes it. But there's -- but let's not  
9 underestimate the amount of work that takes place between the time that, you know, the  
10 maintainer would mobilize and the time that they have to effectively take ownership.

11                   And when the project is delivered, the physical part of the project  
12 gets delivered, then -- and it's entirely normal that some of the documentation may  
13 come forward subsequent to that date.

14                   So there is the physical readiness in terms of having the  
15 infrastructure built and ready to be -- to move on to the next phase, but it's -- it is a  
16 challenge for the maintainer to keep up and be effectively proactively deployed. But it's  
17 not a challenge that's unique to Ottawa or OLRT. It's, I think -- I personally think it's a  
18 challenge on every project.

19                   **MR. JOHN ADAIR:** Right. But presumably, a challenge that can  
20 be met if the maintainer is brought into the piece -- I'm not even going to say at an early  
21 stage -- but months, just a few months earlier so that the maintainer can really get a  
22 sense of where the system's at at that stage?

23                   **MR. NICOLAS TRUCHON:** I don't believe ---

24                   **MR. JOHN ADAIR:** That's one way of meeting the challenge?

25                   **MR. NICOLAS TRUCHON:** Yes, but I don't believe in our case the  
26 maintainer was late coming to the party, to use the analogy. I think maybe it's a  
27 question of what they focused on versus what they should be focusing on. And I must  
28 say that, you know, the volume of issues we had to deal with in the early months of

1 operation certainly wasn't expected or anticipated, and you know, I don't -- you can  
2 prepare for a storm, but you never quite know how big the storm will be. And I think  
3 that's how the -- that would probably be the best qualifier to address, you know, the  
4 volume of work that needed to happen in the early days post-Revenue Service.

5 **MR. JOHN ADAIR:** Okay. And just lastly on this, is it your view,  
6 sir, that the perceived benefit of integration and communication was not realized on this  
7 project?

8 **MR. NICOLAS TRUCHON:** Not as -- certainly, didn't live up to our  
9 expectations.

10 **MR. JOHN ADAIR:** Okay. Mr. Truchon, I just want to ask you a  
11 couple of questions about the P-3 Model, which is something I understand you had  
12 some experience, some significant experience advising on prior to becoming involved in  
13 individual projects. And you mentioned earlier the Alliance Model not having been  
14 around in 2012. Can you just help us understand what the Alliance Model is and what's  
15 sort of motivating a turn towards that model in the industry, if, in fact, I have that right,  
16 that there is a turn?

17 **MR. NICOLAS TRUCHON:** I can only speculate. I can give you  
18 my personal opinion, but I don't know if that's going to be entirely fulsome, because I  
19 have personally never been exposed to the Alliance Model.

20 I do understand that there is a desire to move away from a very,  
21 very rigid risk transfer provision, based on concerns that are being experienced. I think  
22 the level of risk transfer that's implied into the what I would refer to as the classic P-3  
23 Model, it does work, in certain asset classes that probably has challenges in others.

24 And you know, as much as the -- you know, it's one thing to  
25 assume the risk, and like, and parties are prepared to assume the risk, but there are  
26 provisions and conditions over which the risk can be assumed, and some of those  
27 conditions, when the risk does materialize, do test the limits of the model and makes it  
28 very difficult for the private sector to keep its part of the equation, leading to projects

1 that probably have bigger losses than expected.

2 But I wouldn't want to go further than that, because I'm not  
3 speaking of -- from a firsthand knowledge perspective.

4 **MR. JOHN ADAIR:** Okay. Do you have a sense of the types of  
5 projects, even just at the highest level, where the risk allocation that you see typically in  
6 a P-3 Model is more suitable versus the types of projects where a more collaborative  
7 approach to risk is more suitable?

8 **MR. NICOLAS TRUCHON:** I would probably say a project where  
9 the risks are significant and difficult to neutralize or to -- for the private sector to  
10 effectively assume that risk. I think those would be good candidates for this kind of  
11 model. But you know, again, I'm very -- I'm not sure I'm speaking within my expertise  
12 right now.

13 **MR. JOHN ADAIR:** Understood. I don't want to take you too far  
14 into something where you don't feel comfortable giving evidence, but let's come back to  
15 the specifics of this project for a minute, and I'm just going to ask for another document  
16 to be called up, please. It's RTM592807.6.

17 **--- EXHIBIT No. 321:**

18 RTM00592807.0006 – OLRT Lessons Learned Mitigation  
19 Plan / 11 – Resources March 2021

20 **MR. JOHN ADAIR:** And Mr. Truchon, you should have on your  
21 screen in front of you, another of the lessons-learned documents that SNC produced in  
22 March of 2021, this one being entitled "Mitigation Plan Resources". And the issue that  
23 is stated there is insufficient resources being added to the project at bid time and then a  
24 misunderstanding of the level of skill required, et cetera. You can obviously see it for  
25 yourself. I give you that just so you have the context. And I'm going to ask us if we can  
26 come down into the "Findings" section. That's great. Thank you. I'll give you a minute  
27 just to read that to yourself, Mr. Truchon, and then we'll go through, perhaps, some of  
28 the bullet points.

1 **MR. NICOLAS TRUCHON:** Okay.

2 **MR. JOHN ADAIR:** Just dealing with the bullet points, Mr.  
3 Truchon, if you just take a look at the first one where it says:  
4 "Staffing hire did not have the qualifications or experience of the complexity of the  
5 work." (As read).

6 Just pausing there and recognizing that you were not involved at  
7 the early stage but you saw the consequences of decisions that were made at the early  
8 stage of the project, was it your experience that insufficient had been devoted to the  
9 project and that contributed to some of the problems that were apparent when you took  
10 on your role?

11 **MR. NICOLAS TRUCHON:** I think the -- the first bullet doesn't  
12 speak to insufficient resources. I think it speaks to qualifications and experience. I think  
13 what -- what I read from this point -- and again, not having been a party to discussions --  
14 is that when you start an LRT project in a new city that has probably a skill -- you know,  
15 a workforce that there's only a handful of members of the population that have the  
16 relevant qualifications and experience of running an LRT, that can become a bit of a  
17 challenge, especially if you need to staff an organization from -- from scratch.  
18 Obviously, there's talent that can be brought from other geographical locations to  
19 support, but there is bit -- I can see a bit of a challenges in terms of finding specialized  
20 technicians on some of the trades that OLRTC and RTM would have been employing.

21 **MR. JOHN ADAIR:** And did you ever have occasion to discuss  
22 with anyone from SNC their conclusion that the staff who were brought in were not  
23 sufficiently qualified or experienced given the complexity of the job?

24 **MR. NICOLAS TRUCHON:** I know from discussions with RTM  
25 that, you know, hiring with the right qualifications of experience to operate and maintain  
26 a complex LRT system, whether or not we're talking about the track, infrastructure, the  
27 communication systems, the vehicles, you know, not having a big labour pool to draw  
28 from, in terms of competitors, could be a bit -- is a challenge. And I think that depends

1 on the ability of the employer to develop to develop robust training program to  
2 effectively build and grow that skillset.

3 I don't think -- I don't think I can -- I don't think we can find on  
4 Indeed the -- I'm sorry; that's not appropriate -- but, you know, the kind of skills -- having  
5 somebody with 20-years of experience -- you know, there is a labour pool. I'm not  
6 saying that they don't exist, but I wouldn't say that it is a very wide labour pool, and  
7 there's quite a bit of training that needs to come to those individuals before they are  
8 effectively fully capable of performing their functions. And I think this is what I'm reading  
9 from the first bullet.

10 **MR. JOHN ADAIR:** Okay. And then if we can just scroll down into  
11 the "Overview" section -- that's perfect, thank you. So in terms of the "Overview"  
12 section, Mr. Truchon, just take a minute and read that yourself. Let me know when  
13 you've had a chance to do so, please.

14 **MR. NICOLAS TRUCHON:** Yes.

15 **MR. JOHN ADAIR:** And just trying to summarize that, hopefully,  
16 fairly, do we agree that it effectively says that the -- this group's conclusion was that the  
17 proper resources need to be devoted to the project from the start?

18 **MR. NICOLAS TRUCHON:** Yes.

19 **MR. JOHN ADAIR:** And sir -- and I ask this respectfully, but isn't  
20 that kind of obvious that the proper resources need to be devoted to a project of this  
21 size and complexity from the start?

22 **MR. NICOLAS TRUCHON:** Yes.

23 **MR. JOHN ADAIR:** Do you have any sense at all of why that  
24 wasn't done here ---

25 **MR. NICOLAS TRUCHON:** No.

26 **MR. JOHN ADAIR:** --- beyond what you've already about the  
27 labour market?

28 **MR. NICOLAS TRUCHON:** No.

1                   **MR. JOHN ADAIR:** Okay. There's an underlying portion in the --  
2 at the end of the first paragraph here that emphasizes that:

3                                    "These lessons have to be applied to future projects  
4                                    since we..."

5                   Which I assume means SNC-Lavalin:

6                                    "... did not apply them from Canada Line nor Trillium  
7                                    on this issue, resulting in an overrun in costs related  
8                                    to staffing the projects." (As read).

9                   Do you have any sense of what those lessons were from the  
10 Canada Line or Trillium that are being referred to here?

11                   **MR. NICOLAS TRUCHON:** No, I don't.

12                   **MR. JOHN ADAIR:** Okay. And we can take that down now,  
13 Mitchell, thank you. And sir, is it also the case that, to the extent -- leaving aside for a  
14 minute the extent to which either insufficient staffing was in place from the start, or  
15 staffing without the right qualifications and experience, is it also the case that that  
16 continued into the maintenance period?

17                   **MR. NICOLAS TRUCHON:** I would say yes.

18                   **MR. JOHN ADAIR:** And I had understood from your evidence  
19 when you were interviewed formally by Commission counsel that your view, after you'd  
20 arrived and had an opportunity to get the lay of the land, was that the maintenance  
21 group was properly resourced if one were dealing with a 20-year or mature LRT system  
22 where all of the early kinks had been worked out; is that fair?

23                   **MR. NICOLAS TRUCHON:** That is my -- that is part of my  
24 evidence.

25                   **MR. JOHN ADAIR:** And is the implication of that that the  
26 maintenance group was not properly resourced to deal with a new system such as this  
27 one?

28                   **MR. NICOLAS TRUCHON:** That would be a -- that would be



1 correct.

2 **MR. JOHN ADAIR:** And sir, there's been evidence over the course  
3 of the public hearings that we've been holding over the last several weeks with respect  
4 to options and things that can be done to account for some of the growing pains that  
5 might exist with a new system, so, for example, a soft start and a bedding-in period.  
6 Those are terms that are familiar to you?

7 **MR. NICOLAS TRUCHON:** Yes, they are.

8 **MR. JOHN ADAIR:** And you're, at some level, aware that those  
9 are some of the issues that have been discussed at this stage about, "Should different  
10 decisions have been made?"

11 **MR. NICOLAS TRUCHON:** Yes.

12 **MR. JOHN ADAIR:** And is it fair to say that if RTG believes that a  
13 soft start is necessary in order to ensure that the system, once opened, is performing  
14 reliably, that's something RTG could negotiate at the outset of the contract?

15 **MR. NICOLAS TRUCHON:** At the outset of the contract? I  
16 suspect this is probably something that could have been brought up in the bilateral  
17 discussions with the City. But as we say, you know, we're bidding a contract, we're on  
18 of three. The City is not compel to accept what is being suggested by one of the  
19 proponents. It's entirely within their prerogative and, based on their assessment of how  
20 they would like to see the project delivered, that this -- to accept or reject whatever  
21 comments, you know, bidders would make at the bid stage.

22 **MR. JOHN ADAIR:** I understand that. And I understand that RTG  
23 is not in a position in the bid, and in the contract negotiation stage, it's not in a position  
24 to force the City to do anything. That's obvious. But it is in a position to say, "We have  
25 experience with these large infrastructure projects. There's a lot of -- a ton of new  
26 aspects of this particular project. It is going to be a significant mistake not to have a soft  
27 start, and we're recommending to you." Certainly, that could happen, correct?

28 **MR. NICOLAS TRUCHON:** Yes.

1                   **MR. JOHN ADAIR:** And so it is an issue that is, to a considerable  
2 degree, within RTG's control to emphasize for the public-entity customer the importance  
3 of that kind of measure?

4                   **MR. NICOLAS TRUCHON:** Yes.

5                   **MR. JOHN ADAIR:** And the same would be true of a bedding-in  
6 period?

7                   **MR. NICOLAS TRUCHON:** Yes.

8                   **MR. JOHN ADAIR:** And are you aware one way or the other of  
9 whether those discussions took place at the outset?

10                  **MR. NICOLAS TRUCHON:** I understand there has been  
11 discussions, but again, that would be -- I hope this would have been part of the  
12 evidence of my predecessor.

13                  **MR. JOHN ADAIR:** Okay. Coming to the relationship with the City  
14 when you became CEO in July of 2020, I understand that the main issue that you came  
15 to appreciate as you started to understand the situation -- that the main issue was one  
16 of trust as between the City and RTG/RTM.

17                  **MR. NICOLAS TRUCHON:** Trust is certainly a significant element.  
18 When I joined in July of 2020, there was a lot of, I would say, baggage that needed to  
19 be dealt with. First and foremost was to start getting paid, and that was I think the top  
20 priority. In order to get paid, we have to deliver safe, reliable service, which we work  
21 very actively on -- Mario and myself, Mr. Guerra and myself. We certainly had to turn  
22 around the organization in terms of streamlining relationships with the City as well as  
23 within the supply chain, and effectively try to finish what had been initiated by my  
24 predecessor in terms of the remedial plan actions being delivered and try to work to  
25 satisfy some of the concerns that had been articulate by the City, which we work  
26 actively on.

27                  **MR. JOHN ADAIR:** And how would you describe the situation as it  
28 exists today in terms of the trust that exists between the City and RTG?

1                   **MR. NICOLAS TRUCHON:** I certainly see a lot of improvement,  
2 but we've always known that with good, reliable, safe service -- delivering safe, reliable  
3 service is a condition precedent to a stable relationship with our client because this is  
4 what they pay us to deliver to them. So the improvements that have been made  
5 subsequently in the last few months are paying off. I would say that some of those  
6 improvements have been taking place over the last two years that I've been in the  
7 position. They may have been overshadowed by the derailment events that we had, but  
8 set aside those two derailment events, the performance was fairly stable since, I'd say,  
9 August of 2020.

10                   Obviously we had the cracked wheel incident, which happened in  
11 my first month. It took us quite a bit of time to fully recover, but in terms of -- if we set  
12 aside the performance for July 2020 and the two derailments, which are specific finite  
13 incidents, the rest of the performance has been, I would say, satisfactory. So the issues  
14 that we had prior to me arriving on the project, and more specifically the start-up of 2019  
15 and the winter of 2020 -- we certainly haven't seen nearly the same volume of  
16 operational issues on the line since I joined the project in July of 2020.

17                   **MR. JOHN ADAIR:** Okay. And just following up on your answer, I  
18 understood you to say that whatever relationship problems maybe have existed, the  
19 number one issue that has to be addressed is providing safe and reliable service, not  
20 just because that's what the public deserves -- that, of course, everyone accepts -- but  
21 also because the only way you can have a good relationship with the City is if you  
22 deliver what you promise to deliver.

23                   **MR. NICOLAS TRUCHON:** This is what we signed up for.

24                   **MR. JOHN ADAIR:** Right. So to the extent that the City has been  
25 criticized at times by parties for taking too punitive an approach to issues that have  
26 arisen during the maintenance period when you've been around, is it fair to say that that  
27 is a reaction to RTG and RTM failing to deliver the service that the City expected under  
28 the contract?

1                   **MR. NICOLAS TRUCHON:** Yes, but what is -- the other point I  
2 would put forward to this group is even when we have good, safe, reliable service, there  
3 are still fundamental issues with the contract, which we are trying very hard to address  
4 with the City and so far haven't yet concluded. The way the performance gets managed  
5 into our contract, a lot of focus is put on the reliability and the customer-facing elements.  
6 But every month, there are still open-ended issues with the City with respect to how  
7 they interpret the rights that they have within the contract and levy deductions for things  
8 that are not related to service. That remains an open-ended issue with the City that will  
9 need to get resolved because it is still very disruptive in the relationship within my  
10 supply chain.

11                   **MR. JOHN ADAIR:** And that's something, as I understand it, that  
12 is, and has been for quite a while, under review as between RTG and the City.

13                   **MR. NICOLAS TRUCHON:** That is correct.

14                   **MR. JOHN ADAIR:** And is it the case that RTG and the City have  
15 not yet agreed on how to solve that problem but they are nonetheless engaged in good  
16 faith?

17                   **MR. NICOLAS TRUCHON:** Yes.

18                   **MR. JOHN ADAIR:** On both sides you say that?

19                   **MR. NICOLAS TRUCHON:** I would say especially more recently.  
20 Again, the derailment created a need for change. My partners, my sponsors, my  
21 subcontractors -- I'd like to believe everybody stepped up. We've implemented many of  
22 those changes that were being requested of us. We are still implementing those  
23 changes. I'm not saying it's mission complete; there's still some work that's left to be  
24 done. And that is creating I think a constructive environment to have constructive  
25 discussions with our client.

26                   **MR. JOHN ADAIR:** All right. And you said a moment ago that the  
27 derailment in, we'll call it, fall 2021 -- late summer, fall 2021 -- created the need for, and  
28 a strong impetus for, change in terms of the approach to maintenance resources being

1 devoted, et cetera. It does raise the question of why it took that long and that event to  
2 properly motivate the parties responsible for maintenance, right? Because the  
3 maintenance had been a real problem even from trial running. So do you have a sense  
4 or an explanation of why it took so long for RTG, RTM, Alstom to change their  
5 approach?

6 **MR. NICOLAS TRUCHON:** I think my personal opinion -- because  
7 again, this is how RTM manages their relationship with Alstom -- the issues that we had  
8 with the second derailment are not unique to RTG or RTM or Alstom maintenance.  
9 Anybody is exposed to a human error. That's why we have processes that are in place,  
10 and those processes need to be followed, and we have safeguards in terms of  
11 oversight, quality assurance. But as far as we're concerned, following the derailment,  
12 we did implement a number of measures. But I think the biggest improvement is how  
13 things were handled between the City, their advisors, RTM, and Alstom maintenance,  
14 because there is a collaborative factor, in terms of transparency, that's being provided in  
15 terms of making sure that the City is aware of the day-to-day issues that get identified.  
16 So I think we've broken a few silos following the derailment and changing the way we  
17 approach the service delivery, and that has had significant impacts in terms of  
18 improving the relationship with our client.

19 **MR. JOHN ADAIR:** Okay. And just to follow up on my question, to  
20 put it more directly perhaps, isn't it fair to say that the change to the relationship you've  
21 just described and the change to the resources and the approach to maintenance -- all  
22 of those changes really should have taken place long before the derailments?

23 **MR. NICOLAS TRUCHON:** I would say yes. Theoretically, I think  
24 we're delivering -- the way the organization has evolved as a result of the derailment is  
25 different than what it was prior to the derailment, and we think it's for the better.

26 **MR. JOHN ADAIR:** All right. Those are all my questions for you,  
27 sir. Thank you.

28 **COMMISSIONER HOURIGAN:** All right. We're going to take the

1 afternoon break, and we'll be back after 15 minutes.

2 **THE REGISTRAR:** Order. All rise. The hearing will recess for 15  
3 minutes.

4 --- Upon recessing at 3:48 p.m.

5 --- Upon resuming at 4:00 p.m.

6 **COMMISSIONER HOURIGAN:** Next up is the City of Ottawa.

7 **MR. JESSE GARDNER:** Thank you, Mr. Commissioner.

8 **--- CROSS-EXAMINATION BY MR. JESSE GARDNER:**

9 **MR. JESSE GARDNER:** Good afternoon, Mr. Truchon.

10 I think you might still be on mute.

11 **MR. NICOLAS TRUCHON:** How about now?

12 **MR. JESSE GARDNER:** Great.

13 **MR. NICOLAS TRUCHON:** Thanks.

14 **MR. JESSE GARDNER:** Mr. Truchon, you've been -- or you joined  
15 Rideau Transit Group in July of 2020; is that correct?

16 **MR. NICOLAS TRUCHON:** Correct.

17 **MR. JESSE GARDNER:** So it was about nine and a half months  
18 after revenue service availability which was August 30<sup>th</sup>, 2019, right?

19 **MR. NICOLAS TRUCHON:** Yes.

20 **MR. JESSE GARDNER:** So nine and a half, almost 10 months into  
21 the maintenance term?

22 **MR. NICOLAS TRUCHON:** Yes.

23 **MR. JESSE GARDNER:** Okay. And just to be clear, you weren't  
24 involved -- I think you said earlier in your examination with Commission counsel, you  
25 weren't involved prior to that, so no involvement in the design and construction,  
26 achievement of a substantial completion or RSA and trial running; is that right?

27 **MR. NICOLAS TRUCHON:** That is correct.

28 **MR. JESSE GARDNER:** Okay. And, also, no involvement in the

1 launch, obviously, right?

2 **MR. NICOLAS TRUCHON:** That is correct.

3 **MR. JESSE GARDNER:** Okay. And you also weren't involved in  
4 the project when the City first issued its notice of Project Co. event of default on March  
5 10<sup>th</sup>, 2020, right?

6 **MR. NICOLAS TRUCHON:** Correct.

7 **MR. JESSE GARDNER:** Okay. And you haven't previously,  
8 before this project, been involved in the maintenance of a transit system such as an  
9 LRT or an subway system; is that right?

10 **MR. NICOLAS TRUCHON:** That is correct.

11 **MR. JESSE GARDNER:** Okay. So you'd agree with me that after  
12 revenue service availability is achieved, there is a 30-year maintenance term on this  
13 project, right?

14 **MR. NICOLAS TRUCHON:** Yes. Well, technically, 30 years after  
15 revenue service availability. That is correct.

16 **MR. JESSE GARDNER:** Right. And you'd also agree, I take it,  
17 that during the maintenance term, maintenance services are to be performed by RTG to  
18 ensure that the system infrastructure and the vehicles satisfy the maintenance and  
19 rehabilitation requirements under the Project Agreement; is that right?

20 **MR. NICOLAS TRUCHON:** Yes.

21 **MR. JESSE GARDNER:** Okay. And given your experience, you'd  
22 agree that on a P3 project, payment to Project Co. during the maintenance term are  
23 based on performance of the system, including the availability and reliability of the  
24 system; that's how it works, right?

25 **MR. NICOLAS TRUCHON:** Yes.

26 **MR. JESSE GARDNER:** And for an LRT system, that means  
27 getting the vehicles out in the morning, achieving the service level, ensuring that there  
28 are no system events, and making sure the stations are available; is that right?

1 **MR. NICOLAS TRUCHON:** Yes.

2 **MR. JESSE GARDNER:** And you touched on it earlier with  
3 Commission counsel, but deductions are applied to payment during the maintenance  
4 term if performance requirements are not met; that's generally how it works, right?

5 **MR. NICOLAS TRUCHON:** Yes.

6 **MR. JESSE GARDNER:** And these deductions, they're not  
7 arbitrary; they're set out in the Project Agreement, right?

8 **MR. NICOLAS TRUCHON:** Yes, there are deductions defined in  
9 the Project Agreement.

10 **MR. JESSE GARDNER:** And it's the proponent, right, who prices  
11 these payments and -- the maintenance payments in their proposal; is that right?

12 **MR. NICOLAS TRUCHON:** The proponent does price their  
13 appreciation of risks and deductions ---

14 **MR. JESSE GARDNER:** Well ---

15 **MR. NICOLAS TRUCHON:** --- based on an understanding of the  
16 contract. That is correct.

17 **MR. JESSE GARDNER:** And would you agree me that Alstom is  
18 best placed to maintain the vehicles given that they are designed and built by Alstom?

19 **MR. NICOLAS TRUCHON:** That is the reason we've given  
20 Alstom the maintenance subcontract to look after the vehicles as part of our team.

21 **MR. JESSE GARDNER:** We have heard this week of a number of  
22 issues relating what seemed to be disconnects between Alstom Supply and Alstom  
23 Maintenance. Wouldn't you agree that having Alstom Supply provide the trains and  
24 Alstom Maintenance provide maintenance services, shouldn't that result in a smoother  
25 delivery of performance on the system rather than if a different company was  
26 maintaining as opposed to building the trains?

27 **MR. NICOLAS TRUCHON:** Well, I'd like to believe that we  
28 certainly avoid a number of issues by having the same vehicle supplier that is also the



1 vehicle maintainer.

2 **MR. JESSE GARDNER:** Right. So it's fair to say that it's a good  
3 idea to have the same company build and then maintain the vehicles but, in this  
4 instance, there have still be problems on that front; is that fair?

5 **MR. NICOLAS TRUCHON:** Yes.

6 **MR. JESSE GARDNER:** And in each contract month, Project Co.  
7 is to measure the performance of the maintenance services in -- for that applicable  
8 contract month, and failure points may be awarded based on performance; is that right?

9 **MR. NICOLAS TRUCHON:** That is the way the contract is  
10 structured.

11 **MR. JESSE GARDNER:** Right. And the categories of failure  
12 points which may be allocated to RTG include availability failures, system events,  
13 service failures, and quality failures; is that right?

14 **MR. NICOLAS TRUCHON:** That is correct.

15 **MR. JESSE GARDNER:** And Appendix C of Schedule 20 to the  
16 Project Agreement sets out specific objective failure points that apply to those  
17 categories I just covered based on specific circumstances that might occur in the  
18 performance of the maintenance services; is that right?

19 **MR. NICOLAS TRUCHON:** That is the way the schedule is  
20 structured.

21 **MR. JESSE GARDNER:** And so workorders would not affect  
22 availability or system event failures; is that right?

23 **MR. NICOLAS TRUCHON:** I would not agree with that  
24 statement.

25 **MR. JESSE GARDNER:** Okay. You were asked about lessons  
26 learned on the project. You discussed the financial burden on the project in the face --  
27 or on Project Co. in the face of delays and issues on the project. Do you recall having  
28 that discussion with Commission counsel?

1 **MR. NICOLAS TRUCHON:** Yes, I do.

2 **MR. JESSE GARDNER:** So I'd like to clarify your evidence here.  
3 So where the dispute resolve our first instance, in this case, the independent certifier  
4 determines that Project Co. is responsible for delays -- so when that determination is  
5 made that a public owner such as the City, which is funded by taxpayers, should cover  
6 the cost to help out Project Co.?

7 **MR. NICOLAS TRUCHON:** Can you repeat the question.

8 **MR. JESSE GARDNER:** Sure.

9 **MR. NICOLAS TRUCHON:** I just to make sure that I fully  
10 understand the question.

11 **MR. JESSE GARDNER:** Sure. So in a scenario ---

12 **MR. NICOLAS TRUCHON:** M'hm.

13 **MR. JESSE GARDNER:** --- where the decision-maker, or the  
14 dispute-resolver, the independent certifier, makes the determination that it's not the City  
15 but it's Project Co. that's responsible for delays -- in that scenario, are you suggesting  
16 that a public owner such as the City of Ottawa, who's funded by taxpayer money,  
17 should cover those costs or help out Project Co. financially even though Project Co. is  
18 responsible for the delays?

19 **MR. NICOLAS TRUCHON:** No.

20 **MR. JESSE GARDNER:** Okay. So you'd agree, then, that Project  
21 Co. -- if Project Co. is responsible for delays or issues on the project, taxpayers should  
22 not have to pay for those delays or issues, right?

23 **MR. NICOLAS TRUCHON:** I would say that the mechanism --  
24 and I'm just going to nuance my -- provide a bit of context, if you allow me. The  
25 contract, the Project Agreement, is a very complex agreement that covers a number of  
26 situations that are expected to take place. It does not cover everything. It doesn't  
27 contemplate every single scenario that could take place. However, when we look at the  
28 mechanism for a construction-related dispute, it takes us to the independent certifier,

1 which is essentially a cost expert. And then we ---

2 **MR. JESSE GARDNER:** So, Mr. Truchon, I don't mean to interrupt  
3 you. It's just ---

4 **COMMISSIONER HOURIGAN:** Sorry, let him finish his answer,  
5 please. Let him finish his answer. He said he wanted to give you some nuance. He's  
6 doing that. So let him answer.

7 **MR. NICOLAS TRUCHON:** So the independent certifier is first  
8 and foremost a cost expert. Where the issue becomes a little more of a contractual  
9 interpretation, I do believe, personally, that some of those disputes, if they're brought to  
10 the independent certifier, may not necessarily be the best party position, but if that's  
11 provided in the Project Agreement, we certainly need to follow it. And it is -- and the  
12 Project Agreement states that a decision by the independent certifier on matters that are  
13 within its scope are, effectively, the first step of a dispute. So I agree with your  
14 statement, but with the context that I did provide.

15 **MR. JESSE GARDNER:** Okay. And I do appreciate that context,  
16 but it's not quite an answer to my question. So just the last part of my question was,  
17 you'd agree with me that if Project Co. is responsible for a delay or an issue on a  
18 project, taxpayers shouldn't have to pay for those problems that are the responsibility of  
19 Project Co.; would you agree with that?

20 **MR. NICOLAS TRUCHON:** I agree if -- but if Project Co. is  
21 ultimately deemed responsible for a delay by a competent authority, yes, it's not the risk  
22 of the City; it is the risk of Project Co.

23 **MR. JESSE GARDNER:** Okay. And in relation to the discussion  
24 that we've heard from other witnesses and from yourself with Commission counsel on  
25 soft launch and bedding-in -- a bedding-in period, you would agree with me that this  
26 particular Project Agreement does not provide for either a soft launch or a bedding-in  
27 period; is that right?

28 **MR. NICOLAS TRUCHON:** That is the way the Project

1 Agreement is currently drafted.

2 **MR. JESSE GARDNER:** And wouldn't you agree with me that the  
3 best time to think about whether to have a soft launch or a bedding-in period would be  
4 at contract formation?

5 **MR. NICOLAS TRUCHON:** The best -- I believe that it is one  
6 moment where that decision needs to be made, but it doesn't mean that this decision  
7 should be set in stone. And depending on circumstances, given where we are, the  
8 parties are entirely within their discretion to revisit those assumptions. It wouldn't be the  
9 first and the last time. Then a change would have been done to the project agreement.  
10 But in order to do a change on the project agreement, it needs both parties' consent.

11 **MR. JESSE GARDNER:** So I take your point, Mr. Truchon, but  
12 you'd agree with me, I think, that the best time to have that discussion would be at  
13 contract formation and not right before the launch of the system or revenue service  
14 availability or even trial running, right?

15 **MR. NICOLAS TRUCHON:** I think at contract negotiation stage,  
16 discussions about a soft launch are very theoretical and abstract, and they become  
17 much more tangible as we approach revenue service.

18 **MR. JESSE GARDNER:** You'd agree with me that in the fall of  
19 2019, after the launch, a number of problems arose causing delays on the system,  
20 including in relation to the train control system and the vehicle passenger doors, by way  
21 of example. Do you recall that?

22 **MR. NICOLAS TRUCHON:** That is part of the evidence, yes.

23 **MR. JESSE GARDNER:** And you'd agree that as a result of those  
24 issues, the City repeatedly and consistently initiated single tracking and/or replacement  
25 bus service to mitigate the impact to customers.

26 **MR. NICOLAS TRUCHON:** The single tracking part is part of  
27 normal operating procedure for any railway, as I understand, and it's how railways  
28 address and deal with incidents. I don't think single tracking was a unique situation due

1 to the problems we had in 2019. It's still a part of the operating plan of, I think,  
2 Confederation Line and any other responsible transit authority.

3 **MR. JESSE GARDNER:** Right. And there were additional service  
4 problems in the winter of 2019 and 2020, including problems with the overhead  
5 catenary system, switch heater failures, and there were other issues as well. Do you  
6 recall that?

7 **MR. NICOLAS TRUCHON:** I do -- well, as far as the evidence.

8 **MR. JESSE GARDNER:** Yes. Now, you commenced work in July  
9 2020, so I take it you would have been aware of the significant wheel cracking issues on  
10 the vehicles, which occurred around that time. Do you recall that?

11 **MR. NICOLAS TRUCHON:** I would qualify the term "significant". I  
12 don't think I am qualified to make a statement about "significant". There were wheel  
13 cracks that were identified, but we didn't have a wheel failure. These were identified  
14 preventively.

15 **MR. JESSE GARDNER:** Well, you'd agree that as a result of the  
16 identification of the cracks in the wheels, the wheels needed to be replaced as a  
17 preventative measure. Is that right?

18 **MR. NICOLAS TRUCHON:** The wheels needed to be replaced in  
19 order to provide the highest level of safety assurance about the quality. They were  
20 replaced on the basis of safety to make sure that we don't take any irresponsible risks.

21 **MR. JESSE GARDNER:** Right. And it was an event or an issue  
22 that did need to be reported to the TSB; is that right?

23 **MR. NICOLAS TRUCHON:** That is part of the City's governance.

24 **MR. JESSE GARDNER:** So that did in fact occur. We can agree?

25 **MR. NICOLAS TRUCHON:** Yes.

26 **MR. JESSE GARDNER:** Okay. And the cracked wheel  
27 replacement was not complete until February 2022, so about 17 months. Is that your  
28 understanding?

1 **MR. NICOLAS TRUCHON:** That sounds right.

2 **MR. JESSE GARDNER:** Okay. And when you started work on the  
3 project in July of 2022, I take it you were aware that the City had delivered in March of --  
4 or sorry. You started work in July 2020, and I take it at that time you were aware that  
5 the City had delivered a notice of Project Co. event of default on March 10<sup>th</sup>, 2020, a  
6 few months before you joined. Is that right?

7 **MR. NICOLAS TRUCHON:** It was the first document on my desk.

8 **MR. JESSE GARDNER:** I was going to ask. As incoming CEO,  
9 that would be one of the first things you would look at, so I take it -- well, why don't I put  
10 it up on the screen -- or ask that it be put up on the screen? It's COW0523248. Okay.  
11 You obviously, I think, recognize this document, Mr. Truchon.

12 **MR. NICOLAS TRUCHON:** Yes.

13 **MR. JESSE GARDNER:** And it describes the Project Co. event of  
14 default and a number of events of default, and it says:

15 "Each default is described briefly below. RTG is  
16 aware of the details of its ongoing failure to design,  
17 build, and maintain a reliable system, and the ongoing  
18 nature of each of its defaults in relation to the system,  
19 given, for example, the project record  
20 correspondence." (As read)

21 And it goes on to describe the details of the defaults.

22 Now, I'd like to take you to page 2 -- page 3, actually. Okay, so if  
23 we look just above these charts here, it states:

24 "In particular, the City has assessed RTG's failure  
25 points, as shown in the IMIRS system, in respect of  
26 only vehicle availability, station availability, and  
27 system failures." (As read)

28 So in reading this letter, it was your understanding that the City was

1 issuing a notice of default in relation to those three categories of failures; is that right?

2 **MR. NICOLAS TRUCHON:** That is what is written.

3 **MR. JESSE GARDNER:** Right. And if we scroll down to the top of  
4 the next page, I want to focus on this paragraph here starting with "Under the project  
5 agreement". It states that:

6 "Under the project agreement, RTG is not entitled to  
7 any remedy for this default, as section 45.4 of the  
8 project agreement specifically omits sections  
9 45(1)(a)(x) to (xii). However, the City is prepared to  
10 allow RTG a reasonable period of time to remedy this  
11 default as with the other defaults, as described  
12 below." (As read)

13 So my question is, when you came on as CEO and reviewed this  
14 letter, you understood at that time that the City's position was that RTG was not entitled  
15 to cure this default but that the City was going to give RTG that opportunity. Was that  
16 your understanding?

17 **MR. NICOLAS TRUCHON:** Well, that is what is the City's position  
18 detailed in that letter.

19 **MR. JESSE GARDNER:** So I'm going to suggest to you -- and I'm  
20 not going to debate with you the provisions of the project agreement, but I'm just going  
21 to suggest to you that if the PA does say that there's no cure period for a failure point  
22 default and the City is offering RTG that opportunity to cure that default, wouldn't you  
23 agree with me that that would be a collaborative or cooperative effort by the City?

24 **MR. NICOLAS TRUCHON:** Again, that was before my time. I  
25 understand that we did respond -- that my predecessor did respond to the City's letter  
26 disputing the allegation of default. But again, I'm not qualified to have a discussion  
27 about whether or not there is or is not a default. That's outside of my jurisdiction.

28 However, what I can say is I think pragmatically the partners

1 acknowledged that there were actual problems, and a plan was put together to address  
2 those problems. The plan was submitted for the City's consideration. Although it was  
3 never formally approved, it was executed on with the implicit consent from the City. So  
4 although there is this thing about not being able to cure this kind of default, the way  
5 these defaults, in my experience, could be cured is usually through a remedial plan.  
6 Although we disagreed with the City's assessment, we did agree that actual work  
7 needed to take place to improve the safety and more of the reliability of the system,  
8 which is what my predecessor undertook to deliver.

9 **MR. JESSE GARDNER:** Okay. And I do appreciate that context.  
10 I'm going to ask you a specific question, though, acknowledging that we're not going to  
11 agree on the default. But you'd agree with me that if the City believed that it didn't have  
12 to give an opportunity to cure to RTG on this default but it did do that, that would be an  
13 example of the City wanting to work cooperatively with RTG to address these issues.  
14 Wouldn't you agree with that?

15 **MR. NICOLAS TRUCHON:** Whether or not it was the City's  
16 decision, all I know is the facts. And if the City was prepared to give us the ability to  
17 correct issues, whether in the context of the default or outside of the context of the  
18 default, the important thing for the population of Ottawa is that the issues were properly  
19 addressed and fixed, which is what we undertook to do.

20 **MR. JESSE GARDNER:** Okay. Thank you.

21 **MR. NICOLAS TRUCHON:** The obligation to fix the system is not  
22 on the City; it falls on RTG. And we took ownership and we delivered on our plan.

23 **MR. JESSE GARDNER:** Okay. Thank you. And I want to ask you  
24 a little bit about the defaults. I think you have acknowledged that RTG and its  
25 subcontractors, RTM and Alstom, are ultimately responsible for maintenance and for the  
26 derailments that occurred. Is that right?

27 **MR. NICOLAS TRUCHON:** We're responsible for maintenance  
28 and the derailment happened on our equipment, yes.



1                   **MR. JESSE GARDNER:** Okay. And you'd agree that it's normal  
2 that on a system like this that there would be service interruptions, but it's not normal  
3 and it wouldn't be expected that there would be multiple derailments, one with  
4 passengers on board, causing damage to vehicles. That's not a normal occurrence,  
5 right?

6                   **MR. NICOLAS TRUCHON:** That is probably one of the most  
7 unlikely incidents we can deal with.

8                   **MR. JESSE GARDNER:** Right. And the first derailment was  
9 caused by a defect or issue with axle bearing assembly, I believe you said. Is that  
10 right?

11                   **MR. NICOLAS TRUCHON:** I did not specifically say that, but it is  
12 the advice that we are getting from the experts so far.

13                   **MR. JESSE GARDNER:** Okay, that's fair.

14                   And the defect or the issue with the axle bearing assembly, would  
15 you agree with me that it would not have been identified if there was another week of  
16 trial running or maybe two weeks of trial running? It wouldn't have been identified; is  
17 that fair?

18                   **MR. NICOLAS TRUCHON:** That is correct.

19                   **MR. JESSE GARDNER:** Okay. What if the criteria for trial running  
20 had been different? Would you agree with me that it wouldn't have helped to identify  
21 that latent defect which wasn't identified for two years after launch?

22                   **MR. NICOLAS TRUCHON:** I'm not sure I want to qualify this as a  
23 latent defect, but I think it's a little premature.

24                   **MR. JESSE GARDNER:** Sure, that's fair. I can rephrase the  
25 question.

26                   **MR. NICOLAS TRUCHON:** We're talking about a unusual or a  
27 premature component failure that -- of a system in two and a half years of -- sorry, two  
28 years of operations. So we're obviously investigating that because that is certainly

1 premature and certainly not expected which is the work that's currently ongoing.

2 **MR. JESSE GARDNER:** Right. So taking it back to my question, I  
3 think I'll break it up a little bit. And you touched on it a little bit at the end. But if the trial  
4 running criteria had been different, you don't think it would have been identified; this  
5 issue with the axle bearing assembly wouldn't have been identified at that time? Is that  
6 fair?

7 **MR. NICOLAS TRUCHON:** In trial running it would have  
8 benefited the first, I'd say, seven months of operations but I don't think it would have  
9 had an impact on the axle bearing situation that we discovered in August of 2021, to  
10 answer your question.

11 **MR. JESSE GARDNER:** Yes, thank you.

12 And you'd agree that the City didn't do anything that caused the  
13 issue with the axle bearing assembly; is that fair?

14 **MR. NICOLAS TRUCHON:** No, I don't believe there is a  
15 responsibility of the City at this point. But the investigation is still ongoing. But nothing  
16 right now is pointing in that direction, if that's what you're asking.

17 **MR. JESSE GARDNER:** Right. Now, I believe there's an Alstom --  
18 and we've seen it during the course of the hearing -- but an Alstom report on the cause  
19 of the first derailment. And is it your view that that is an independent report that Alstom  
20 has provided?

21 **MR. NICOLAS TRUCHON:** I don't believe it is an independent  
22 report because it was prepared by one of the interested parties.

23 **MR. JESSE GARDNER:** Okay. And I take it that RTG disagrees  
24 with Alstom's report with respect to the root cause of the derailment?

25 **MR. NICOLAS TRUCHON:** I'm not in a position to agree or  
26 disagree at this point. I think what we need -- what we identified is that the report wasn't  
27 complete and required a bit more perspective because it was essentially -- we felt -- we  
28 feel that there is a number of factors that might be relevant to the analysis that we

1 understand have not been taken into consideration. And this is why we are going to an  
2 independent third party to try to get visibility because for me what's important is  
3 resolving the issue. That is what I'm ultimately accountable to the City and this is what  
4 I've committed to the City to deliver on personally.

5 **MR. JESSE GARDNER:** Okay. All right. Thank you.

6 I want to talk to you just briefly about the second derailment. We're  
7 heard details about the cause of the second derailment but I think it's fair to summarize  
8 by saying that that a technician failed to torque bolts on a gearbox. Is that putting it in a  
9 fairly simple way; is that what your understanding is?

10 **MR. NICOLAS TRUCHON:** That is my understanding as well. **MR.**

11 **JESSE GARDNER:** Okay. Would you agree with me that this  
12 is a fairly serious human error on the part of Alstom, given the result, the derailment?

13 **MR. NICOLAS TRUCHON:** Obviously everybody is disappointed  
14 with this incident. I think it -- I personally see this as a reality check and certainly  
15 something that I would -- I hope in many years to come I'll be able to speak about how  
16 simple actions by employees on the floor can have pretty disruptive impact and  
17 ultimately could lead to a safety issue.

18 So I don't think any organization is effectively shielded. We can put  
19 all the best processes in place. We can have all the level of oversight and all the level  
20 of quality control. At the end of the day this remains risk mitigation strategy. Now when  
21 those prove ineffective, this is the outcome that we see today on the derailment is the  
22 outcome.

23 **MR. JESSE GARDNER:** And the reason I raise this point about  
24 the human error being the cause of the second derailment is because I want to ask you,  
25 you know, would you agree with me that the parties would not have known during trial  
26 running or before RSA that this sort of error would have happened two years into the  
27 revenue service?

28 **MR. NICOLAS TRUCHON:** I think I've already answered that

1 question. But I'll do it again. No.

2 **MR. JESSE GARDNER:** Thank you.

3 Would you agree with me that given what's gone on during the  
4 maintenance period -- we talked about a number of different failures, the derailments,  
5 it's reasonable that this City over the past two years has had some trust issues with  
6 RTG and its subcontractors in relation to the ability to provide the maintenance services  
7 on the project.

8 **MR. NICOLAS TRUCHON:** I think trust is a big word. At the end  
9 of the day what's important is communication, access, transparency. These are all part  
10 of our philosophy that we're trying to operate under. I think having the City into  
11 meetings directly engaging with RTM, Alstom over the issue, gives them the level of  
12 information that provides them with the comfort that things are properly addressed.

13 **MR. JESSE GARDNER:** And I think that answer describes kind of  
14 what would happen after. But my question is, in your view is it reasonable for the City to  
15 have some concerns, given what's gone on in the maintenance period about RTG's  
16 ability to provide the maintenance services on this project?

17 **MR. NICOLAS TRUCHON:** Their concerns are theirs. At the end  
18 of the day we still did provide safe reliable service except for three months. So it's hard.  
19 I'm not sitting on the City's side trying to understand but I can appreciate that someone  
20 from the outside looking in requesting information could get a bit frustrated and this is  
21 what we're specifically addressing in this new environment that we're in.

22 So I can't comment on the position of the City prior to the  
23 derailment. All I can say is it's a continuous improvement. We've made a number of  
24 strategic decisions to improve the relationship with the City by providing them access to  
25 first-hand information instead of two -- and then this has benefits and drawbacks.

26 **MR. JESSE GARDNER:** Okay. I'd like to move on. We can take  
27 this document down. Thank you.

28 You agree that on a P3 project, the Project Co., in this case RTG, is

1 responsible to the owner, in this case the City, for the performance of maintenance  
2 obligations including staffing the maintainer; is that right?

3 **MR. NICOLAS TRUCHON:** We're responsible for defining  
4 means and methods, resourcing that's required to deliver the performance  
5 specifications that we contracted with the City.

6 **MR. JESSE GARDNER:** Okay. And I think that answers my  
7 question.

8 **MR. NICOLAS TRUCHON:** Sorry, and staffing is a component of  
9 that.

10 **MR. JESSE GARDNER:** Yes, okay. Thank you.

11 And you'd agree that the City does not have control over RTG or its  
12 subcontractors staffing choices; is that fair?

13 **MR. NICOLAS TRUCHON:** To a certain extent. If the City has  
14 concerns about specific staff the City is well within their prerogative to request a  
15 replacement. But at the end of the -- as far shop employees or employees -- my  
16 comment relates to key individuals. But as far as actual employees, it's within my  
17 governance, RTM's governance and Alstom's maintenance governance to manage  
18 their employee relationships.

19 **MR. JESSE GARDNER:** Okay. And I take it you're familiar with  
20 Schedule 9 to the Project Agreement which deals with key individuals? Is that right?

21 **MR. NICOLAS TRUCHON:** That is correct.

22 **MR. JESSE GARDNER:** Okay. I'd like to bring up that schedule.  
23 It's COW289.

24 **--- EXHIBIT No. 322:**

25 COW0000289 – OLRT Project Agreement Schedule 9 Key  
26 Individuals

27 **MR. JESSE GARDNER:** So when we have the document up on the  
28 screen, if we could go to page 4 of the PDF, it's Part B, the -- yes.

1                   So in this section, actually, if we just scroll to the top of the next  
2 page above, sorry. You go up. Yeah. So right here, we see "Key Individuals  
3 Maintenance Services" at Part B, and then if we scroll down to page 4, we see that  
4 there are a total of four key individuals specific for maintenance.

5                   So there are -- I'm going to suggest to you, and we can look  
6 through the document if you'd like, but I'm going to suggest to you that there are 30 key  
7 individuals in this document and these are the 4 that are for the maintenance period. Is  
8 that your general understanding, Mr. Truchon?

9                   **MR. NICOLAS TRUCHON:** Yes, yes.

10                  **MR. JESSE GARDNER:** Okay. And one of these key individuals  
11 is the vehicle maintenance manager. Do you see that? It's the third one.

12                  **MR. NICOLAS TRUCHON:** Yes.

13                  **MR. JESSE GARDNER:** Okay. And you'd agree that it's RTG's  
14 obligation to ensure that these key individual roles are staffed with qualified individuals  
15 at all times, as -- because these roles are critical; is that right?

16                  **MR. NICOLAS TRUCHON:** These are key individuals, as --  
17 individuals that the City, in its contract, has identified as strategic to the delivery of the  
18 service, and for which the City has requested the ability to approve the candidates that  
19 are being put forward to make sure that they have their level of qualifications the City  
20 believes are adequate.

21                  **MR. JESSE GARDNER:** Okay. And we're going to get to some of  
22 those issues that you've just described, but can you agree with me that it's RTG's  
23 responsibility to staff these positions with qualified individuals, right?

24                  **MR. NICOLAS TRUCHON:** Our responsibility is to provide  
25 individuals which we believe are qualified, but ultimately, the decision sits with the City  
26 as to whether or not the City enjoy -- appreciates the level of qualifications for the  
27 individual, considering the role that's being put -- that this individual will assume in the  
28 organization.

1                   **MR. JESSE GARDNER:** Okay. So we can take this document  
2 down, and I'd like to now show you the main body of the PA. It's COW280.

3                   So if we could go to page 46 of the PDF, and if we scroll down -- I  
4 think we'll scroll down a little but further. I think we might have a problem with the page  
5 number so I'll just quickly track.

6                   **COMMISSIONER HOURIGAN:** What's the page number on the  
7 document?

8                   **MR. JESSE GARDNER:** It may be that it's 46. It's section 10.4(b),  
9 so if we just find the section number, we may be able to find it faster.

10                  **COMMISSIONER HOURIGAN:** Okay. Is that it?

11                  **MR. JESSE GARDNER:** So if you just scroll down to 10.4. This is  
12 a different version of it. Okay. There it is. Perfect.

13                  Okay. So Mr. Truchon, this is the key individual section, and I'm  
14 going to take you to 10.4(b). And it's describing the key individuals, and it says:

15                                 "The individuals who are critical to the performance of  
16                                 the maintenance services are identified in Schedule 9  
17                                 --- "

18                  Which we just looked at.

19                                 "--- and Project Co. shall use commercially  
20                                 reasonable efforts to ensure that such persons remain  
21                                 involved in the maintenance services as set out in  
22                                 Schedule 9." (As read)

23                  So that's your understanding of Project Co.'s obligation in relation  
24 to key individuals for maintenance; is that right?

25                  **MR. NICOLAS TRUCHON:** Yes.

26                  **MR. JESSE GARDNER:** Okay. And if we scroll to -- so we looked  
27 at section C below, the PA states that if Project Co. needs to replace a key individual  
28 set out in Schedule 9, it needs to provide the City with information on the proposed

1 replacement. It needs to consult with the City. RTG can't just replace an individual  
2 without prior consent. That's your understanding of RTG's obligation?

3 **MR. NICOLAS TRUCHON:** That is my understanding, yes.

4 **MR. JESSE GARDNER:** Okay. And the final paragraph, D, it  
5 states that if the City determines that it is in the best interests of the City that any  
6 individual identified in Schedule 9 be replaced, the City will notify RTG within 30 days,  
7 and within 30 days of receipt, by Project Co. of the notice, RTG will propose a  
8 replacement. So is that your understanding of that obligation?

9 **MR. NICOLAS TRUCHON:** That is the situation I referred  
10 previously in our discussion.

11 **MR. JESSE GARDNER:** Right. So generally speaking, if the City  
12 feels that one of those key individuals needs to be replaced, it would give notice to RTG  
13 and RTG would undergo a process of finding a suitable replacement, right?

14 **MR. NICOLAS TRUCHON:** Yes.

15 **MR. JESSE GARDNER:** Okay. And we can take this document  
16 down, thank you.

17 So this is one of the situations or limited situation where the City  
18 has the ability to address staffing issues with RTG; is that fair?

19 **MR. NICOLAS TRUCHON:** For key individuals, yes.

20 **MR. JESSE GARDNER:** Right. And I think, as you said earlier,  
21 RTG is responsible for its employees. It staffs its maintenance obligations roles, but the  
22 City has this ability to replace key individuals if it feels it's necessary, right?

23 **MR. NICOLAS TRUCHON:** Acting reasonably.

24 **MR. JESSE GARDNER:** Acting reasonably, yes.

25 So I'd like to show you a letter from RTG to the City dated July 22<sup>nd</sup>,  
26 2019. It's COW0159484.

27 Okay. So we can see that the subject of the email is "Key  
28 Individual Replacement, Vehicle Maintenance Manager".



1 Do you see that, Mr. Truchon?

2 **MR. NICOLAS TRUCHON:** Yes, I do.

3 **MR. JESSE GARDNER:** Okay. So if we scroll down to the body of  
4 the letter, we see that RTG is proposing that Richard -- Mr. Richard France be the  
5 replacement for the vehicle maintenance manager position. Do you see that?

6 **MR. NICOLAS TRUCHON:** Yes.

7 **MR. JESSE GARDNER:** And if we scroll down through this letter,  
8 we see below that there is a letter from RTM to RTG proposing Mr. France, and below  
9 that, we see Mr. France's CV or resume. Do you see that, Mr. Truchon?

10 **MR. NICOLAS TRUCHON:** I do.

11 **MR. JESSE GARDNER:** Okay. So this is typically how, I think,  
12 RTG would go about proposing a replacement for a key individual to the City; is that  
13 right?

14 **MR. NICOLAS TRUCHON:** Yes.

15 **MR. JESSE GARDNER:** And Mr. France was going to take on the  
16 role of vehicle maintenance manager, right?

17 **MR. NICOLAS TRUCHON:** That is the proposal that was put in  
18 front of the City for consideration.

19 **MR. JESSE GARDNER:** So -- and I think we can take this  
20 document down. Thank you.

21 So we can agree that following the process set out in the PA, RTG  
22 proposed to the City that Mr. France would be in this role and provided the City with the  
23 information required pursuant to the PA, and that was the CV, so that the City could  
24 decide whether or not to approve that individual; is that right?

25 **MR. NICOLAS TRUCHON:** Yes.

26 **MR. JESSE GARDNER:** Now, it's our understanding that Mr.  
27 France did, in fact, take over this role, and so it's fair that the City understood, based on  
28 this letter and his involvement in the project, that Mr. France took on this role as vehicle

1 maintenance manager; is that fair?

2 **MR. NICOLAS TRUCHON:** I'm not -- I mean, obviously, that was  
3 before my time, so I would need to go through documentation to see whether or not we  
4 have formal correspondence from the City that accepts the proposal to replace any  
5 vehicle maintenance manager with Mr. Richard France. I don't know if that  
6 correspondence exists, if that's where you're going.

7 **MR. JESSE GARDNER:** Okay. I take your point, Mr. Truchon.  
8 But Mr. France gave testimony yesterday about his involvement in  
9 the project. Surely you're aware that he's ---

10 **MR. NICOLAS TRUCHON:** Yeah, I do.

11 **MR. JESSE GARDNER:** --- heavily involved in the project, right?

12 **MR. NICOLAS TRUCHON:** I personally know Mr. France, so yes.

13 **MR. JESSE GARDNER:** Okay. Are you aware that Mr. France  
14 gave testimony yesterday that this letter that I've just shown to you, that he hadn't seen  
15 it before, and he indicated that he wasn't -- to his knowledge, not in that role?

16 **MR. NICOLAS TRUCHON:** I was not aware of that.

17 **MR. JESSE GARDNER:** Okay. He actually stated when he was  
18 asked about that issue that he wasn't in the role, to his knowledge, and he didn't know if  
19 anyone was in that particular role.

20 So would you agree with me that while RTG was advising the City  
21 that this -- that Mr. France would be in this role, Mr. France, according to himself, didn't  
22 actually take on this role?

23 **MR. NICOLAS TRUCHON:** I'm not sure I follow your question.

24 **MR. JESSE GARDNER:** Sure. So RTG, we've just looked at the  
25 letter -- RTG proposed that Mr. France would take on the role of vehicle maintenance  
26 manager. Would you agree with that?

27 **MR. NICOLAS TRUCHON:** Well, RTM -- the vehicle maintenance  
28 manager in our structure is a position that is provided through RTM. So RTM sends

1 RTG a letter saying, "We need to replace the vehicle maintenance manager." That's  
2 currently stated in the project agreement. They provide a CV. I'm sure they're not --  
3 they must have taken the CV somewhere. I don't know. I just put forward that request  
4 to the City to be compliant.

5 **MR. JESSE GARDNER:** Sure. So my question is very narrow.  
6 You would agree with me -- we just looked at a letter where RTG proposes to the City  
7 that Mr. France will be in the role of vehicle maintenance manager, right?

8 **MR. NICOLAS TRUCHON:** Based on the recommendation from  
9 RTM.

10 **MR. JESSE GARDNER:** Okay. Yes. And so Mr. France's  
11 evidence yesterday was that he wasn't in that role and that he didn't know if anyone  
12 was in that role. Are you aware if anyone was in that role?

13 **MR. NICOLAS TRUCHON:** We need to bring this up with RTM.  
14 This is a new issue for me, I'm afraid.

15 **COMMISSIONER HOURIGAN:** You have to also be clear on the  
16 timing, recognizing that in 2019 he wasn't there, the witness. He was subsequently  
17 there. So just be careful, when you're putting these points to him, to be clear on what  
18 time you're looking for, okay?

19 **MR. JESSE GARDNER:** I take that point. We are going to go  
20 through a period of time, so it will become clear, I think, why I'm putting this to Mr.  
21 Truchon in terms of ---

22 **COMMISSIONER HOURIGAN:** That wasn't my point at all. My  
23 point is, if you're putting something to a witness and you're asking him about what  
24 happened, you need to be clear to him as to what time period you're talking about.  
25 That's all I'm saying. It's for your benefit too, because if you're going to rely on  
26 something later, you want to make sure your question is clear, okay?

27 **MR. JESSE GARDNER:** Okay. Thank you, Mr. Commission.  
28 The letter that we looked at was July 22<sup>nd</sup>, 2019, in terms of where

1 we are in time. Yesterday, Mr. France gave evidence that he was not in that role, and I  
2 believe your evidence, Mr. Truchon, is that you're not aware personally of whether  
3 someone was in that role. Is that fair?

4 **MR. NICOLAS TRUCHON:** As far as I'm concerned, Richard  
5 France was in that role, so I'm sorry. If I look at the documentation, I have  
6 correspondence to the City stating that Mr. France is in that role. I would need to further  
7 investigate that. I don't know where RTM would have taken Mr. Richard France's CV.  
8 We would need to look at the correspondence to understand the paper trail as to how  
9 we got there, whether or not Mr. France was volunteered by his organization to fill in  
10 that role and his organization. I'm speculating here, but ---

11 **MR. JESSE GARDNER:** I appreciate that, Mr. Truchon.

12 **MR. NICOLAS TRUCHON:** --- I'm just finding this out right now.

13 **MR. JESSE GARDNER:** Yeah. I'm not asking you to speculate.  
14 We just looked at a letter from RTG to the City proposing Mr. France is the vehicle  
15 maintenance manager, and that was July 22<sup>nd</sup>, 2019. I'd like to show you another letter  
16 now, and it's COW0593600. So this letter is dated October 1<sup>st</sup>, 2021, and if we scroll  
17 down to the bottom of this letter, it's from Mr. Morgan. And if we scroll back to the top,  
18 it's addressed to you. Do you recognize this letter?

19 **MR. NICOLAS TRUCHON:** I do.

20 **MR. JESSE GARDNER:** Okay. And the subject is "Notice under  
21 section 10.4(d), replacement of key individual". Do you see that?

22 **MR. NICOLAS TRUCHON:** Yes, I see that.

23 **MR. JESSE GARDNER:** Okay. I'd like to take you through a few  
24 parts of this letter.

25 In the first paragraph it states that:

26 "The City asks that RTG replace Mr. France as the  
27 vehicle maintenance manager." (As read)

28 Do you see that?

1 **MR. NICOLAS TRUCHON:** Yes.

2 **MR. JESSE GARDNER:** Okay. It explains that:

3 “The City has carefully considered Mr. France’s  
4 competencies in the context of the two derailments  
5 within six weeks.” (As read)

6 Do you see that?

7 **MR. NICOLAS TRUCHON:** Yes.

8 **MR. JESSE GARDNER:** Okay. And I’d like to take you down to  
9 page 2. It talks about:

10 “Mr. France, as the vehicle maintenance manager, is  
11 directly responsible for maintenance of the vehicles.  
12 The City is concerned about his competency to fulfill  
13 the obligations in his role given the ongoing issues  
14 with the vehicles.” (As read)

15 The letters goes on to say that:

16 “To be clear, the City is not satisfied with the reliability  
17 of the vehicles, nor with RTG’s performance of the  
18 maintenance services as it relates to the vehicles.”  
19 (As read)

20 Do you see that?

21 **MR. NICOLAS TRUCHON:** Yes, I do.

22 **MR. JESSE GARDNER:** Okay. And then if we go to page 3 below  
23 and if we look at “As well”:

24 “...the City has witnessed a trend of unexplained or  
25 improperly deferred maintenance activities over the  
26 course of 2021. RTG’s backlog and maintenance  
27 issues needs to be addressed and has not been  
28 addressed under the watch of Mr. France.” (As read)

1 Do you see that, Mr. Truchon?

2 **MR. NICOLAS TRUCHON:** I do.

3 **MR. JESSE GARDNER:** And you understood, when you received  
4 this letter, that that was the City's position, that they were not satisfied with the  
5 performance of Mr. France in the role of vehicle maintenance manager; is that right?

6 **MR. NICOLAS TRUCHON:** That is correct.

7 **MR. JESSE GARDNER:** Okay. So if we scroll down to the bottom  
8 of this letter, the City is asking -- or is demanding that RTG, pursuant to the PA, replace  
9 this key individual, the vehicle maintenance manager. That's your understanding of the  
10 purpose of this letter?

11 **MR. NICOLAS TRUCHON:** Yes.

12 **MR. JESSE GARDNER:** Okay. Now, is it fair to say, based on the  
13 review that you and I just did of the project agreement provisions, that when the City  
14 sent this letter to you, they understood that Mr. France would be removed from that role,  
15 correct?

16 **MR. NICOLAS TRUCHON:** That is correct.

17 **MR. JESSE GARDNER:** So Mr. France was shown this letter  
18 yesterday, and it appeared as though he had not seen it, and he indicated that to his  
19 knowledge he hadn't been removed from his role. Are you aware of this?

20 **MR. NICOLAS TRUCHON:** No, but I'm aware that we did relay the  
21 letter to RTM, and I understand that RTM did relay that letter to Alstom, through the  
22 proper contractual channels, to ask for the replacement of Mr. France. Whether or not  
23 his employer or Alstom maintenance decided to make him aware of the City's request,  
24 that's entirely within their prerogative. We were just following the contractual channels  
25 that we had for key positions.

26 **MR. JESSE GARDNER:** And you'd agree with me, based on the  
27 review of the project agreement we just did, when the City sent this letter, RTG needed  
28 to replace Mr. France and suggest a replacement vehicle maintenance manager within

1 30 days. Is that right?

2 **MR. NICOLAS TRUCHON:** That is the objective of the City. Now,  
3 if I recall correctly, during that period of time, we were pretty distracted by a derailment,  
4 so that might explain why we had a bit of an issue trying to keep up with the timeline  
5 that was requested by the City. I don't know. We need to check the correspondence to  
6 see when a response was sent to the City about the replacement of Mr. France. With a  
7 bit of time, perhaps we can send that back to the Commission or the Inquiry. It's just  
8 the initial request. I do recall subsequent correspondence about this issue, but I don't  
9 have that on the top of my mind right now.

10 **MR. JESSE GARDNER:** The reason I ask you about this, Mr.  
11 Truchon, is the City was -- I'm going to suggest to you that the City was taking one of  
12 the significant steps that it could take under the PA in response to the derailments. And  
13 if we go to the top of this letter, you can see that it's dated October 1<sup>st</sup>, 2021. So this  
14 was just after the September derailment. Would you agree with that?

15 **MR. NICOLAS TRUCHON:** Yes.

16 **MR. JESSE GARDNER:** In terms of timing. So the City was taking  
17 one of the more significant steps it has available to it under the project agreement by  
18 replacing -- or thinking that it was replacing a key individual. But you can't say here  
19 today whether or not that actually took place, right?

20 **MR. NICOLAS TRUCHON:** I'm just trying to convey back that on  
21 October 1<sup>st</sup>, 2021, we were right in the middle of infrastructure repairs. We were right in  
22 the middle of maintenance assessments on the vehicles in the fleet, trying to re-  
23 establish revenue service. So I think, in my personal opinion, the City's approach was  
24 completely misguided because it was focusing on the wrong things. The priority was to  
25 re-establish service, and there was a time after that to go through the replacement of  
26 key individuals.

27 So I'm sorry; I don't know. I don't have a better answer for you right  
28 now. As far as I'm concerned, we relayed the correspondence, and what happened

1 afterwards, we need to investigate that. I don't have that on the top of my mind right  
2 now.

3 **MR. JESSE GARDNER:** Mr. Truchon, I'm going to suggest to you  
4 that as a public owner, the City of Ottawa, after two derailments in six weeks, one with  
5 passengers on board, and given the structure of the PA -- the City has specific options  
6 available to it, specific mechanisms, this replacement of key individuals being one of  
7 them. Wouldn't you agree with me that it was a reasonable step for the City to take,  
8 given its concerns, having just had two derailments?

9 **MR. NICOLAS TRUCHON:** What I'm saying is I'm not challenging  
10 the City's entitlement to make that request.

11 What I'm just saying is the timing could have been a little different  
12 because the resources in the organization was focused on something we considered a  
13 little more critical than going around and removing people that the City felt were no  
14 longer necessary for the benefit of the project. That's just me. That's the only thing I'm  
15 saying.

16 **MR. JESSE GARDNER:** And I appreciate your position on that,  
17 Mr. Truchon. We've talked during this hearing about oversight that the City has over  
18 RTG. This -- you'd agree with me, this is one of the oversight mechanisms the City has,  
19 so when something's going wrong on the project, the City has the option where -- you  
20 know, acting reasonably, to replace a key individual? Would you agree that this is an  
21 oversight mechanism that the City has?

22 **MR. NICOLAS TRUCHON:** Yes.

23 **MR. JESSE GARDNER:** Okay. Thank you. And sir, to your  
24 knowledge, Mr. France is still in his role today; is that right?

25 **MR. NICOLAS TRUCHON:** We understand that Mr. France has  
26 never been in that role, based on your ---

27 **COMMISSIONER HOURIGAN:** Yeah, that's -- you need to be  
28 clear on what role you're talking about.



1                   **MR. JESSE GARDNER:** The vehicle maintenance manager role  
2 discussed in the first letter in 2019, he's not in that role today; is that right?

3                   **MR. NICOLAS TRUCHON:** Based on the evidence that he's  
4 given the Commission yesterday, I would need to investigate that. And if he's not in that  
5 role, we will need to follow up to make sure that we provide a suitable replacement as a  
6 vehicle maintenance manager for the City's consideration.

7                   **MR. JESSE GARDNER:** Thank you, Mr. Truchon. That's helpful.  
8 And you would agree with me that there have been some additional maintenance-  
9 related issues since the derailments, right?

10                  **MR. NICOLAS TRUCHON:** I don't which ones you're specifically  
11 referring to. "Maintenance issues" is a wide term, so there are regular issues on the  
12 light rail project that do happen from time to time. Can you be a little more specific?

13                  **MR. JESSE GARDNER:** Sure, I'll give you an example. I think -- I  
14 believe you're aware of a significant -- or an issue which took place in March of this  
15 year, 2022, where RTG, or Alstom, failed to put oil in the gearbox of a vehicle, which  
16 resulted in a service interruption. Do you recall that incident?

17                  **MR. NICOLAS TRUCHON:** I do recall that incident.

18                  **MR. JESSE GARDNER:** And Alstom investigated and determined  
19 that RTM had to fill the gearbox with oil; is that right?

20                  **MR. NICOLAS TRUCHON:** Can you repeat that? You said  
21 "RTM"? RTM doesn't put oil in gearboxes.

22                  **MR. JESSE GARDNER:** Sorry. Is it your recollection that there  
23 was investigation and it was determined that Alstom had failed to fill the gearbox with  
24 oil?

25                  **MR. NICOLAS TRUCHON:** Yes.

26                  **MR. JESSE GARDNER:** Okay. And that vehicle was removed  
27 from service because it was damaged; is that right?

28                  **MR. NICOLAS TRUCHON:** Not specifically. The gearbox was

1 replaced, and the vehicle has since then been reintroduced into service. We're talking  
2 about derailment.

3 **MR. JESSE GARDNER:** But I'm going to suggest to you that there  
4 was damage to the vehicle. Do you have any evidence to the contrary?

5 **MR. NICOLAS TRUCHON:** I would need to investigate that.

6 **MR. JESSE GARDNER:** Okay. I'd like to talk to you about the --  
7 just a little bit about the return-to-service plan after the two derailments. The City  
8 advised RTG in October of 2021 that TRA had been retained to review the return-to-  
9 service plan. Do you recall that, Mr. Truchon?

10 **MR. NICOLAS TRUCHON:** I do. I do.

11 **MR. JESSE GARDNER:** And there were a number of iterations of  
12 that return-to-service plan; is that right?

13 **MR. NICOLAS TRUCHON:** Well, I wouldn't say "iterations". You  
14 know, when you're dealing in this -- I'm sorry. I'm going to provide a bit of context.  
15 When you're dealing with the kind of situation we were in, we -- as much as we'd like to  
16 deliver a complete binder of the right colour with all the sections and all the material  
17 properly indexed, you need to appreciate that material gets developed based on  
18 different workstreams. The -- my recollection of the development of the return-to-  
19 service plan involved sending sections ahead of time for consideration and review by  
20 the City so that it would have effectively been cleared. So we would populate the full  
21 content of the return-to-service plan through different deliverables that were being  
22 assembled concurrently.

23 **MR. JESSE GARDNER:** Okay. Would you agree that TRA and  
24 City raised concerns about the return-to-service plans that RTG was providing? Do you  
25 recall them raising concerns?

26 **MR. NICOLAS TRUCHON:** Can you be specific?

27 **MR. JESSE GARDNER:** Are you aware, generally, of, at any point  
28 in relation to the return-to-service plan, the City or TRA raises a concern about the

1 sufficiency of the plan?

2 **MR. NICOLAS TRUCHON:** I think there were concerns about  
3 there was a misunderstanding on expectations as to what would be the content of the  
4 return-to-service plan. I think it's based on misunderstanding of, as I said, expectations  
5 and how these were communicated. Once the City refined -- once the City and its  
6 advisors refined their expectations, we certainly stepped and we delivered what they  
7 were looking for. I don't think it's -- it was done in a collaborative on a constructive  
8 basis to -- everybody was working toward a common objective and, personally, when  
9 I'm going to be looking back to incident 10 years from now, I'll be very proud of how  
10 people rolled up their sleeves, put aside their differences, and focused on what the  
11 problem was, getting the trains back in service.

12 **MR. JESSE GARDNER:** And I think that's fair, Mr. Truchon. What  
13 I'm asking is, you didn't just hand over the return-to-service plan and that was it. When  
14 I say it's iterative, I mean TRA and the City came back with comments and eventually it  
15 was approved by TRA and the City. Is that a fair description of what happened?

16 **MR. NICOLAS TRUCHON:** I agree that it took a couple of  
17 iterations to satisfy what the expectations were from TRA, but I don't -- I'm not sure -- I  
18 don't want to be difficult. I'm just trying to understand where we're going.

19 **MR. JESSE GARDNER:** No, that's helpful. That's what I was  
20 asking. And there was an agreement and the RTG and the City to return-to-service on  
21 November 12<sup>th</sup>, 2021; do you recall that?

22 **MR. NICOLAS TRUCHON:** That is correct, yes.

23 **MR. JESSE GARDNER:** Okay. But it wasn't full service; it was -- it  
24 started with seven trains from November 12<sup>th</sup> to the 17<sup>th</sup>, and then November 18<sup>th</sup> to  
25 22<sup>nd</sup>, it was eight trains. It went up to nine trains from the 23<sup>rd</sup> to the 28<sup>th</sup>. And then,  
26 finally, on November 29<sup>th</sup>, it was 11 trains; is that right?

27 **MR. NICOLAS TRUCHON:** That is correct.

28 **MR. JESSE GARDNER:** And then, at that point, there was an

1 agreement to reduce service -- to keep it at 11 trains for a period of time; is that  
2 generally correct?

3 **MR. NICOLAS TRUCHON:** Yes, there was an agreement to  
4 keep the service level at 93 percent of the project.

5 **MR. JESSE GARDNER:** Okay.

6 **MR. NICOLAS TRUCHON:** That is 11 trains.

7 **MR. JESSE GARDNER:** Yes. And we touched earlier on issues  
8 that have occurred since the derailment, one of them being the gearbox issue with a  
9 lack of oil in it. But there were other -- some other issues. So, for example, with the  
10 OCS system, the pantograph, an issue with the switch -- with one of the switches. Do  
11 you recall any of those incidents?

12 **MR. NICOLAS TRUCHON:** Yes.

13 **MR. JESSE GARDNER:** Okay. So there have been incidents that  
14 have happened, or maintenance issues since the derailments. We can agree on that?

15 **MR. NICOLAS TRUCHON:** But those are part of normal  
16 operations. That's where I'm trying to go with this. We hit the -- the pantograph hit one  
17 of the fixtures for the OCS. It was investigated. It was fixed. It wasn't a generalized  
18 problem. We had a service interruption but, you know, the measuring stick is not the  
19 number of incidents. The measuring stick is, how we respond to incidents and how do  
20 we reinstate service, because it's a mechanical system. People need to understand, it's  
21 a train. It's a complex beast of technology and mechanical equipment. It's bound -- it's  
22 going to -- it's bound to have other failures.

23 And maintenance issue is a big thing. You know, the contract  
24 doesn't call for 100-percent performance. The contract asks for a minimum of 98  
25 percent, and how we achieve 98, well, there's a two of the -- two percent of the time  
26 where there could be issues, and it's how we respond and give the right response and  
27 rectification, address what the issue is, do a proper root-cause analysis, identify what  
28 the fix is, and make sure that, as much as we can, it doesn't happen again.

1                   **MR. JESSE GARDNER:** So -- and I appreciate that, Mr. Truchon.  
2 My simple question is that we can agree that, since the derailments, there have been  
3 technical problems that have resulted in system interruptions; is that right?

4                   **MR. NICOLAS TRUCHON:** Yes.

5                   **MR. JESSE GARDNER:** Okay. Mr. Guerra testified that RTM  
6 underwent and reorganization after the derailments to add some additional resources --  
7 oversight, subject-matter expertise, and -- so he confirmed that RTM's staffing  
8 increased at that time; is that your recollection?

9                   **MR. NICOLAS TRUCHON:** Please repeat the question.

10                  **MR. JESSE GARDNER:** Sure. So we have heard from Guerra,  
11 and he was testifying about a reorganization within RTM ---

12                  **MR. NICOLAS TRUCHON:** M'hm.

13                  **MR. JESSE GARDNER:** --- after the derailments. Are you familiar  
14 with that?

15                  **MR. NICOLAS TRUCHON:** Yes. Yes, I am.

16                  **MR. JESSE GARDNER:** Okay. And when he was describing, he  
17 indicated that it included adding some individuals in oversight roles, subject-matter  
18 expertise, and, generally, increased staff. Do you recall that?

19                  **MR. NICOLAS TRUCHON:** He referred specifically to  
20 restructuring his organization to exercise better oversight over the performance of his  
21 subcontractor, some of that restructuring involving -- involved onboarding new, qualified,  
22 senior individuals to assume that role and make sure that we had competent people in  
23 the right boxes doing the right job.

24                  **MR. JESSE GARDNER:** Right.

25                  **MR. NICOLAS TRUCHON:** That's what I understood from it.

26                  **MR. JESSE GARDNER:** Thank you. And would you agree with  
27 me that RTM was understaffed prior to the derailments?

28                  **MR. NICOLAS TRUCHON:** I would say that RTM was structure

1 differently before the derailments on the basis of how they understood they would be  
2 able to manage their subcontracts. Subsequent to the derailment they decided to  
3 restructure.

4 **MR. JESSE GARDNER:** And when you say restructure, that  
5 included staffing, increasing staff; is that fair?

6 **MR. NICOLAS TRUCHON:** We're not talking about a significant  
7 increase in staff. We're talking about putting people in the right roles and position at the  
8 right time of the day so that they can effectively execute the oversight plan.

9 **MR. JESSE GARDNER:** Okay, thank you.

10 You're aware that the City and RTG /RTM have daily meetings to  
11 discuss the previous day's performance and any issues that may come up; is that right?

12 **MR. NICOLAS TRUCHON:** I am. It's part of my schedule.

13 **MR. JESSE GARDNER:** And you obviously weren't involved in  
14 those meetings prior to your joining. I think that we can agree on that.

15 **MR. NICOLAS TRUCHON:** Yes.

16 **MR. JESSE GARDNER:** Right. So you have -- you wouldn't have  
17 any direct knowledge of the work orders that were discussed prior to your joining so in  
18 2019, is that fair?

19 **MR. NICOLAS TRUCHON:** I don't have knowledge of individual  
20 work orders because there are thousands of them.

21 **MR. JESSE GARDNER:** Right. And we can agree, I think, that  
22 prior to your joining, that daily discussion of what was going on and work orders that  
23 were being discussed, you wouldn't have any direct knowledge of those, given the time  
24 period, right?

25 **MR. NICOLAS TRUCHON:** That is correct.

26 **MR. JESSE GARDNER:** Okay, And would you agree with me that  
27 the City reviews disputed work orders and discusses deductions with RTG and RTM?

28 **MR. NICOLAS TRUCHON:** Yes,

1                   **MR. JESSE GARDNER:** Okay. Do you recall a work order for  
2 wood slats about the guideway?

3                   **MR. NICOLAS TRUCHON:** No.

4                   **MR. JESSE GARDNER:** Okay. In relation to payment deductions,  
5 the City recently --- the City has agreed not to levy deductions for events that would  
6 have (audio skip) effect. Are you aware of that cracked glass, redundant doors,  
7 flickering lights?

8                   **MR. NICOLAS TRUCHON:** I'm sorry. You broke off for a second  
9 you're going to have to ---

10                  **MR. JESSE GARDNER:** Sure, I'll repeat it. So in relation to  
11 payment deductions ---

12                  **MR. NICOLAS TRUCHON:** Yes.

13                  **MR. JESSE GARDNER:** --- the City has agreed not to levy  
14 deductions for events that would be disproportionate in effect. So examples being  
15 cracked glass or redundant doors, flickering lights. Would you agree that the City has  
16 agreed not to do that?

17                  **MR. NICOLAS TRUCHON:** There is a willingness from the City  
18 to be reasonable on its interpretation of some elements of the KPM but not all of those  
19 elements. And there are still interpretations of the KPM from the City over which we  
20 have a fundamental disagreement and those deductions -- I think that the situation Mr.  
21 Guerra mentioned in his testimony this morning is, you know, what we have is --- I think  
22 our biggest problem is some of the work orders that get opened up. When they're  
23 looked, RTM makes a decision that this is not a work order that should be subject to a  
24 penalty. And it does get prioritized accordingly. It does get fixed but when it gets fixed  
25 it's potentially longer than the response and rectification times that would be associated  
26 had the work order been identified as a KPM work order. And on that basis, the City  
27 then comes back and unilaterally decides that this work order should have had a KPM  
28 attached to it and does generate a deduction. And that's how we end up with hundreds

1 of thousands of dollars against a specific deduction.

2 **MR. JESSE GARDNER:** Mr. Truchon, I appreciate that the parties  
3 don't agree on everything. But my question is actually very specific. And so I would ask  
4 you more recently would you agree with me that the City has agreed to apply key  
5 performance metrics in a way so that RTG does not incur so many deductions? Would  
6 you agree that that's happened recently?

7 **MR. NICOLAS TRUCHON:** Yes but there's still significant  
8 deductions over which we still disagree with the City. So yes, the City does agree to  
9 remove some of the deductions but certainly not everything and it still results with  
10 significant dollars being withheld against payments and being accumulated into the  
11 (audio skip) still current. If that is your question.

12 **MR. JESSE GARDNER:** Well, my question was actually would you  
13 agree that just that the City has agreed in respect of certain key performance metrics  
14 that it's going to levy deductions in a way that RTG does not incur so many deductions.  
15 That's my question. I think you agreed to that; is that fair?

16 **MR. NICOLAS TRUCHON:** What I would say is this is not an  
17 exercise that needs to be done on a one-off basis as you suggested. The exercise that  
18 needs to be done is what we refer to as a payment mechanism review which RTG has  
19 been requesting in order to get to a position where the City feels it has all the tools that  
20 it needs and we get to a common understanding as to how we will be applying that  
21 mechanism going forward. If we agree on the rules of the game and what is a  
22 deduction, what is not a deduction, and we put some measure of relativity on the  
23 seriousness of the deduction. That is, as far as I'm concerned, where we need to go in  
24 order to resolve the issue. But I do agree that a line by line reconciliation results in  
25 certain cases in deductions being removed, as you suggested. But it's not addressing  
26 the fundamental problem that we have and that has a significant impact on my supply  
27 chain.

28 **MR. JESSE GARDNER:** Okay. And you would agree, Mr.



1 Truchon, that the City made JVA Consulting available as a resource to RTG?

2 **MR. NICOLAS TRUCHON:** Yes.

3 **MR. JESSE GARDNER:** Okay. And that's Mr. James Boyle out of  
4 the U.K.; is that right?

5 **MR. NICOLAS TRUCHON:** That was before my time, but yes.

6 **MR. JESSE GARDNER:** But you're aware of it then?

7 **MR. NICOLAS TRUCHON:** I am.

8 **MR. JESSE GARDNER:** Okay. And he's a well -- I think we can  
9 agree he's a well-recognized expert from the U.K. and I think we can agree that he's  
10 been helpful to RTG in terms of it's maintenance practices?

11 **MR. NICOLAS TRUCHON:** He has been helpful in terms of  
12 developing the elements of the first remedial plan we were discussing previously in  
13 terms of identifying what are the measures that need to be deployed in order to address  
14 the issues that have been encountered for seven months.

15 **MR. JESSE GARDNER:** Okay. And in the first part of your answer  
16 you raised timing and when you were involved. But are you aware that he was  
17 originally retained by the City, but the City allowed RTG to retain him in an effort to help  
18 with -- be collaborative with RTG?

19 **MR. NICOLAS TRUCHON:** Yes.

20 **MR. JESSE GARDNER:** Okay.

21 **MR. NICOLAS TRUCHON:** We want the best resource to help  
22 us, you know. We had an undertaking to put together a remedial plan. Mr. Boyle was a  
23 competent expert. We requested -- I don't know how we got to move to RTG to assist  
24 us but his contribution was certainly appreciated. And we felt he was probably better  
25 positioned to contribute to the success of the project by being part of the execution team  
26 as part of the City oversight team.

27 **MR. JESSE GARDNER:** But you would agree with me that the  
28 City was being cooperative and collaborative in agreeing to do that; is that right?

1 **MR. NICOLAS TRUCHON:** Yes.

2 **MR. JESSE GARDNER:** Okay. I'd like to talk to you just briefly  
3 about the root cause of the derailment and just some of the reports that have come out.  
4 Are you familiar with the Mott MacDonald report dated April  
5 2022? **MR. NICOLAS TRUCHON:** Yes.

6 **MR. JESSE GARDNER:** Okay. I'd like to bring that up on the  
7 screen. It's COM0010116. Would you agree with me that this report makes a number  
8 of recommendations in relation to the performance of maintenance obligations?

9 **MR. NICOLAS TRUCHON:** This report does make a number of  
10 recommendations as well as a number of observations.

11 **MR. JESSE GARDNER:** Right. I want to take you to page 243 of  
12 the PDF. So this is the recommendations section. Do you see it up on the screen, sir?

13 **MR. NICOLAS TRUCHON:** Yes.

14 **MR. JESSE GARDNER:** Okay. And I'm not going to take you  
15 through all of the recommendations. I would just note that if you look at the first ones,  
16 the 6.1 Revenue vehicle priority, number 1 says:

17 "It is recommended that an independent review of the  
18 long-term stopped and cannibalized vehicles and  
19 associated materials equipment is carried out as a  
20 part of an overall asset condition assessment as it is  
21 likely these assets may deteriorate if left in an  
22 inoperable condition for long period of time."

23 Do you see that?

24 **MR. NICOLAS TRUCHON:** Yes, I do.

25 **MR. JESSE GARDNER:** And you know what they're talking about,  
26 right? It's the use of parts from vehicles which have yet to be delivered to the City to  
27 repair existing vehicles. Is that your understanding?

28 **MR. NICOLAS TRUCHON:** That is correct.

1                   **MR. JESSE GARDNER:** Okay. And I think -- is it fair to say that  
2 that might be a short-term solution but it's not a sustainable solution given that one day  
3 those vehicles will need to be delivered?

4                   **MR. NICOLAS TRUCHON:** Yes. I'll bring a bit of context if you  
5 allow me.

6                   This report is based on observations that were made when Mott  
7 MacDonald visited the site, I think, for a couple of days sometime in September of 2020.  
8 What they effectively identified is factually correct, that there were vehicles that were in  
9 the process of being assembled, so not yet part of the fleet.

10                  So I'm talking about Stage 2 vehicles that were in the yard, which  
11 Alstom maintenance or Alstom supply, as part of -- in order to service the existing  
12 service fleet, was required to use some of those components.

13                  And if we bring everything back into perspective, there's this thing  
14 called Covid that was going on at the same time, which was effectively disrupting supply  
15 chains and making it very difficult to access specialized components. So that was the  
16 short-term solution that was prioritized by Alstom with everybody's knowledge, to keep  
17 the service fleet going.

18                  **MR. JESSE GARDNER:** So you'd agree with me that it's not a  
19 long-term solution, right? This ---

20                  **MR. NICOLAS TRUCHON:** I would agree ---

21                  **MR. JESSE GARDNER:** Okay. Thank you.

22                  So I'd like to take you to page 245, so please scroll down. There  
23 are some additional recommendations for revenue vehicles, and I want to take you to  
24 the right area. If we scroll down -- here it is, yes, so Number 27. So:

25                                 "Project Co. assessed the deferred vehicle  
26 maintenance list and developed a strategy for dealing  
27 with this backlog in a prioritized manner. Outstanding  
28 deferred maintenance items, including safety critical

1 and reliability related deferred items, as well as  
2 outstanding modifications, should be listed on a  
3 vehicle-by-vehicle basis to identify the level of effort  
4 required to return each vehicle to operational service  
5 in a simple system used to catalogue each vehicle's  
6 repair priority and status." (As read)

7 Has RTG undertaken this assessment as recommended by Mott  
8 MacDonald?

9 **MR. NICOLAS TRUCHON:** I think this was covered in the  
10 evidence provided by my colleague, Mr. Guerra, that specifically spoke to deferred  
11 maintenance. And I think it'd be Commission visibility on where we are, you know, what  
12 is the concept of deferred maintenance, how it relates to vehicles. I think it's a question  
13 of how we organized the planning and I understand that this has been successfully  
14 implemented.

15 So as far as we are concerned, you know, the backlog, as we stand  
16 today, is well under control, contrary to what has been suggested by other witnesses in  
17 front of the Commission. There's -- and there's -- the safety critical elements, obviously  
18 always take precedence, as my colleague indicated, but there are other backlog  
19 maintenance items that do get prioritized when the -- we're not going to stop a fleet -- a  
20 vehicle from the fleet to deal with a scratch on the panel. So this is the kind of backlog.

21 But as we are today, the backlog, as far as I'm concerned, is  
22 entirely under control, and the recommendations that have been implemented, that  
23 have been suggested by Mott MacDonald, is just good maintenance practice and it's  
24 currently being deployed.

25 **MR. JESSE GARDNER:** So what I'm asking, Mr. Truchon, then, to  
26 be more specific is, has RTG prepared a detailed vehicle-by-vehicle assessment of the  
27 type of deferred maintenance work being described here? Has that happened?

28 **MR. NICOLAS TRUCHON:** Not RTG specifically, because I don't

1 work on vehicles, but my maintenance subcontractor does have a planning program  
2 that's in place that's completely visible to the City, and as far as I'm concerned, doesn't  
3 create any issues, at least, that have been communicated to my attention. If there is  
4 issues, I would certainly welcome the City to come forward and I'll be more than happy  
5 to address it with RTM and Alstom maintenance.

6 **MR. JESSE GARDNER:** Okay. So you don't have personal  
7 knowledge, but you understand that RTM and Alstom have done this; is that right?

8 **MR. NICOLAS TRUCHON:** That is my understanding.

9 **MR. JESSE GARDNER:** Okay. I'd like to go to the next page, 246,  
10 the final recommendation at the bottom. Oh, sorry, if we just scroll up? Right there,  
11 Number 34.

12 It states that:

13 "In the longer term, Project Co. should adjust their  
14 maintenance practices to create data to provide  
15 traceability and apply a proactive approach to  
16 assessment management." (As read)

17 Mr. Truchon, would you agree with me that RTM and Alstom could  
18 strive generally to be more proactive in the provision of the maintenance services?

19 **MR. NICOLAS TRUCHON:** I fully agree with you.

20 **MR. JESSE GARDNER:** Okay.

21 **MR. NICOLAS TRUCHON:** And it is currently being deployed.

22 **MR. JESSE GARDNER:** And so is it accurate to say that after the  
23 derailments, and after this Mott MacDonald report, there's been a shift to include more  
24 preventative maintenance measures or activities? Is that right?

25 **MR. NICOLAS TRUCHON:** This is part of the many conditions that  
26 the City has stated as far as their expectations, which we are currently working on to  
27 implement.

28 **MR. JESSE GARDNER:** Okay. So I just want to take you to one

1 more area of this report. It's page 183. Okay. If we scroll down to 3.1.2, right above  
2 that, the final paragraph above that states:

3 "Mott MacDonald have provided an outlined scope of  
4 work proposal to the City for carrying out an  
5 independent wheel rail interface study. Due to  
6 difficulties in obtaining the relevant technical data  
7 from Project Co. that is required to conduct the study,  
8 the work has been put on hold." (As read)

9 Are you aware that Mott MacDonald was not able to do its wheel  
10 rail interface assessment because of lack of information from Project Co.?

11 **MR. NICOLAS TRUCHON:** I don't think it's their scope to do that.  
12 Wheel to rail interface is critical to our operation. Having a third party generate an  
13 independent report, you know, the report is one thing. The buy in from everybody to  
14 implement the recommendations is what needs to happen. So RTM is already working  
15 on the wheel to rail interface, and that is the right process that's being followed.

16 As far as I'm concerned, Mott MacDonald, you know, they can --  
17 they have their opinion, they have made a number of observations, some of them are  
18 valid, some of them are anecdotal, but at the end of the day, it's just my personal  
19 opinion. But we are working to implement what we think needs to be implemented from  
20 that report and we're giving full visibility to the City as to what we're moving on for.

21 And the wheel to rail interface is fundamental. It's part of the root  
22 cause analysis recommendation from Alstom which we've taken on to effectively deliver  
23 on. And that work will be completed by the end of this month so that we can execute on  
24 it.

25 **MR. JESSE GARDNER:** Right. So I just want to ask you a very  
26 specific question, and that is, I take it that you would agree with me that RTG hasn't  
27 given the information to Mott MacDonald necessary to do this, but it sounds like you  
28 think it's not their position to do this analysis; is that fair?

1                   **MR. NICOLAS TRUCHON:** I don't recall a specific request from  
2 then on wheel to rail. I would need to go through the documentation. Keep in mind we  
3 have -- we received the report, I think, in February of 2022, and we were already  
4 planning on doing our own wheel to rail interface at that point.

5                   **MR. JESSE GARDNER:** Understood. Okay, thank you.  
6 I'm just going to ask you a final set of questions, Mr. Truchon.  
7 You've worked in the P-3 industry or P-3 market since it was first introduced in Canada;  
8 is that fair?

9                   **MR. NICOLAS TRUCHON:** That's very generous of you, but I  
10 started working in P-3s, I think in 2001. I understand there were a handful of projects  
11 before that time, but I've been around for a few years.

12                   **MR. JESSE GARDNER:** But fair to say you have a lot of P-3  
13 experience, right?

14                   **MR. NICOLAS TRUCHON:** As many other people do, but yes.

15                   **MR. JESSE GARDNER:** Okay. You were involved in the  
16 Fredericton to Moncton Highway Project back in the early 2000s; is that right?

17                   **MR. NICOLAS TRUCHON:** Yes. Yes, I was.

18                   **MR. JESSE GARDNER:** And you worked for VINCI at the time?

19                   **MR. NICOLAS TRUCHON:** Yes, VINCI Concessions.

20                   **MR. JESSE GARDNER:** Yes. And would you agree that a number  
21 of international players entered the Canadian market at that time to work in P-3s?

22                   **MR. NICOLAS TRUCHON:** Yes.

23                   **MR. JESSE GARDNER:** And that included players like ACS, your  
24 current employer; is that right?

25                   **MR. NICOLAS TRUCHON:** Correct.

26                   **MR. JESSE GARDNER:** You'd agree that ACS is the largest or at  
27 least second largest construction company in the world, right?

28                   **MR. NICOLAS TRUCHON:** I'm not going to comment on that.

1 They are a large construction company. It does change based on whether or not we  
2 look at revenues, employees.

3 **MR. JESSE GARDNER:** Fair. And some of the competitive  
4 advantages that these large international players like ACS have, coming into the  
5 Canadian P-3 market, was their ability to bring innovative construction solutions, right,  
6 innovative means and methodologies; is that fair?

7 **MR. NICOLAS TRUCHON:** This, among other things.

8 **MR. JESSE GARDNER:** Right. And in this market, given your two  
9 decades of experience working on various sides, being the contractor, public owners,  
10 you're aware that ACS has a reputation for its aggressive bidding practices. Are you  
11 aware of that?

12 **MR. NICOLAS TRUCHON:** I am aware that they have a reputation  
13 of successful bidding practice, if that's what you're alluding to.

14 **MR. JESSE GARDNER:** Well, one of the ways -- I would suggest  
15 that one of the ways that ACS has been so successful in the Canadian market is that it  
16 bids aggressively; is that fair?

17 **MR. NICOLAS TRUCHON:** I think ACS takes very careful looks at  
18 every project very carefully, makes a detailed analysis on the service requirement, and  
19 puts forward the best competitive proposal it can.

20 **MR. JESSE GARDNER:** And having advised owners before, you  
21 know that owners don't have an ability to look behind the face of the line-item numbers  
22 given in a bid proposal. Is that fair?

23 **MR. NICOLAS TRUCHON:** I disagree with that. Owners have the  
24 prerogative of asking whatever information they want in their bid -- to ask for proponents  
25 to fill out data sheets, provide detailed costs breakdowns, provide visibility. Obviously,  
26 all information is confidential when it's part of a bid package, but it's the public  
27 authority's complete prerogative to decide what it wants in its proposal.

28 **MR. JESSE GARDNER:** And Mr. Truchon, I'm going to suggest to



1 you that it is not typical that a proponent would hand over a detailed, granular, line-item  
2 explanation of how they are building their financial proposal to owners. Wouldn't you  
3 agree with that?

4 **MR. NICOLAS TRUCHON:** That's not my professional experience.  
5 I've seen that done before.

6 **MR. JESSE GARDNER:** And would you agree -- in terms of  
7 discussing P3 models and alliance models, you'd agree that your employer, ACS, is  
8 participating actively in the P3 market globally.

9 **MR. NICOLAS TRUCHON:** I think ACS -- I can't give corporate  
10 policy; I'm just a simple employee, but if there are opportunities where ACS believes it  
11 can add value, it will certainly put its hat into the mix.

12 **MR. JESSE GARDNER:** Right. In terms of the alliance model,  
13 which you touched on with Commission counsel briefly, you indicated that you have not  
14 personally been exposed to the alliance model. I'd suggest to you, Mr. Truchon, that  
15 this is not surprising given that the alliance model has only been used on one project in  
16 Ontario to date, and that project is just in its initial phases of construction. Is that fair?

17 **MR. NICOLAS TRUCHON:** If you say. I don't know.

18 **MR. JESSE GARDNER:** Okay. I just have a few more questions  
19 for you.

20 Sitting here today, given the problems that arose in the winter of  
21 2019 and 2020, the wheel cracks and other issues in the summer of 2020, the  
22 derailments, and the work that's been done since the derailments, do you think that the  
23 system is safe and reliable today?

24 **MR. NICOLAS TRUCHON:** I have no reason to believe otherwise.

25 **MR. JESSE GARDNER:** Right. And given those problems -- the  
26 issues in winter of 2019/2020, the cracked wheels, the two derailments within six weeks  
27 -- if you worked at the City in Ms. Amilcar's position or in Mr. Charter's position, would  
28 you be satisfied with the overall performance of RTG of its maintenance obligations over

1 the maintenance term?

2 **MR. NICOLAS TRUCHON:** What I would say is I now have a lot  
3 more visibility on what's going on. I would be happy to have a responsible contractor  
4 that steps up, shows up every day, dedicates resources to fix the system. It may not be  
5 as quickly as everybody would like. This I agree with. But we need to be mindful that  
6 running trains is the primary element. The rest just needs to continue to progress.

7 And there's only so much time we can do to do permanent fixes,  
8 but in the background, with everything that we have on the return-to-service plan that  
9 were executing on, the various commitments that we're discussing with the City, give us  
10 a couple months to finalize everything that we're committed to in terms of going forward,  
11 and a lot of the issues -- and I can say this today: a lot of the issues we had in the early  
12 days are not as significant today as they used to be. So I think we have a history of  
13 correcting issues. We have a good client that's willing to sit down and have the right  
14 discussions. At the operational level, I would echo what my colleague Mario Guerra  
15 said earlier today. The relationship right now is in its best position it's ever been. Now  
16 we need to deal with the stuff that nobody wants to deal about in order to get us into a  
17 stable state and cadence that will prevent us from making the news any further.

18 **MR. JESSE GARDNER:** Okay. I appreciate your time today, Mr.  
19 Truchon. Those are all my questions.

20 **MR. NICOLAS TRUCHON:** Thank you.

21 **COMMISSIONER HOURIGAN:** All right. Next up is Alstom.

22 **--- CROSS-EXAMINATION BY MS. LENA WANG:**

23 **MS. LENA WANG:** Good afternoon, Mr. Commissioner.

24 Good afternoon, Mr. Truchon.

25 **MR. NICOLAS TRUCHON:** Good afternoon.

26 **MS. LENA WANG:** Mr. Commissioner, before I start, I'd just like to  
27 address one point arising from Mr. Gardner's examination just now, just so that the  
28 record is clear.

1                   Yesterday, when Mr. France gave evidence, he said that he had  
2 not seen the letter from RTG to the City appointing him as vehicle maintenance  
3 manager. He was not asked if he had seen the letter from the City to RTG requesting  
4 his replacement. He did not say he had not seen that letter. And so that starts at page  
5 75 of the transcript from yesterday's hearing. I just want that to be clear for the record.

6                   **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.

7                   **MS. LENA WANG:** Mr. Truchon, I just have a few questions for  
8 you. And I think there's been some confusion as to the difference between title and role  
9 in your discussion with Mr. Gardner just now.

10                   The PA identifies key individuals -- key roles over which the City  
11 was entitled to exercise control; is that right?

12                   **MR. NICOLAS TRUCHON:** Correct.

13                   **MS. LENA WANG:** And one of those was the vehicle maintenance  
14 manager.

15                   **MR. NICOLAS TRUCHON:** That is what we discussed.

16                   **MS. LENA WANG:** Okay. And you understand that Mr. France is  
17 Alstom's project manager for maintenance services; is that right?

18                   **MR. NICOLAS TRUCHON:** I think this is what his email signature  
19 is saying, so I would agree with that.

20                   **MS. LENA WANG:** And you understand that that's his role. It's for  
21 both infrastructure and vehicle maintenance.

22                   **MR. NICOLAS TRUCHON:** If you say so. I don't deal with Mr.  
23 France on a day-to-day basis, but if that is his role, that is his role. I have no basis to  
24 reject that.

25                   **MS. LENA WANG:** Right. And I assume, based on your own  
26 experience, Mr. Truchon, you're aware that different companies often use different titles  
27 for the same or similar roles across industry. That's common.

28                   **MR. NICOLAS TRUCHON:** Yes.

1                   **MS. LENA WANG:** Okay. And I think you've agreed that Alstom  
2 was not a party to the project agreement.

3                   **MR. NICOLAS TRUCHON:** That is correct.

4                   **MS. LENA WANG:** And so based on what you know -- and you've  
5 told us that you know Mr. France personally -- would you agree that Mr. France, as the  
6 Alstom project manager for maintenance, was in fact fulfilling the role of vehicle  
7 maintenance manager for the purpose of the PA, even if that was not his title within  
8 Alstom?

9                   **MR. NICOLAS TRUCHON:** I think yes.

10                  **MS. LENA WANG:** Okay. Thank you. Those are all my  
11 questions.

12                  **MR. NICOLAS TRUCHON:** Thank you.

13                  **COMMISSIONER HOURIGAN:** All right. Thank you.

14                               Next is IO.

15                  **MS. MORGAN WATKINS:** Hi. Good afternoon, Mr.  
16 Commissioner. Morgan Watkins for Infrastructure Ontario. We have no questions for  
17 the witness.

18                  **COMMISSIONER HOURIGAN:** Next is the Province of Ontario.

19                  **MR. ADAM MORTIMER:** Good afternoon, Commissioner. Adam  
20 Mortimer for the Province of Ontario. We have no questions for the witness.

21                  **COMMISSIONER HOURIGAN:** Next is the Amalgamated Transit  
22 Union Local 279.

23                  **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

24                               **MR. JOHN McLUCKIE:** Good evening, Commissioner.

25                               Good evening, Mr. Truchon. I just have a few questions. I won't be  
26 very long, sir. I just wanted to touch on a few things that you talked about in your cross-  
27 examination earlier with counsel for the City, if I could, sir.

28                               So this is a commercial relationship between yourselves and the

1 City. That's correct, sir?

2 **MR. NICOLAS TRUCHON:** Yes.

3 **MS. JOHN McLUCKIE:** And it's got a 30-year term after revenue  
4 service, correct?

5 **MR. NICOLAS TRUCHON:** Yes.

6 **MS. JOHN McLUCKIE:** And as I understood, your evidence with  
7 counsel for the City is that the City does not have control over the staffing levels of the  
8 participants to the contract. Is that my correct understanding, sir?

9 **MR. NICOLAS TRUCHON:** That is my understanding as well.

10 **MS. JOHN McLUCKIE:** Right. So even if the City, having watched  
11 the service in operation, determines that more people are needed at a particular time or  
12 at a particular place, they don't have the ability to tell any of your subcontractors to do  
13 that. Is that correct, sir?

14 **MR. NICOLAS TRUCHON:** That's not entirely correct, and let me  
15 provide you a bit of context. So under the City's position of the allegation that the  
16 project will default, the City has the ability to request remedial actions. And part of the  
17 discussions that we have going on right now with the City is about what measures do  
18 we need to deploy in order to satisfy the City that the organization is going to be  
19 properly resourced to prevent further occurrences of a derailment or to properly provide  
20 the service delivery. So as part of that discussion, there are discussions about resource  
21 levels. And that is on the table right now, but nothing has been concluded yet. But that  
22 would be the mechanism that would be available to the City to request additional  
23 resources from RTG.

24 **MR. JOHN McLUCKIE:** Okay. But I want to focus on one of your  
25 words there, and I think it's an important word. You said it's open to the City to  
26 "request" additional resources as part of this remediation plan. Am I understanding your  
27 testimony correct there a minute ago, sir?

28 **MR. NICOLAS TRUCHON:** They make the request but,

1 ultimately, it's our -- it's how we staff our organization, or how we resource the  
2 organization to provide the right level of service to deliver the program.

3 **MR. JOHN McLUCKIE:** Right. So when we go back to the  
4 question I asked you one question ago when I said the City cannot direct a particular  
5 number of staff at a particular time or at a particular place, that is, in fact, correct, then,  
6 is it not, sir?

7 **MR. NICOLAS TRUCHON:** That is correct.

8 **MR. JOHN McLUCKIE:** Or even if they see the need, if they feel  
9 that this would be beneficial to the system, they do not have that ability to simply tell you  
10 to do that and you have to do it?

11 **MR. NICOLAS TRUCHON:** That is correct.

12 **MR. JOHN McLUCKIE:** And that's a key element of this  
13 commercial relationship between you and City, correct?

14 **MR. NICOLAS TRUCHON:** The framework is based on the  
15 premise that we are -- we have the flexibility to develop the resource and methods to  
16 deliver the service.

17 **MR. JOHN McLUCKIE:** Okay. So in terms of resources -- so  
18 there's resources from Alstom. There's resources from RTM. And ultimately, RTG  
19 supervises both of those two in terms of the resources they bring to bear on this  
20 contract; is that fair, sir?

21 **MR. NICOLAS TRUCHON:** I wouldn't say I have over -- I have  
22 over Alstom Maintenance. That is RTM's scope to manage Alstom Maintenance. But  
23 we exercise oversight over RTM.

24 **MR. JOHN McLUCKIE:** And you exercise maintenance over  
25 OLTC as well, correct?

26 **MR. NICOLAS TRUCHON:** Define "maintenance"?

27 **MR. JOHN McLUCKIE:** You exercise oversight over OLRTC?

28 **MR. NICOLAS TRUCHON:** Sorry, I misunderstood you. We --

1 we, effectively -- during the construction phase, we had a number of resources to keep  
2 up with the technical side of the design and construction program.

3 **MR. JOHN McLUCKIE:** And as the prime contractor, RTG is  
4 ultimately responsible for the performance of all of its subcontractors; is that true, sir?

5 **MR. NICOLAS TRUCHON:** That is correct.

6 **MR. JOHN McLUCKIE:** And you contract to RTM. And as I  
7 understood you just a minute ago, RTM, in turn, contracts to Alstom, sir?

8 **MR. NICOLAS TRUCHON:** Yes.

9 **MR. JOHN McLUCKIE:** And you would expect them to then  
10 properly supervise their subcontractor, Alstom, correct?

11 **MR. NICOLAS TRUCHON:** Yes.

12 **MR. JOHN McLUCKIE:** And I just want to talk about the resources  
13 that RTM brings to bear for that, and it goes to the testimony yesterday from Guerra --  
14 or, I guess, this morning, actually -- and he indicated that in January of this year, so  
15 about four months prior to now, that RTM had started having managerial staff,  
16 supervisory-level staff, on duty 24/7. Were you aware of that, sir?

17 **MR. NICOLAS TRUCHON:** Yes. That's part of the  
18 reorganization that's been implemented -- that is being implemented.

19 **MR. JOHN McLUCKIE:** Right. So that suggests, then, that for the  
20 first two and a half years that this train was operational, there was no supervision,  
21 essentially, on the nightshift, sir; would you agree with that?

22 **MR. NICOLAS TRUCHON:** I wouldn't say that. There was -- you  
23 know, keep in mind that the way the contract is structured -- I understand the contract to  
24 be structured between RTM and Alstom Maintenance. Alstom does have its own  
25 supervision. They have their oversight. They have their managerial -- the shop-floor  
26 supervision. They have their own quality program. And that is the -- that is the basis  
27 over which they are delivering their service. RTM was more in an audit capacity, as far  
28 as I understand it. But given the volume of issues and the level of activity that needed

1 to take place, the decision was made for RTM to restructure their organization to now  
2 provide the full coverage 24 hours a day, seven days a week.

3 **MR. JOHN McLUCKIE:** So the responsibility of Alstom is -- or the  
4 responsibility of RTM is to supervise Alstom and to ensure that they're carrying out their  
5 responsibilities under the contract; that's correct?

6 **MR. NICOLAS TRUCHON:** Correct.

7 **MR. JOHN McLUCKIE:** And up until January of this year, on the  
8 overnight shift, RTM had no one in place to ensure that Alstom was carrying out their  
9 responsibilities; that's true as well, sir?

10 **MR. NICOLAS TRUCHON:** This is a very broad statement. I  
11 would need to confirm that. I'm not -- I don't think I -- I don't think I have the information  
12 on hand right now to confirm that.

13 **MR. JOHN McLUCKIE:** Well, I can -- if you'd like, I can read Mr.  
14 Guerra's testimony to you in his interview with Commission staff where he indicated that  
15 the overnight shift, in terms of having a manager on duty 24/7, was only added in  
16 January of 2022, sir.

17 **MR. NICOLAS TRUCHON:** That's fine. So if it's part of Mr.  
18 Guerra's testimony, you have the answer. I can confirm that.

19 **MR. JOHN McLUCKIE:** And just in terms of the operations of the  
20 train, so the train runs Monday to Thursday, 5:00 a.m. to 1:00 a.m.; correct, sir?

21 **MR. NICOLAS TRUCHON:** From 5:00 a.m. to 1:00 a.m., that  
22 sounds roughly correct.

23 **MR. JOHN McLUCKIE:** And on Saturdays, 5:00 a.m. to 2:00 a.m.?

24 **MR. NICOLAS TRUCHON:** That sounds about right.

25 **MR. JOHN McLUCKIE:** Saturday, 6:00 a.m. to 2:00 a.m.?

26 **MR. NICOLAS TRUCHON:** You mean Sunday?

27 **MR. JOHN McLUCKIE:** No, I mean Saturday ---

28 **MR. NICOLAS TRUCHON:** Okay.



1 **MR. JOHN McLUCKIE:** --- 6:00 a.m. to 2:00 a.m.

2 **MR. NICOLAS TRUCHON:** Yes, it sounds ---

3 **MR. JOHN McLUCKIE:** And on Sunday, it runs from eight o'clock  
4 in the morning to 11 o'clock at night?

5 **MR. NICOLAS TRUCHON:** That sounds like the regular  
6 program.

7 **MR. JOHN McLUCKIE:** Right. I'm going to suggest to you that the  
8 hours that the train is not running are the most important hours in terms of the  
9 maintenance and the preventative maintenance for those trains. Would you agree with  
10 that, sir?

11 **MR. NICOLAS TRUCHON:** I would agree with that.

12 **MR. JOHN McLUCKIE:** Because when they're in the yard, that's  
13 when the opportunity the technicians have to service them, correct?

14 **MR. NICOLAS TRUCHON:** That is correct.

15 **MR. JOHN McLUCKIE:** And it's also the time there's no trains  
16 running on the tracks so that you can conduct maintenance of the tracks, and the  
17 signaling, and the electrical infrastructure, sir?

18 **MR. NICOLAS TRUCHON:** That is correct.

19 **MR. JOHN McLUCKIE:** And the stations don't have trains running  
20 through them so you can carry out whatever maintenance you need during the station  
21 hours; correct, sir?

22 **MR. NICOLAS TRUCHON:** That is correct.

23 **MR. JOHN McLUCKIE:** And during those critical overnight  
24 periods, up until January of this year, RTM had no supervisors on duty for those critical  
25 hours of infrastructure and repair work, sir?

26 **MR. NICOLAS TRUCHON:** What I would say is the  
27 subcontractors, the main subcontractor being Alstom, does have its own governance  
28 and its own supervision. As far as RTM was concerned, in the structure that was

1 initially implemented, they were, you know, exercising oversight, not directly while the  
2 work was taking place, but catching up in the following day once the work had taken  
3 place. It was deemed to be probably not optimal, and that's the basis over which RTM  
4 restructured their organization.

5 **MR. JOHN McLUCKIE:** Right. And in terms of that restructuring,  
6 the timing of it, I'm just going to read a quote to you from your interview with  
7 Commission counsel. Do you remember giving an interview probably about two months  
8 ago, sir?

9 **MR. NICOLAS TRUCHON:** Yes.

10 **MR. JOHN McLUCKIE:** And you were talking about this  
11 reorganization and what led to it. I'm just going to read it to you from your transcript  
12 here, sir. And this is on page 44, 45 of the PDF:

13 "So from that perspective, I think that that's where  
14 RTM was -- is going. They're -- the derailments got  
15 RTM to seriously consider some of the oversight, that  
16 it was affecting on their performance, the performance  
17 of one their major subcontractors as it relates to  
18 vehicle maintenance, but also infrastructure  
19 maintenance. So that drove quite a bit -- quite a bit  
20 of, you know, thinking on the part of RTM as to how  
21 they could restructure themselves to better ensure the  
22 alignment and performance." (As read).

23 Do you recall saying that to Commission counsel?

24 **MR. NICOLAS TRUCHON:** I do. I do.

25 **MR. JOHN McLUCKIE:** So after the derailment -- in fact, after two  
26 derailments, RTM then seriously considers whether it's providing enough oversight to  
27 Alstom and add an overnight supervisor on a 24/7-basis, sir; correct?

28 **MR. NICOLAS TRUCHON:** I don't necessarily agree with that

1 because I think there were discussions before the derailment about making that  
2 structural change. The derailment created an environment to force the implementation  
3 of that change very quickly. But I understand, from memory, that this was being  
4 discussed even before the derailment.

5 **MR. JOHN McLUCKIE:** And yet, it was only brought in after the  
6 derailment, sir?

7 **MR. NICOLAS TRUCHON:** Yes.

8 **MR. JOHN McLUCKIE:** And clearly, people thought it was  
9 necessary because that was the action you took in response to the derailment, sir?

10 **MR. NICOLAS TRUCHON:** It is one of the commitments that we  
11 made as part of our return-to-service plan.

12 **MR. JOHN McLUCKIE:** Thank you, sir. Those are my questions.

13 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.  
14 Next is Transportation Action Canada, Mr. David Jeanes.

15 **MR. DAVID JEANES:** Yes, thank you. David Jeanes, Transport  
16 Action Canada. I have no questions for Mr. Truchon.

17 **COMMISSIONER HOURIGAN:** All right. Thank you.

18 Next is the witness counsel, RTG.

19 **--- CROSS-EXAMINATION BY MR. MICHAEL FENRICK:**

20 **MR. MICHAEL FENRICK:** Good afternoon, Mr. Truchon. I'm  
21 sorry, I', just experiencing a bit of a technical issue here.

22 **COMMISSIONER HOURIGAN:** We can see you now, and we can  
23 here you.

24 **MR. MICHAEL FENRICK:** Okay, great. Thank you.

25 Mr. Truchon, you were asked a number of questions, and I don't  
26 want to retread a lot of the ground that was covered about what Mr. France's role was  
27 and what the City had asked of RTG. I do want to ask you one factual question. Have  
28 you attended any meetings with -- that Mr. France and representatives of the City have

1 attended since October 1<sup>st</sup>, 2021?

2 **MR. NICOLAS TRUCHON:** I don't believe I have.

3 **MR. MICHAEL FENRICK:** Okay. But more to the point here, what  
4 I'm wondering about is your evidence that you gave to Mr. Gardner, on behalf of the  
5 City, that it was your view that replacing the vehicle maintenance manager while you  
6 were in the midst of trying to recover from the second derailment was misguided. Is that  
7 a fair characterization of your evidence?

8 **MR. NICOLAS TRUCHON:** Yes.

9 **MR. MICHAEL FENRICK:** And why was it misguided, sir?

10 **MR. NICOLAS TRUCHON:** When we're in a crisis situation,  
11 because it was a crisis, as far as I'm concerned, it's all hands on deck. If you like the  
12 person or you don't like the person, if that person is in position, we don't have time to  
13 bring in a new player and start searching for a new player. There will be a time and  
14 place to do the changes that the City requested. Just on that basis I felt that whether or  
15 not it was justified I'm not going to opine on that. But I certainly felt that it was a  
16 distraction that we could not afford because it was taking our focus away by creating  
17 another issue of contention and taking our focus away from doing the actual work that  
18 needed to take place to get the trains back in service.

19 **MR. MICHAEL FENRICK:** And was that the only example of the  
20 City's approach following the second derailment where it was taking RTG's attention  
21 away from recovering and from resolving the issues with the derailment, or were there  
22 others?

23 **MR. NICOLAS TRUCHON:** No. The Notice of Default was  
24 completely premature. And it was completely disconnection from the discussions we  
25 were having at the operational level. And personally, even to this day, I still don't  
26 understand the motivations that get the City to move with the Notice of Default. You  
27 know, you want everybody to be focused on repairing the infrastructure, figuring out  
28 what's wrong with the train, figuring out what's wrong with the process, making the

1 necessary fundamental changes that needed to take place. And as far as I'm  
2 concerned, throwing contractual disputes into the mix was unnecessary at this point,  
3 and certainly premature.

4 **MR. MICHAEL FENRICK:** I just want to ask you about something  
5 that came up earlier in the City's questioning of Mr. Guerra that we didn't get a chance  
6 to come back to. But it's the issue of whether or not there's a cap deductions, daily  
7 maximum cap on deductions. Did you see Mr. Guerra's evidence ---

8 **MR. NICOLAS TRUCHON:** I did.

9 **MR. MICHAEL FENRICK:** --- when the question was asked of  
10 him?

11 **MR. NICOLAS TRUCHON:** I did.

12 **MR. MICHAEL FENRICK:** And is it your understanding that there  
13 is a cap, a daily cap on deductions?

14 **MR. NICOLAS TRUCHON:** I wish there were but there's clearly  
15 not. As far as the characterization of a cap is, I think, a misunderstanding of the Project  
16 Agreement. The Project Agreement calls for -- the \$10,000 that was being referred is  
17 the maximum amount that the City is entitled to hold back against our payment. And  
18 it's a 10,000 per day for a disputed item.

19 When the item is disputed, if the value of the deduction exceeds  
20 \$10,000 the maximum amount that the City is entitled to hold back is \$10,000 until the  
21 dispute gets resolved. And at that point the full amount, whatever the value of that  
22 dispute ends up -- whether it's -- once it's settled and it's determined as a final value,  
23 that payment, that amount is held back against the payment from RTG.

24 **MR. MICHAEL FENRICK:** And approximately how many of these  
25 disputed items are there at the moment?

26 **MR. NICOLAS TRUCHON:** I don't have an exact number. I don't  
27 have enough -- we're talking about thousands of work orders that are being in dispute,  
28 sitting in the dispute ledger waiting to be resolved.

1                   **MR. MICHAEL FENRICK:** I want to turn to a slightly different issue  
2 now which is when the Mayor was examined last week and some other witnesses as  
3 well, there was a suggestion that RTG had acknowledge responsibility for the sink hole  
4 because it received an insurance payment.

5                   Are you familiar with that evidence, Mr. Truchon?

6                   **MR. NICOLAS TRUCHON:** I am.

7                   **MR. MICHAEL FENRICK:** And I just want to ask a very simple  
8 question; maybe it's a little too simple. But first of all, why did RTG have insurance for  
9 this type of situation?

10                  **MR. NICOLAS TRUCHON:** Like any responsible owner we buy  
11 insurance for when bad things happen. And that's exactly what happened in the case of  
12 the sink hole. When we have a big problem like the sink hole, the natural place to go --  
13 and a sink hole in my case or a fire in a house or anybody that's a property or asset  
14 owner, you buy insurance to protect against a catastrophic incident and this is exactly  
15 what we did. And that policy was a no fault policy. So ultimately, the party that was  
16 responsible for covering that risk, you know, covered that risk, the financial impact of  
17 that incident through the insurance settlement. But I don't think there was anything  
18 about any admission of responsibility. It was just a settlement with the insurers based  
19 on the terms of the policy.

20                  **MR. MICHAEL FENRICK:** And that's a sensible way of  
21 approaching this, to have insurance for exactly these types of unforeseen  
22 circumstances?

23                  **MR. NICOLAS TRUCHON:** Perfectly.

24                  **MR. MICHAEL FENRICK:** I just want to call up a document. It's  
25 COMH000065.

26 **--- EXHIBIT No. 323:**

27   COMH00000065 – Mutual Full and Final Release between  
28   the City of Ottawa and RTG et al 27 September 2021

1                   **MR. MICHAEL FENRICK:** And this is a full and final mutual release  
2 between the City and RTG. Now, I'm not interested in you addressing any of the  
3 commercial or confidential settlement discussions that preceded this document but I  
4 would like to take you through this document. So please don't tread on too many of the  
5 settlement privileged stuff that might have occurred before this agreement was entered  
6 into.

7                   The first thing I'd like to take your attention to, it's the fourth recital  
8 on the first page. And I'd just like you to confirm. Was the City a co-insured under that  
9 policy, the same policy that RTG had?

10                  **MR. NICOLAS TRUCHON:** I believe it is.

11                  **MR. MICHAEL FENRICK:** And if we go down near the bottom of  
12 the page, there's an indication there that the City had also brought a claim under the  
13 same policy. Were you aware that the City also had a claim for delay against its  
14 insurers under the same policy at the time?

15                  **MR. NICOLAS TRUCHON:** Yes.

16                  **MR. MICHAEL FENRICK:** And also if you go down to the top of  
17 the second page there's another recital there that seems to indicate that the City had  
18 brought a claim against RTG for damages relating to, among other things, the sinkhole  
19 and the delays that it had caused. Do you see that?

20                  **MR. NICOLAS TRUCHON:** Yes, I do.

21                  **MR. MICHAEL FENRICK:** And is it our understanding that the City  
22 had a claim -- had its own claim against RTG related to the delay?

23                  **MR. NICOLAS TRUCHON:** Yes.

24                  **MR. MICHAEL FENRICK:** And I just want to go -- there's a little bit  
25 down on that page. I think it's the third recital that's on that page, so before we get into  
26 the numbered paragraphs. You'll see there that there's a recital that concerns a term of  
27 the settlement that RTG settled. First of all, RTG settled its claim with the insurer over  
28 the delay events. That's your recollection as well?

1                   **MR. NICOLAS TRUCHON:** Yes.

2                   **MR. MICHAEL FENRICK:** And that the insurer wanted the City to  
3 consent to the amounts that would be paid to RTG under the settlement.

4                   **MR. NICOLAS TRUCHON:** Yes.

5                   **MR. MICHAEL FENRICK:** Do you see that? And that they would  
6 agree that it was a first past the post policy which would mean there would be less  
7 money under the policy to satisfy the City's claim. Is that your understanding?

8                   **MR. NICOLAS TRUCHON:** That is my understanding as well. **MR.**

9                   **MICHAEL FENRICK:** Okay. And the City agreed to enter into  
10 -- to acknowledge this; is that correct?

11                   **MR. NICOLAS TRUCHON:** Yes.

12                   **MR. MICHAEL FENRICK:** And if we just go down to paragraph 1  
13 of this document, RTG released its claims against the City with respect to delay and the  
14 sinkhole; is that a fair characterization of that paragraph?

15                   **MR. NICOLAS TRUCHON:** Yes.

16                   **MR. MICHAEL FENRICK:** And if we go down to numbered  
17 paragraph 2, the City released its claims as well against RTG; is that fair?

18                   **MR. NICOLAS TRUCHON:** Yes.

19                   **MR. MICHAEL FENRICK:** So both parties essentially agreed and I  
20 just want to -- agreed to release the claims they had against each other; is that what I'm  
21 seeing on this document?

22                   **MR. NICOLAS TRUCHON:** That is my understanding as well.

23                   **MR. MICHAEL FENRICK:** Okay. But I just want to go down now  
24 to paragraph 14, the numbered paragraph 14 of the release. And you'll see there that  
25 neither party is admitting liability with respect to the sinkhole. Is that what you see there  
26 at paragraph 14?

27                   **MR. NICOLAS TRUCHON:** Yes, I read the same thing.

28                   **MR. MICHAEL FENRICK:** Okay. So there was no admission of



1 liability by RTG that it had in fact done anything to cause the sinkhole; is that correct?

2 **MR. NICOLAS TRUCHON:** Correct.

3 **MR. MICHAEL FENRICK:** Okay. I want to turn now -- and we can  
4 take that document down. We've talked a lot and in your evidence with Commission  
5 counsel and in your interview and throughout this process there's been a lot of focus on  
6 some of the troubles with the relationship between the City and RTG and further down  
7 the chain with Alstom. But I want to focus now on the future a little bit and the present  
8 moment.

9 How would you describe the relationship between RTG and the City  
10 now?

11 **MR. NICOLAS TRUCHON:** Again, as I mentioned previously, I  
12 consider the relationship to be significantly improved at the operational level but we do  
13 still have a fundamental commercial issues that need -- that will need to be addressed  
14 and we certainly look forward to the City to (audio skip).

15 **MR. MICHAEL FENRICK:** And in terms of RTG's or RTM's  
16 relationship with Alstom, how would you characterize that now, at the present moment  
17 we're speaking about?

18 **MR. NICOLAS TRUCHON:** I would say it is progressing but still  
19 remains quite complicated. But it is operational. It is functioning at the operational  
20 level, and that's evidenced by the performance that we've been having in the system.  
21 As complicated as the RTG relationship is with the City, the relationship between RTM  
22 and Alstom maintenance is also equally complicated, because everything is intertwined.

23 **MR. MICHAEL FENRICK:** And I believe you gave a bit of a  
24 summary in your evidence of your experience in the P3 market. And you were very  
25 humble about your experience, but in my view, it's been quite extensive. And you don't  
26 have to admit that or acknowledge that, but I have a question, which is, given that  
27 experience on this project and on others, what would you say was the biggest challenge  
28 on this project, from your perspective, since you joined -- or beforehand that you

1 inherited when you did join?

2 **MR. NICOLAS TRUCHON:** I think it's managing expectations. As  
3 far as -- maintenance operations, as I indicated previously, are based on their ability to  
4 recover from incidents, because we know incidents are going to be taking place. What I  
5 have as the biggest -- what I would say is the P3 contract -- the sponsors, my sponsors,  
6 when they bid on the P3 contract, they knew exactly what they were getting themselves  
7 into. They understand construction. They understand all the risks that are being  
8 assumed, and they willingly signed up their name to deliver the service.

9 I'd like to believe that when there is a contractual provision that  
10 works, there is a calculated risk in the contract that's being assessed. And when that  
11 risk materializes, it's no longer about fighting; it's about recovering. And it's about the  
12 "P" of partnership to try to go and proactively resolve issues, and not try to find every  
13 provision in the project agreement that would be remotely beneficial to anchor your  
14 position and not engage.

15 We take a lot of risk. We take all the onus of delivering the service.  
16 I think a public party in the P3 agreement has, as far as I'm concerned, one key role to  
17 do: it's to pay when service is delivered, and when there are disputes, it's to address  
18 those disputes and not let disputes linger. It's to engage and resolve issues, and I think  
19 on that front specifically, this is probably, as far as I'm concerned, the biggest issue that  
20 this project has encountered.

21 **MR. MICHAEL FENRICK:** One last question for you. How do you  
22 think those challenges, either on this project or on other projects, could be handled  
23 going forward?

24 **MR. NICOLAS TRUCHON:** I think this project is missing a very  
25 fundamental element: an honest broker. Where we're sitting, obviously we put forward  
26 positions in front of the City to progress issues. The City obviously reviews those  
27 proposals. Some of them they accept; some of them they don't. But at the end of the  
28 day, it's to have a sounding board and a bit of visibility as to what are other practices on

1 other projects. There are things that we are fighting on this project which we are not  
2 fighting on any other projects. And there are issues that we have -- I'm sure part of this  
3 has been part of the evidence in front of the Commission -- about things like carryover  
4 of deductions, which is clearly established as not a practice that's taking place on other  
5 projects, yet we need to fight for every inch. And that's just adding additional noise into  
6 the equation.

7                   At the end of the day, we agree we had some shortcomings. I don't  
8 challenge that. And we certainly haven't delivered the level of service we were looking for,  
9 but it is improving. And we look at the records, and it's not just the last three months. In  
10 between the cracked wheels and the derailments, it was smooth sailing. We were  
11 getting performance numbers in the 98/99 percent in terms of availability.

12                   We can make this vehicle work. We will make this vehicle work,  
13 and we will continue to make this vehicle work on the track and on the infrastructure.  
14 And as far as I'm concerned, we have the full unconditional commitment of the sponsors  
15 to do so.

16                   **MR. MICHAEL FENRICK:** Thank you. Those are my questions,  
17 Mr. Truchon.

18                   **MR. NICOLAS TRUCHON:** Thank you.

19                   **COMMISSIONER HOURIGAN:** Re-examination?

20                   **MR. JOHN ADAIR:** None. Thank you.

21                   **COMMISSIONER HOURIGAN:** I want to thank the witness for  
22 coming and testifying. We appreciate your evidence. It is helpful to us in our work. So  
23 you're excused.

24                   I wanted to say as well that this is the end of the hearings at the  
25 University of Ottawa law school. And for those who are not in the Ottawa area, I can tell  
26 you it is an outstanding institution, one of the best law schools in the country. And  
27 before we leave it, I would like to thank everyone at the law school for being very  
28 gracious hosts. In particular, I would like to thank Dean Kristen Boon for allowing us to

1 use this terrific courtroom on campus. And thank you also to Professor Alain Roussy for  
2 making all of the arrangements for us to be here.

3 And finally, and mostly importantly, I want to thank our four Ottawa  
4 U summer students for their invaluable assistance. They are Andrew Clark-Alfaro,  
5 Hanna Hsiao, Megan Lethbridge, and Bassel Sabalbal. They have worked very hard  
6 and they have helped a great deal. They all have a big future in the law, and I was very  
7 grateful to be able to work with them. So thank you all.

8 All right. Good-bye.

9 **THE REGISTRAR:** All right rise. The hearing is now adjourned.

10 --- Upon adjourning at 5:57 p.m.

11

12

### C E R T I F I C A T I O N

13

14 I, Wendy Clements, a certified court reporter, hereby certify the foregoing pages to be  
15 an accurate transcription of my notes/records to the best of my skill and ability, and I so  
16 swear.

17

18 Je, Wendy Clements, une sténographe officiel, certifie que les pages ci-hautes sont une  
19 transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et  
20 je le jure.

21

22



23 Wendy Clements