



Public Hearing

Audience publique

Commissioner / Commissaire

The Honourable / L'honorable
C. William Hourigan

VOLUME 11

Held at :

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

Monday, June 27, 2022

Tenue à:

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

Lundi, le 27 juin 2022

INTERNATIONAL REPORTING INC.

<http://www.transcription.tc>

(800)899-0006

II Appearances / Comparutions

Falguni Debnath	Executive Director / Directrice Générale
Christine Mainville	Co-lead Counsel / Avocate principale
Kate McGrann	Co-lead Counsel / Avocate principale
John Adair	Co-lead Counsel / Avocat principal
Chris Grisdale	Commission Counsel / Avocat de la Commission
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
Carly Peddle	Commission Counsel / Avocate de la Commission
Emily Young	Commission Counsel / Avocate de la Commission
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	
Sarit Batner	Ontario Infrastructure and Lands Corporation (IO)
Julie Parla	
Morgan Watkins	
Solomon McKenzie	

III Appearances / Comparutions

Kyle Lambert
Jeremiah Kopp

Morrison Hershfield

Heather MacKay
Jeffrey Claydon
Adam Mortimer

The Province of Ontario

Michael Varantsidis
Gary Gibbs
Kim Gillham

Rideau Transit Group – EJV (Engineering Joint Venture)

Jennifer McAleer
Peter Mantas
Maria Braker

Thales Canada Inc.

David Jeanes

Transport Action Canada

Linda Rothstein
Gordon Capern
Michael Fenrick
Jean-Claude Killey
Kartiga Thavaraj
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

IV
Table of Content / Table des matières

	PAGE
MR. MICHAEL MORGAN, Affirmed	1
Examination in-Chief by Ms. Christine Mainville	1
Cross-Examination by Mr. Michael Fenrick	66
Cross-Examination by Mr. John McLuckie	72
Cross-Examination by Mr. Peter Wardle	81
Re-Examination by Ms. Christine Mainville	106
MR. BRIAN GUEST, Affirmed	112
Examination in-Chief by Mr. John Adair	112
Cross-Examination by Mr. Peter Wardle	173
Cross-Examination by Ms. Linda Rothstein	176
Cross-Examination by Mr. John Mather	185

V
Exhibit List / Liste des pièces

No	DESCRIPTION	PAGE
160	STV0000296 – Email from Thomas Prendergast to Jocelyne Begin et al Re – Comments re: RTG Proposal on RSA 5 September 2018	15
161	STV0000297 – RTG Proposal on RSA 4 September 2018	21
162	STV0000299 – Critical Ottawa Vehicle Issues 5 September 2018	22
163	STV0000313 – Vehicle fleet build out for 34 vehicles 12 September 2018	25
164	STV0000512 – Email from Thomas Prendergast to John Manconi et al Re – Final Update: Immobilized train on track between DR East Portal and Rideau Stn 9 September 2019	31
165	STV0000510 – Email from Thomas Prendergast to John Manconi et al Re – Final Update: Immobilized Train between STL and CYR, track 2 9 September 2019	32
166	COW0593690 – Text messages between Michael Morgan and Richard Holder 29 July 2019 to 17 December 2019	36
167	STV0002337 – Whats App Messages City of Ottawa 24 April 2019 to 29 December 2019	37
168	COW0000128 – City of Ottawa Memo from Director O-Train Construction Steve Cripps to Mayor and Members of Council 11 May 2017	63
169	COW0451494 – Email from John Manconi to Jocelyne Begin et al Re- Alstom RTG Update 12 August 2019	93
170	IFO0000878 – OLRT Project Agreement Schedule 15 – 3 Maintenance and Rehabilitation Requirements 24 June 2013	98
171	COW0000386 – Letter Boxfish to City of Ottawa 10 September 2013 with attached Policy Briefing Aligning Public Policy in Support of Public Transit The City of Ottawa/Regional Municipality of Waterloo 24 June 2013	116
172	COW0593617 – City of Ottawa Addendum No. 1 Request for Standing Offer Strategic Advisory Services 20 April 2010	142

VI
Exhibit List / Liste des pièces

No	DESCRIPTION	PAGE
173	COW0593619 – Proposal of Supply of Consulting Services by The Boxfish Group to the Rail Implementation Office City of Ottawa, 13 June 2011	144
174	COW0593623 – City of Ottawa Changes to P.O. #45075221 The Boxfish Group 14 August 2013	149
175	IFO0042507 – Email from John Traianopoulos to Megan Mulligan Re: IO Media Clips – 17 February 2017	154
176	MHH0038155 – Email from George Tapas (AECOM) to Daniel Farrell (Morrison Hershfield) RE: RFP – Fairness Commissioner Services for LRT Stage 2 18 October 2016	156
177	COMH000028 – Email from Brian Guest to Bob Chiarelli 16 October 2021	180
178	TRN00000175 – Brian Guest’s Curriculum Vitae	168

Ottawa, Ontario

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

--- Upon commencing on Monday, June 28, 2022, at 8:59 a.m.

THE REGISTRAR: Order. All rise. The hearing is now resumed.

The Honourable Justice Hourigan is presiding.

(SHORT PAUSE)

--- MR. MICHAEL MORGAN, Affirmed

COMMISSIONER HOURIGAN: Very good. We just had a technical issue. We are all set to go. So, the first counsel to examine you will be Ms. Mainville from the Commission. Go ahead, Ms. Mainville.

MS. CHRISTINE MAINVILLE: Thank you, Mr. Commissioner.
Was the witness sworn in?

COMMISSIONER HOURIGAN: He was.

MS. CHRISTINE MAINVILLE: Okay. Thank you. I don't have him yet on my screen.

--- EXAMINATION IN-CHIEF BY MS. CHRISTINE MAINVILLE:

MS. CHRISTINE MAINVILLE: Good morning, Mr. Morgan.

MR. MICHAEL MORGAN: Good morning.

MS. CHRISTINE MAINVILLE: Hi. Okay. Can you start by telling us when you began working for the City of Ottawa?

MR. MICHAEL MORGAN: I began working for the City in late 2014. I joined the City as the director of rail operations.

MS. CHRISTINE MAINVILLE: Right. And that was in relation to Stage 1, correct?

MR. MICHAEL MORGAN: In relation to Stage 1 and in relation to the Trillium line.

MS. CHRISTINE MAINVILLE: Got it. And was that more specifically with OC Transpo, then?

MR. MICHAEL MORGAN: OC Transpo is the Transit Services

1 Department of the City of Ottawa. So, OC Transpo is part of the City of Ottawa.

2 **MS. CHRISTINE MAINVILLE:** Right. But given that you were
3 director of rail operations, was that ---

4 **MR. MICHAEL MORGAN:** They are ---

5 **MS. CHRISTINE MAINVILLE:** Was that ---

6 **MR. MICHAEL MORGAN:** They're interchangeable. You can say
7 "OC Transpo"; you can say "Transit Services."

8 **MS. CHRISTINE MAINVILLE:** I see. Okay. So, you were
9 effectively working for OC Transpo?

10 **MR. MICHAEL MORGAN:** Yes.

11 **MS. CHRISTINE MAINVILLE:** Okay. And that -- did that involve
12 some planning for operations in respect of Stage 1?

13 **MR. MICHAEL MORGAN:** Yes. So, that role involved operating
14 and maintaining the existing Trillium line as well as putting the plans together to
15 mobilize a team to operate and provide oversight for the Stage 1 contract.

16 **MS. CHRISTINE MAINVILLE:** Okay. And would that have
17 included things like the parallel bus services and planning for that?

18 **MR. MICHAEL MORGAN:** No. it would have been restricted to
19 recruiting for the operations centre, recruiting for the driver, setting up procedures for
20 how we're going to maintain the system, how we're going to provide oversight of the
21 maintenance. It would be that. It wouldn't include the bus planning, the network
22 planning, the other elements of the services.

23 **MS. CHRISTINE MAINVILLE:** Okay. And then in July 2017, as I
24 understand, you became director of rail construction but in relation to Stage 2, correct?

25 **MR. MICHAEL MORGAN:** Correct.

26 **MS. CHRISTINE MAINVILLE:** And was that added to your portfolio
27 and you were no longer director of rail operations, or were you ---

28 **MR. MICHAEL MORGAN:** No -- at that point, I switched positions.

1 So, I was primarily responsible for the Stage 2 program for the City of Ottawa, but I
2 stayed close to the Stage 1 program because we needed to understand any technical
3 changes, any operational changes that needed to be applied to Stage 2, so I stayed
4 close to the -- what was happening with Stage 1.

5 **MS. CHRISTINE MAINVILLE:** Okay. And did someone take your
6 place as director of rail operations?

7 **MR. MICHAEL MORGAN:** At the time it would have been either --
8 I believe it was Joanna Venditti and that may have been followed by Duane Duquette.

9 **MS. CHRISTINE MAINVILLE:** Okay. And as of January 2019,
10 when Mr. Cripps, as I believe -- as I understand, retired, you became the director of the
11 rail implementation office as well, right?

12 **MR. MICHAEL MORGAN:** Correct.

13 **MS. CHRISTINE MAINVILLE:** And so, in addition to still being
14 responsible for the Stage 2 construction, you led Stage 1 through its completion right
15 and through to RSA?

16 **MR. MICHAEL MORGAN:** Correct. So, in the beginning of 2019
17 we were still in the final throes of procurement on Stage 2, and there was a separate
18 procurement director who was looking after that. I was still mobilizing the team for
19 Stage 2 as well as I took over responsibility for Stage 1.

20 **MS. CHRISTINE MAINVILLE:** Okay. And in that context were you
21 reporting to Mr. Manconi?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MS. CHRISTINE MAINVILLE:** Okay. Anyone else or was that
24 your direct reporting ---

25 **MR. MICHAEL MORGAN:** No, that was my direct report.

26 **MS. CHRISTINE MAINVILLE:** Okay. And how did the
27 decision-making process go as between you and Mr. Manconi or others at the City
28 generally speaking?

1 **MR. MICHAEL MORGAN:** For the Stage 1 program in particular,
2 it -- generally the program was, I would say, you know, operating; it was at a -- in a
3 steady state, and they would report on a regular basis the Executive Steering
4 Committee which was made up of a number of senior staff at the City. And then there
5 would be regular reporting to the Finance and Economic Development Committee
6 meetings and/or the Transit Commission meetings. So, that was essentially -- the
7 reporting for my team was up to the Executive Steering Committee on any key issues
8 and up to John Manconi on a day-to-day basis for issues that arose.

9 **MS. CHRISTINE MAINVILLE:** And was there something that
10 defined who had decision-making authority on any given issue?

11 **MR. MICHAEL MORGAN:** Certainly, from a budgetary
12 perspective, there was clear rules in terms of drawing down on the contingency, you
13 know, having to go to the Executive Steering Committee if there was any budget
14 pressures or new funding required that would -- outside of the contingency that would
15 have to go up to counsel. On a day-to-day basis there is likely some program
16 management documents and files, you know, plans that the team was relying on that
17 governed -- that basically spelled out those rules, the governance for the contingency,
18 the governance for Executive Steering Committee and others.

19 **MS. CHRISTINE MAINVILLE:** And would you have
20 decision-making authority in many respects but occasionally needed authority or
21 sign-off from Mr. Manconi; is that generally speaking the way you would see it?

22 **MR. MICHAEL MORGAN:** Well, yeah. I would say on a day-to-
23 day basis running the operation, making sure we were connecting the right people,
24 making sure we were advancing the project, finishing things. There was a lot of
25 coordination with Transit so that, you know, that -- basically John's team, so there was
26 coordination at his level through a series of meetings. But the day-to-day of getting out,
27 inspecting, you know, elements and issues in the field, that was largely with my team.

28 And then as we ran into roadblocks or issues that kind of came up

1 over time, those would be first flagged to John for his assistance if they were, for
2 example, issues that were generated within the organization or issues within say, Hydro
3 Ottawa, for example, that we needed some support, I would flag those to John. If there
4 was any major deviations, typically we would go -- there would be a briefing to the
5 Executive Steering Committee.

6 **MS. CHRISTINE MAINVILLE:** Okay. And you are still involved in
7 Stage 1 in terms of bringing the project to final completion, correct?

8 **MR. MICHAEL MORGAN:** Yes. So, I'm still the City
9 representative on the contract. So, there's a few things going on with that contract.
10 One is the final completion of the Stage 1 works, the second is there's a -- we did an
11 add-on contract for a fleet expansion and so that work is still in progress. We did an
12 MSF yard expansion; that work was completed. So, two big things right now are final
13 completion and closing out the final issues, the fleet expansion. And I have been pulled
14 into a number of legal contractual issues that are outstanding on the project.

15 **MS. CHRISTINE MAINVILLE:** Right. You're involved in handling
16 several aspects of the litigation between the City and RTG, correct?

17 **MR. MICHAEL MORGAN:** Correct.

18 **MS. CHRISTINE MAINVILLE:** And your -- and just so it's clear,
19 you're also currently still engaged in the Stage 2 work, right?

20 **MR. MICHAEL MORGAN:** Yes.

21 **MS. CHRISTINE MAINVILLE:** Okay. And your education is in
22 electrical engineering, right?

23 **MR. MICHAEL MORGAN:** Yes.

24 **MS. CHRISTINE MAINVILLE:** Are you a certified engineer?

25 **MR. MICHAEL MORGAN:** I'm a professional engineer registered
26 with Professional Engineers of Ontario.

27 **MS. CHRISTINE MAINVILLE:** Okay. And you've worked with
28 Bombardier before?

1 **MR. MICHAEL MORGAN:** Yeah, prior to joining the City of Ottawa
2 I worked on a series of turnkey projections starting in Vancouver. Bombardier did a
3 design build expansion of the SkyTrain to put in the Millennium Line.

4 From there, I worked on a project at the JFK Airport in New York
5 using the same technology, bi-rail technology.

6 I then worked on that same system for four and a half years during
7 the operations and maintenance phase. I worked on a P-3 in Yong Yin for a brief period
8 as part of a restart, and then a P-3 on the Gold Coast, which was a two-year
9 assignment. And then at the end of that assignment, I joined the City of Ottawa.

10 **MS. CHRISTINE MAINVILLE:** Right. And the last two you
11 mentioned were an LRT project in South Korea, the restart; and the other one ---

12 **MR. MICHAEL MORGAN:** Yeah.

13 **MS. CHRISTINE MAINVILLE:** --- on the Gold Coast being in
14 Australia, correct?

15 **MR. MICHAEL MORGAN:** Yeah.

16 **MS. CHRISTINE MAINVILLE:** And you did various things on these
17 projects, including in respect of testing and commissioning, operations and
18 maintenance, right?

19 **MR. MICHAEL MORGAN:** Correct, yes. So in New York at the
20 airport project, which was a light rail system as well, I was involved with everything from
21 vehicle overhauls to maintenance to customer service to, you know, commercial
22 negotiations.

23 When I went to Yong Yin, it was largely focused on testing and
24 commissioning, a restart of that system.

25 And then on the Gold Coast, I was responsible for testing and
26 commissioning of the complete system on behalf of the design build consortium on that
27 project.

28 **MS. CHRISTINE MAINVILLE:** Right. So you've worked, obviously,

1 we said, for Bombardier for the private sector, the -- effectively, the project -- on these
2 other projects, correct?

3 **MR. MICHAEL MORGAN:** Correct.

4 **MS. CHRISTINE MAINVILLE:** And were you brought into the
5 Ottawa LRT project because of your experience?

6 **MR. MICHAEL MORGAN:** I expect that yes, yeah.

7 **MS. CHRISTINE MAINVILLE:** Okay. And in terms of operational
8 readiness, I just want to canvass a couple of things with you.

9 How was the operator's readiness to be assessed in this project?

10 **MR. MICHAEL MORGAN:** So when we started, you know, there
11 was a few tools that we were using. You know, the training program for the operators
12 was run by a gentleman named Jim Hopkins. We were very fortunate to recruit Jim,
13 because he ran the safety department of the Skytrain System for probably 20 or 30
14 years.

15 So Jim is the Chief Safety Officer for the City. He had a training
16 department. His department did a number of things to not only train, to prepare, and to
17 assess the operators, including a simulator for the train, a simulator for the control
18 system, and they, you know, put in a training program with testing gates along the way
19 and various things.

20 I'm not -- that was the setup at the beginning. I'm not intimately
21 familiar with those details, but that was largely under Jim's area of responsibility and he
22 brought a lot to the table in terms of having worked the Skytrain for so many years.

23 **MS. CHRISTINE MAINVILLE:** So I understand there was a
24 training program and everything that was done to prepare, but was there anything to
25 evaluate the readiness, at the end of the day?

26 **MR. MICHAEL MORGAN:** Well, in terms of the readiness, it was
27 really using trial running to assess that the system could go into service, assessing the
28 testing commissioning program generally, assessing the capability of the operators and

1 their handling and understanding of the vehicles, making sure they're all qualified and
2 certified. Those were the primary assessments.

3 We also -- John, as part of his remit, brought on the independent
4 assessment team, you know, third-party group of external consultants with lots of
5 experience in rail and light rail systems to assess the overall readiness of the system.

6 We always looked at the system holistically from kind of a project
7 level, saying, "Are the operators ready to go? Are the maintainers ready to go? Is the
8 system ready to go?"

9 **MS. CHRISTINE MAINVILLE:** Right. So and regularly, that trial
10 running doesn't specifically evaluate the operators? It's not one of the criteria or
11 measures -- criteria that was measured as part of trial running, right?

12 **MR. MICHAEL MORGAN:** I think there was ---

13 **MS. CHRISTINE MAINVILLE:** Performance of the operators?

14 **MR. MICHAEL MORGAN:** You're right. There's no explicit metric
15 included in the trial running for the operators. That being said, it's a highly automated
16 system, so the operators on board the trains are there, they're pressing a vigilance
17 button to basically show that they're awake. They need to press this button every 30
18 seconds.

19 And so the extent that the system is reliable, the system's
20 automated, and so there should be little need for intervention.

21 **MS. CHRISTINE MAINVILLE:** Right. But they do need to be
22 trained and develop some level of experience in troubleshooting incidents, events on
23 the line, and what to do when things go wrong, correct?

24 **MR. MICHAEL MORGAN:** No, absolutely. Like, I didn't mean to --
25 by any means -- to undermine their role. Like, we have them there on the trains to
26 provide an extra set of eyes on the system, monitoring the tracks. They need to be fully
27 capable, and if they weren't, you know, then you would have problems in trial running.
28 You would have problems in operations. And so that would, to a certain extent,

1 undermine our ability to run the system if they weren't there ready to go or reacting,
2 responding. For example, responding to a door, they have the operator on the train, we
3 need them to respond quickly.

4 **MS. CHRISTINE MAINVILLE:** Right.

5 **MR. MICHAEL MORGAN:** If they see something on the tracks, we
6 need them to respond quickly.

7 **MS. CHRISTINE MAINVILLE:** Right. And my point is simply that
8 there was no pass/fail measure of their ability to perform those types of tasks, correct?

9 **MR. MICHAEL MORGAN:** Correct, yeah.

10 **MS. CHRISTINE MAINVILLE:** And is that, the need to practice
11 these types of failures, events, troubleshooting, these types of things, is that part of why
12 the City required a window of time between RSA and revenue service to practice these
13 types of activities?

14 **MR. MICHAEL MORGAN:** Yeah, in part, you know, to get
15 everybody on the system, to get them familiar with it, to have some time and access in a
16 kind of unfettered condition. There was a big period of time, for example, when RTG
17 had fences along the platform, and so we were taking the fences down so that they
18 could kind of really feel what it looked like to get into a station.

19 It also gave us an opportunity to get our customer service staff and
20 get all of our -- the rest of the kind of the transit services department into the stations to
21 do some final checks and understand and you know, our customer service being the
22 best example that they're basically going to be taking phone calls on Monday morning
23 from customers on how to get to places, what the transfers are, how to get up to the
24 platform, and so they needed to be familiar with it.

25 So it was our operator staff, our controller staff, customer service
26 staff, management staff generally. Everybody needed some time to get in there and ---

27 **MS. CHRISTINE MAINVILLE:** Right.

28 **MR. MICHAEL MORGAN:** --- be ready to explain the system and

1 share the information with customers.

2 **MS. CHRISTINE MAINVILLE:** Okay. I just -- given your
3 involvement in Stage 2, I just want to ask you about a change that the City made to the
4 process for Stage 2, one being the claims avoidance strategy that was put in place.

5 **MR. MICHAEL MORGAN:** Right.

6 **MS. CHRISTINE MAINVILLE:** So ---

7 **MR. MICHAEL MORGAN:** You know, so that was ---

8 **MS. CHRISTINE MAINVILLE:** Well, I think you're going to what my
9 question is. I want to confirm that this strategy was put in place, or wasn't in place for
10 Stage 1; is that correct?

11 **MR. MICHAEL MORGAN:** No, it wasn't in ---

12 **MS. CHRISTINE MAINVILLE:** Okay.

13 **MR. MICHAEL MORGAN:** Sorry, I mean, let me just clarify that.
14 What you're quoting is a specific element off of my resume, you know, in terms of how I
15 described the work that I do.

16 In Stage 1, there was absolutely a group of commercial people who
17 were working to avoid claims, settle claims, make sure things didn't go through to court,
18 that we didn't end up in litigation. There was absolutely a group that was doing that.

19 When John came on board, he was much more directive with that
20 approach saying, "We need to work with these people. We need to make the project a
21 success. And in Stage 2, we don't want to end the project and have massive claims
22 hanging over our head," so really taking a dedicated strategy in Stage 2 to say, "Let's
23 avoid that situation."

24 **MS. CHRISTINE MAINVILLE:** And when you say John, you mean
25 Mr. Manconi, correct?

26 **MR. MICHAEL MORGAN:** Yes.

27 **MS. CHRISTINE MAINVILLE:** And I understand that this --
28 whether it was -- how it was termed or applied in Stage 1 versus Stage 2, pursuant to

1 this approach, the City seeks to act like a partner, right?

2 **MR. MICHAEL MORGAN:** Yes. We are absolutely trying to be
3 collaborative with the two constructors. We got two construction teams on Stage 2. It's
4 very complex work, a lot of moving parts, a lot of third-party stakeholders.

5 Trillium Line, for example, had 11 governmental stakeholders who
6 were -- had to provide approval for the project, and so we're absolutely working with
7 them to try to make sure that we can -- where we can, as the owner, help them that we
8 do that.

9 **MS. CHRISTINE MAINVILLE:** Right.

10 **MR. MICHAEL MORGAN:** That was done in Stage 1, but I think
11 more -- it's more explicitly stated in Stage 2.

12 **MS. CHRISTINE MAINVILLE:** Right, because the City recognizes
13 that there is no -- it's not necessarily productive to dispute everything or to stick to the
14 letter of the contract if it may have unintended consequences, correct?

15 **MR. MICHAEL MORGAN:** Correct.

16 **MS. CHRISTINE MAINVILLE:** And do you recall opining to the
17 Commission that a proper approach to partnership is -- includes the fact that -- and
18 again, I'm using your terms -- you don't bludgeon your partner?

19 **MR. MICHAEL MORGAN:** I think the use of the term "bludgeon", I
20 actually -- I borrowed from one of our P-3 consultants, but absolutely. Like, you can't --
21 when you're administering these contracts, you can't -- you know, we're not
22 administering every little I and T and comma and semicolon, you know? We need to
23 work with them, do what's practical and do what's going to be successful for the project.
24 And it's no benefit to the private sector to beat them up over every little issue. And if we
25 did that, we wouldn't get bidders on future projects. If we took on a reputation as just
26 being overly stringent with some of the contract elements, that would get us into trouble
27 and we would just be fighting over everything and we'd be in front of the courts all the
28 time.

1 **MS. CHRISTINE MAINVILLE:** I take it, though, Stage 1, despite
2 any efforts that were made to avoid it, it did encounter some issues with respect to
3 disputes escalating, correct? And taking several years to resolve?

4 **MR. MICHAEL MORGAN:** Yes.

5 **MS. CHRISTINE MAINVILLE:** And that, at the end of the day, I
6 think you'd agree is not helpful to the project, right?

7 **MR. MICHAEL MORGAN:** No. I think it can sour the relationship
8 when there's outstanding multi-million-dollar claims and they're in dispute and they're in
9 a dispute for a long period of time.

10 **MS. CHRISTINE MAINVILLE:** Right. Was there, to your mind, a
11 lack of trust in respect of the constructor? So whether it was there from the get-go or
12 arose over time, did you see the City or some in more senior positions at the City
13 effectively come to lose trust in the project company on Stage 1?

14 **MR. MICHAEL MORGAN:** I would say in certain areas, and
15 perhaps more at the working level, there was lots of trust between staff and RTG people
16 that were building the stations and trying to commission things and put them into
17 service. That being said, I think there was absolutely a loss of confidence and a loss of
18 trust in the schedules that were being brought forward by RTG. So every time we would
19 get a schedule from them, they would deliver that to us; we had little to no confidence in
20 that schedule. Time and time again, they missed those schedule dates, and so after a
21 while, there was a sense that we didn't have clear information from RTG on the
22 schedule and when the project was going to be completed.

23 **MS. CHRISTINE MAINVILLE:** Right. And you're saying there was
24 this loss of confidence, even though the City was itself tracking the progress of the
25 construction work.

26 **MR. MICHAEL MORGAN:** Yes, because we would get in a room,
27 we would have an independent assessment team review the dates, they would look at
28 the scope of work that was outstanding, we would look at the state of the stations, the

1 state of the fleet, and none of it was ready. And then we would get information from
2 RTG saying, "Don't worry; we'll be ready in May. Don't worry; we'll be ready in
3 November." And it never came to pass. They were never ready, and so it became this
4 kind of conflict where what we saw on the ground wasn't matching what they were
5 telling us. So that was a huge challenge. Probably the biggest challenge for the project
6 was just the lack of understanding of when the project was going to be finished.

7 **MS. CHRISTINE MAINVILLE:** Okay. You touched on the experts
8 that the City brought in, and I just want to canvass that a bit with you.

9 You recall working with STV, one of the partners of the Capital
10 Transit Partners consortium.

11 **MR. MICHAEL MORGAN:** Correct.

12 **MS. CHRISTINE MAINVILLE:** And what did you understand their
13 role to be in the latter years of the project, so not during the technical design phase, but
14 really as everybody got ready for the maintenance phase?

15 **MR. MICHAEL MORGAN:** I mean, STV stayed with us throughout
16 the project. Near the end, there was a small group. John brought in STV to -- I think
17 there was two or three of them -- Brian Dwyer, Joe North, and maybe one other -- to
18 assist him in Trillium Line rail issues, just general executive guidance to him. So there's
19 a small group, and then eventually, near the end, he brought in STV's independent
20 assessment team to review the progress on the ground. They brought schedulers and
21 did various analyses, and then at the very end of the project, just there on the ground
22 observing the patterns of behaviour, observing the work as it was undertaken, and
23 reporting back on what they saw and what they understood to be the situation.

24 **MS. CHRISTINE MAINVILLE:** Okay. You said Mr. Manconi -- they
25 were really reporting to him and he brought them in, but were they available generally to
26 the City team for input?

27 **MR. MICHAEL MORGAN:** Yes. Because they were part of the
28 owner's engineer team that reported to my group, we had full access to them and all of

1 their partners, and John also had a contract with them to make them available to him.
2 So there was never a question that we couldn't access STV resources to assist with the
3 project.

4 **MS. CHRISTINE MAINVILLE:** Okay. And were there any
5 constraints in respect of their role, for instance, in terms of whether they could go so far
6 as opining on the readiness of this system?

7 **MR. MICHAEL MORGAN:** In terms of constraining them, the
8 culture of the transit organization at the time, as being led by John, was to be open
9 about what you felt was an issue or not an issue, or where things were working or not
10 working. He wanted everyone to be frank and blunt and open.

11 **MS. CHRISTINE MAINVILLE:** Okay. And then what about
12 Parsons? I take it you worked with them as well.

13 **MR. MICHAEL MORGAN:** Parsons was, I would say, a bit of an
14 add-on to the owner's engineer team after the fact. We wanted to get -- I believe that
15 Steve Cripps brought them on. One of their strengths was direct experience with CBTC
16 systems, and more specifically the Thales CBTC system, so that was very important for
17 us because that was a critical piece of the project.

18 In addition to that, they also had a group of engineers, based out of
19 their Kingston office, that had worked on several projects like the Vancouver Canada
20 Line, SkyTrain line, and others, so they were quite familiar with Thales and integration
21 issues that come with a CBTC project.

22 **MS. CHRISTINE MAINVILLE:** And I take it they were also advising
23 the City on readiness of operations and maintenance.

24 **MR. MICHAEL MORGAN:** So there was some additional support
25 provided by a couple of others. By the time we got to the end of the project, we were
26 looking to establish 24-hour coverage for the maintenance facility just to kind of monitor
27 what was going on, so I think they provided some additional staff for that. They did
28 have at least one person providing some guidance and insight on system integration

1 and at least one person assisting the operations team.

2 **MS. CHRISTINE MAINVILLE:** Okay. But they were involved in --
3 at least one or some of them were involved in advising the City on operational and
4 maintenance issues they might be observing.

5 **MR. MICHAEL MORGAN:** Generally, but they didn't sit at the
6 executive level. They didn't sit on the independent assessment team with John
7 Manconi. During that period, the last two or three months of the project, we probably
8 had 30 people, 40 people who would be active on the system assessing what was going
9 on, assessing the status and readiness of the system. Some of them had more scope;
10 others had less.

11 **MS. CHRISTINE MAINVILLE:** And I just want to go through some
12 of the advice that these various consultants provided to the City and observations they
13 made, so if we could first pull up STV0000296.

14 **--- EXHIBIT No. 160:**

15 STV0000296 – Email from Thomas Prendergast to Jocelyne
16 Begin et al Re – Comments re: RTG Proposal on RSA 5
17 September 2018

18 **(SHORT PAUSE)**

19 **MS. CHRISTINE MAINVILLE:** You'll see, Mr. Morgan, that you're
20 copied on this email from Tom Prendergast.

21 **MR. MICHAEL MORGAN:** Yes.

22 **MS. CHRISTINE MAINVILLE:** And he was with STV, right? So
23 one of the consultants.

24 **MR. MICHAEL MORGAN:** At the time he was with STV, yes.

25 **MS. CHRISTINE MAINVILLE:** And you're generally copied on
26 emails like this, right, to your recollection?

27 **MR. MICHAEL MORGAN:** Yes.

28 **MS. CHRISTINE MAINVILLE:** And I take it you would review these

1 emails and what they circulated.

2 **MR. MICHAEL MORGAN:** Yes.

3 **MS. CHRISTINE MAINVILLE:** So in this one -- and this is dated
4 September 5th, 2018 -- Mr. Prendergast is conveying comments from his team on what
5 is at that time a proposal from RTG to meet a November 2nd RSA date. And I'm not
6 going to ask you about that proposal that came and went, but just in terms of some of
7 the comments made here, you'll see, if we go down a little bit -- and we'll show the
8 whole bottom of the page, but if we start at the paragraph there that says "lastly":

9 "Attached are two documents summarizing the
10 outstanding critical vehicle issues related to the
11 Alstom fleet, along with examples of standard vehicle
12 acceptance criteria/practices used by agencies to
13 ensure the vehicles are ready to be used in revenue
14 service." (As read)

15 Do you see that, where I'm at?

16 **MR. MICHAEL MORGAN:** Yes.

17 **MS. CHRISTINE MAINVILLE:** Okay. So he references these
18 attachments, which I'll take you to, but he indicates the second document -- so if you go
19 to the middle of the paragraph, where I was:

20 "The second document, while not necessarily being
21 part of the PA and therefore not enforceable, per se,
22 helps to illustrate the risks associated with vehicles
23 having poor or unacceptable reliability issues and why
24 the need for a sufficient fleet size (minimum service
25 requirement plus unscheduled/scheduled
26 maintenance spares) and why that cannot be
27 compromised without assuming unacceptable risks in
28 delivering service." (As read).

1 So this is something you and your colleagues were attuned to,
2 right, the risks of vehicles having poor or unacceptable reliability issues?

3 **MR. MICHAEL MORGAN:** So one of the things he's saying in this
4 paragraph is that the spares ration affects performance, that, you know ---

5 **MS. CHRISTINE MAINVILLE:** Yeah.

6 **MR. MICHAEL MORGAN:** --- if you don't have high-level, that that
7 will undermine your ability to deliver the service.

8 **MS. CHRISTINE MAINVILLE:** Right, and that's typically, am I
9 right, they would advise a minimum of two spares available, right, to be able to maintain
10 service?

11 **MR. MICHAEL MORGAN:** So, oftentimes, how you run a service
12 is that you have your peak service numbers and then you want at least one, you know,
13 vehicle on standby -- we call it a "hot standby" -- ready to go that you can swap into
14 service right away such that, you know, if you have to take a vehicle out at the end of
15 the line, it's not a big deal. You just park it; the second one comes in; they swap
16 positions in the rotation, and you keep going. So it becomes seamless to the customer.

17 If you don't have a hot standby and you have to take a vehicle out
18 of service, you end up with a bit of a gap in service. Now, on a four-minute service or a
19 five-minute service, that's not a huge deal, but it starts to erode the performance of the
20 system. So having those -- you know, the right number of spares available to be able to
21 support the service and to be able to make swaps in service is critical to how the system
22 will run.

23 **MS. CHRISTINE MAINVILLE:** But am I right, as I asked, that
24 typically at least two spares was the general advice the City was receiving, correct?

25 **MR. MICHAEL MORGAN:** That -- yeah, I mean -- so for -- in our
26 configuration, 34 vehicles, you know, in service, 15 during the morning peak was kind of
27 preliminary configuration, you would want to have two vehicles set aside, minimum, to
28 be in service, and the other two would be used for maintenance. And so so long as the

1 fleet was performing well, that would generally work. But that's very, very tight.

2 **MS. CHRISTINE MAINVILLE:** Right, exactly. So two above the 15
3 base that you want available as spares ---

4 **MR. MICHAEL MORGAN:** Yeah.

5 **MS. CHRISTINE MAINVILLE:** --- and then -- okay.

6 **MR. MICHAEL MORGAN:** We're counting a little bit differently. So
7 I'm saying two -- one above the 15 or two above the 30 because we run them coupled
8 together, so it's just a bit of the terminology. I just want to make sure I'm clear on that.

9 **MS. CHRISTINE MAINVILLE:** Okay, right. And in terms of my
10 earlier question, he's not only advising about spares and what the fleet size should be,
11 but also the risks associated with vehicles having poor or unacceptable reliability
12 issues?

13 **MR. MICHAEL MORGAN:** Yes.

14 **MS. CHRISTINE MAINVILLE:** Right? So you were attuned to
15 that?

16 **MR. MICHAEL MORGAN:** Yes, in September of 2018 ---

17 **MS. CHRISTINE MAINVILLE:** Yeah.

18 **MR. MICHAEL MORGAN:** --- yes, absolutely, yeah.

19 **MS. CHRISTINE MAINVILLE:** Okay. And the other thing he
20 addresses towards the bottom of the page is, if we go all the way done -- okay. So in
21 summary in this paragraph, he speaks about a pattern at that point in time -- in the
22 second sentence, a pattern they are seeing from RTG is their continued inability to meet
23 critical milestones in terms of dates of completion, and they're accounting for it by
24 reducing the time allocated for pretrial running and system assurance requirements.
25 That is especially the case with respect to being able to effectively test the vehicles in
26 ways that closely approximate the service delivery environment they will actually
27 operate in -- acceleration, braking, station stopping, et cetera -- as well as the CBTC
28 system being able to meet the service requirements for end-to-end running of trains

1 under normal and exacerbated conditions, right?

2 So one thing he's saying there is -- well, let me finish, actually, the
3 rest of the paragraph. So:

4 "So the City IAT expressed their concerns regarding
5 the schedule compression and the knock-on effect it
6 would have on being able to open a safe and reliable
7 service on/after RSA over 15 months ago" (As read).

8 And then if we go to the last sentence:

9 "And because the effect is across a broader spectrum
10 of issues than just the vehicles, we believe it
11 important to reiterate that fact so that it is not lost in
12 the most recent discussions where some may believe
13 it is solely about the vehicle issue." (As read).\

14 So am I right that what he's conveying there is you need time to,
15 first of all, full exercise the system, including under normal and exacerbated conditions,
16 right?

17 **MR. MICHAEL MORGAN:** What he's saying -- you know, and Tom
18 is very articulate. My take on what he's saying is that -- this proposal is about meeting
19 the November date and what he's saying it that in order to meet the November, what
20 they're doing is they're sacrificing all of this additional running time ---

21 **MS. CHRISTINE MAINVILLE:** Right, so the City ---

22 **MR. MICHAEL MORGAN:** --- and so therefore ---

23 **MS. CHRISTINE MAINVILLE:** The City's on notice that that's what
24 they're doing, right? They're cutting time -- running time for the trains, right?

25 **MR. MICHAEL MORGAN:** Yeah, he's saying two things. One is,
26 in order to make this false November date, they're essentially sacrificing all this running
27 time.

28 **MS. CHRISTINE MAINVILLE:** Right.

1 **MR. MICHAEL MORGAN:** And then the second he's saying, which
2 undermines, you know, some -- you know, even the idea of a November is that there
3 are a number wrong across a number of subsystems. So he ends it with saying it's not
4 just the vehicle.

5 **MS. CHRISTINE MAINVILLE:** Right.

6 **MR. MICHAEL MORGAN:** And I think that's the ---

7 **MS. CHRISTINE MAINVILLE:** Well, I'm going to suggest he's
8 saying it's also not just the vehicles that you need exercise. You need to exercise the
9 whole system, right?

10 **MR. MICHAEL MORGAN:** Absolutely. The end of his sentence is
11 saying it's not sole about the vehicle issue. And so when there was discussions about a
12 potential November opening date, we didn't have station occupancy; we didn't have fire
13 department approval on operating either the tunnel between the mainline and the yard;
14 we didn't have final testing of the ventilation system in St. Laurent tunnel; we didn't have
15 any elevator or escalator approvals on any of the stations. So -- yet at the same time,
16 you know, RTG's coming an presenting a November date, Tom's response is, "There's
17 no way."

18 **MS. CHRISTINE MAINVILLE:** Right. But I'm not concerned about
19 the November plan. My question is, you understand, at that point, the importance of
20 running the full system in both, as he says here, normal and exacerbated conditions,
21 right?

22 **MR. MICHAEL MORGAN:** Yes, yes. He's saying that and he's
23 saying not to compromise that.

24 **MS. CHRISTINE MAINVILLE:** But you understand that and you
25 accept that point, right?

26 **MR. MICHAEL MORGAN:** Yes.

27 **MS. CHRISTINE MAINVILLE:** Okay. And then, if we go to
28 STV0000297, which is one of the documents appended to this email, and we go to page

1 -- or slide 10, and this is a document that -- it -- slide 10, this is a document, as I
2 understand it, that the advisors have prepared in response to this RTG proposal. Can
3 we go to slide 10?

4 **--- EXHIBIT No. 161:**

5 STV0000297 – RTG Proposal on RSA 4 September 2018

6 **MS. CHRISTINE MAINVILLE:** And here they're conveying some of
7 the same information, but they're being clear. They're saying:

8 "Traditionally, months of extensive testing in real
9 operating condition would be carried out identify latent
10 design issues. Alstom claimed they would like to see
11 3000 to 5000 kilometres. This will not be possible."
12 (As read).

13 And of course, I pause to note I recognize this is about the
14 November 2018 RSA target date which came and went.

15 "As such, latent design issues may be identified after
16 start of service, which could affect the ability to run
17 the vehicles. Additionally, each vehicle would have
18 been required to operate failure-free (burn-in) for 500
19 to 1000 kilomtres to identify infant mortality issues."
20 (As read).

21 Right? So you understand from this that, traditionally, months of
22 extensive testing in real operating conditions would be advisable, or perhaps best
23 practice?

24 **MR. MICHAEL MORGAN:** So I think, you know, I agree with the
25 statements that are made here. The 3000 to 5000, yeah, again, it's back to the
26 November context. That was not going to be possible.

27 **MS. CHRISTINE MAINVILLE:** No, but I -- but I want to understand
28 that you took that point, just irrespective of what was going to happen for a November

1 2019 or not.

2 **MR. MICHAEL MORGAN:** Yeah, yeah. Like, in terms of the
3 November date, absolutely, yes.

4 **MS. CHRISTINE MAINVILLE:** No, no. Not -- I'm saying
5 irrespective of the November date, you understood that this was a best practice,
6 generally speaking.

7 **MR. MICHAEL MORGAN:** Yes.

8 **MS. CHRISTINE MAINVILLE:** And did this case the City to rethink
9 its plans regarding when to start revenue service following the RSA date, just in terms of
10 being -- having time to run the system fully?

11 **MR. MICHAEL MORGAN:** No. This was not -- this information is
12 not a surprise. Like, this is not new information in -- that's why I keep bringing you back
13 to the context of November. We expected to have thousands of kilometres on these
14 vehicles. We expected to have a full fleet. You know, the ;last sentence here saying
15 that there's going to be no full fleet. So we fully expected to run the system and
16 accumulate hours.

17 **MS. CHRISTINE MAINVILLE:** So the approach was, we're not
18 going to accept the system until it was ready really?

19 **MR. MICHAEL MORGAN:** Correct.

20 **MS. CHRISTINE MAINVILLE:** Can we go to the other attachment
21 to the email which is STV000299?

22 **--- EXHIBIT No. 162:**

23 STV0000299 – Critical Ottawa Vehicle Issues 5 September
24 2018

25 **MS. CHRISTINE MAINVILLE:** And so this was another document
26 prepared by some at STV. If we go just to the bottom of this page, "Vehicle count on
27 opening day"; so just the number, the second point there.

28 "Maintenance will be required. All of the open

1 modifications...”

2 I take that to mean some retrofits and things left to be done, right?

3 **MR. MICHAEL MORGAN:** Open modifications are generally
4 retrofits, yes.

5 **MS. CHRISTINE MAINVILLE:** Okay.

6 “All of the open modifications need to be installed and
7 tested. The open vehicle testing must be completed.
8 How will this be performed when all vehicles are in
9 service?” (As read)

10 So of course, at that point in time, there are fewer vehicles that they
11 propose to be made available, RTG, right?

12 **MR. MICHAEL MORGAN:** Sorry, is this attached to the November
13 date?

14 **MS. CHRISTINE MAINVILLE:** Yes.

15 **MR. MICHAEL MORGAN:** Yeah. Again, if it’s linked to the
16 November suggested opening, I think that this is fair. You know, you can’t -- in addition
17 to the, you know, what I described about the spares, you know, so you have your
18 spares to protect service. You have your spares for routine maintenance. This is just
19 regular maintenance to change out air filters, change out brake fluids, brake pads. You
20 need vehicles set aside just for that.

21 On top of that you would need vehicles to be pulled out of service
22 to do modifications. And so this would just further impact what you could do. And you
23 would never be able to catch up on the modifications if you didn’t have additional
24 vehicles.

25 **MS. CHRISTINE MAINVILLE:** Right. So you understand that to
26 be just a consideration that has to be factored into an assessment of readiness is, you
27 know, how many vehicles will you actually have, depending on how many open
28 modifications you may have to perform, right?

1 **MR. MICHAEL MORGAN:** Yes.

2 **MS. CHRISTINE MAINVILLE:** And the third point, he says there is:

3 “Early life failures of components is always an issue
4 on new vehicle designs. It appears that RTG has
5 reduced the time for burn-in and trial running with
6 each new schedule submitted. The risk associated
7 with an unproven vehicle/infrastructure is very high.”

8 (As read)

9 So you and your colleagues understand at that point in time that
10 there is a high level of failure of components in the early life of a system like this,
11 correct?

12 **MR. MICHAEL MORGAN:** Yes.

13 **MS. CHRISTINE MAINVILLE:** And at least from the advisors’
14 perspectives this is to some level an unproven vehicle or infrastructure, right? So I
15 mean, it’s new in many respects.

16 **MR. MICHAEL MORGAN:** Yeah. I think, you know, the advice
17 that they’re providing is that you need to run the system end to end. You need to
18 exercise everything on the system to shake out any early issues.

19 **MS. CHRISTINE MAINVILLE:** Right. And there was added risk
20 her given it was all brand new, right? A brand new system, ne infrastructure, and new
21 elements working together.

22 **MR. MICHAEL MORGAN:** Yeah. I mean, it’s higher risk than, say,
23 an existing system where you're adding more vehicles, where you're just expanding the
24 fleet.

25 **MS. CHRISTINE MAINVILLE:** Right.

26 **MR. MICHAEL MORGAN:** So in this case, new track, new
27 catenary, new vehicles, new traction power systems, yes.

28 **MS. CHRISTINE MAINVILLE:** Okay. And if we take this down and

1 go to STV000313.

2 This is a document that won't be dated but I'll advise that it's in
3 relation to now a November 30th proposal. So as you may recall, the RSA target date
4 moved from November 2nd to November 30th.

5 And just hold on a second here. I'll give the number again. Oh,
6 you have it there, 313.

7 I'm not seeing the actual document.

8 **--- EXHIBIT No. 163:**

9 STV0000313 – Vehicle fleet build out for 34 vehicles 12
10 September 2018

11 **COMMISSIONER HOURIGAN:** We can see it, so hang on.

12 **MS. CHRISTINE MAINVILLE:** I'm seeing a screen and the
13 captions but not the document.

14 Okay. So this document is not dated here but I'm going to suggest
15 it was created on December 9th, 2018, just to situate you a little bit. And if we go down
16 to the heading there, "Vehicles testing and commissioning" and further in. Let's just
17 bring it up a bit more because I'll read the whole bottom there.

18 **COMMISSIONER HOURIGAN:** Sorry, Counsel, can you tell us the
19 date you say this document was ---

20 **MS. CHRISTINE MAINVILLE:** Yes, December 9th, 2018.

21 **COMMISSION HOURIGAN:** Talking about a proposed date of
22 November 30th?

23 **MS. CHRISTINE MAINVILLE:** Correct, yes.

24 And so here the statement is: "For the extent..."

25 **COMMISSION HOURIGAN:** Just stand by. Just stand by for a
26 second.

27 Go ahead, Counsel.

28 **MS. CHRISTINE MAINVILLE:** Okay.

1 **MR. PETER WARDLE:** (Speaking off mic)

2 **COMMISSION HOURIGAN:** Yeah, it's a good point. It seems to
3 talk about a November date. That's why I wonder why it's a December date.

4 **MS. CHRISTINE MAINVILLE:** Sorry, I apologize. That's a fair
5 point. I took the date from relativity but that may be incorrect. But it is -- you're right. It
6 is at least I think we can agree in respect of a November 30th, 2018 proposal.

7 **COMMISSION HOURIGAN:** Yeah. I think we can take it that it is
8 with respect to that proposal and that accordingly it has to be pre-November 30th.

9 **MS. CHRISTINE MAINVILLE:** Right.

10 **COMMISSION HOURIGAN:** Not a December date. All right?

11 **MS. CHRISTINE MAINVILLE:** Yes, fair enough. Thank you.

12 **COMMISSION HOURIGAN:** And counsel has a date of?

13 **MR. PETER WARDLE:** Date of September 12.

14 **COMMISSION HOURIGAN:** Right. They have September 12,
15 2018, which ---

16 **MS. CHRISTINE MAINVILLE:** Thank you.

17 **COMMISSION HOURIGAN:** --- intuitively seems to make some
18 sense. So that will help situate it for you.

19 **MS. CHRISTINE MAINVILLE:** Yes, thank you for that clarification.

20 Okay. So what as to what's he's indicating here is:

21 "For the acceptance of a new vehicle fleet ..."

22 And he's reiterating some of what we've seen.

23 "...traditionally month of extensive testing and real
24 operating conditions performed t identify latent design
25 issues. Without such testing, latent design issues
26 would be expected to become apparent at present
27 after start of service. Depending on the criticality,
28 such issues could drive up the unscheduled

1 maintenance activities, decreasing the fleet's number
2 of available vehicle vehicles."

3 So you understood again that if there wasn't months of extensive
4 testing and real operating conditions there could be latent design issues that would put
5 additional pressure on maintenance, right?

6 **MR. MICHAEL MORGAN:** Yes.

7 **MS. CHRISTINE MAINVILLE:** And then if we go down a bit at the
8 paragraph that starts, with "Additionally..."

9 "Additionally, each vehicle would have been required
10 to operate failure free burn-in for 500 to 1000
11 kilometres to identify early life component failures.
12 Without a robust vehicle burn-in these failure will
13 occur after the start of service, again decreasing the
14 fleet's number of available vehicles." (As read)

15 And that really corresponds to what we've seen in the other
16 document, right?

17 **MR. MICHAEL MORGAN:** Yes.

18 **MS. CHRISTINE MAINVILLE:** And then just under "Maintenance
19 readiness", they indicate:

20 "As a new maintenance provider it is not expected
21 that the maintainers have the experience to efficiently
22 troubleshoot or maintain a new fleet of vehicles. It
23 has also been stated that the inventory of protective
24 spare parts is not at the level desired to maintain
25 service. Together, these two issues will increase the
26 mean time to repair NTTR, which is an indicator of
27 how fast a defective vehicle can be repaired and
28 made available for operation. An increase in MTTR

1 also decreases a fleet's number of available vehicles
2 adversely affecting the ability to operate a full train
3 schedule."

4 You followed with me? Maybe?

5 **MR. MICHAEL MORGAN:** Yes. So, you know, really pointing to
6 the point that -- you know, and you see this a lot where owners or maintainers are not
7 happy with the spares, the level of spares, and now I'm talking about spare parts that
8 the maintainer has on hand. And so, you know, as an owner, you want to see them
9 have, you know, 25 bogies and 25, you know, of each part. They never want to provide
10 that level of sparing because it's quite capital intensive, you know. It's quite an
11 investment. And so, you know, it's a bit of an anecdotal statement in respect of do they
12 have the amount of spare parts on hand, you know, and are we going to have vehicles
13 that are parked and waiting for, you know, new materials to come from overseas or
14 wherever? That's really what he's pointing to.

15 **MS. CHRISTINE MAINVILLE:** Okay. But what I am more
16 interested in is the indication that this is a new maintainer and there will need to be time
17 for them to get up to speed, right, effectively what he is saying?

18 **MR. MICHAEL MORGAN:** That's what he is saying, yes.

19 **MS. CHRISTINE MAINVILLE:** Do you agree with that, that that
20 was a reality that had to be contended with?

21 **MR. MICHAEL MORGAN:** I mean, not in its entirety. You know,
22 we were relying on Alstom, you know, as the maintenance provider for an Alstom
23 vehicle. They just built these vehicles, you know. They should know the vehicles inside
24 and out. They have lots of facilities and people around the world that they can bring to
25 bear on this project. So, yeah, if you hire somebody new off the street, they are going
26 to need time and training and experience to get up to speed. But, you know, we're not -
27 - we're talking about one of the biggest manufacturing companies in the world. They
28 should have had that experience. They should have been able to bring it to bear. They

1 should have been able to minimize this risk.

2 **MS. CHRISTINE MAINVILLE:** The City was aware that they had to
3 hire new people though, right, and train them?

4 **MR. MICHAEL MORGAN:** It was fully in their remit to bring people
5 from the four corners of the earth to help them build and maintain the system. There
6 was nothing preventing them from, you know, bringing people from their various
7 factories, you know. As I understand it, they brought people from Hornell; they brought
8 people from France. They had lots of experience to bring to bear on this project.

9 **MS. CHRISTINE MAINVILLE:** And it wasn't simply about
10 maintaining the vehicles, but much of the infrastructure, correct?

11 **MR. MICHAEL MORGAN:** Alstom, as I understand the
12 subcontract, and I have not seen the subcontract, they have responsibility for
13 maintenance of the infrastructure as well.

14 **MS. CHRISTINE MAINVILLE:** Right. And that was new, in
15 addition to needing to learn how to work in coordination with the operators and the
16 control room, correct?

17 **MR. MICHAEL MORGAN:** New, but it doesn't -- I mean, my other
18 point still stands, you know. They -- Alstom is a worldwide maintainer of these systems.
19 Like, there's no -- there should be no restrictions or limitations on their ability to bring
20 people to the site.

21 **MS. CHRISTINE MAINVILLE:** But you accept that whomever is
22 coming to the site, there is a learning curve and a need to get people familiar with this
23 brand new system. And what the advisor is saying there is, they cannot be expected to
24 have the experience to effectively troubleshoot or maintain a new fleet right off the bat.

25 **MR. MICHAEL MORGAN:** No, I agree with the idea that there is a
26 learning curve, but I also -- you know, when I look at the system, you know, some of the
27 systems are standard systems. The traction power substations, there is nothing special
28 about them. You can go and find that same substation in 10 other cities. There is

1 absolutely a learning curve, but it depends what your starting point is. So, if your
2 starting point is a new electrical technologist who just graduated and has no experience,
3 then absolutely there is going to be a big learning curve. If you're bringing someone in,
4 you know, from Vancouver or New York who has worked on these systems for years,
5 then, you know, there is nothing special about our solution. There is nothing special
6 about our catenary. There is nothing special about our track.

7 **MS. CHRISTINE MAINVILLE:** No, but every system is different,
8 right, in that people are different on the new systems?

9 **MR. MICHAEL MORGAN:** Yes, to an extent, yes.

10 **MS. CHRISTINE MAINVILLE:** Okay. We can bring this down. In
11 terms of the train issues or operational issues that were known ahead of trial running,
12 do you recall any specifically in terms of the types of issues you were encountering with
13 the trains and operating the system around the summer of 2019?

14 **MR. MICHAEL MORGAN:** I think that, you know, one of the known
15 issues was the PACIS system, which is an onboard IT system, which was -- they were
16 having trouble with the integration of that system. It connects with cameras on the
17 wayside. It connects with a display on the train. It connects with the train control
18 system. So, it was a very complicated piece, and they were having trouble getting that
19 working. That was probably the biggest kind of single thing you could point to and say
20 this is a challenge for them.

21 You know, there were some emerging issues. We know about the
22 cracked cab doors was kind of a new issue that arose. But, otherwise, they had worked
23 through a series of issues kind of over the spring, and then as we approached the
24 summer, I think we were into more of a steady state of -- you know, that you encounter
25 on any of these systems. You can have door issues, and you can have switch issues,
26 you can have brake issues. But there was no single kind of emerging pattern that said
27 none of the doors work, none of the brakes work, none of the -- you know, it was more
28 -- the singular issue was that camera -- camera review system, but the other systems

1 were just kind of here and there.

2 **MS. CHRISTINE MAINVILLE:** Okay. And do you recall there
3 being break issues around June 2019?

4 **MR. MICHAEL MORGAN:** You know, the only thing that I recall is
5 in the -- their first application for substantial completion, there was a brake modification
6 that was incomplete and, as I understand it, by the time they achieved substantial
7 completion, that modification was completed across the fleet.

8 **MS. CHRISTINE MAINVILLE:** Okay. Let's bring up STV 0000512
9 So, just to refresh your memory about some of what was going on at the time, you'll see
10 just a bit lower -- and you're copied on that email, right, at the top? And we don't quite
11 see the full date here, but it is June 9, 2019. If we can expand that a little bit so we can
12 see the full date? All right, so we see it there in the email. Okay. June 9th.

13 **--- EXHIBIT No. 164:**

14 STV0000512 – Email from Thomas Prendergast to John
15 Manconi et al Re – Final Update: Immobilized train on track
16 between DR East Portal and Rideau Stn 9 September 2019

17 **MS. CHRISTINE MAINVILLE:** And so, you see Mr. Manconi, on
18 the second email in the chain, references brake faults. Are these brake -- oh, we can
19 go back up. Can we please go back up to the top of the document? Okay, right here,
20 that's perfect. You will see there Mr. Manconi's email, "The weekend had been going
21 well. These brake faults, are they related to work being done on trains?" Do you see
22 that?

23 **MR. MICHAEL MORGAN:** Yes.

24 **MS. CHRISTINE MAINVILLE:** Okay. And then the answer from
25 Mr. Prendergast is, he gives some explanation and then he says, "With as many issues
26 as these cars have, it is difficult to tell what happened." So, I take it there were several
27 issues arising around that point in time, in respect to the trains, right?

28 **MR. MICHAEL MORGAN:** You know, based on this email, I can't

1 draw that conclusion. You know, this -- you know, the relationship here between Tom
2 and the City, you know, Tom has 40 years of experience on rail systems and he is
3 providing advice and feedback to John so that John is armed for the future on how to
4 deal with these issues.

5 In this incident, it looks like -- the email says the brake was reset
6 and it kept going. You know, Tom is pointing to, you know, brakes can be reset and you
7 keep going, but there are other modes that are more difficult to troubleshoot that can be
8 problematic, and he's asking, "We should ask what happened in this case." So, he
9 doesn't actually know what's happened. All he knows is that a brake has been reset
10 and we've kept going.

11 **MS. CHRISTINE MAINVILLE:** Okay. And we can ask him about
12 what he meant by that phrase, but at least it appears that from his perspective there are
13 several issues that would (indiscernible).

14 **MR. MICHAEL MORGAN:** I disagree. I can't take that from this
15 email.

16 **MS. CHRISTINE MAINVILLE:** Okay. We will ask ---

17 **MR. MICHAEL MORGAN:** This email is just providing John with
18 feedback on brakes and how they work.

19 **MS. CHRISTINE MAINVILLE:** Okay. We'll ask Mr. Prendergast.
20 We can take this down and go to STV 0000510. Do you recall there being concern
21 regarding troubleshooting skills and response time? Two issues, two incidents on the
22 line?

23 **--- EXHIBIT No. 165:**

24 STV0000510 – Email from Thomas Prendergast to John
25 Manconi et al Re – Final Update: Immobilized Train between
26 STL and CYR, track 2 9 September 2019

27 **MR. MICHAEL MORGAN:** You know, in the beginning -- oh, are
28 we waiting for a document? Sorry.

1 **MS. CHRISTINE MAINVILLE:** Yes. So, around this point in time,
2 at least, you will see this is also June 9th, 2019 ---

3 **MR. MICHAEL MORGAN:** Right.

4 **MS. CHRISTINE MAINVILLE:** --- and Mr. Gaul, who is also an
5 STV advisor to the City, is identifying or pointing to an issue with isolating a break and
6 how much time that took, and he's questioning whether troubleshooting skills and
7 processes are adequate, if you want to take the time to read that.

8 **MR. MICHAEL MORGAN:** Yeah, so I think, you know, Larry, in
9 this instance, he's again providing advice and guidance to the team on what should --
10 what should our expectation be in terms of being able to troubleshoot a break. And so I
11 think that's fair. And I think it's fair that he's saying that we should ensure we have
12 appropriate guidance, his words, from Alstom. I know, in the beginning, Alstom was
13 reluctant to have City staff reset breakers or troubleshoot issues, in part, because they
14 wanted to get to a vehicle in its failed state such that they could understand the exact
15 conditions in which the failure occurred and so that they could use that information to
16 feed back to their engineering team and ensure that it doesn't get repeated.

17 In this case -- you know, and so over time that improved and
18 Alstom, I would say, kind of relaxed a little bit and gave the operator more time to -- or
19 more -- they approved, for example, breaker resets and some additional things, which
20 was helpful, and I think Alstom was helpful in terms of advancing the support on
21 troubleshooting, generally.

22 **MS. CHRISTINE MAINVILLE:** Okay. And we'll get to the
23 progress, but here, Mr. Prendergast then indicates that he agrees the normal break cut-
24 out should be a relatively straightforward issue and dealt with in the timeframe you
25 stated.

26 "Without knowing the actual cause, it's difficult to
27 ascertain whether it was a basic troubleshooting
28 problem or serious condition. All that said, I share

1 your concerns about the readiness of everyone as
2 they move toward revenue service. They won't have
3 the luxury of time and it will be a proverbial fishbowl."
4 (As read).

5 And so my question is, there was an understanding, I'm going to
6 suggest, that you couldn't neglect the fact that response times and troubleshooting
7 would be performed, ultimately, in even more stressful conditions, if you will, following
8 revenue service, right? You would be a proverbial fishbowl?

9 **MR. MICHAEL MORGAN:** Yes, you know, troubleshooting a train
10 that is empty during testing is easier than troubleshooting a train that has 600 people on
11 it. I agree with that.

12 **MS. CHRISTINE MAINVILLE:** Exactly. A train full of passengers
13 waiting to get somewhere ---

14 **MR. MICHAEL MORGAN:** Yes.

15 **MS. CHRISTINE MAINVILLE:** --- and waiting on you to fix the
16 problem.

17 **MR. MICHAEL MORGAN:** Yes.

18 **MS. CHRISTINE MAINVILLE:** So we can take this down. So there
19 are some issues, you'll agree with me, ahead of trial running, but, ultimately, RTG gets
20 to substantial completion, right, with some waivers and deferred work?

21 **MR. MICHAEL MORGAN:** We -- yes, we confirmed substantial
22 completion with them, ultimately, yeah.

23 **MS. CHRISTINE MAINVILLE:** And RTG moved right into trial
24 running, as had been agreed between the parties?

25 **MR. MICHAEL MORGAN:** Generally, yes.

26 **MS. CHRISTINE MAINVILLE:** And you're getting reports about
27 trial running, correct?

28 **MR. MICHAEL MORGAN:** I believe I was getting check-ins from

1 the team, yes.

2 **MS. CHRISTINE MAINVILLE:** From who do you -- from whom, in
3 particular?

4 **MR. MICHAEL MORGAN:** Well, it would have been directly from
5 Richard if they were coming through, and Richard was -- Richard Holder who was on
6 my time. It may have come indirectly from Troy, occasionally.

7 **MS. CHRISTINE MAINVILLE:** Troy Charter?

8 **MR. MICHAEL MORGAN:** Troy Charter, sorry.

9 **MS. CHRISTINE MAINVILLE:** Both of whom were on the trial
10 running review team, correct?

11 **MR. MICHAEL MORGAN:** Yes.

12 **MS. CHRISTINE MAINVILLE:** Okay. And what communication
13 platforms were you using at that time to communicate about trial running?

14 **MR. MICHAEL MORGAN:** I believe it was -- there would have
15 been email chains going back and forth. There was probably some text messages that I
16 was sending to the team. And then there was a group WhatsApp chat that was being
17 used by a broader team.

18 **MS. CHRISTINE MAINVILLE:** Okay. So those are the ones you
19 recall using yourself?

20 **MR. MICHAEL MORGAN:** Yes.

21 **MS. CHRISTINE MAINVILLE:** And you were asked to produce any
22 such messages for the Commission and you were not able to produce any, correct?

23 **MR. MICHAEL MORGAN:** Correct.

24 **MS. CHRISTINE MAINVILLE:** And why is that?

25 **MR. MICHAEL MORGAN:** Because my phone was reset and
26 there was no archive of that WhatsApp chat, but I think that WhatsApp chat is recreated
27 on 15 other phones, so.

28 **MS. CHRISTINE MAINVILLE:** Yeah, okay. So you -- you confirm

1 that you do not have any such communications accessible to you at this time?

2 **MR. MICHAEL MORGAN:** Yes.

3 **MS. CHRISTINE MAINVILLE:** Now, if we go to some of the ones
4 we did receive, as you point out, we'll go to, first, COW0593690, and these are, as you
5 may recall, messages between yourself and Mr. Holder, so text messages, as I
6 understand it. Do you recognize -- if we go up, yeah, okay. Do you recognize this as
7 an email -- or a text messaging chain between yourself and Mr. Holder?

8 **--- EXHIBIT No. 166:**

9 COW0593690 – Text messages between Michael Morgan
10 and Richard Holder 29 July 2019 to 17 December 2019

11 **MR. MICHAEL MORGAN:** Yes, yeah, it appears to be from me.

12 **MS. CHRISTINE MAINVILLE:** Okay. So your -- I believe your
13 messages are on the left in grey, and Mr. Holder's in green?

14 **MR. MICHAEL MORGAN:** Yes, looks like it.

15 **MS. CHRISTINE MAINVILLE:** Okay. And so Monday July 29th is
16 the first day of trial running, correct?

17 **MR. MICHAEL MORGAN:** I believe so, yes.

18 **MS. CHRISTINE MAINVILLE:** And so you write:

19 "Carwash out of service, several elevators out of
20 service, and some vehicle issues." (As read).

21 Right? Is was a rough ---

22 **MR. MICHAEL MORGAN:** Yeah.

23 **MS. CHRISTINE MAINVILLE:** It wasn't a good start to trial
24 running, do you recall?

25 **MR. MICHAEL MORGAN:** Yes, the -- yes, it was a bad start to trial
26 running. This was a -- this was the first day. I was taking the position that it's
27 unacceptable for elevators to be out of service.

28 **MS. CHRISTINE MAINVILLE:** Right. And Mr. Holder indicates at

1 the bottom of that first green text:

2 "So many deficiencies called into the TOCC that Matt
3 P. told them to stop calling." (As read).

4 And the TOCC being the control centre, right?

5 **MR. MICHAEL MORGAN:** Yes, yeah.

6 **MS. CHRISTINE MAINVILLE:** Okay.

7 **MR. MICHAEL MORGAN:** So the process there being inspectors
8 in the field calling in deficiencies, phones not working, or whatever it is, calling it into the
9 control centre, the control centre opening workorders to get -- or tracking those issues
10 so that they could be rectified.

11 **MS. CHRISTINE MAINVILLE:** Okay. And if we just scroll down a
12 little, you'll see you ask about whether Mr. Holder -- can we scroll down a little bit -- Mr.
13 Holder, whether he is sending the scorecards around.

14 "Are you sending the scorecards around? I don't
15 seem to be receiving that document." (As read).

16 Do you see that on the right?

17 **MR. MICHAEL MORGAN:** Yes.

18 **MS. CHRISTINE MAINVILLE:** So were you -- did you end up
19 receiving scorecards?

20 **MR. MICHAEL MORGAN:** I believe I did in the end, yes.

21 **MS. CHRISTINE MAINVILLE:** For the entire period, or ---

22 **MR. MICHAEL MORGAN:** I don't recall the -- you know, the
23 specific -- how many emails I received but, certainly, I was curious to know the
24 outcomes and curious to see the status of what the scorecard for the day said.

25 **MS. CHRISTINE MAINVILLE:** Now, if we go to STV0002337 --
26 and I'm not going to take you through each day, Mr. Morgan, but you'll recall that after a
27 rough start, there is restart, right, of the trial running, early on?

28 **--- EXHIBIT No. 167:**

1 STV0002337 – Whats App Messages City of Ottawa 24 April
2 2019 to 29 December 2019

3 **MR. MICHAEL MORGAN:** Yes, yes.

4 **MS. CHRISTINE MAINVILLE:** And subsequent to that -- we'll go to
5 page 2 of this document. These are a series of, I believe, the WhatsApp messages you
6 referenced which had a group of -- a large group of individuals on them, correct?

7 **MR. MICHAEL MORGAN:** Yes.

8 **MS. CHRISTINE MAINVILLE:** And so if you go to page 2 of the
9 PDF around line 28 -- or 27, yes, okay, thank you. So this is after the first restart,
10 August 5th.

11 **MR. MICHAEL MORGAN:** Sorry.

12 **MS. CHRISTINE MAINVILLE:** Sorry. Yeah, let's just hold there.
13 Okay. And so, Mr. Manconi asked Troy -- that's Mr. Charter:

14 "Just before we jump on the call, where do you think
15 they will score today?"

16 And Mr. Charter indicating:

17 "On KMs, I doubt they pass. Everything else,
18 probably good."

19 Mr. Manconi:

20 "What does that mean, day pass or failed?"

21 Mr. Charter:

22 "I think day failed. Even if they pass with low KMs,
23 will kill the 98 percent, 12-day average."

24 Mr. Manconi:

25 "Day failed or reset, it's important."

26 Mr. Charter:

27 "Reset, unfortunately. It will be close." (As read).

28 Mr. Manconi asking you to jump in, correct?

1 **MR. MICHAEL MORGAN:** Yes.

2 **MS. CHRISTINE MAINVILLE:** Okay. And then, at line 41, you
3 jump in, as prompted, if we scroll down a little bit, and you indicate:

4 “John, the intent of the IC is to arbitrate disputes and
5 conflicts. If we want to give a pass, the IC may give
6 an opinion but is unlikely intervene. Looking at the
7 string of issues from today, the issue is more than just
8 an event with a single train.” (As read).

9 And so I want to ask you about that message, Mr. Morgan. Am I
10 right that you were suggesting that there’s more than one event with a single train, but
11 the City might consider granting a pass?

12 **MR. MICHAEL MORGAN:** No. The -- so, part of this message is
13 I’m explaining the role of the IC and -- you know, to John and clarifying, you know, their
14 role in the contract generally, which is generally if the parties agree, the IC doesn’t
15 intervene ---

16 **MS. CHRISTINE MAINVILLE:** Right ---

17 **MR. MICHAEL MORGAN:** -- is my point. So, if we agree to defer
18 works -- between the parties, we come to an agreement, they generally don’t intervene.
19 So, that’s kind of -- so it’s two parts. The second part is there’s more than just one
20 event. It’s more than just one train.

21 **MS. CHRISTINE MAINVILLE:** Right. And so, just going back to
22 the IC’s role, it was understood on the City’s end that the IC doesn’t conduct an
23 independent assessment, you know, or analysis of whether criteria is met if the parties
24 agree that it’s met?

25 **MR. MICHAEL MORGAN:** No, she would still do her own due
26 diligence, and if she was concerned, I would expect her to flag -- to use her
27 independence to flag that concern. And even though she might let the parties agree,
28 that she would still be on record saying that it was an issue.

1 **MS. CHRISTINE MAINVILLE:** Well, I'm going to suggest that her
2 evidence would be that if the City is in agreement that a criterion is met, whether it be a
3 deficiency placed on the minor deficiencies list because the City perceives it as being
4 minor or otherwise, and there -- RTG and the City are *ad idem* on these issues, that the
5 IC is not going to intervene?

6 **MR. MICHAEL MORGAN:** Yes, I would agree that that would be
7 the position she would take, but I also suggest if you pushed it further, that she would
8 flag issues, that for minor deficiencies and little things, and if the City and RTG agreed,
9 she would absolutely allow that to progress. But if we'd made fundamental agreements
10 that departed from the project agreement, she may have reserved her position on that.

11 **MS. CHRISTINE MAINVILLE:** Or may have flagged concerns, but
12 at the end of the day not intervened, correct?

13 **MR. MICHAEL MORGAN:** Yes.

14 **MS. CHRISTINE MAINVILLE:** Which is effectively what you're
15 saying here, "she's unlikely to intervene if we want to give a pass," right?

16 **MR. MICHAEL MORGAN:** Yeah. You know, I think the caution
17 coming back from John is what's the IC's view going to be on this? You know, and I
18 think it's really speaking to misunderstanding on his part about what the IC was doing at
19 that meeting.

20 **MS. CHRISTINE MAINVILLE:** Which you're clarifying, okay.
21 Correct?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MS. CHRISTINE MAINVILLE:** And is it fair to say the City was
24 incentivized to get through trial running and pass?

25 **MR. MICHAEL MORGAN:** I don't understand what that means,
26 "incentivized."

27 **MS. CHRISTINE MAINVILLE:** Well, the mindset -- is it fair to say,
28 as you read through these messages, the mindset is, you know, try to get a pass if you

1 can, right? So, not at any cost, but you're not minded to say, "Take the time it needs to
2 take"?

3 **MR. MICHAEL MORGAN:** I -- no, I wouldn't say that. The way
4 you've stated it, I wouldn't say that was the case. I mean, I think the City, generally,
5 was interested in opening the system. You know, everybody in Ottawa wanted the train
6 system open. But, you know, that wasn't at any expense. You know, we still needed to
7 make sure that we put a rigorous process in place.

8 **MS. CHRISTINE MAINVILLE:** Not at any expense, but if you
9 thought there could be a pass, that's what everybody ultimately were going to lean
10 towards; is that fair?

11 **MR. MICHAEL MORGAN:** If it's a rounding error, yes.

12 **MS. CHRISTINE MAINVILLE:** Okay. If we just look at line 44 here
13 on the document, August 6th is not going so well, correct? So, we have Mr. Gaul
14 indicating: "Fourteen trains on the main line, 15 train crept out on connector track,
15 break faults, being returned to yard replacement, train being prepared, no ETA yet on
16 launch time of replacement train. Another train 1-2 experienced break fault at Blair."

17 So, some issues on that day as well, right?

18 **MR. MICHAEL MORGAN:** You stopped reading though, two-and-
19 a-half-minute delay.

20 **MS. CHRISTINE MAINVILLE:** Oh, sorry ---

21 **MR. MICHAEL MORGAN:** So, yeah, I mean -- yeah, there was a
22 break fault, two-and-a-half-minute delay, they kept moving, there was no spare
23 available.

24 **MS. CHRISTINE MAINVILLE:** Okay. And that day ultimately was
25 a pass. I'm going to suggest -- we'll take -- we'll go to the chart afterwards, but ---

26 **MR. MICHAEL MORGAN:** Yeah.

27 **MS. CHRISTINE MAINVILLE:** -- is it fair to say that on days where
28 there was a pass, things were -- it didn't mean things were necessarily perfect, correct?

1 **MR. MICHAEL MORGAN:** Yeah, you could have a pass day,
2 absolutely, and have a two-and-a-half-minute delay or have a door issue or, you know,
3 if you had a spare train, you might swap it out. That is part of running a light rail system,
4 yes.

5 **MS. CHRISTINE MAINVILLE:** Okay. If you go to August 7th, so
6 page 4 of the PDF, please. And August 7th, just to situate you, is a restart date, right?
7 Because there's a second restart, if you recall.

8 **MR. MICHAEL MORGAN:** Okay.

9 **MS. CHRISTINE MAINVILLE:** Okay. August 7th. You see at line
10 75, Mr. Manconi indicates: "Michael, two things. Can you send us the language on the
11 PA relating to the 98 per cent? I want a meeting with me, you, Troy, Joyce..."

12 **MR. MICHAEL MORGAN:** Joce.

13 **MS. CHRISTINE MAINVILLE:** Joce. "...Pat, Larry, Tom, and Pat
14 immediately following up ops readiness." And you say: "Okay. I will send the
15 language."

16 So, what was that about, to your recollection?

17 **MR. MICHAEL MORGAN:** I think he just wanted to know the root
18 of the 98 per cent and where that number was coming from. He wanted to understand
19 how that was captured in the project agreement.

20 **MS. CHRISTINE MAINVILLE:** Which it is not, correct?

21 **MR. MICHAEL MORGAN:** The 98 per cent is not captured in the
22 project agreement.

23 **MS. CHRISTINE MAINVILLE:** Okay. And so, what was the
24 outcome of that discussion, as you recall?

25 **MR. MICHAEL MORGAN:** On that day, I don't recall what
26 discussion took place following that.

27 **MS. CHRISTINE MAINVILLE:** What about ---

28 **MR. MICHAEL MORGAN:** It would ---

1 **MS. CHRISTINE MAINVILLE:** What about irrespective of that
2 particular meeting? What discussions were had around the 98 per cent, around that
3 time?

4 **MR. MICHAEL MORGAN:** Well, I think -- you know, I think it -- and
5 it comes out maybe a week later or so, but I think, you know, it's again John trying to
6 understand, you know, this 98 per cent, where does it come from? Is it a project
7 agreement requirement? You know, understand the history to it. He had previously
8 engaged as part of the STV, Joe North, as a consultant, and Joe North had worked
9 independently with Roger Schmidt, the technical director from RTG, to establish a set of
10 pass/fail criteria for a trial running. And so, I think, John was trying to understand and
11 reconcile where was the 98 per cent coming from, what had Joe and, you know, Roger
12 Schmidt worked out previously, what was the standard for this type of thing.

13 You know, we all know the project agreement didn't have a pass/fail
14 criteria, and so, at some point, Joe North and Roger Schmidt developed some pass/fail
15 criteria, and then at some point RTG used the 98 per cent for the pass/fail criteria. So, I
16 mean, I think those things are well known.

17 **MS. CHRISTINE MAINVILLE:** Right. So -- and that's because
18 there were challenges at that point in time in meeting that target, correct?

19 **MR. MICHAEL MORGAN:** You know, I don't recall specifically how
20 it came up, but, you know, in these texts, this is -- the starting point with John is always,
21 "Let me understand what's taking place. Let me understand where the numbers are
22 coming from, who came up with them." He relied heavily on Joe in the beginning to
23 come up with numbers, and so he was probably trying to understand what if any
24 difference there was.

25 You know, subsequent to this, there was conversations with Peter
26 Lauch, and, you know, a discussion about should we revert to the 2017 numbers, the
27 96 per cent, 9 out of 12 days? You know, those numbers had been developed
28 independently and outside of the trial running process by, you know, setting up, I would

1 say, pretty rigorous scoring for trial running and, you know, done independently.

2 And so, I think it was more just trying to understand that, having a
3 discussion with Peter and knowing that things were not going well. You know, in
4 retrospect, we also look back at some of the things that Canada Line did to understand
5 where did the 12 days come from? How many pass days did they have? I understand
6 from EJV's transcript that they only had 3 days, 3 days out of 12.

7 So, I think it was just the conversation to say, what should we be
8 doing? Was it the right measure? What did we agree to previously? And did we agree
9 to something previously? Is it okay to go back to that? I think was the discussion that
10 was had with Peter, Peter Lauch from RTG. He ultimately sent us a letter suggesting
11 that we should go back to the agreed-upon numbers. You know, the City had
12 previously agreed to those numbers. We were still comfortable that those numbers
13 were strong and provided strong criteria for measuring trial running. So, there was no --
14 I would say there was no overriding concern that we were watering down the numbers.

15 **MS. CHRISTINE MAINVILLE:** Okay. So, let's walk through that a
16 bit more slowly. We can bring this down for now, this document. I think you indicated
17 that the 98 per cent was -- assured quite a robust level of reliability, correct?

18 **MR. MICHAEL MORGAN:** Ninety-eight (98) percent, based on
19 how you measure the kilometres on our system and how you run the network is
20 basically perfect service.

21 **MS. CHRISTINE MAINVILLE:** Well, and it lines up, am I right, with
22 the level of service availability that RTM would be held to during the service period
23 under the PA, correct?

24 **MR. MICHAEL MORGAN:** Correct. And at the 98 percent level,
25 there is no performance deductions for kilometres in the contract.

26 **MS. CHRISTINE MAINVILLE:** Right. And so in that respect, the
27 City, in the Project Agreement, set out its reliability expectations about how the system
28 should perform as reflected in the AVKR?

1 **MR. MICHAEL MORGAN:** Yes. You know, and then it was a
2 sliding scale from there. And so, you know, I think that 98 percent was basically like,
3 excellent service for the customer. As you kind of move down from that, 97, 96, 95,
4 there was still -- I would say the deductions were not huge. Once you drop below, like,
5 90, 88 percent, that's where we started to hit system events, and so there was kind of a
6 scaling of the performance of the performance deductions relative to the performance
7 levels.

8 **MS. CHRISTINE MAINVILLE:** Okay. But it made sense that if the
9 City wanted excellent service, and that that is the threshold at which RTM would start
10 getting penalized, it makes sense for the trial running team to use that measure to
11 demonstrate to the City the level of reliability it expected of the system, fair?

12 **MR. MICHAEL MORGAN:** RTG chose that level, and so I think
13 that was an aggressive target for them. We'd already agreed independently to a
14 different target, and so I don't -- one or other, I think in the end, you know, the numbers
15 were very good.

16 **MS. CHRISTINE MAINVILLE:** Well, we'll get to how significant the
17 change was, but you'll agree with me, if the City wanted to ensure they could meet
18 consistently the 98 percent average they were going to be held to that it made sense to
19 assess the system at 98 percent AVKR?

20 **MR. MICHAEL MORGAN:** I think that's a choice. We had already
21 agreed to numbers that were different than that independently, and relied on experts to
22 come up with those numbers. So the difference between the two, I think, you know the
23 performance deductions between 98 and 97 percent are not significant, and so I think,
24 you know, that's back on RTG in terms of providing the performance, providing the
25 reliability. Those are our tools. You know, we were trying to be reasonable.

26 I think that when you look at trial running criteria, there's no
27 consistency in application of criteria on LRT projects, certainly at that time. You know,
28 this was the first LRT project out of the gate in Ontario. You know, I came from a

1 project in Australia that had criteria in the contract. I think there was a concern that if
2 you put in criteria that was too stringent, RTG would back off of that when it came time
3 to apply to RSA. So we reverted to what we'd agreed to with RSA, and we agreed to
4 numbers that we thought were reasonable at the time.

5 **MS. CHRISTINE MAINVILLE:** The lower the score, the AVKR, the
6 more performance could be impacted, correct? The AVKR, I think you indicated to me
7 previously is a measure of performance?

8 **MR. MICHAEL MORGAN:** Correct. It's a measure of performance
9 and when you get into service, it's normalized. And what I mean by that, it's -- you take
10 out non-Project Co. events. And so, you know, in service, if you have to take a train out
11 of service because there's graffiti or somebody's sick on the train, those things don't
12 hurt RTG. And so there's -- so there is ---

13 **MS. CHRISTINE MAINVILLE:** Now ---

14 **MR. MICHAEL MORGAN:** --- it's a measure, but it's not a perfect
15 measure.

16 **MS. CHRISTINE MAINVILLE:** But you'll recall that the trial running
17 test procedure accounted for things like that, the Project Co., non-Project Co. events,
18 right?

19 **MR. MICHAEL MORGAN:** Yes.

20 **MS. CHRISTINE MAINVILLE:** They are things that may have
21 interfered -- yeah -- with their ability to make full service?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MS. CHRISTINE MAINVILLE:** And so going back to the 98 and 96
24 percent, I understand there's a spectrum, but there is a difference in the reliability of a
25 system that meets 96 percent versus 98 percent, right?

26 **MR. MICHAEL MORGAN:** Yes, at face value, 96 is lower than 98,
27 yes.

28 **MS. CHRISTINE MAINVILLE:** Okay. And you indicated previously

1 that customers won't feel 98 percent, but they will feel something like 91 percent, right?
2 They're not going to be happy with a 91 percent AVKR?

3 **MR. MICHAEL MORGAN:** Correct. If -- I believe what I said is if
4 you're in the high nineties, you know, 96, 97, 98, we're not going to get any calls. Like,
5 people are going to be very happy with that service.

6 If we have a 90 day, 91, 88, those are -- that's a bad day. We've
7 ruined somebody's commute to work that day.

8 **MS. CHRISTINE MAINVILLE:** Okay. And it's fair to say the
9 difference between 98 and 96 percent becomes more significant when it's averaged out,
10 based on the best 9 out 12 days rather than 12 full days, right?

11 **MR. MICHAEL MORGAN:** Yes.

12 **MS. CHRISTINE MAINVILLE:** Which is what happened, in this
13 case? That was another change that was made to the trial running criteria?

14 **MR. MICHAEL MORGAN:** Yes.

15 **MS. CHRISTINE MAINVILLE:** And it is, I'm going to suggest, an
16 even more significant difference when you're running 13 instead of 15 trains for part of
17 that time period, right?

18 **MR. MICHAEL MORGAN:** Well, you know, we were running the
19 normal service schedules, and so to the extent that trial running period overlapped the
20 weekend, we went down to 11 trains, you know? So -- and over the course of the
21 period, you know, we only ran 15 trains, but it was probably a two and a half to three-
22 hour-period in the morning only, so it was a very short window of time when we were
23 running the 15 trains. And so we'd done that a number of days, and then we went and
24 put in a service model that ran on 13 trains in the morning peak.

25 And so we were going up and down. We went -- we had some
26 days with 15, you know, we went to 13. We had days with 11 in there. So it was -- we
27 were really trying to mimic the service pattern, mimic what we were going to do in
28 service, measure what we were going to do in service.

1 **MS. CHRISTINE MAINVILLE:** Well, the number of trains, one of
2 the changes that occurred at the same time as the change of -- change to the average
3 AVKR was that RTG would be launching 13 instead of 15 trains for the morning peak
4 period, correct?

5 **MR. MICHAEL MORGAN:** For the morning weekday peak periods,
6 partway through the program, yeah. And partly stemming from conversations, John and
7 the head of planning, you know, calibrating the ridership levels and the required number
8 of trains we needed, 13 was the plan. And so we demonstrated 15 a number of times,
9 satisfied that that specific objective could be met, and then we moved on to practicing
10 with the morning peak using 13, the afternoon peak using 13.

11 **MS. CHRISTINE MAINVILLE:** You said, Mr. Morgan, that there
12 were challenges, and indeed, the project company was struggling with making 15 trains
13 available on any consistent basis?

14 **MR. MICHAEL MORGAN:** On a consistent basis, certainly, in the
15 beginning, absolutely. The -- you know, the 13 has a huge benefit in terms of protecting
16 service for the riders, you know, because it provides you those -- that extra spare
17 capacity, and in a sense, in the trial running period, it would have provided them some
18 extra capacity, some extra time, take the pressure off that two and half to three-hour-
19 period in the morning. But you know, we were mimicking what we were going to do in
20 service, and so it was perfectly reasonable.

21 **MS. CHRISTINE MAINVILLE:** Well, I'm going to suggest that at
22 that point in time, it wasn't decided that the service for the revenue service period would
23 be reduced from 15 to 13 during the morning peak period.

24 **MR. MICHAEL MORGAN:** You know, I'd have to go back and
25 check the specific timing of when decisions were made in terms of switching, but you
26 know, the change from 15 to 13, in my mind, was not a significant change, you know?
27 We were able to make changes. We made other changes.

28 The other change that we made early on was to allow RTG to run

1 double vehicles on the weekend. Now, the contract called for them to run single
2 vehicles, and so that was a huge -- you know, I think provided a significant amount of
3 relief to them, to RTG, to be able to run double vehicles on the weekend, and I'll explain
4 why.

5 You know, normally, they were just -- they only had to provide
6 singles, and so doing singles on the weekend meant that Friday nights, the vehicles
7 would have to come back, they'd have to break them all apart, they'd have to re-enter
8 them into the CBTC system, run them over the weekend as singles, and then Sunday
9 night, put them back together.

10 You know, we made the agreement with them to say, "You can run
11 doubles instead of singles," and they were very grateful for that change, because it
12 eliminated a bulk of work. But at the same time, it gave extra capacity to our customers.
13 Now our customers on the line, you know, every time a train comes by on Saturday and
14 Sunday, it's a double train. In the original contract was a single train. So I think it's
15 reasonable for us to make these changes to the accommodations.

16 In fact, you could make the argument that it was actually more
17 difficult to achieve the single trains on the weekend, and so to-ing and fro-ing, we're
18 trying to match the customer service experience during the trial running period.

19 **MS. CHRISTINE MAINVILLE:** And that ---

20 **COMMISSIONER HOURIGAN:** Counsel, sorry. We'll take the
21 morning break, all right? Thank you.

22 **THE REGISTRAR:** Order. All rise. The Commission will recess
23 for 15 minutes.

24 --- Upon recessing at 10:39 a.m.

25 --- Upon resuming at 10:51 a.m.

26 **THE REGISTRAR:** Order. All rise. The hearing is now resumed.

27 **COMMISSIONER HOURIGAN:** All right. Please proceed.

28 **MS. CHRISTINE MAINVILLE:** Thank you.

1 Mr. Morgan, can you hear me?

2 **MR. MICHAEL MORGAN:** Yes.

3 **MS. CHRISTINE MAINVILLE:** Okay. Who made the decision
4 about the change to the criteria for trial running on the City's end?

5 **MR. MICHAEL MORGAN:** We received a letter from Peter
6 documenting the change. I don't recall who provided the final approval, but certainly it
7 would have been flagged with John, and I suspect John would have flagged that with
8 his City manager and others.

9 **MS. CHRISTINE MAINVILLE:** Okay, but you did indicate there
10 were discussions ahead of that letter being sent, correct? About the 98 per cent
11 requirement.

12 **MR. MICHAEL MORGAN:** Yeah. There would have been
13 certainly an explanation about what was in the project agreement, what was not in the
14 project agreement, what would have been agreed to previously, probably a discussion
15 in the room with Peter Lauch and others to say what was workable, was it reasonable to
16 go back to the original criteria.

17 **MS. CHRISTINE MAINVILLE:** Right. So, it was basically -- the
18 letter is not the first the City hears of this. There were discussions, and, effectively, the
19 letter confirms those discussions, right?

20 **MR. MICHAEL MORGAN:** Yeah. I would say that generally that's
21 -- how we tried to work, to the extent possible, is that we would have agreement and
22 collaborate on an outcome with RTG before we get a surprise. We tried to stay away
23 from getting surprise notices and letters and things that we weren't aware of. And so,
24 we collaborated and agreed that was the general approach.

25 **MS. CHRISTINE MAINVILLE:** Okay. So, who first initiated the
26 discussion about the change in the criteria?

27 **MR. MICHAEL MORGAN:** I don't recall where that initiated. You
28 know, I know John was asking some questions about where the 98 per cent came from.

1 I think there was some back and forth with Peter. I don't know specifically where that
2 came about.

3 **MS. CHRISTINE MAINVILLE:** Right. So, Mr. Manconi, when you
4 say "John," was very much aware of the 2017 RFI that you mentioned, right?

5 **MR. MICHAEL MORGAN:** I mean, I understand -- he would be
6 aware at a high level that -- you know, because he had tasked Joe North, one of his
7 consultants, to draft and come to agreement on what the criteria should be. I don't
8 know if he was, you know, intimately familiar with the specifics, you know. That's quite
9 a detailed document. But, generally, I think he would -- he would know that he had
10 tasked Joe North with coming up with criteria in 2017.

11 **MS. CHRISTINE MAINVILLE:** Right. And he understood that
12 criteria to be -- to reflect a lower AVKR than the 98 per cent that you were, at that point,
13 abiding by?

14 **MR. MICHAEL MORGAN:** Yes.

15 **MS. CHRISTINE MAINVILLE:** Okay. And so, the City was
16 considering why we weren't using the RFI, the 2017 RFI criteria or measurements,
17 correct?

18 **MR. MICHAEL MORGAN:** Yes.

19 **MS. CHRISTINE MAINVILLE:** Okay. And so -- and the
20 questioning was being done, I am going to suggest, because there were challenges in
21 meeting the 98 per cent, right? There were some performance issues?

22 **MR. MICHAEL MORGAN:** Or just, you know, differences in
23 expectations around why we -- what was the point of agreeing to the 2017 numbers if
24 one was just going to change it? And we had already agreed to something that we
25 thought was rigorous and adequate for what our needs were and, you know, so the
26 discussion was -- we agreed then why did we change it. So, it was probably more kind
27 of a collaboration to understand what was predicating that difference.

28 **MS. CHRISTINE MAINVILLE:** Can I ask you the reverse question,

1 why would the City go back to an earlier agreement if things were running smoothly?

2 **MR. MICHAEL MORGAN:** The City -- you know, we agreed to
3 those numbers, and I think it was -- you know, I don't think it would have been good
4 faith to go back to say that those numbers couldn't be used, right? I mean, it's
5 reasonable -- we made the agreements. A few years later, RTG published a document
6 with a higher specification. There was no reason for us not to apply those numbers.

7 **MS. CHRISTINE MAINVILLE:** Mr. Morgan, there was a later
8 agreement, correct, that superseded this 2017 one? The City agreed to use the trial
9 running test procedure?

10 **MR. MICHAEL MORGAN:** Yes. So, there is the 2017 agreement
11 on the numbers. Then RTG published a series of procedures that further expanded the
12 scope of the trial running criteria in a very expansive way, in a way that is not supported
13 by the PA, but we collaborated on that. And then through August there was a
14 discussion about relying on the 2017 criteria.

15 **MS. CHRISTINE MAINVILLE:** Okay. But that was because there
16 were challenges in meeting the criteria that was subsequently agreed to in 2019,
17 correct?

18 **MR. MICHAEL MORGAN:** I don't know that I can draw that
19 conclusion based on my recollection of what happened. You know, we were trying to
20 be collaborative. We had criteria that were solid, that we believed in. There was a
21 discussion with Peter whether it made more sense to use those criteria.

22 **MS. CHRISTINE MAINVILLE:** Mr. Morgan, what other reason
23 would there be to change the criteria part way through trial running to, you'll agree with
24 me, to make it easier to meet, right? The criteria was easier to meet after the change?
25 You will agree with me on that?

26 **MR. MICHAEL MORGAN:** Yes, I agree with that statement.

27 **MS. CHRISTINE MAINVILLE:** Okay. And so, what other reason
28 would there be other than there were challenges in meeting the higher criteria?

1 **MR. MICHAEL MORGAN:** The other reason is, in part, because
2 none of the numbers were supported by the project agreement.

3 **MS. CHRISTINE MAINVILLE:** Okay. Right. But why wouldn't the
4 City -- RTG having agreed to meet a higher measure of performance, why would the
5 City want to compromise that?

6 **MR. MICHAEL MORGAN:** Well, we didn't want to compromise it.
7 We had another set of criteria that we had put forward, that we had agreed, that were
8 sufficient to meet the service expectations. We were advancing that, you know. I think
9 in all of these cases it required, you know, a high level of collaboration with our partner
10 on these issues. And not supported by the PA, we were out on a limb, to a certain
11 extent, you know? And we didn't think it was a big change.

12 **MS. CHRISTINE MAINVILLE:** Well, on that, you weren't supported
13 by the PA, I am going to suggest that RTG never suggested that they would rely on that
14 and overlook the criteria that had been set out and agreed to in the trial running
15 procedure; is that fair?

16 **MR. MICHAEL MORGAN:** I think that's fair to say in retrospect
17 only.

18 **MS. CHRISTINE MAINVILLE:** What do you mean in retrospect
19 only?

20 **MR. MICHAEL MORGAN:** I mean, sitting here today, I think they
21 would say that, that they were never contemplating that they would dispute the levels,
22 that they would push back on what the actual objectives were, that if trial running had
23 gone on for another week, that they may have disputed that.

24 **MS. CHRISTINE MAINVILLE:** Okay, but they never ---

25 **MR. MICHAEL MORGAN:** But I don't think it's fair for ---

26 **MS. CHRISTINE MAINVILLE:** But they never, in fact, did, right?

27 **MR. MICHAEL MORGAN:** Well, we came to an agreement.

28 **MS. CHRISTINE MAINVILLE:** Right.

1 **MR. MICHAEL MORGAN:** So, it wasn't ever required. Yes.

2 **MS. CHRISTINE MAINVILLE:** They never said, you know, "Even if
3 you don't agree, we'll do what we want to do, irrespective of what the City thinks." They
4 never, in fact, did that, because the City agreed to lesser criteria, right?

5 **MR. MICHAEL MORGAN:** Correct.

6 **MS. CHRISTINE MAINVILLE:** And am I right that the City
7 requested that RTG send the letter to you dated August 16, 2019, and have it emanate
8 from them?

9 **MR. MICHAEL MORGAN:** Yes. We worked together on the letter,
10 and he -- ultimately it came from them, yes.

11 **MS. CHRISTINE MAINVILLE:** Okay. And, in terms of reducing the
12 number of trains from 15 to 13, it's fair to say that if 13 were available and RTG had no
13 problem running 15 trains, the City would have accepted 15 trains, right?

14 **MR. MICHAEL MORGAN:** I don't know that we would have. You
15 know, the 15 does require additional drivers, does have additional cost to it. You know,
16 the numbers were being calibrated to the service levels.

17 **MS. CHRISTINE MAINVILLE:** Well, I am going to suggest, and we
18 have heard much evidence up to now, that the reason that the number of vehicles to be
19 run during morning peak service were reduced from 15 to 13, both as it relates to trial
20 running and revenue service, was because there were reliability issues with the trains,
21 and they were struggling to make 15 run at a time. Do you not agree with that?

22 **MR. MICHAEL MORGAN:** I believe that you've received evidence
23 to that effect, yes.

24 **MS. CHRISTINE MAINVILLE:** And you disagree that that was a
25 factor? Is it a factor?

26 **MR. MICHAEL MORGAN:** You know, I don't think that that's -- in
27 absence of kind of the calibration for service levels, I don't think that's, you know, 100
28 percent accurate. I think it's fair for the City to take actions that they think are going to

1 protect the service and protect the public's interests. I have already talked to you about
2 one change we made that actually improved service, where we adjusted the number of
3 vehicles, where we went from, you know, basically 11 vehicles in service to 22 vehicles
4 in service on the weekend. So, there's ---

5 **MS. CHRISTINE MAINVILLE:** Right. So let me ---

6 **MR. MICHAEL MORGAN:** (Indiscernible).

7 **MS. CHRISTINE MAINVILLE:** Okay. But let's focus from the 15 to
8 the 13. You say there was some reassessment of the level of ridership to be expected?

9 **MR. MICHAEL MORGAN:** Yes.

10 **MS. CHRISTINE MAINVILLE:** And when was that reassessment
11 or analysis performed?

12 **MR. MICHAEL MORGAN:** That was performed by Pat
13 Scrimgeour, in the run up to launch.

14 **MS. CHRISTINE MAINVILLE:** Right, so at the very end, right?

15 **MR. MICHAEL MORGAN:** Yes.

16 **MS. CHRISTINE MAINVILLE:** After trial running?

17 **MR. MICHAEL MORGAN:** No, I think it occurred around the same
18 time as we made that change, in part to validate what we needed to run, in part to
19 assess and make sure that trial running mimicked exactly what we were going to run
20 during service.

21 **MS. CHRISTINE MAINVILLE:** The City reconsidered, quite late in
22 the day, you will agree with me, during trial running, how many trains it needed and
23 whether it can meet the ridership to be expected, I am going to suggest, because there
24 were struggles with making 15 available.

25 **MR. MICHAEL MORGAN:** Right. I -- the only time to reconsider
26 that number was before launch.

27 **MS. CHRISTINE MAINVILLE:** What do you mean?

28 **MR. MICHAEL MORGAN:** You wouldn't reconsider that number in

1 2017 when you didn't know what the ridership numbers were. You wouldn't reconsider
2 that in 2018 when you didn't know the ridership numbers. You would reconsider it
3 before going into service, at the end, before you were about to launch and hand the
4 system over.

5 **MS. CHRISTINE MAINVILLE:** Well, Mr. Morgan, I'm going to
6 suggest there was a lot of planning happening on the operational side, and that's a bit
7 late in the day to suddenly be reassessing the level of ridership given the level of
8 planning that the City was, I think you'll agree with me, trying to achieve throughout the
9 leadup to RSA.

10 **MR. MICHAEL MORGAN:** I think ---

11 **MS. CHRISTINE MAINVILLE:** There was a lot of -- sorry, go
12 ahead.

13 **MR. MICHAEL MORGAN:** I would say it's relatively late, but I think
14 the decision was made objectively because it -- and it was supported by the analysis of
15 what the ridership was.

16 **MS. CHRISTINE MAINVILLE:** Who -- you signed to the term sheet
17 on behalf of the City, correct?

18 **MR. MICHAEL MORGAN:** There were a number of term sheets
19 that we signed.

20 **MS. CHRISTINE MAINVILLE:** Okay. Let's bring up the one with
21 RTG for revenue service availability, RTG00151032. Do you recognize this term sheet?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MS. CHRISTINE MAINVILLE:** And we go to page 7. You signed
24 this term sheet on behalf of the City?

25 **MR. MICHAEL MORGAN:** I think Richard actually signed it on my
26 behalf.

27 **MS. CHRISTINE MAINVILLE:** Okay. So who made the ultimate
28 decision on this term sheet on the City's side?

1 **MR. MICHAEL MORGAN:** Well, it would have been a -- there
2 would have been collaboration with the general manager in terms of what was going
3 into the term sheets and understanding of what we were trying to achieve with it. I
4 expect John would have briefed the City Manager on -- on -- certainly at a high level. I
5 don't know if he got to the level of the contents of what was in the term sheet or not.

6 **MS. CHRISTINE MAINVILLE:** Okay. And when you say the
7 "general manager", you mean John Manconi?

8 **MR. MICHAEL MORGAN:** Yes.

9 **MS. CHRISTINE MAINVILLE:** Okay. And so you -- the City, in this
10 term sheet, provides for, if we go to page 2, the number of vehicles to be made
11 available for morning peak period to be 13 instead of 15. Can we go to page 2? Right.
12 So you see that that's where we see that the number of trains, car trains -- double-car
13 trains, sorry -- to be made available for use during morning peak period service would
14 be 13 instead of 15, correct?

15 **MR. MICHAEL MORGAN:** Yes.

16 **MS. CHRISTINE MAINVILLE:** And can I just clarify the term
17 "available for use"? Would there be spares available in addition to the 13 or not,
18 pursuant to this?

19 **MR. MICHAEL MORGAN:** So pursuant to this, no. But, you know,
20 that concept that we spoke about earlier about having hot -- like, vehicles on hot
21 standby or vehicles assigned to maintenance, that's not actually a Project Agreement
22 requirement. That's industry best practice to have a vehicle on standby but, in fact,
23 what RTG did with its spare vehicles is up to RTG, similar -- you know, on some
24 systems, I've seen them run with no spare ratio, and that's a decision that's with them.
25 And so here, we're saying, basically, the service level is going to be 13 rather than the
26 15.

27 **MS. CHRISTINE MAINVILLE:** Right. But -- and so what I
28 understand you to be saying is the City couldn't be assured that there would be spares

1 available and so you were prepared to go into service for morning peak hour with
2 perhaps a maximum of 13 trains available?

3 **MR. MICHAEL MORGAN:** I don't -- can you repeat that? I don't
4 think that's exactly what I said.

5 **MS. CHRISTINE MAINVILLE:** Okay. Well, you -- you couldn't --
6 as I understand what you're saying, you didn't know necessarily whether RTG would be
7 using the additional two cars as spares, right?

8 **MR. MICHAEL MORGAN:** You know, in any service level, if
9 they're -- if they're running 34 vehicles and we need 30 vehicles in service, the other
10 four are for them to use and maintain. If we're running -- in this case, it would be 26.
11 The other eight vehicles would be for them to use and maintain. We could ---

12 **MS. CHRISTINE MAINVILLE:** But you don't know, right?

13 **MR. MICHAEL MORGAN:** What does that mean, I "don't know"?

14 **MS. CHRISTINE MAINVILLE:** You don't know whether they were
15 going to have spares available in addition to the 13 when you went into service?

16 **MR. MICHAEL MORGAN:** So we had 34 vehicles and those -- the
17 34 vehicles were delivered under the project. Those were handed over. The -- we were
18 going to put 26 vehicles into service during the peaks. And they had eight vehicles and
19 they could do what they wanted with those eight vehicles.

20 **MS. CHRISTINE MAINVILLE:** Okay. So my question is, you --
21 then the City had no assurance that they would have spares available should there be
22 issues with the train -- the 13 trains that were to run during morning peak service,
23 correct?

24 **MR. MICHAEL MORGAN:** Correct. So they had eight -- they
25 would have had those eight vehicles spare for their use. They -- you know, we would
26 have put pressure on them to keep a few of those vehicles available on standby ready
27 for us to use, to swap out, if necessary.

28 **MS. CHRISTINE MAINVILLE:** M'hm.

1 **MR. MICHAEL MORGAN:** But that was not -- that sparing strategy
2 was not embedded anywhere in the project agreement.

3 **MS. CHRISTINE MAINVILLE:** Okay. And RTG, pursuant to this
4 term sheet, was to provide a timeline for when it was anticipated to increase the trains
5 available from 13 to 15, correct?

6 **MR. MICHAEL MORGAN:** Yes. And that was tied to an order for
7 38 more Stage 2 vehicles. And so those vehicles were in active production. They were
8 due to be delivered by the City by -- they're now late, very late, but the majority of them
9 were due to be delivered to the City by January 2020 ---

10 **MS. CHRISTINE MAINVILLE:** M'hm.

11 **MR. MICHAEL MORGAN:** --- and we were trying to encourage --
12 incentivize RTG to bring additional Stage 2 vehicles into the fleet to improve their spare
13 ratio because that would underpin the service so that we would be able to do a vehicle
14 swap without any issues if they had those additional vehicles. You know, so now, when
15 we look at the service today, there's seven Stage 2 vehicles added to the fleet, so they
16 have a fleet of 41. That absolutely supports and protects service. And at the time, we
17 were looking for them to give us a timeline for when they could introduce additional
18 Stage 2 vehicles into the fleet to go from 34 up to 38.

19 **MS. CHRISTINE MAINVILLE:** Mr. Morgan, on this time when the
20 term sheet is signed, the City has concerns about the reliability of the trains, correct?

21 **MR. MICHAEL MORGAN:** Is -- you know, I've spoken in the past
22 about this. You know, I think the -- in terms of reliability, the City, you know, lives and
23 breathes concerns about reliability on our bus network, on our train network, on all of
24 our systems. At the time, there was no, I would say, acute system on the network that
25 we said, "We're concerned about this."

26 We're concerned about everything -- you know, that we're
27 concerned about reliability, generally, and it's the brake system that's going to haunt us,
28 or it's this. I think going into service, we had a clear understanding that, you know, on a

1 big system like this, you could have switch issues, and you could have door issues, and
2 you could have brake issues. And so long as we dealt with those quickly, and resolved
3 those quickly, you know, it would have limited to no impact on service.

4 But in the end, we actually -- you know, there was new issues that
5 arose and emerged which were highly problematic.

6 **MS. CHRISTINE MAINVILLE:** Right. And you could anticipate
7 that there may be additional new issues that arose, right? Everything couldn't be
8 mitigated ahead of service?

9 **MR. MICHAEL MORGAN:** There was no way to know 100 percent
10 all of the issues that would arise during service. You know, there was new things, you
11 know, new interactions, you know, running the trains through a station with a full
12 platform was different for our operators, so yeah, there was absolutely things that we
13 couldn't have predicted. We knew that, you know, on any system, you're going to have
14 some issues, and we were organizing the team to get ready to deal with those quickly.

15 **MS. CHRISTINE MAINVILLE:** M'hm. You provided in the term
16 sheet for increased monitoring that RTG was to pay for, right?

17 **MR. MICHAEL MORGAN:** Correct.

18 **MS. CHRISTINE MAINVILLE:** And so why would -- I take it this
19 increased monitoring was informed by some of the issues that were being witnessed in
20 respect of the train -- the trains and the maintenance?

21 **MR. MICHAEL MORGAN:** Yeah, it's -- yeah, generally. You
22 know, we were exercising our rights under the contract to have additional oversight in
23 place during the launch to make sure -- during the launch and the service, generally, to
24 make sure we knew what was going on, we could surface issues quickly, and we could
25 help to rectify issues quickly.

26 **MS. CHRISTINE MAINVILLE:** You'll agree with me, though, that
27 provision would not have normally been included if everything was running perfectly,
28 right?

1 **MR. MICHAEL MORGAN:** Yeah, if everything was running
2 perfectly -- you know, if the -- you know, if the leadup to that period, you know, had
3 been smoother, if there was more visibility on the schedule and the launch dates, and
4 there was a higher level of comfort, yes, we wouldn't have invoked that specific element
5 to the contract.

6 **MS. CHRISTINE MAINVILLE:** Right, you didn't have a full level of
7 comfort with where you were at at the time of RSA, correct? There were concerns.

8 **MR. MICHAEL MORGAN:** Yeah, and the term sheet outlines
9 some of those concerns. There was this platform edge camera system. It wasn't
10 working and we were dissatisfied with the performance of that system. Part of the term
11 sheet was saying to RTG, "You need to provide a mitigation for this."

12 Was I happy to go into service with people standing on the platform
13 blowing whistles? I was not happy, but it was mitigated and they came up with a
14 solution. They've since resolved the issue. There were things like that, I think, that kind
15 of came up that we were concerned about, but there was nothing that would foretell
16 some of the issues that we saw with the erratic door behaviour, the inductor failures, the
17 catenary pull-downs -- that type of thing.

18 **MS. CHRISTINE MAINVILLE:** I understand, but given the
19 concerns that were present, why would the City shorten the timeline instead of
20 expanding it to go into service following RSA?

21 **MR. MICHAEL MORGAN:** How was the timeline -- I'm not clear
22 that the timeline was shortened.

23 **MS. CHRISTINE MAINVILLE:** So let's start there. The City, I'm
24 going to suggest, had been saying they would need approximately four weeks to
25 prepare for revenue service following RSA. Do you agree?

26 **MR. MICHAEL MORGAN:** I would say that they used language
27 that was more generic than that. They said three to four weeks was typically the run-up
28 time.

1 **MS. CHRISTINE MAINVILLE:** Okay. And if we go to
2 RTG00400436.0001, this is a letter that you signed to Mr. Lauch on July 31st, 2019. Do
3 you recognize that?

4 **MR. MICHAEL MORGAN:** Yes.

5 **MS. CHRISTINE MAINVILLE:** So this is right at the beginning of
6 trial running, right?

7 **MR. MICHAEL MORGAN:** Yes.

8 **MS. CHRISTINE MAINVILLE:** And here you indicate:

9 “In anticipation of the revenue service availability date
10 being achieved on or around August 16th, 2019, as
11 currently scheduled, it is the City’s intention to
12 commence revenue service in early Q4 of 2019.” (As
13 read)

14 So I’m going to suggest this is actually approximately a six-week
15 period that’s anticipated at this time between RSA and the start of revenue service. Do
16 you agree?

17 **MR. MICHAEL MORGAN:** Q4 is later in the year. Yes, I agree
18 with that. The following sentence also talks about a September 1st service level change.
19 At this point in time, this letter, in terms of the start date and the planning, is not --
20 nothing is confirmed in terms of when we were starting. Nothing is confirmed through
21 this letter.

22 **MS. CHRISTINE MAINVILLE:** No, but at least one of the
23 considerations it appears that the City has at this time is that they may take around six
24 weeks to prepare for revenue service, correct?

25 **MR. MICHAEL MORGAN:** Yes.

26 **MS. CHRISTINE MAINVILLE:** And indeed it had always been the
27 City’s intention to take some time following revenue service availability to prepare.

28 **MR. MICHAEL MORGAN:** It was always our intention to have

1 three to four weeks of time allocated to customer service operations and others to run
2 the system prior to opening it to customers.

3 **MS. CHRISTINE MAINVILLE:** Right. And if we just go briefly to
4 COW0000128, we see this is a memo from I believe it's Mr. Cripps to, at that time in
5 2017, the mayor and members of council.

6 **--- EXHIBIT No. 168:**

7 COW0000128 – City of Ottawa Memo from Director O-Train
8 Construction Steve Cripps to Mayor and Members of Council
9 11 May 2017

10 **MS. CHRISTINE MAINVILLE:** If we go to page 3, you'll see Mr.
11 Cripps indicates right at the middle there:

12 "The revenue service availability date, which is the
13 transfer of ownership, is separate and distinct from
14 the actual beginning of revenue service for
15 passengers. The City does not expect to receive the
16 trains one day and fill them with passengers the next.
17 The transition from the current public transit network,
18 which is mainly bus implemented by the O-Train
19 Trillium Line, to the multi-modal transit system, which
20 will be the busiest light rail transit (LRT) in North
21 America on day one of service, requires meticulous
22 planning and extensive verification of preparedness."

23 (As read)

24 Do you agree with that statement, as being made to council and the
25 mayor, about how preparedness will be the subject of extensive verification ahead of
26 revenue service, and that it's not the City's intention to get to RSA and then promptly fill
27 the trains with passengers the next day?

28 **MR. MICHAEL MORGAN:** You said a couple of different things

1 there. Meticulous planning and extensive verification of preparedness -- I absolutely
2 agree with that, and I think that there was a whole team at transit services that was
3 dedicated to doing that through the multi-modal transformation program. They spent
4 multiple years doing just that: meticulous planning.

5 The example is the fare gates system, which was piloted on the
6 Trillium Line, went into service on the O-Train Confederation Line. We hear about fare
7 systems having problems all over the world. We haven't had any news reports about
8 our fare system. It went into service and worked flawlessly, and that was part of that
9 program of meticulous planning that spanned a whole number of departments. It wasn't
10 just this one group.

11 **MS. CHRISTINE MAINVILLE:** Right, but let's stick to this project.
12 The City's intention had always been to make sure the system was ready to go into
13 service, fair?

14 **MR. MICHAEL MORGAN:** Yes.

15 **MS. CHRISTINE MAINVILLE:** And it could take the time it needed
16 to ensure that, after revenue service availability and before actual revenue service,
17 right?

18 **MR. MICHAEL MORGAN:** Yes, but nothing in this document
19 points to a duration of time.

20 **MS. CHRISTINE MAINVILLE:** My question, though, is then, why
21 did the City only take two weeks knowing the concerns that existed that remained at the
22 time of RSA?

23 **MR. MICHAEL MORGAN:** So when I do the math, trial running
24 basically ended around the 22nd -- 21st/22nd.

25 **MS. CHRISTINE MAINVILLE:** Approximately, yes.

26 **MR. MICHAEL MORGAN:** At that point, the obligations for doing
27 a trial running, or for RTG to do anything in particular, were essentially ended. They
28 were in documentation mode to get to RSA. So the system was available for operations

1 as of that point to start using. So they used it starting on that day through to September
2 14th to run exercises and to do different things. That network was available to us, so
3 we're splitting hairs a bit about -- is it two weeks after RSA or is it three weeks after trial
4 running? It has the same effect. We had the system for three weeks and then we
5 opened it with parallel bus service for three weeks.

6 **MS. CHRISTINE MAINVILLE:** Mr. Morgan, I don't think we're
7 splitting hairs when we're saying the City knew, from the advice it had gotten from its
8 advisors and consultants, that there were several challenges with having a system like
9 this one go into service without being fully ready. The City could take the time it needed
10 to ensure its readiness. It was advisable to do so, and the question is, why did the City
11 not take longer as a result of all these concerns?

12 **MR. MICHAEL MORGAN:** Okay. That's a different question. So
13 the City took three weeks to -- essentially, I'm saying that the City took the full three
14 weeks, after trial running ended, to operate the system and to verify that things were
15 working as required. I think in the middle of that there was one little hiccup with the train
16 control system and some radios, but they used that time to prepare. And then the other
17 mitigation that they used was to run the system in parallel with buses and open it to the
18 public for another three weeks.

19 So there was a long period of time there. It wasn't until October
20 that the buses were turned off. That intervening period of three weeks where we had
21 parallel bus service and the system was open, the service ran quite well. We had 98
22 per cent, and I would suggest that if the service hadn't been that good, if during the
23 intervening period when we had parallel bus service we hadn't achieved 98 per cent --
24 that there had been a major problem during those weeks -- the City absolutely would
25 have taken more time. We were emboldened by the fact that once we opened to the
26 public, it worked quite well for those three weeks, with the parallel bus service. Now,
27 what happens after that is a different story. But in the lead up, you know, we ran for
28 three weeks; we did the parallel bus service for three weeks. We were, you know,

1 comforted by the service, the 98 per cent that we achieved during that time of parallel
2 bussing. Absolutely, if we had had a problem, if we'd discovered the wheel crack, if
3 we'd discovered the inductor failure, if we'd discovered any of these other major
4 failures, we absolutely would have stopped and taken more time.

5 **MS. CHRISTINE MAINVILLE:** Those are my questions, Mr.
6 Morgan. Thank you.

7 **COMMISSIONER HOURIGAN:** All right. Now you will be asked a
8 series of questions from different counsel. The first counsel is from RTG.

9 **--- CROSS-EXAMINATION BY MR. MICHAEL FENRICK:**

10 **MR. MICHAEL FENRICK:** Good morning, Mr. Morgan. My name
11 is Michael Fenrick. I am here as counsel for the RTG parties, and I would like to thank
12 you for your time here, giving evidence today. Just picking up on a few of the themes
13 that Commission counsel took you to. She brought you to your words from, I believe,
14 your formal interview, that you used the word "bludgeon" and you said one of your
15 consultants had used that word, that you were adopting. Who was that?

16 **MR. MICHAEL MORGAN:** I didn't say that I was adopting that
17 word. I think I borrowed it. Somebody used it. One of the -- I think it was one of the P3
18 consultants, in the early days when we were getting advice on how to administer the
19 contract and how to administer work orders, but that was not the intent.

20 **MR. MICHAEL FENRICK:** But you recall that word being used?
21 And do you recall who used that word?

22 **MR. MICHAEL MORGAN:** I think it was one of the Deloitte
23 consultants. I don't recall exactly who.

24 **MR. MICHAEL FENRICK:** Okay. Just because we've heard a lot
25 of aggressive language being used, Mr. Jensen talking about "throats to choke," and the
26 "hammer" that the witness from Deloitte used. So, I just wanted to confirm that.

27 You've been involved in claims on this project?

28 **MR. MICHAEL MORGAN:** Yes.

1 **MR. MICHAEL FENRICK:** But this was the first transit P3 project
2 for the City; is that correct?

3 **MR. MICHAEL MORGAN:** Yes, as I understand it, yes.

4 **MR. MICHAEL FENRICK:** So, the City did not have a lot of
5 experience, at least in the early days, with contract administration on transit P3s?

6 **MR. MICHAEL MORGAN:** Early days, I'm not sure what you mean
7 by "early days," but we -- you know, we engaged Infrastructure Ontario; we engaged a
8 series of consultants. We had a -- there was a lot of support for how this contract was
9 delivered.

10 **MR. MICHAEL FENRICK:** Well -- and that was going to be my
11 next question, which was you did rely on advice from consultants concerning contract
12 administration; is that fair?

13 **MR. MICHAEL MORGAN:** Consultants, as well as Infrastructure
14 Ontario, yes.

15 **MR. MICHAEL FENRICK:** And which consultants did you rely on
16 for contract administration advice, or did the City rely on?

17 **MR. MICHAEL MORGAN:** Depending on the time, you know, we
18 relied on advice from a variety of legal firms. We relied on advice from Boxfish on some
19 issues. We relied on advice from, you know, Deloitte on a number of issues. It
20 depended on the issue.

21 **MR. MICHAEL FENRICK:** And you are aware, sir, that sometimes,
22 in disputes, parties may take positions in formal correspondence?

23 **MR. MICHAEL MORGAN:** Yes.

24 **MR. MICHAEL FENRICK:** That there may be a -- excuse me, I cut
25 off your answer, I apologize.

26 **MR. MICHAEL MORGAN:** Can you repeat the question?

27 **MR. MICHAEL FENRICK:** The question was simply that parties
28 sometimes, in formal correspondence, will take positions, because they need to do so in

1 order to protect their legal interests; is that fair?

2 **MR. MICHAEL MORGAN:** Yes.

3 **MR. MICHAEL FENRICK:** And just in terms of this project, we had
4 some discussion around some delays that ultimately resulted in delays achieving
5 substantial completion. You're, of course, aware there was a sink hole during the
6 construction of this project?

7 **MR. MICHAEL MORGAN:** Yes.

8 **MR. MICHAEL FENRICK:** And that that sink hole delayed the
9 construction?

10 **MR. MICHAEL MORGAN:** I can't agree with that statement.

11 **MR. MICHAEL FENRICK:** You can't agree that a sink hole would
12 delay construction on a ---

13 **MR. MICHAEL MORGAN:** Well ---

14 **MR. MICHAEL FENRICK:** --- on an infrastructure project?

15 **MR. MICHAEL MORGAN:** I think it's -- it delayed that portion of
16 the works, but in terms of, like, the broader delay analysis, I can't speak to that.

17 **MR. MICHAEL FENRICK:** Well, I'm not asking you to be a delay
18 expert here, sir. I am just saying, I think it is a matter of common sense that if there is a
19 major sink hole during a project that wasn't a foreseen circumstance, that that is likely to
20 cause some delay on that portion of the project; is that fair?

21 **MR. MICHAEL MORGAN:** Yes.

22 **MR. MICHAEL FENRICK:** And you're aware that Project Co.
23 believed that it was entitled to schedule relief for that event; is that fair?

24 **MR. MICHAEL MORGAN:** Yes.

25 **MR. MICHAEL FENRICK:** And the City was unwilling to grant that
26 relief?

27 **MR. MICHAEL MORGAN:** I believe that's the case, but that file
28 was largely handled before I arrived.

1 **MR. MICHAEL FENRICK:** Okay. And -- but you and your team -- I
2 believe you gave evidence to Ms. Mainville for the Commission that you and your team,
3 during the construction of the project, you know, had regular meetings and were in
4 regular contact with the RTG team; is that fair?

5 **MR. MICHAEL MORGAN:** Yes.

6 **MR. MICHAEL FENRICK:** So, you were aware of the state of
7 construction throughout the project, throughout the construction phase of the project?

8 **MR. MICHAEL MORGAN:** I was aware of the state of construction
9 at any moment in time, but I had no way of assessing when work was going to be
10 completed based on those slices -- those moments in time.

11 **MR. MICHAEL FENRICK:** The City hadn't formed an opinion,
12 then, that substantial completion was not likely to be achieved by May 2018 based on
13 its observations?

14 **MR. MICHAEL MORGAN:** The City had formed that opinion, but
15 we had no -- but, you know, that was our opinion based on our review of the state of the
16 nation. At that time, it was clear that it wasn't complete, but we were also getting
17 information from RTG suggesting that it was complete. So, we had conflicting
18 information.

19 **MR. MICHAEL FENRICK:** And the information that RTG provided
20 to you would have included a number of caveats, including with respect to issues that
21 were still to be addressed on the project; is that fair?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MR. MICHAEL FENRICK:** And you're aware that the City and RTG
24 have had a number of disputes on this project?

25 **MR. MICHAEL MORGAN:** Yes.

26 **MR. MICHAEL FENRICK:** And that one of those disputes relates
27 to the carry forward of deductions, that's from one contract month to the next contract
28 month?

1 **MR. MICHAEL MORGAN:** Yes.

2 **MR. MICHAEL FENRICK:** And you're aware that Infrastructure
3 Ontario has given evidence in this proceeding that that's not how it interprets its
4 template agreements?

5 **MR. MICHAEL MORGAN:** RTG reported that to me, yes.

6 **MR. MICHAEL FENRICK:** Okay. And I believe we've had
7 evidence from Mr. Traianopoulos as well in this proceeding that that's not how they view
8 the contract as operating. But I presume you haven't had an opportunity to review his
9 evidence.

10 **MR. MICHAEL MORGAN:** No.

11 **MR. MICHAEL FENRICK:** And there are other disputes as well on
12 this project. For instance, the City alleged default in March of 2020?

13 **MR. MICHAEL MORGAN:** Yes.

14 **MR. MICHAEL FENRICK:** And that dispute has not been resolved
15 at this date?

16 **MR. MICHAEL MORGAN:** No, it's been overtaken by events.

17 **MR. MICHAEL FENRICK:** And the parties disagree over the City's
18 decision not to pay RTG for certain contract months in 2019; is that fair?

19 **MR. MICHAEL MORGAN:** There are ongoing negotiations in
20 relation to that issue, yes.

21 **COMMISSIONER HOURIGAN:** Just be careful.

22 **MR. MICHAEL FENRICK:** And ---

23 **COMMISSIONER HOURIGAN:** Just hang on. I just want to warn
24 the witness. Just be careful about not going into solicitor-client advice or litigation
25 settlement. You'll regret it if you do.

26 **MR. MICHAEL MORGAN:** No, no, I mean ---

27 **COMMISSIONER HOURIGAN:** I know you will. I know you are a
28 careful witness. I am just trying to warn you, just so -- I mean, this we are little far afield.

1 We're dealing with another piece of litigation. He's done a good job in terms of
2 answering your questions, but let's just be careful that we don't breach anything here.
3 That's all I'm saying. So, I'm giving you the heads up, and I am giving Mr. Fenrick the
4 warning as well. Okay?

5 **MR. MICHAEL MORGAN:** I absolutely appreciate the guidance
6 because I feel like we're litigating a dispute here a little bit.

7 **COMMISSIONER HOURIGAN:** We're not quite there, but I'm just
8 giving you that guidance, so you don't say something you will regret. Okay? Go ahead.

9 **MR. MICHAEL FENRICK:** That's fair, Mr. Commissioner. Of
10 course, I am not interested in hearing about that. I was simply asking a factual question
11 about whether the dispute had been resolved, you know, nearly three years into the
12 project. And the answer at this point is no.

13 I think with that, those are my questions. I am certainly not trying to
14 litigate anything with you at this point.

15 **COMMISSIONER HOURIGAN:** That's fine.

16 **MR. MICHAEL FENRICK:** Thank you.

17 **COMMISSIONER HOURIGAN:** All right. Very good. Thank you.

18 Alstom is next.

19 **MR. CHARLES POWELL:** Thank you, Mr. Commissioner. Charles
20 Powell, counsel for Alstom. We have no questions for the witness.

21 **COMMISSIONER HOURIGAN:** All right. STV is next.

22 **MR. JAMES DORIS:** James Doris for STV, and we have no
23 questions.

24 **COMMISSIONER HOURIGAN:** Infrastructure Ontario?

25 **MR. SOLOMON MCKENZIE:** Good morning, Solomon McKenzie
26 for Infrastructure Ontario. We have no questions for the witness.

27 **COMMISSIONER HOURIGAN:** All right. Thank you. Thales?

28 **MS. MARIA BRAKER:** Hello, Maria Braker for Thales. We have

1 no questions for this witness.

2 **COMMISSIONER HOURIGAN:** RTG EJV?

3 **MR. MICHAEL VRANTSIDIS:** Yes, thank you, Mr. Commissioner,
4 Michael Vrantsidis for the EJV. We do not have any questions for this witness.

5 **COMMISSIONER HOURIGAN:** All right. Thank you. Morrison
6 Hershfield?

7 **MR. KYLE LAMBERT:** Thank you, Mr. Commissioner.
8 Morrison Hershfield does not have any questions for this witness.

9 **COMMISSIONER HOURIGAN:** Very good.

10 So now we go to your own counsel, the City's counsel, all right?

11 **MR. JOHN McLUCKIE:** Mr. Chairman, Mr. Commissioner, if I
12 could interject for a moment, please, sir, McLuckie?

13 **COMMISSIONER HOURIGAN:** Yeah, go ahead.

14 **MR. JOHN McLUCKIE:** Commission counsel and the director of
15 the Commission had indicated ATU could have 10 minutes this morning after Thales.
16 Just wondering if that would still be possible, sir?

17 **COMMISSIONER HOURIGAN:** If we've given that undertaking,
18 that's fine. It just wasn't on my list. So you can go ahead. You can have 10 minutes.
19 So just tell the witness who you represent.

20 **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

21 **MR. JOHN McLUCKIE:** Mr. Morgan, good morning. My name is
22 John McLuckie, for the record, M-c-L-u-c-k-i-e. I am counsel for ATU 279, so we
23 represent the operators and maintenance staff of OC Transpo as well as the
24 maintenance staff at Alstom.

25 You're familiar with my client, sir?

26 **MR. MICHAEL MORGAN:** Yes.

27 **MR. JOHN McLUCKIE:** I just want to nail down something from
28 this morning that I found interesting in your testimony and then I'll move on to some

1 questions more pertinent.

2 With respect to the decision to move from 15 trains to 13 trains --
3 and I'm going to refer to a document, and I'm going to ask the Court Clerk to bring up
4 STV2337. It's the WhatsApp chat, and if we go to page 14 of the document, please?

5 And if we can scroll down so that line 313 is visible, please?

6 Mr. Morgan, do you see this document in front of you on your
7 screen?

8 **MR. MICHAEL MORGAN:** Yes.

9 **MR. JOHN McLUCKIE:** So at this point in time, this is August 15th
10 of 2019 -- so trial running has been completed at this point?

11 **MR. MICHAEL MORGAN:** Not -- no, I don't think at that point,
12 officially.

13 **MR. JOHN McLUCKIE:** Was it underway at this point?

14 **MR. MICHAEL MORGAN:** Yes, it was underway at this point?

15 **MR. JOHN McLUCKIE:** It's fair to say there were some concerns
16 coming out of that trial running as to the reliability of the system?

17 **MR. MICHAEL MORGAN:** I think there were ongoing issues that
18 we were tracking and monitoring every day, as you would on a system like this.

19 **MR. JOHN McLUCKIE:** And Mr. Manconi, at line 313, you were
20 part of this group chat, I understand?

21 **MR. MICHAEL MORGAN:** Yes.

22 **MR. JOHN McLUCKIE:** And at 5:05 on the evening of the 15th of
23 August, he's indicating the new plan is to reduce from 15 to 13 trains for the morning
24 rush hour, correct?

25 **MR. MICHAEL MORGAN:** Yes.

26 **MR. JOHN McLUCKIE:** And that Michael will pen documentation.
27 I take it that's you?

28 **MR. MICHAEL MORGAN:** I would take care of the documentation,

1 yes.

2 **MR. JOHN McLUCKIE:** Right.

3 **MR. MICHAEL MORGAN:** With RTG.

4 **MR. JOHN McLUCKIE:** And Mr. Charter, who is also on the rail
5 team indicates that, "A new timetable will be prepared tonight, loaded and ready for
6 tomorrow," correct?

7 **MR. MICHAEL MORGAN:** Yes.

8 **MR. JOHN McLUCKIE:** So it seems like the decision to go from 13
9 to 15 trains is made fairly late in the process; you would agree?

10 **MR. MICHAEL MORGAN:** Fifteen (15) to 13? Relatively, I
11 suppose, yes.

12 **MR. JOHN McLUCKIE:** So less than a month before the City
13 assumed control over the service, you've dropped down by two trains?

14 **MR. MICHAEL MORGAN:** Yes.

15 **MR. JOHN McLUCKIE:** I just want to move on to -- we'll take the
16 document down, Mr. Clerk -- so in terms of the project and how it was structured, the
17 obligation to provide maintenance was an obligation on the P-3, the Project Co.,
18 correct?

19 **MR. MICHAEL MORGAN:** Yes.

20 **MR. JOHN McLUCKIE:** And that obligation was, in turn,
21 subcontracted down from RGT to RTM?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MR. JOHN McLUCKIE:** And then subcontracted from RTM to
24 Alstom?

25 **MR. MICHAEL MORGAN:** Parts were subcontracted further, yes.

26 **MR. JOHN McLUCKIE:** Alstom ended up with two obligations.
27 One was to maintain the trainsets; you'd agree with that?

28 **MR. MICHAEL MORGAN:** Yes.

1 **MR. JOHN McLUCKIE:** And the other was to maintain sort of the
2 rail and electrical infrastructure on the system itself, correct?

3 **MR. MICHAEL MORGAN:** Yes.

4 **MR. JOHN McLUCKIE:** You indicated in your interview with
5 Commission counsel that the obligation of the P-3 parties was in part to ensure that at
6 the time the service was transferred to the City, that it had an adequate number of
7 maintenance staff available to keep the system functional. Do you remember saying
8 words to that effect?

9 **MR. MICHAEL MORGAN:** Yes.

10 **MR. JOHN McLUCKIE:** And in terms of the P-3 role, the objective
11 of the P-3 partners, the private partners, that's to turn a profit on this contract, isn't it?

12 **MR. MICHAEL MORGAN:** Could be, yes. I expect it is.

13 **MR. JOHN McLUCKIE:** Common sense says in a commercial
14 arrangement, they hope to make money on it, correct?

15 **MR. MICHAEL MORGAN:** Yes.

16 **MR. JOHN McLUCKIE:** They're not providing a public service;
17 they're providing a private service that they're being paid for?

18 **MR. MICHAEL MORGAN:** They're providing a service that they're
19 being paid for.

20 **MR. JOHN McLUCKIE:** And the contract between the City and the
21 private parties in this deal is for the 30-year period?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MR. JOHN McLUCKIE:** And it's a fixed cost, correct?

24 **MR. MICHAEL MORGAN:** Yes.

25 **MR. JOHN McLUCKIE:** There's a very limited ability for any of the
26 private partners to pass on higher costs up to the City, correct?

27 **MR. MICHAEL MORGAN:** Limited in respect of specific
28 maintenance, yes.

1 **MR. JOHN McLUCKIE:** Right. So the cheaper that Alstom can
2 provide the number of maintenance crews required, the more profit that it's potentially
3 making on the deal, correct?

4 **MR. MICHAEL MORGAN:** Theoretically, yes.

5 **MR. JOHN McLUCKIE:** So it's in Alstom's interest to keep the
6 maintenance crews to the minimum required to meet the standards of the contract?

7 **MR. MICHAEL MORGAN:** It's in Alstom's interest to optimize the
8 number of staff in relation to the performance deductions. At some point, that drops off
9 a cliff and they don't have enough staff and they can't meet the performance, they will
10 start losing money.

11 **MR. JOHN McLUCKIE:** Right. And I think you alluded to that idea
12 this morning when you talked about spare parts, to be operated with -- for a lot of spare
13 parts, whereas the contract, they would obviously like to keep inventory to a minimum.
14 Same idea, correct?

15 **MR. MICHAEL MORGAN:** Correct, yes.

16 **MR. JOHN McLUCKIE:** So it's in Alstom's interest to want as lean
17 an operation as possible because that's how they make money?

18 **MR. MICHAEL MORGAN:** Correct.

19 **MR. JOHN McLUCKIE:** Okay. And in terms of the trial running, I
20 think we agreed a few minutes ago that the trial running over the summer of 2019, so it
21 had identified a number of problems with the reliability of the trains?

22 **MR. MICHAEL MORGAN:** That's an overly broad statement.

23 **MR. JOHN McLUCKIE:** Okay. Was it not true that Alstom
24 consistently had difficulties fielding 15 trains to maintain operations?

25 **MR. MICHAEL MORGAN:** I think that in the beginning, the first
26 week of trial running was rather difficult and they needed to reset, and then at some
27 point, they did achieve 15 vehicles for a number of days, and then we made the
28 adjustment to 13 vehicles.

1 **MR. JOHN McLUCKIE:** You had an interview earlier on in this
2 process with Commission counsel?

3 **MR. MICHAEL MORGAN:** Yes.

4 **MR. JOHN McLUCKIE:** And you recall saying that you had
5 concerns as the service approached revenue service availability, that the City had
6 concerns that Alstom did not have a sufficient number of maintenance staff available to
7 it. Do you recall saying that to her?

8 **MR. MICHAEL MORGAN:** I recall saying that, and I think if you
9 look at the records of communication between us and the email exchanges, that was
10 kind of one of our overriding concerns, is that they had the right people in the right place
11 so that in the event that there was a reliability incident, they could react and respond
12 quickly.

13 **MR. JOHN McLUCKIE:** So you weren't convinced in the summer
14 of 2019 that Alstom had the right number of people, correct?

15 **MR. MICHAEL MORGAN:** So we, you know, had many
16 discussions with them, you know, and their obligations are simply to provide service, not
17 staffing levels. And so we surfaced that issue multiple times with them to make sure
18 that they provided the right level. And you know, to -- the response that we got to that
19 from ACS and from SNC-Lavalin and from EllisDon and from Alstom was that they were
20 absolutely going to provide the right number of people. We got those assurances from
21 them multiple times.

22 **MR. JOHN McLUCKIE:** Do you recall, in your interview with
23 Commission counsel, that you identified -- and this is at page 90 of your transcript, if
24 you'd like me to bring it up -- that the City was concerned that at the RSA point, that
25 more people were needed for the maintenance of the train? Do you recall saying this?

26 **MR. MICHAEL MORGAN:** Yes. We've been consistent with that
27 opinion.

28 **MR. JOHN McLUCKIE:** So again, I come back to my question,

1 that at the point RSA was being contemplated, Alstom did not, in the view of the City,
2 have sufficient maintenance staff for the train?

3 **MR. MICHAEL MORGAN:** The train or responding to systems and
4 service, that was -- I think we were fairly consistent with that point, and so yes.

5 **MR. JOHN McLUCKIE:** And you indicated in your interview with
6 Commission counsel that one of the issues that led to the shortage of staff was that
7 Alstom's maintenance team were getting overwhelmed. Trains were coming in with
8 deficits during the day and they were not capable of being fixed overnight to be ready
9 for the next morning. Do you recall saying that to her?

10 **MR. MICHAEL MORGAN:** Yes.

11 **MR. JOHN McLUCKIE:** And that's a consequence of there simply
12 weren't enough people to keep up with both the preventative and the corrective
13 maintenance the trains were requiring, correct?

14 **MR. MICHAEL MORGAN:** I'm -- you can't attribute that solely to a
15 number of people. I think you also have to calibrate that against having the right fixes in
16 place, having the right technical solutions, having, you know, the right processes in
17 place. It's not always about people; it's sometimes also about the process.

18 **MR. JOHN McLUCKIE:** Would you agree with me that having
19 more people would have helped?

20 **MR. MICHAEL MORGAN:** I don't know. Not being on the shop
21 floor with Alstom and knowing do they have the right processes in place, have they
22 optimized their maintenance operation, I can't say that for sure.

23 One of the other things that we always pushed Alstom on and RTM
24 generally was to have someone in control of the yard, some -- a single point of contact
25 was controlling the yard's movement, was making sure that they knew 100 percent what
26 was happening in the morning with those trains for launch.

27 **MR. JOHN McLUCKIE:** Just again, going back to your interview
28 with Commission counsel, you indicated that at that point in the summer of 2019, that

1 Mr. Manconi, John Manconi, the general manager, was pushing Alstom to increase the
2 number of maintenance staff that they had available. Do you recall telling her ---

3 **MR. MICHAEL MORGAN:** Yes, I -- yes.

4 **MR. JOHN McLUCKIE:** And do you recall telling her that not only
5 did he push for more staff, he was pushing for more staff in the field to respond to trains
6 in sort of a real-time environment? Do you recall saying that?

7 **MR. MICHAEL MORGAN:** Yes.

8 **MR. JOHN McLUCKIE:** And I'm going to suggest to you that at the
9 time that the train was operating in the summer of 2019, Alstom did not have sufficient
10 staff, in the opinion of the City, to maintain the system.

11 **MR. MICHAEL MORGAN:** I think that's fair, yes.

12 **MR. JOHN McLUCKIE:** Okay. Just to move forward with that, in
13 terms of the contract arrangement you had -- so Mr. Manconi could push Alstom and
14 could make suggestions to Alstom, but it wasn't within Mr. Manconi's purview to direct
15 Alstom to either hire, or change, or alter their staffing schedules, was it?

16 **MR. MICHAEL MORGAN:** So only to the extent that we could link
17 staffing to a specific issue. So where we could say, you know, we had an issue with
18 door software where, you know, there was kind of a mishandling, I would say, of
19 paperwork, so we were able to direct them to provide door technicians on each of the
20 vehicles for a period of time. Similarly, we were able to lock them into an agreement to
21 provide additional staff to deal with the platform-edge cameras.

22 And so -- so in limited instances where, you know, there was a
23 specific defect, it was -- we were in a better position to push them to add more staff.
24 But just to be able to push them broadly across the project to increase staffing by, say,
25 10 percent, we -- the contract did not provide a mechanism for that.

26 **MR. JOHN McLUCKIE:** And that would be different than, for
27 example, OC Transpo's bus maintenance? Mr. Manconi had issues with how bus
28 maintenance was being done. He directly control those managers, does he not?

1 **MR. MICHAEL MORGAN:** So OC Transpo bus services is a
2 different setup. It's a lot self-perform with some, you know, outsourcing. You know,
3 there are -- there are restrictions, I would say. You know, Mr. Manconi was not free
4 during his tenure to add 400 vehicle technicians. I mean there were some constraints,
5 but he had more control, yes.

6 **MR. JOHN McLUCKIE:** Right. And that's a key difference
7 between OC Transpo's bus operations and this P3 operation for the train, correct?

8 **MR. MICHAEL MORGAN:** We've outsourced the maintenance,
9 yes.

10 **MR. JOHN McLUCKIE:** One last area of questions and then I'm all
11 done with you, Mr. Morgan. Thank you. So in terms of the parallel bus system, so the
12 buses were running in parallel to the trains for approximately three weeks, correct?

13 **MR. MICHAEL MORGAN:** Yes.

14 **MR. JOHN McLUCKIE:** And you'd indicated in your interview with
15 Commission, and then again this morning in your testimony, that had you identified
16 problems with those first three weeks of service, you'd have continued the parallel bus
17 service. Do you recall saying that?

18 **MR. MICHAEL MORGAN:** I recall saying that. The context of that
19 is, if there is absolutely a critical defect -- and I think the examples I gave was the
20 inductors, the cracked wheels, major problem on the system that compromised the
21 service, and safety, and the reliability, we would have continued the bus service.
22 There's no doubt in my mind that at that time, if we discovered the cracked wheels, that
23 we would have pushed the date out.

24 **MR. JOHN McLUCKIE:** So just to cover off one thing, though.
25 Prior to the City taking over the train system, isn't it true that the City had issued nearly
26 350 layoff notices to bus operators?

27 **MR. MICHAEL MORGAN:** You know, that's out of my purview. I
28 think that if you step back in time -- you have to go back early in -- early in the process

1 of the project where there was discussions about layoff notices and potential estimates
2 of who would be impacts by that.

3 **MR. JOHN McLUCKIE:** Okay. But again, if layoff notices had
4 been issued, and the evidence thus far has been that they were, it would have been
5 very difficult for the City simply to turn around and reinstitute the parallel bus service,
6 would it not?

7 **MR. MICHAEL MORGAN:** Yes, it would have been imperfect.

8 **MR. JOHN McLUCKIE:** Because you would have gotten rid of the
9 drivers that were performing that service?

10 **MR. MICHAEL MORGAN:** Yes. I'm not aware of -- like, I'm not on
11 that file to know specifically about layoffs or not, or notices or not, but, you know, if you
12 had drivers and they -- you let them go, they would no longer have been available, yes.

13 **MR. JOHN McLUCKIE:** Mr. Commissioner, thank you very much.
14 Those are my questions this morning.

15 **COMMISSIONER HOURIGAN:** All right. Thank you.

16 Now we'll hear from witness counsel, City of Ottawa's counsel.

17 **MR. PETER WARDLE:** Thank you very much, Mr. Commissioner.
18 I'll just note that because I'm in person today, I may have some difficulty pushing the
19 button, so I hope you'll give me some leeway. Thank you very much.

20 **COMMISSIONER HOURIGAN:** It takes about a week to learn how
21 to do it, so if you do it today pretty well, you'll be ahead of schedule.

22 **MR. PETER WARDLE:** Thank you.

23 **--- CROSS-EXAMINATION BY MR. PETER WARDLE. :**

24 **MR. PETER WARDLE:** Mr. Morgan, you've already testified that
25 prior to coming to the City of Ottawa, you were involved in a number of international rail
26 projects, correct?

27 **MR. MICHAEL MORGAN:** Yes.

28 **MR. PETER WARDLE:** And I'm just going to take you through

1 them very quickly. My friend, Ms. Mainville, already covered them with you. You were
2 involved in systems integration for Bombardier on the JFK Project?

3 **MR. MICHAEL MORGAN:** Yes.

4 **MR. PETER WARDLE:** You were involved in the recommissioning
5 in Yongin, South Korea?

6 **MR. MICHAEL MORGAN:** Yes.

7 **MR. PETER WARDLE:** You worked on the Gold Coast LRT for the
8 consortium between 2012 and 2014?

9 **MR. MICHAEL MORGAN:** Yes.

10 **MR. PETER WARDLE:** And your responsibilities included leading
11 testing and commissioning for that project?

12 **MR. MICHAEL MORGAN:** Yes.

13 **MR. PETER WARDLE:** And so you've worked on the Projectco
14 side and the owner side in these P3 projects?

15 **MR. MICHAEL MORGAN:** Yes.

16 **MR. PETER WARDLE:** I want to talk a little bit about the pressure
17 to open around this project. So we know it was over a year late. That's been
18 established through the evidence.

19 **MR. MICHAEL MORGAN:** Yes.

20 **MR. PETER WARDLE:** You've already given some evidence
21 today about the delays and the various assurances given by RTG at various points in
22 time about the schedule, fair?

23 **MR. MICHAEL MORGAN:** Yes.

24 **MR. PETER WARDLE:** And is it also fair to say that the City had to
25 be transparent with its constituents about what RTG was saying about when it would
26 finish the project?

27 **MR. MICHAEL MORGAN:** Absolutely, yes.

28 **MR. PETER WARDLE:** And what I mean by that is that when RTG

1 gave the City a date like the May 2018 date, or the November 2018 date, as I
2 understand it, that date had to be reported up to a City Council Committee called Fedco,
3 correct?

4 **MR. MICHAEL MORGAN:** Yes. So, generally, we shared and
5 were as transparent as possible with the dates, which ultimately led to some awkward
6 situations where RTG at the table reporting at Fedco and the City was at the table, and
7 we were there disagreeing about dates. And so there was never alignment on dates,
8 and the dates that we got from RTG throughout the project were never met until the
9 end.

10 **MR. PETER WARDLE:** And we heard already that there was
11 pressure company, RTG, to open, correct?

12 **MR. MICHAEL MORGAN:** Yeah, the -- you know, when you're
13 working on one of these big projects, the -- you know, this is a big consortium with three
14 -- you know, three big companies looking at the project. They're absolutely putting
15 pressure on their team to open.

16 **MR. PETER WARDLE:** Now, you had direct involvement with
17 Mayor Watson at various points in during for -- during your involvement with the project,
18 correct?

19 **MR. MICHAEL MORGAN:** Yes, right, I would be -- accompany
20 John and City Manager to meetings on a semi-regular basis with the mayor.

21 **MR. PETER WARDLE:** Was Mayor Watson interested in knowing
22 when the system was going to open?

23 **MR. MICHAEL MORGAN:** He was always interested in
24 understanding in understanding when it was going to be finished. He was absolutely
25 interested.

26 **MR. PETER WARDLE:** Did you or, to your knowledge, you staff
27 ever get direction from the mayor to open the system by a specific date?

28 **MR. MICHAEL MORGAN:** No, never.

1 **MR. PETER WARDLE:** Did you ever get direction from the mayor
2 to rush the system into operation?

3 **MR. MICHAEL MORGAN:** No, never.

4 **MR. PETER WARDLE:** And, Mr. Morgan, were you comfortable
5 that if the City had to slow the process down that that would have been supported at the
6 political level?

7 **MR. MICHAEL MORGAN:** Yes. We -- you know, we got the first
8 substantial completion notice and we rejected it. And there was -- there was no
9 hesitation. There was no second guessing. There was no, "Are you sure? Go back
10 and look at it again." It was 100 percent. We submitted our opinion. We provided an
11 extensive list of all the subsystems that weren't finished, all the outstanding work, and it
12 was full accepted. There was no -- there was never any second guessing.

13 **MR. PETER WARDLE:** And I won't take you to the documents, but
14 the fact that you'd rejected the first application for substantial completion, that was
15 reported to the mayor and council, correct?

16 **MR. MICHAEL MORGAN:** I believe so, yes.

17 **MR. PETER WARDLE:** I want to just speak very briefly with you
18 about the concepts in the project agreement of substantial completion and revenue
19 service availability. So in this project agreement, those were two separate concepts
20 and two different dates, correct?

21 **MR. MICHAEL MORGAN:** Yes.

22 **MR. PETER WARDLE:** Okay. Does that separation of
23 requirements and having two separate dates, in your view, make complete sense in a
24 light rail project like this one?

25 **MR. PETER WARDLE:** You know, so when I joined to project and
26 I started to understand the path to completion, it was awkward. Like, it was -- that
27 separation is uncommon for a light rail project, that you would have the substantial
28 completion -- like, that you would have a milestone and you would call it "substantial

1 completion”, that it would be tied -- you know, which has its own meanings in terms of
2 Construction Lien Act, percent complete, and all of those things. Like -- and the
3 suggestion in that milestone that the system was ready for public use when, actually,
4 the system was never intended to be open for public use at that time.

5
6 So you have this kind of conflation of substantial completion with RSA. It should have
7 been one in the same. So we get substantial completion and it’s got all these legal
8 terms in terms of use and enjoyment and availability for the public, but that was totally
9 disaligned with how you run an LRT system, how you commission an LRT system, how
10 you, you know, put a system into service. A lot of Alstom, Thales, many others, they
11 were tying, trial running, commissioning end of completion of the project and their safety
12 certification to a later period, to the RSA period. And so, we had this earlier milestone
13 where it basically said it needs to be ready for public use, but then we had never
14 intended to make it available for public use until RSA. So, there is this huge disconnect.

15 I mean, I think it ties back to this being the first LRT in Ontario,
16 because Waterloo, which was the very next one, cleaned it up. Like, that issue is gone
17 on the Waterloo project, as far as I am aware. They only had substantial completion,
18 which is after trial running, at RSA, now it is actually ready for use in the public. So, we
19 had, you know, to do some gymnastics to get around that issue because just -- you
20 know, even RTG, I remember having discussion with Peter Lauch saying, you know, he
21 was doing the math on, well, substantial completion means no more percentage of --
22 this has to be remaining. Well, it’s no good to have two percent of work remaining if you
23 don’t have the safety certificate for the system. Like, you’ve kind of lost the plot at that
24 point. And so, there was a lot of discussion about how you manage that, how you deal
25 with that. I mean, it’s been cleaned up in subsequent IO templates, but it was definitely
26 an issue.

27 **MR. PETER WARDLE:** When you say it’s been cleaned up in
28 subsequent IO templates, what do you mean by that?

1 **MR. MICHAEL MORGAN:** If I go and I look at the Waterloo PA,
2 which is available online, it doesn't have a substantial completion followed by a
3 subsequent RSA. It's only substantial completion. It's just that's the final milestone. I
4 mean, it would have been -- so, they had a pre-substantial completion as their kind of
5 second-last milestone, which is fine. And I think it has even been eliminated completely
6 in other contracts. But at substantial completion, you know, that's when you are
7 handing it over to the public, that's when you should have all your safety certificates,
8 that's when your trial running should be finished, that's when you should be ready to go
9 into service, not at this kind of milestone that occurs four weeks earlier.

10 So, it was awkward. The two things weren't aligned. Substantial
11 completion was followed by things we needed to do to put the system into service,
12 things we needed to do to make sure it was safe.

13 **MR. PETER WARDLE:** So, that's going to just take me quickly to
14 another issue, and that is the concept of minor deficiencies. So, as I understand you
15 know, Mr. Morgan, the definition of a minor deficiency is a deficiency that doesn't affect
16 the use or enjoyment of the system by the public.

17 **MR. MICHAEL MORGAN:** Right.

18 **MR. PETER WARDLE:** Is that concept something that can be
19 applied at the time of substantial completion under this project agreement?

20 **MR. MICHAEL MORGAN:** In this project, no, because we had
21 never planned on -- you couldn't make it available to the public. Alstom was not going
22 to sign off on those vehicles and give us a safety certificate until trial running was
23 completed. The same with Thales. It's kind of normal industry practice to get the safety
24 certificates at the end, and, at that point, you can make it available to the public. We
25 had a requirement for an independent safety auditor to sign off; that was at RSA. So,
26 specifically, the City had an obligation to complete a task at RSA before opening it to
27 the public. So, it caused -- yeah, it caused us headaches with how you apply minor
28 deficiencies.

1 I'd say the other challenge that the PA had is that there was no
2 teeth in how you measured minor deficiencies. Other contracts, you get to hold back
3 the money. You know, for us, the second we declare something a minor deficiency, it's
4 gone; it's out of our hands. You know, RTG can fix it when they want, and there is no
5 hook in the contract to say, "Okay, well, we have this money that we're holding until you
6 get it done." So, we kind of were in no-man's land a little bit with some of these
7 deficiencies, and that led to us signing some of these agreements and doing some set-
8 offs to lock them in to make sure we didn't lose sight of those specific issues.

9 **MR. PETER WARDLE:** I want to just take you briefly to the
10 agreement that was reached with respect to deferred works, and that is RTG
11 00332043.0002. So, first of all, Mr. Morgan, I understand you were involved in creating
12 the list that's attached to this agreement and finalizing this agreement.

13 **MR. MICHAEL MORGAN:** Yes.

14 **MR. PETER WARDLE:** And, is it correct -- if we go to the
15 schedule, and I'm not going to spend a lot of time on this, but if we could turn to, I think
16 it's the third or fourth page where the schedule starts. So, we have Schedule A,
17 Deferred Work, and if we could go back to page 7 of the PDF? So, I understand that
18 some of the items on the deferred work list were various certificates that would only be
19 available at revenue service availability; is that correct?

20 **MR. MICHAEL MORGAN:** That's correct. The engineering safety
21 assurance case, and then there were some other certificates where we were getting
22 information from the TSSA, for example, saying they are fine with the elevator, but they
23 were a few days late getting the actual certificates. And, you know, that's a non-Project
24 Co. cause, and so we provided some opportunity to get around that.

25 **MR. PETER WARDLE:** And, then, as I understand it, there was a
26 list of items relating to certain works, and those are the cab doors, the platform edge
27 cameras, and the passenger information system that, as I understand it, were going to
28 be addressed or mitigated by the time of revenue service availability; is that correct?

1 **MR. MICHAEL MORGAN:** Correct, yes.

2 **MR. PETER WARDLE:** And so those deficiencies were not minor
3 deficiencies within the definition in the project agreement, correct?

4 **MR. MICHAEL MORGAN:** Correct.

5 **MR. PETER WARDLE:** But they were not major changes to the
6 work or what the City was going to accept at revenue service availability; isn't that
7 correct?

8 **MR. MICHAEL MORGAN:** Correct.

9 **MR. PETER WARDLE:** And is it also correct that if those deferred
10 works were satisfactorily addressed or mitigated by the time of RSA, they would not
11 affect safety of the system or use and enjoyment of the system by the public?

12 **MR. MICHAEL MORGAN:** Correct.

13 **MR. PETER WARDLE:** And, to your knowledge, was the work set
14 out in here either completed or mitigated by the time of RSA?

15 **MR. MICHAEL MORGAN:** Completed or mitigated, yes.

16 **MR. PETER WARDLE:** I want to talk a little bit with you for a
17 moment about maintenance. And this is an issue that has been addressed this morning
18 with a couple of -- some of the questions from my friend on behalf of the ATU.

19 **COMMISSIONER HOURIGAN:** Can we take this down now?

20 **MR. PETER WARDLE:** Yes, we can. Thank you, Mr.
21 Commissioner.

22 **COMMISSIONER HOURIGAN:** Okay.

23 **MR. PETER WARDLE:** So, perhaps to start with some basics, and
24 perhaps this is too obvious, but is it fair to say that the operation of the trains and any
25 reliability issues with the vehicles is directly connected to maintenance activity?

26 **MR. MICHAEL MORGAN:** Yes.

27 **MR. PETER WARDLE:** And this is a complex system that requires
28 daily maintenance in order to operate as required, fair?

1 **MR. MICHAEL MORGAN:** Yes.

2 **MR. PETER WARDLE:** In other words, if the train fails for some
3 technical reason, the failure is important, but also the ability of the maintainer to get that
4 train off the line and remedy the issue, or put out a spare train?

5 **MR. MICHAEL MORGAN:** Yeah. The reliability issue is such that,
6 you know, you can have a brake fault, you can have a door fault, but it's about being
7 able to reset that quickly and keep the service going. So, to the extent that you can
8 respond quickly, that the operator or maintainer can jump in and do the right thing to get
9 the train out of the way, that absolutely feeds into the performance of the system.

10 **MR. PETER WARDLE:** And if the maintainer -- to put it another
11 way, if the maintainer does not keep up with maintenance activities, that can have a
12 cascading effect over time?

13 **MR. MICHAEL MORGAN:** Yeah. There's a bit of a -- you know,
14 you can -- maintainers can defer some works, but after a while that will catch up with
15 them in terms of, like, taking vehicles out of service completely. You know, you can, for
16 example, defer rail grinding for a period of time, but you can't do that indefinitely. Like, it
17 will start to break down the system if you're not doing things properly, if you're not, you
18 know, checking the brakes, changing the fluids, whatever. You know, all those things
19 need constant attention.

20 **MR. PETER WARDLE:** So, now I just want to talk for a little bit
21 about the August of 2019, during the trial running, and I am going to ask you about the
22 vehicles and some of the systems, and then the maintenance function.

23 So, starting with the vehicles, during trial running, what was your
24 view about the reliability of the vehicles being supplied by Alstom?

25 **MR. MICHAEL MORGAN:** So, I think when we think back about
26 the vehicles, there was no singular issue with the vehicles that gave us concerns. So,
27 for example, it wasn't like we had this fleet of vehicles and they were working fine, save
28 and except for the brakes, or save and except for the doors. Generally, they were doing

1 well. That they were -- so long as we responded quickly and got those vehicles out of
2 service, we could keep the service and they were doing okay. Some of the subsequent
3 reporting that we've seen on it, some of the documents provided by Alstom, suggest --
4 confirm that, in fact, you know, that the reliability was realistic.

5 **MR. PETER WARDLE:** So, I do want to take you to one of the
6 weekly Alstom reports. And that document is COW0445315. And Mr. Commissioner,
7 this is a document that was reviewed last week with another witness, Mr. Bouteloup.

8 So first of all, Mr. Morgan, did you receive documents like this from
9 Alstom from time to time during the project?

10 **MR. MICHAEL MORGAN:** Yes.

11 **MR. PETER WARDLE:** Okay. And if we go to the -- I'm going to
12 go right to the third page, and you'll see the time period that's covered here on the third
13 page is August 3rd to August 26th.

14 **MR. MICHAEL MORGAN:** Yes.

15 **MR. PETER WARDLE:** Have you had a chance to review this
16 chart in preparation for your testimony today?

17 **MR. MICHAEL MORGAN:** Yes.

18 **MR. PETER WARDLE:** What does it tell you as a professional
19 engineer about the reliability of the Alstom trains during the trial running period?

20 **MR. MICHAEL MORGAN:** There's a lot of really good information
21 in here. If you look at the first column -- again, it's August 3rd through August 26th, so
22 we know some of the challenges on the fleet were kind of front-ended in the very first
23 week. But if you look at the column for doors, this is showing no door failures, which is
24 phenomenal. Brakes -- there's six issues over the course of the month. There's, I think,
25 three or four that were front-end loaded, but there's only two in the latter half. No low-
26 voltage issues. A bunch of areas where the performance is very good.

27 What jumps out is the CCTV PAPIS. That's kind of the big-hitter in
28 terms of a problem for us, and that's essentially the platform edge cameras and that

1 functionality that we had already indicated to RTG that we expect them to mitigate.

2 **MR. PETER WARDLE:** The platform edge cameras is covered
3 ultimately in the RSA term sheet; is that not correct?

4 **MR. MICHAEL MORGAN:** Yes.

5 **MR. PETER WARDLE:** Okay. And if we go over to the next page
6 to reliability, you'll see -- and this graph is a little hard to follow because it has, as I
7 understand it, some soft vertical bars and then a sort of graph, and they're all on the
8 same chart. But what does this reliability chart indicate to you about the reliability of the
9 Alstom vehicles in the period from May to August of 2019?

10 **MR. MICHAEL MORGAN:** So the vertical bars there is the
11 mileage that's accumulating. So you see the mileage going up substantially there. All
12 the vehicles running on the line -- the mileage is increasing substantially. So we're
13 getting a lot of kilometres on these vehicles, which is very good, and then the line --
14 there's two lines. One is just the raw data, the weekly trends, saying the number of
15 failures per 1,000 kilometres. And then once they normalize that to take out that
16 platform edge camera issue that I mentioned, the number basically goes to zero failures
17 per 1,000 kilometres, so you probably need to change that point. You're changing the
18 scale to say, okay, how many failures per 10,000 kilometres?

19 It's a very good trend: the previous chart showing zero door
20 failures, this chart showing the numbers going down, the mileage going way up. Here
21 we're accumulating a lot of mileage across the fleet, so we're getting those numbers to
22 really make sure that any issues are shaken out of the system.

23 **MR. PETER WARDLE:** Now, just to summarize, then, were you
24 confident as the City approached the end of trial running that the vehicles were
25 approaching a point where they were ready to go into service?

26 **MR. MICHAEL MORGAN:** Yes. They were getting better and
27 better over time, to the point that even when we launched going into service, the system
28 achieved that 98 per cent that I mentioned earlier. They definitely had a hard start.

1 That first week of trial running, it was clear that there was some -- probably within their
2 organization, they hadn't fully transitioned to say, "Okay. We need to stop. We're no
3 longer manufacturing these vehicles; now we're running these vehicles." So they kind
4 of needed to pause, stop, restart. Once they did that, they got into a pattern of
5 behaviour that achieved the numbers we expected, and the service improved
6 substantially.

7 **MR. PETER WARDLE:** So perhaps we can take the share down,
8 and now I want to just ask briefly about the signalling system and the integration of that
9 system with the vehicles and the control room. What was your assessment of the
10 functioning of that system in August 2019 as you approached revenue service?

11 **MR. MICHAEL MORGAN:** I've worked on maybe two other
12 systems that use the Thales train control system. It uses an older version. It uses an
13 inductive loop as the technology, so it's a bit awkward to work with. On those previous
14 projects, we had lots of challenges with the Thales system, largely construction-
15 related/implementation issues, less so than a Thales software issue. But in
16 comparison, on this project, the Thales product was solid. It worked. There's many
17 new features available on the product that we didn't have 15 years ago. It was stable
18 and reliable.

19 **MR. PETER WARDLE:** So now I want to turn to maintenance.
20 And can we agree, first of all, that for you and for Mr. Manconi, a key issue and concern
21 in the period before launch was readiness for maintenance?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MR. PETER WARDLE:** And isn't it the case, Mr. Morgan, that
24 throughout the trial running period, the City was attempting to get RTM and Alstom
25 focused on putting enough resources on maintenance to ensure that any issues that
26 might be experienced after launch would be addressed?

27 **MR. MICHAEL MORGAN:** Yes.

28 **MR. PETER WARDLE:** And is it also fair to say that this was one

1 of Mr. Prendergast's main concerns?

2 **MR. MICHAEL MORGAN:** Yes.

3 **MR. PETER WARDLE:** And is it also fair that at one point it
4 actually involved the mayor?

5 **MR. MICHAEL MORGAN:** Yes. There was a number of calls
6 made by the mayor and meetings involving the executive from RTG where we were
7 pushing to provide the right number of people.

8 **MR. PETER WARDLE:** So I want to just turn up COW0451494.

9 **--- EXHIBIT No. 169:**

10 COW0451494 – Email from John Manconi to Jocelyne Begin
11 et al Re- Alstom RTG Update 12 August 2019

12 **(SHORT PAUSE)**

13 **MR. PETER WARDLE:** If we go down the page, I want to just start
14 with the email at the bottom of the page and over to the following page. It's from Mr.
15 Manconi, Friday, August 9th, and it starts "Here is the update". Do you see that Mr.
16 Morgan?

17 **MR. MICHAEL MORGAN:** Yes.

18 **MR. PETER WARDLE:** Now, this is not an email that you're
19 involved in. You can see you're not one of the recipients, but I just want to take you
20 through it. It starts:

21 "Here is the update from the numerous meetings we
22 had with RTG, Alstom, and RTM. Matt, the
23 messaging to the mayor is this call. Email for his call
24 with the CEO of Alstom." (As read)

25 Matt, or Mathieu Gravel, is an assistant to the mayor, correct?

26 **MR. MICHAEL MORGAN:** Yes.

27 **MR. PETER WARDLE:** And then you'll see Mr. Manconi goes on
28 and says:

1 "I'm happy to advise that RTG, RTM has taken our
2 advice and increased resources across the board.
3 Today you are already seeing significant
4 improvements by the action taken. Here is what
5 Alstom has committed and has already begun. I
6 would use this for the discussion with the CEO and
7 ask him to confirm that he is fully supportive of this
8 plan." (As read)

9 Do you see that?

10 **MR. MICHAEL MORGAN:** Yes.

11 **MR. PETER WARDLE:** And were you aware that Mr. Manconi was
12 having these discussions at around this time?

13 **MR. MICHAEL MORGAN:** I believe so. He would have asked for
14 assistance in drafting or input or ideas into this type of message, yes.

15 **MR. PETER WARDLE:** And then you'll see there's a list of items.
16 And I won't take them through all of it, but is it fair to say that the focus is really on
17 bringing in additional resources for a launch of the system?

18 **MR. MICHAEL MORGAN:** Yes.

19 **MR. PETER WARDLE:** Okay. And then if we go to the top, it
20 appears now Mr. Gravel is reporting three days later that the mayor has had a call with
21 the Alstom CEO. Do you see that?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MR. PETER WARDLE:** And Mathieu Gravel is reporting:

24 "He is committed to the plan and resourcing his team,
25 as agreed to. He has also committed to maintaining
26 this resourcing plan in the months following the
27 launch, as he recognizes, "We have no other choice
28 but to ensure this system launch is a success."

1 Do you see that?

2 **MR. MICHAEL MORGAN:** Yes.

3 **MR. PETER WARDLE:** Okay. And I think you have already
4 acknowledged that you, from your position as director of the Light Rail Office,
5 understood that there would be issues in the period after launch, correct?

6 **MR. MICHAEL MORGAN:** Yes.

7 **MR. PETER WARDLE:** And we have heard things -- we've heard
8 from various witnesses about things like a bathtub curve or a bedding in period. You
9 are familiar with those concepts?

10 **MR. MICHAEL MORGAN:** Yes.

11 **MR. PETER WARDLE:** Was maintenance after launch and
12 particularly ensuring adequate resourcing to handle maintenance the key to handling
13 any issues that might arise during a bedding in period?

14 **MR. MICHAEL MORGAN:** Absolutely. I think to the extent that
15 you could respond to an issue quickly, contain the issue, and get the vehicle out of
16 service, and, equally, that when the vehicle got brought back to the yard at the end of
17 the day, that you had staff available to do the corrective maintenance and make it
18 available for service the next day, that underpinned or could have underpinned the
19 success of the system at that time.

20 **MR. PETER WARDLE:** Now I'm going to suggest to you that
21 there's a schedule in the project agreement that deals with the maintenance obligations
22 of the maintainer, and it's Schedule 15.3. Are you familiar with that schedule?

23 **MR. MICHAEL MORGAN:** Yes.

24 **MR. PETER WARDLE:** Was there anything in that schedule or
25 elsewhere in the project agreement that allowed the City to mandate minimum staffing
26 levels through either RTM or its subcontractor?

27 **MR. MICHAEL MORGAN:** No.

28 **MR. PETER WARDLE:** And is it also fair to say that the City had

1 no visibility in connection with the relationship between RTM and Alstom on the
2 maintenance side?

3 **MR. MICHAEL MORGAN:** Correct. We had no visibility of their
4 contract or the relationship of the reporting back and forth.

5 **MR. PETER WARDLE:** Were there any criteria in the project
6 agreement that would have allowed the City to reject RTG's application for revenue
7 service availability on the basis that the maintainer was not ready to maintain the
8 system?

9 **MR. MICHAEL MORGAN:** Given that, you know, they kept
10 vehicles running and the system was operating during trial running, I don't -- that would
11 have been your only hook, I will call it, to say -- to do that.

12 **MR. PETER WARDLE:** Okay. And isn't it the case as well that the
13 way the project agreement works is that the mechanism to enforce the maintenance
14 obligation is the payment mechanism that applies during the maintenance period?

15 **MR. MICHAEL MORGAN:** Yes, that is our primary tool.

16 **MR. PETER WARDLE:** So, in other words, if the maintainer
17 couldn't fix any issues that arose after launch to meet the service requirements, the
18 maintainer wouldn't get paid?

19 **MR. MICHAEL MORGAN:** Correct.

20 **MR. PETER WARDLE:** And so, I am going to suggest to you that
21 in the period leading up to launch, the City were getting promises from RTM and Alstom
22 that they would staff up and bring appropriate resources to the table and they would be
23 ready; isn't that fair?

24 **MR. MICHAEL MORGAN:** So, they were absolutely crystal clear
25 on that. There was never -- we would regularly push them on that point and they would
26 regularly, you know, as a consortium, get together and say they are ready to go, they
27 had no doubts. There was never -- there was a never a moment where we had a
28 discussion and they said, "You know, maybe we can make an agreement or a side deal

1 that we do some kind of alternate service for three months. Maybe we need -- can you
2 give us another three weeks of running and we'll do it at a reduced rate?" There was no
3 negotiation. They were ready to go.

4 **MR. PETER WARDLE:** I just want to talk very briefly about trial
5 running and maybe get to the bottom line here. At the end of the day, at the end of the
6 trial running process, Mr. Morgan, what was the average vehicle kilometre ratio that is
7 contained in the IC's report?

8 **MR. MICHAEL MORGAN:** I recall it's 96.9 per cent.

9 **MR. PETER WARDLE:** And, in your view, was that AVKR
10 sufficient to meet the requirements of trial running that the parties had agreed to?

11 **MR. MICHAEL MORGAN:** Yes, we had agreed to that, and that
12 was a sufficiently robust number that you could rely on that to go into service.

13 **MR. PETER WARDLE:** And I think you've already testified that
14 after -- in the period after trial running finished, that number continued to improve,
15 correct?

16 **MR. MICHAEL MORGAN:** Correct. And even as we opened the
17 system to the public and ran parallel bus service, you could have expected that number
18 to drop as you started to see issues and, you know, perhaps door interference or
19 different things, you might have expected that number to drop in that period, but it
20 improved and we achieved 98 per cent, so the City was further satisfied that everything
21 had been met.

22 **MR. PETER WARDLE:** You were on the WhatsApp chats that
23 involved a number of the City staff and consultants, correct?

24 **MR. MICHAEL MORGAN:** Yes.

25 **MR. PETER WARDLE:** And maybe we can just start with how
26 many people were on that chat?

27 **MR. MICHAEL MORGAN:** Maybe 16, two dozen; I don't know.
28 There was a lot.

1 **MR. PETER WARDLE:** Okay. Was there any secrecy about the
2 information being exchanged in that process?

3 **MR. MICHAEL MORGAN:** No.

4 **MR. PETER WARDLE:** Okay.

5 **MR. MICHAEL MORGAN:** Sorry, can we just take the -- can we
6 take this down?

7 **MR. PETER WARDLE:** I'm sorry. I'm sorry. That is my fault, Mr.
8 Morgan.

9 **COMMISSIONER HOURIGAN:** If you can take it down for us, the
10 document, please.

11 **MR. PETER WARDLE:** Did you review the chats as they were
12 coming in?

13 **MR. MICHAEL MORGAN:** Yes.

14 **MR. PETER WARDLE:** Okay. Did anything in any of those chats
15 cause you any concerns that the City was giving in to political pressure to open the
16 system?

17 **MR. MICHAEL MORGAN:** No.

18 **MR. PETER WARDLE:** And I just want to very quickly take you to
19 the evidence you gave earlier about the reduction in the number of trains from 15 to 13
20 at revenue service availability. And, first of all, I want to take you to a document called
21 the "Operations Service Plan." And, Mr. Commissioner, just for your benefit, we notified
22 -- we provided one document number for this, but we actually found another document
23 number that is the correct one. It is IFO 0000878. So, this is actually a part of
24 Schedule 15-3, and you'll see the heading is "Maintenance and Rehabilitation
25 Requirements," Mr. Morgan. And you're familiar with the schedule, as you've already
26 indicated?

27 **--- EXHIBIT No. 170:**

28 IFO0000878 – OLRT Project Agreement Schedule 15 – 3

1 Maintenance and Rehabilitation Requirements 24 June 2013

2 **MR. MICHAEL MORGAN:** Yes.

3 **MR. PETER WARDLE:** And if we go to page 43 of the PDF, you're
4 going to see something called the "Operations Service Plan," and I want to come back
5 to this wording on page 43. But if we go forward, there is a whole series of tables. Just
6 scroll forward down a couple of pages. Those are the tables I wanted to come to. I am
7 not going to take you through them in detail, but is it correct that these pages set out the
8 projected passenger minimum service capacity for various years?

9 **MR. MICHAEL MORGAN:** Yes.

10 **MR. PETER WARDLE:** And this document had been prepared in
11 2012 or 2013 at the time the project agreement was executed, correct?

12 **MR. MICHAEL MORGAN:** Correct.

13 **MR. PETER WARDLE:** Okay. And from those passenger
14 projections were derived the numbers for available vehicles to meet that passenger
15 load, correct?

16 **MR. MICHAEL MORGAN:** Correct.

17 **MR. PETER WARDLE:** Okay. And that turned out, and I'm not
18 going to take you through the entire table, to be 30 vehicles in 2019, or 15 trains.

19 **MR. MICHAEL MORGAN:** Yes.

20 **MR. PETER WARDLE:** Okay. But if we go back to the beginning
21 of the document, if we go back to page 43, you'll see it says that,

22 "The Operations Service Plan is a living document. The
23 City controls the Operations Service Plan and may
24 amend or change the Operations Service Plan within
25 the terms of the project agreement and may be required
26 to compensate Project Co. for such changes in
27 accordance with the terms of the project agreement."

28 So, is it fair to say, then, that the Operations Service Plan could be

1 changed by the City at its sole discretion at any time?

2 **MR. MICHAEL MORGAN:** Yes.

3 **MR. PETER WARDLE:** And that makes sense, I'm going to
4 suggest to you, because it is OC Transpo that knows how many passengers it needs to
5 carry at any particular time.

6 **MR. MICHAEL MORGAN:** Correct.

7 **MR. PETER WARDLE:** And if a projection for ridership that was
8 made in 2012 or 2013 was wrong, it could be adjusted at any time?

9 **MR. MICHAEL MORGAN:** Correct.

10 **MR. PETER WARDLE:** And I'm going to suggest to you that that's
11 what happen here. Mr. Manconi's scheduling coordinator, Mr. Scrimger, looked at the
12 projected passenger loads and concluded that they were too optimistic.

13 **MR. MICHAEL MORGAN:** Yes.

14 **MR. PETER WARDLE:** In fact, passenger growth between -- if I
15 have this right, passenger capacity growth between 2012 and 2019 had flattened in
16 comparison to the projects that are set out in this document, correct?

17 **MR. MICHAEL MORGAN:** I believe that's the case.

18 **MR. PETER WARDLE:** Okay. So is it fair to say that there was, in
19 fact, a solid rationale to reduce the number of trains going into revenue service
20 availability?

21 **MR. MICHAEL MORGAN:** Yes.

22 **MR. PETER WARDLE:** And as you've already indicated, although
23 it's not under the City's control, reducing the number of trains and having more available
24 spares would assist RTG in meeting the requirements of revenue service?

25 **MR. MICHAEL MORGAN:** Yes.

26 **MR. PETER WARDLE:** And all of this, I'm going to suggest to you,
27 was not an issue that needed to be approved by council, correct?

28 **MR. MICHAEL MORGAN:** Correct. The General Manager of

1 Transit has broad, delegated authority in respect of service levels.

2 **MR. PETER WARDLE:** In other words, this was an operational
3 issue for OC Transpo?

4 **MR. MICHAEL MORGAN:** Yes.

5 **MR. PETER WARDLE:** We talked a little bit -- we talked a little bit
6 about the problems that the system experienced in your evidence in response to
7 questions from some of the other lawyers who've questioned you this morning. After
8 the end of September, or after the parallel bus service was removed, in the
9 October/November period, what would you -- could you just describe quickly what the
10 problems were and how you would characterize those problems?

11 **MR. MICHAEL MORGAN:** So after we ended the parallel bus
12 service, we started to see some issues become more critical. We used -- we started to
13 see an issue with Alstom train-control monitoring system where the software was having
14 a networking problem. The train would get to the end of the line and we'd basically
15 have to hold it out of service for a period of 15 minutes while the system was rebooted.

16 So that was -- it had become more -- that issue became more and
17 more prevalent, and it was, you know undermining our ability to run the service, in part,
18 because at Tunney's Pasture, you know, which is a side platform, we were forcing
19 passengers to just kind of go to the other side. Blair, it was less of a problem, but it was
20 still -- the stations were full and so we were asking customers change trains. And so
21 training changing trains when they're empty is not an issue, but on a platform it
22 becomes a major nuisance. And so that was kind of the one.

23 And then we saw some very erratic behaviour out of the doors that I
24 think many people were unable to explain. You'd have a scenario where, you know, a
25 large-framed man would hold the door and the door would be fine, and it would close,
26 and then you'd a small-statured senior citizen, the door would bump that person, and
27 then the train would be stuck. And so we saw some very strange behaviour out of the
28 gate and kind of compounding a few other things, you know, the first couple of months

1 when we weren't running the parallel service. The confidence in the system was
2 eroded.

3 **MR. PETER WARDLE:** And were those issues addressed in that
4 time period?

5 **MR. MICHAEL MORGAN:** The -- so train-control monitoring
6 system software took them some time, but I think by the end of October/November, they
7 found a resolution to the networking issue that they'd found. The door issue, it took
8 them until the following spring to get a new software version approved and released into
9 service. And so I think it was probably April, May, June, that timeframe for when they
10 were able to update the door software.

11 **MR. PETER WARDLE:** Did the service actually start to improve at
12 some point in late-2019?

13 **MR. MICHAEL MORGAN:** So we had -- you know, after those two
14 issues, which were -- you know, if things had been left at that, if those had been our
15 kind of two critical issues coming out of, you know, the launch of the system, I think we
16 would have been okay. We would have been able to recover.

17 The challenge was, after that, we saw -- started to see the
18 inductors essentially blow up. You know, so there's a large -- you know, imagine
19 something the size of your dishwasher on the roof of the train smoking and just bringing
20 the train to a stop. So that issue, which we link back to a, you know, quality issue at the
21 manufacturing stage was a major problem.

22 The switch heaters in the eastern locations started to cause us
23 major problems. They weren't -- either it was a poor design selection or weren't being
24 maintained correctly, depends on who you ask in the RTG consortium, but they seemed
25 undersized for the operation. We had a couple of catenary pull-downs. One was very
26 catastrophic in St. Laurent tunnel.

27 Another was, you know, there's this Parafil, which is a nylon rope
28 attached to the catenary which suffered from corrosion due to highway salts. Now, you

1 could argue that a better design selection, better choice of product would have avoided
2 that issue. Equally, increased maintenance would have avoided that issue. So there's
3 two or three things kind of happening on top of each other.

4 And then we saw an integration issue kind of crop up where the
5 brakes weren't performing. There was these faulty valves that didn't work in winter.
6 There was integration with a -- in a guideway-intrusion detection system, all -- there was
7 three or four things, maybe even five things all contributing to -- you know, excessive
8 braking on the system that was resulting in wheel flats, and RTG was unable to kind of
9 quickly repair those issues and get them back into service.

10 All to say, to answer your question, that the service in January,
11 February, and March 2020 just hit rock bottom.

12 **MR. PETER WARDLE:** And what was your observation at the time
13 about the resourcing of the maintainer, particularly RTM and Alstom, in that period?

14 **MR. MICHAEL MORGAN:** Well, you know, they certainly -- you
15 know, something like, you know, the excessive breaking and you get a wheel flat, which
16 is not a big issue -- you know, light rail vehicles get wheel flats all the time. We'd given -
17 - as part of the Stage 2 expansion, we'd given them a new double-axle wheel lathe that
18 they could use, so -- and they also had a second single-axle wheel lathe.

19 So they had the capacity there to correct those issues and put
20 them back into service but they weren't ready to go. You know, for whatever reason,
21 the wheel lathe was out of service. The person to service it was overseas. They lost
22 time. The fleet just slowly -- they became overwhelmed and they weren't able to keep
23 up. And at one point we were running, basically, reduced service and having to add
24 supplemental bus service just to keep up.

25 **MR. PETER WARDLE:** And I'm going to take you through it, but in
26 July of 2020, as I understand it, there was the discovery of the cracked wheels, is that
27 correct?

28 **MR. MICHAEL MORGAN:** Correct. So again an issue that should

1 have been detected at -- or avoided, frankly, in the manufacturing process but, you
2 know, we lost service for the week, and they've spent a lot of time since then replacing
3 those wheels.

4 **MR. PETER WARDLE:** And, obviously, as the Commissioner
5 knows, in August and September of 2021, there were the two derailments, correct?

6 **MR. MICHAEL MORGAN:** Yeah, the two -- you know, the two
7 derailments this past year, you know, they were kind of two -- two separate incidents.
8 Like, there was a bit of a challenge -- you know, they kind of characterize differently.

9 The first one was, you know, the axle and the wheel assembly fell
10 apart, you know. And what seemed to have happened is, over time -- it's a very -- it's
11 an integrative assembly and, over time, it came loose and it started to kind of cause
12 friction of heat and broke down. Now, you know, the early assessment is that's due to a
13 lack of system integration. The wheel-rail interface wasn't optimized. They didn't do
14 early tests to verify the strain on the axle actually matched their design assumptions.
15 And so kind of in the best case, you know, that failure was going to happen in any
16 event, but I think, over time, some of the maintenance practices they did on the railhead
17 -- and they don't have a good program for maintenance of the railhead -- actually may
18 have contributed to or exacerbated that issue and brought it on sooner.

19 So there's a whole series of issues around how that axle came
20 apart and that failure mode all tied back to the rail design, the track design, construction,
21 commissioning, maintenance, all of those things kind of knitted together. And so that's
22 a technical issue, and you can deal with a technical issue. You know, the engineers will
23 get to the root of that problem. They'll come up with a plan, and they'll fix it, and they'll
24 make it go away. That was the first issue.

25 The second issue is -- so the first issue, it's hard to find. You know,
26 it's hard to define what the actual failure mode is. We don't have the full definition yet.
27 The second issue, it's easy to know what the failure mode was. It was clearly, you
28 know, somebody replacing an axle. They didn't tighten the bolt and, you know, the gear

1 box fell off and became an anchor for the vehicle and pulled it off the track. So the
2 second vehicle, you know, we know what the root cause is. It's very simple. Somebody
3 didn't tighten bolt.

4 But the fix to the second issue is actually much harder to get to
5 because in the first, it's a technical thing and you fix the widget. In the second time, it's
6 an organizational issue now. It's a -- like, the culture of supervision, the culture -- the
7 processes that they have in place, everything that underpins that vehicle. You know,
8 and so when we went to put that system back into service, the question was, "Okay, so
9 this one vehicle had a loose bolt. How many other vehicles have loose bolts?" And
10 certainly, you would rely on -- and I think a big organization like RTG, RTM, Alstom
11 would have documentation to say, "No, no, that was a one-off. All the other vehicles,
12 the documentation is solid. We're good to go. It was just one mistake."

13 But when they went and looked for that assurance, they went and
14 looked for that documentation, they couldn't find it to their satisfaction such that, oops,
15 now we need to check the entire fleet.

16 And some of the things that they needed to check are hard to get
17 to. It's not just like, go do a visual inspection. Some of it's take the vehicle apart, break
18 it down, put it back together, re-validate why we have this issue. And you know, that
19 speaks to organizational culture which is, actually, I think the harder of the two
20 challenges. It's easier to fix the widget. It's harder to fix the culture.

21 **MR. PETER WARDLE:** Okay. The problems -- we've heard a lot
22 of questions already, and I'm sure we're going to hear more in these hearings about trial
23 running. The problems that you've described that took place in the winter of 2020, the
24 cracked wheels in the summer of 2020, the derailments in August and September of
25 2021, would any of those problems have been detected earlier had there been longer
26 trial running, Mr. Morgan?

27 **MR. MICHAEL MORGAN:** No.

28 **MR. PETER WARDLE:** And why not?

1 **MR. MICHAEL MORGAN:** Because, you know -- so there's a bit of
2 time where we're saying, you know, the PA had 12 days, and 9 out of 12, or however
3 you want to do the measurement, an additional week, an additional two weeks, you
4 know, none of those things surfaced. It took six months. We saw the mileage issue --
5 chart from Alstom a minute ago, and they were accumulating a lot of mileage. And so
6 another week wouldn't have made a difference. By the time we got into the Para bus
7 service, the service was good, it was stable.

8 It's, you know, a year later. You know, like, the derailments with the
9 axle, that took almost three years to manifest itself, or two and a half years, so ---

10 **MR. PETER WARDLE:** All right. Thank you very much. Those
11 are all my questions.

12 **COMMISSIONER HOURIGAN:** All right. Re-examination?

13 **MS. CHRISTINE MAINVILLE:** Just on two issues, Mr.
14 Commissioner.

15 **COMMISSIONER HOURIGAN:** All right.

16 **MS. CHRISTINE MAINVILLE:** Thank you.

17 **--- RE-EXAMINATION BY MS. CHRISTINE MAINVILLE:**

18 **MS. CHRISTINE MAINVILLE:** Mr. Morgan, first of all, in terms of
19 the minor deficiencies list, were there any deficiencies the City did not want included on
20 the minor deficiencies list that the independent certifier had included?

21 **MR. MICHAEL MORGAN:** I don't recall that we got into that level
22 of detail. We were, you know, happy for the independent certifier to put issues on the
23 list. I mean, I guess they -- I -- yeah, I think if she had put things on the list, we were
24 okay with that. There were certain things that we didn't want to be treated as minor
25 deficiencies. That's probably the nuance there.

26 **MS. CHRISTINE MAINVILLE:** And the independent certifier would
27 not have disagreed with that position, correct?

28 **MR. MICHAEL MORGAN:** Unlikely, no.

1 **MS. CHRISTINE MAINVILLE:** Didn't the City ultimately hold the
2 pen on the minor deficiencies list?

3 **MR. MICHAEL MORGAN:** Ultimately, no. I ---

4 **MS. CHRISTINE MAINVILLE:** Sorry. Maybe I shouldn't have said
5 ultimately, but they put forward what they -- as a first step, right -- what they viewed to
6 be minor deficiencies?

7 **MR. MICHAEL MORGAN:** Well, yeah. There was a pretty
8 extensive list that the three parties were collaborating on. Like, there's no -- I wouldn't
9 say there's any there's any surprises in the list. You know, we were -- I had a team of
10 senior engineers and very experienced staff who were working directly with Peter
11 Lauch's staff at RTG, and there was a common list, yet in -- the independent certifier
12 was involved and was doing their own inspections. And so I don't know if they would
13 have added new things to the list that we were unaware of.

14 **MS. CHRISTINE MAINVILLE:** And just on a second point, Mr.
15 Wardle took you to the letter, you'll recall, from Alstom, or the email from Alstom dated
16 August 12th, 2019, committing to increasing its resources, correct, its maintenance
17 resources?

18 **MR. MICHAEL MORGAN:** He brought me to the email that was
19 drafted by the City or the mayor's office that in it, summarized a call with Alstom, yes.

20 **MS. CHRISTINE MAINVILLE:** Sorry, but basically indicating or
21 conveying that Alstom was going to increase its resources, right?

22 **MR. MICHAEL MORGAN:** Yes.

23 **MS. CHRISTINE MAINVILLE:** In August 2019. Okay. And then if
24 I could just take you to STV0002337, at page 47? Page 47, please.

25 So if you'll look at line 866, which is on September 5th, 2019, so
26 nearly a month subsequent to that commitment?

27 **MR. MICHAEL MORGAN:** Yeah.

28 **MS. CHRISTINE MAINVILLE:** Right? You'll indicate -- you'll see, I

1 mean, that it's indicated, "Folks," this is from Mr. Manconi, "Mayor is not happy with
2 yesterday. He was asking --- "

3 I'm sorry, just to situate us, this is after trial running but before the
4 start of service, correct?

5 **MR. MICHAEL MORGAN:** Correct. Yeah.

6 **MS. CHRISTINE MAINVILLE:**

7 "Mayor is not happy. He was asking why 10 hours to
8 reset the radios. I explained that it -- that is not the
9 case, what was done, et cetera. On a separate not,
10 Peter called me." (As read)

11 I take it he's talking about Peter Lauch?

12 **MR. MICHAEL MORGAN:** Yes.

13 **MS. CHRISTINE MAINVILLE:**

14 "Peter called me and he confirmed that his debrief, he
15 liked many of the things they did right. To Larry's
16 point, he was not pleased on how long it took them. I
17 said, "Good." Troy is leading the joint debrief and we
18 need to be quicker on response." (As read)

19 And so am I right, Mr. Morgan, that by this time, whether it's -- it
20 didn't take 10 hours to reset radios or whatnot, there were still concerns at that point in
21 time about response time, correct?

22 **MR. MICHAEL MORGAN:** Yeah. You know, this is the -- I was -- I
23 think I alluded to one of the other interviewers today about an issue that happened with
24 the CBTC system just prior to launch, and this -- I think this is the day that it happened.
25 So this is going to be a one-off event where there's -- I think there was a lightning strike
26 and the circuit breakers tripped for these CBTC radios on the eastern side, and it took
27 longer than it should have for somebody to go and figure out the source of the problem
28 and reset those little circuit breakers and get the system back into service.

1 **MS. CHRISTINE MAINVILLE:** Well, I'm going to suggest there's --
2 it's more than just a one-off in terms of issues that are still arising at this point in time.
3 And I won't take you through these -- all of these text messages, but if we just go to line
4 -- on the next page, line 888, you'll see there -- now, this is September 7th, and Mr. Larry
5 Gaul says:

6 "Not a good launch. Four trains late departing yard
7 due to various vehicle issues and a train brought to
8 handover platform without inspection sheets. Nine
9 trains on main line, at least two departures from Blair
10 and one from Tunneys will be missed." (As read)

11 And Mr. Manconi indicates:

12 "Seven days to launch and we are still dealing with
13 inspection sheets." (As read)

14 Right? So there was still a learning curve, and issues with how
15 maintenance was handling vehicle launch, and the various procedures and processes,
16 correct?

17 **MR. MICHAEL MORGAN:** So the prior event, I would describe as
18 a one-off because I don't think we've seen it again. I think line 888, that's the -- you
19 know, the pattern a little bit, you know, inspection sheets shouldn't -- there should be no
20 learning curve with inspection sheets. Once you've done them once or twice, it should
21 be easy after that.

22 Missing launch in the morning, you know, that's a critical miss, but
23 you know, it's tough to know what the impact of that would have been on the overall
24 day.

25 **MS. CHRISTINE MAINVILLE:** And the inspection sheets, to be
26 clear, is they need -- maintenance team brings to clear the trains to be released?

27 **MR. MICHAEL MORGAN:** Yeah. Yeah.

28 **MS. CHRISTINE MAINVILLE:** So you say -- well, there shouldn't

1 be issues with them, but indeed, there were still at this point in time, right?

2 **MR. MICHAEL MORGAN:** Yes. Yeah.

3 **MS. CHRISTINE MAINVILLE:** And just to go down to line 903 on
4 the next page, Mr. Manconi indicates here, September 7th:

5 "Troy, Larry, these trains, these issues are stressing
6 me out. Can you guys tell me if we were in service,
7 what would the impact be? Would customers be
8 stuck transferring trains, delays, et cetera?" (As read)

9 There are enough issues that Mr. Manconi is stressed, it seems,
10 right?

11 **MR. MICHAEL MORGAN:** Mr. Manconi paid attention to a lot of
12 issues, and he was -- you know, he was always vigilant about wanting to know exactly
13 what was happening, always wanting to know was it being responded to correctly?

14 **MS. CHRISTINE MAINVILLE:** Very last message, Mr. Morgan, if
15 we just go to line -- sorry, page 59, line 1019.

16 This is now September 12th, two days before launch, right, and Mr.
17 Manconi writes, at line 1019:

18 "Troy, Jim, Tom, Larry, if we need to run those trains
19 in manual mode, we are trained up for that, correct? I
20 need everyone to think of Plan B, C, and D.

21 Cancellation of launch is not an option." (As read)

22 So as I understand this message, there is -- Mr. Manconi would like
23 consideration given to the potential inability to operate in automatic mode as intended,
24 right?

25 **MR. MICHAEL MORGAN:** Yeah. I don't know what specific event
26 triggered this exchange, but he was -- yeah, he's clearly flagging something with
27 wanting a Plan B, but there was never an option to run without fully -- being in fully
28 automated mode. So I don't know what caused this -- him to send this note, but you

1 know, he's always planning for a contingency scenario.

2 **MS. CHRISTINE MAINVILLE:** Right. Well, I'm going to suggest,
3 though, it's more than that in that this is an accurate -- more accurate representation of
4 the level of confidence that the senior at the City in how the system was going to
5 perform at revenue service in terms of meeting plans B, C, and D. Do you agree with
6 that?

7 **MR. MICHAEL MORGAN:** No.

8 **MS. CHRISTINE MAINVILLE:** You believe the City was confident -
9 - fully confident in the system when it was launched?

10 **MR. MICHAEL MORGAN:** I don't believe in -- the statement you
11 made prior to that is what I was saying no to. I think that reacting to individual events in
12 a certain way is not reflective, necessarily, of the overall confidence.

13 **MS. CHRISTINE MAINVILLE:** And so how would you describe the
14 City's confidence at the time of launch of the system?

15 **MR. MICHAEL MORGAN:** As measured.

16 **MS. CHRISTINE MAINVILLE:** Okay. Thank you. Those are my
17 questions.

18 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.

19 Thank you, Mr. Morgan, for coming today and giving your evidence.
20 You're excused. We're down until two o'clock.

21 **MR. MICHAEL MORGAN:** Thank you.

22 **THE REGISTRAR:** Order, all rise. The Commission has
23 adjourned until 2:00 p.m.

24 --- Upon recessing at 12:44 p.m.

25 --- Upon resuming at 2:07 p.m.

26 **COMMISSIONER HOURIGAN:** Mr. Guest, can you hear me?

27 **MR. BRIAN GUEST:** I can. Can you hear me okay?

28 **COMMISSIONER HOURIGAN:** Yeah, we can. There was just a

1 slight technical issue, but it's been resolved.

2 Thank you for appearing today. Before you give your testimony,
3 you have a choice to either be sworn to tell the truth or affirmed to tell the truth. What
4 would you prefer?

5 **MR. BRIAN GUEST:** I'll affirm, I guess.

6 **COMMISSIONER HOURIGAN:** All right. Stand by.

7 **--- MR. BRIAN GUEST: Affirmed**

8 **THE REGISTRAR:** The witness has been sworn in.

9 **COMMISSIONER HOURIGAN:** All right. Thank you.

10 Mr. Guest, you'll be asked questions by a number of counsel. The
11 first is Commission counsel, Mr. Adair, so let's go ahead.

12 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR:**

13 **MR. JOHN ADAIR:** Good afternoon, Mr. Guest. Sir, I will be
14 asking you some questions over the next little while. If you don't understand any of the
15 questions or you need some more information in order to answer it, please just let me
16 know, okay?

17 **MR. BRIAN GUEST:** Yes.

18 **MR. JOHN ADAIR:** Sir, you've worked for quite a number of years
19 now with government on various public-facing projects.

20 **MR. BRIAN GUEST:** I have.

21 **MR. JOHN ADAIR:** You'd agree with me that public confidence in
22 the means by which government is operating is crucial.

23 **MR. BRIAN GUEST:** It is.

24 **MR. JOHN ADAIR:** And specifically, public confidence in the
25 decision-making process is among the most important aspects of the relationship
26 between the public and government.

27 **MR. BRIAN GUEST:** Yes.

28 **MR. JOHN ADAIR:** Let me, sir, ask you a few questions about

1 how a municipal government operates with respect to a project like this in terms of
2 division of labour.

3 I think we probably agree, as a starting point, the City did not have
4 all of the necessary skills in house in order to carry out a project like this, correct?

5 **MR. BRIAN GUEST:** That's correct. It's rare that a public agency
6 will have the in-house capability of doing a mega project, because they're so episodic.
7 You don't do them every year, so in general you assemble a team, yeah.

8 **MR. JOHN ADAIR:** And in the process of assembling a team, one
9 of the things the City will do is bring in experts.

10 **MR. BRIAN GUEST:** Indeed.

11 **MR. JOHN ADAIR:** Now, in terms of staff's role in working with the
12 experts, I'm going to just try to understand that at a high level and see if we're on the
13 same page.

14 I take it staff would engage in the process of identifying and
15 retaining the appropriate experts.

16 **MR. BRIAN GUEST:** Yes.

17 **MR. JOHN ADAIR:** And then in terms of how the City receives
18 information from the experts, typically the information flow would be the experts speak
19 to staff and then staff synthesizes that information and passes on what's necessary and
20 appropriate to council.

21 **MR. BRIAN GUEST:** Yeah. I mean, it's a little bit more
22 complicated than that. The team itself has many disciplines -- legal, finance. Deloitte,
23 the owner's engineering team -- they all have their own disciplines, so at the project
24 level, it's really important to bring coherence to all those disciplines, who kind of
25 sometimes live in their own silos, and make sure that the appropriate decisions are
26 synthesized into a whole, which then staff will look at the options that have been
27 developed -- or the business decisions, as they're sometimes euphemistically called
28 inside a project team -- and put that forward to senior decision-makers. They're then

1 usually evaluated for an overall recommendation to council. So generally I agree, but I
2 just want to make sure that inside the project team you understand that there's an
3 interdisciplinary process that needs to happen, and that's a really critical role.

4 **MR. JOHN ADAIR:** Right. And so in terms of making sure that
5 council is properly informed, one has to ensure that staff receives information from the
6 individual subject matter experts, and that that information is synthesized, because not
7 all of it can be passed on to council. And then one also has to ensure that there is an
8 overall coherence to the information as it's synthesized, correct?

9 **MR. BRIAN GUEST:** Correct.

10 **MR. JOHN ADAIR:** And then once it's properly synthesized, the
11 necessary information goes to council and council makes decisions?

12 **MR. BRIAN GUEST:** Usually, it goes up to senior management,
13 through several levels of senior management. Choices are made where choices are
14 available, and then it goes to council with a recommendation.

15 **MR. JOHN ADAIR:** Right. And then council makes a decision
16 either accepting a recommendation or not, and then it goes back to staff to execute?

17 **MR. BRIAN GUEST:** Indeed.

18 **MR. JOHN ADAIR:** Okay. So when you have this scenario where
19 staff are retaining outside experts, what that means, I gather, is staff doesn't actually
20 need to become subject matter experts, they just need to be good at synthesizing the
21 information for council, and then implementing council's decisions?

22 **MR. BRIAN GUEST:** That needs to happen, and staff will also
23 often not be specialized in bringing together legal, financial, business decisions,
24 technical issues, stakeholder issues. Usually, the staff that are involved are kind of
25 parked in -- from within the organization, from one of the silos, so to speak, one of the
26 disciplines, and so the importance of connecting dots and making sure you're
27 challenging everything that needs to come together into the right framework is not
28 something I would want to leave you with the impression that, you know, staff focus on -

1 - like, are specialists in that, but they certainly are critical in playing a role. It's much
2 more about roundtable team approach in which you're looking at the options, you're
3 querying the various disciplines, where there's an impact that knocks on from one
4 discipline to another, there's an interplay there to say, "Really, do we have -- like, is
5 there not a better way to do that to get a better outcome?"

6 But you know, broadly, I'm not quibbling with your
7 characterizations. Staff have to be responsible at the end of the day, and I guess in this
8 case, that would be Mr. Jensen who would be accountable for making sure that the
9 office, as a whole, produced fully vetted and coherent advice.

10 **MR. JOHN ADAIR:** Right. And presumably, the higher up you get
11 within City staff, once you get to the really senior City staff, the better they are, one
12 would think, at connecting the dots and bringing that kind of coherent focus?

13 **MR. BRIAN GUEST:** Broadly, that's fair, but also, certain issues
14 just live at a higher level in a project team. So for example, an issue to do with the
15 National Capital Commission might find its way properly onto the City manager's desk.

16 **MR. JOHN ADAIR:** Sure. And that's what I mean when I say the
17 higher-level staff. As you get up to City manager, deputy City manager, they're not
18 dedicated to a project team, their role is to really complete that process of synthesizing
19 information, connecting dots, and making sure council has what it needs?

20 **MR. BRIAN GUEST:** Yeah, but they're not living the details in the
21 same way the project team does, so they are more -- their job entails bringing together
22 the big picture, for sure.

23 **MR. JOHN ADAIR:** Right. And that's my point is, the details make
24 their way up through this process we've just described, then you get upper
25 management, City manager, deputy City manager, et cetera, responsible ultimately for
26 passing on a coherent set of information to council?

27 **MR. BRIAN GUEST:** Sure.

28 **MR. JOHN ADAIR:** And I take it, in your experience, the staff at

1 the City of Ottawa have generally been pretty good at that overall process we've just
2 described?

3 **MR. BRIAN GUEST:** Yeah.

4 **MR. JOHN ADAIR:** Let me, sir, ask you some questions about
5 your company, Boxfish. Your company is described according to the website as a
6 unique infrastructure project delivery firm. Do I have that right?

7 **MR. BRIAN GUEST:** Yeah.

8 **MR. JOHN ADAIR:** And you describe yourself in your bio on the
9 website as having been instrumental in the modernization of major P-3 project
10 infrastructure procurements in Canada, correct?

11 **MR. BRIAN GUEST:** I think that's fair.

12 **MR. JOHN ADAIR:** And I think you also agree with me that you
13 have a keen interest in best practices when it comes to infrastructure projects?

14 **MR. BRIAN GUEST:** I do.

15 **MR. JOHN ADAIR:** And specifically, best practices with respect to
16 procurement?

17 **MR. BRIAN GUEST:** Yes.

18 **MR. JOHN ADAIR:** Now, in terms of your role on this particular
19 project, Mr. Guest, you were brought in as a consultant, initially, at least, in the pre-
20 procurement and procurement phase?

21 **MR. BRIAN GUEST:** That's correct.

22 **MR. JOHN ADAIR:** And I'm going to ask for a document that I'll
23 show you that I think will help us get a better handle on your role. If we could have,
24 please, Document COW386?

25 **--- EXHIBIT No. 171:**

26 COW0000386 – Letter Boxfish to City of Ottawa 10
27 September 2013 with attached Policy Briefing Aligning
28 Public Policy in Support of Public Transit The City of

1 Ottawa/Regional Municipality of Warterloo 24 June 2013

2 **MR. JOHN ADAIR:** And Mr. Guest, I'll just ask you to just take a
3 minute and read for yourself the first two paragraphs of the letter on page 1.

4 So if, Mitchell, if you could just scroll down a little bit so those two
5 paragraphs appear? That's great, thank you.

6 **MR. BRIAN GUEST:** Yes.

7 **MR. JOHN ADAIR:** So Mr. Guest, I'm just going to focus our
8 attention on the third sentence of the second paragraph that begins, "Boxfish
9 innovations," and I want to talk about some of the innovations that are referred to here
10 as well as some others that are not in your letter, but that we've heard from from other
11 witnesses.

12 The first is the risk table. Do you see that?

13 **MR. BRIAN GUEST:** Yes.

14 **MR. JOHN ADAIR:** And that refers primarily, sir, as I understand it,
15 to the mechanism by which the Geotech risk was sort of the options with respect to how
16 to allocate the Geotech risk in the RFP?

17 **MR. BRIAN GUEST:** That was certainly one element of it for sure.

18 **MR. JOHN ADAIR:** And then the price cap, is that just another way
19 of saying the affordability cap?

20 **MR. BRIAN GUEST:** Affordability cap, yeah.

21 **MR. JOHN ADAIR:** And that's the sort of cap that was in the RFP
22 of roughly 2.1 billion, just under?

23 **MR. BRIAN GUEST:** That's correct.

24 **MR. JOHN ADAIR:** And then, sir, you have the NPV adjustments
25 for energy operations and mobility, and my understanding is those were effectively a
26 way of incorporating certain operational priorities into the pricing of the contract, and
27 NPV refers to net present value. Do I have that generally right?

28 **MR. BRIAN GUEST:** Net present value, yeah. So in a standard IO

1 procurement, the technical score is worth 500 points and the financial score is worth
2 500 points, but the financial ---

3 **MR. JOHN ADAIR:** So just before -- sir, may I just interrupt you for
4 one second? I don't want to cut off your answer, so if you need to give this as part of
5 your answer, then you'll tell me that after I have interrupted you here, but all I want to do
6 is make sure I understand that basically, what you did is helped to innovate a way to
7 capture certain operational goals in the NPV assessment, at a broad -- at a high level; is
8 that broadly right?

9 **MR. BRIAN GUEST:** At a high level, that's broadly right.

10 **MR. JOHN ADAIR:** All right.

11 **MR. BRIAN GUEST:** And it's important to do so, if I just finish off
12 quickly -- I don't want to use your time -- but the importance of an NPV fix revolves
13 around the fact that the scoring for price is geared, and that means that the actual NPV
14 value for the best proposal, cheapest proposal, spreads itself out from those which
15 might be 1 percent more expensive, and for every 1 percent, 30 points.

16 So an NPV, it's not just like, oh, it's a technical issue and it gets a
17 bunch of points in technical. The NPV fixes put everybody on an even playing field. So
18 if, for example, you're going to close all the roads because you're going to dig up Queen
19 Street for three and a half years, that's an externality that's going to cost ---

20 **MR. JOHN ADAIR:** Mr. Guest, I appreciate all that, but I can
21 assure you, we're not going to get into how the NPV works over the course of the time
22 here. And if ---

23 **MR. BRIAN GUEST:** Fair enough.

24 **MR. JOHN ADAIR:** --- somebody else thinks that they need to
25 understand exactly how the NPV works better, you're going to be free to tell them that,
26 but that's really not my question, sir, okay?

27 Now, there are a couple of others that are not mentioned in that
28 letter specifically that I want to ask you about, because other witnesses have testified to

1 your role in a couple of other issues.

2 So one is, a couple of the witnesses spoke to your role in the
3 design of the tunnel location and depth. Is it correct that you played a role in that?

4 **MR. BRIAN GUEST:** It is.

5 **MR. JOHN ADAIR:** And a couple of witnesses have told us you
6 also later played a role in the debt swap that occurred in or about 2017; is that
7 accurate?

8 **MR. BRIAN GUEST:** Yeah, after this letter, but those options were
9 -- I played a role in developing those options.

10 **MR. JOHN ADAIR:** And then, also, you played a role with respect
11 to claims and disputes later on in the project?

12 **MR. BRIAN GUEST:** I did.

13 **MR. JOHN ADAIR:** And, sir, just at a very level, recognizing you
14 have a huge amount of detail you can offer us about P3s and this project, specifically,
15 but at a high level have I broadly touched on some of the sort of the major contributions
16 that you made?

17 **MR. BRIAN GUEST:** Sure.

18 **MR. JOHN ADAIR:** All right. And I take it, part of what you were
19 doing in your letter to Mr. Craig is highlighting -- at least as of that time, you were
20 highlighting the major contributions as opposed to giving him a complete list of every
21 single thing you've done.

22 **MR. BRIAN GUEST:** Yeah, I think it -- those were the things that I
23 thought were kind of worth noting that were particular to this procurement that had
24 value, but there was a general role that was played in connecting all the dots internally
25 with the project team and helping the project team be ready to articulate clear choices.
26 So that was ---

27 **MR. JOHN ADAIR:** And we are going to come back to that. And,
28 sir, is it accurate that for your consulting in the pre-procurement and procurement

1 phase, you -- and, really, it's Boxfish -- were paid a little over \$600,000?

2 **MR. BRIAN GUEST:** That sounds about right. I think it -- for the
3 three years of the procurement, we were paid around -- around -- you know, around
4 \$200,000 to \$250,000 a year.

5 **MR. JOHN ADAIR:** Right. And then, if you factor in the work you
6 did late in the process in 2017 and '18, I assume that the total value of your consulting
7 work on Stage 1 would be somewhere around or perhaps slightly in excess of \$1M?

8 **MR. BRIAN GUEST:** I -- I don't know. I -- it was -- the involvement
9 later on was much, much more cursory. So whether we exceeded that dollar figure, I
10 wouldn't be able to tell you.

11 **MR. JOHN ADAIR:** Okay. So if we're -- if we're in the sort of the
12 high sixes for the pre-procurement and procurement work, something addition to that for
13 2017, '18, '19, you know, you're get into the high six figures, low seven, ballpark?

14 **MR. BRIAN GUEST:** If you say so, yeah. I imagine you've got
15 some numbers there, so -- I mean you're not including Stage 2. You're talking about
16 Stage 1 and some of the procurement -- sorry, some of the claims work, which was very
17 minimum.

18 **MR. JOHN ADAIR:** Yeah.

19 **MR. BRIAN GUEST:** So yeah, it's probably not much more the
20 base that we just talked about.

21 **MR. JOHN ADAIR:** Okay. Now let me just ask you, sir, a little bit
22 about your background. I understand that you started professionally, at least, as a
23 consultant or a lobbyist. That may not be a term that people prefer these days, so I
24 don't mean anything in particular by it, but in or around the mid-1990's?

25 **MR. BRIAN GUEST:** I was working on a very large helicopter
26 procurement, so -- and I wasn't doing direct contact or anything, so I don't know why
27 you would say "lobbyist". But the firm that I worked at it did do lobbying and did do
28 some direct contact. My role was really around focusing major procurement that was

1 happening for which my firm was one for one of the bidders, and I had an opportunity to
2 learn quite a bit about procurement from a gentlemen named Arthur Silverman who was
3 the head of procurement for the Canadian Government, so I kind of got a masterclass
4 from him.

5 **MR. JOHN ADAIR:** Sure. And then, in terms of your education
6 and professional expertise, you're not an engineer?

7 **MR. BRIAN GUEST:** I'm not.

8 **MR. JOHN ADAIR:** Or an accountant, or a lawyer?

9 **MR. BRIAN GUEST:** No.

10 **MR. JOHN ADAIR:** And in terms of your involvement with this
11 project, this was the first LRT project you had worked on?

12 **MR. BRIAN GUEST:** Well, definitional -- I did the North-South
13 Pilot.

14 **MR. JOHN ADAIR:** That's the Trillium Line, just for ease of
15 identification?

16 **MR. BRIAN GUEST:** Yeah, it was called the Pilot at the time. It
17 became the Trillium as it got more capable. The idea was to try it for a couple of years.
18 And so we got it in place for a, you know, kind of like bargain-basement price, to make
19 sure that everybody would see that it would utility. And I became familiar with rail
20 systems around that project.

21 **MR. JOHN ADAIR:** Right. And I take, sir, you're -- although you
22 helpfully pointing out that you had that experience, you're not suggesting that the Pilot
23 Project on the Trillium was similar to the work required to undertake the Confederation
24 Line?

25 **MR. BRIAN GUEST:** No. No, I think in my interview, I called it a
26 "trinket". It was very small.

27 **MR. JOHN ADAIR:** And, in fact, in terms of sort of dollar value, it
28 was a \$16M-odd project?

1 **MR. BRIAN GUEST:** By the time we landed it, yeah.

2 **MR. JOHN ADAIR:** So the Confederation Line would be roughly
3 150 times the size of that?

4 **MR. BRIAN GUEST:** Yeah.

5 **MR. JOHN ADAIR:** And the Pilot Project involved putting an LRT
6 system on top of an existing Canadian Pacific Railway line?

7 **MR. BRIAN GUEST:** That's right, and building out additional tracks
8 and switches in order to make sure that the trains could cross at Carleton U.

9 **MR. JOHN ADAIR:** Right. And there wasn't a tunnel involved in
10 that project?

11 **MR. BRIAN GUEST:** Well, there is -- there was an existing tunnel
12 that needed to be assessed. Yeah, there was a tunnel, and it was old track.

13 **MR. JOHN ADAIR:** Fair enough. There wasn't a need to build a
14 tunnel?

15 **MR. BRIAN GUEST:** There wasn't a need to build the tunnel.
16 There was no need to build a new tunnel, for sure.

17 **MR. JOHN ADAIR:** And I think we're agreed, the Trillium Pilot
18 Project was really not comparable to the Confederation Line in any meaningful sense?

19 **MR. BRIAN GUEST:** Well -- I mean it had -- it had -- I don't split
20 hairs. It wasn't close, as complicated, or difficult, or it's size was very small, but all the
21 same kind of issues had to be dealt with. But in a very ---

22 **MR. JOHN ADAIR:** Sorry, let's just back that up a second. It's not
23 the case that all the same kinds of issues had to be dealt with because, for example,
24 you had to deal with an enormous tunneling project on the Confederation Line that you
25 didn't have to deal with on the Trillium Line.

26 **MR. BRIAN GUEST:** Fair enough.

27 **MR. JOHN ADAIR:** Right.

28 **MR. BRIAN GUEST:** No, I meant the rail systems, yeah.

1 **MR. JOHN ADAIR:** Well, you didn't have a communication-based
2 train control system with an automatic train operator, did you?

3 **MR. BRIAN GUEST:** We didn't. Listen, I'm begin fair ---

4 **MR. JOHN ADAIR:** So ---

5 **MR. BRIAN GUEST:** I'm not trying to over-egg Trillium Line.

6 **MR. JOHN ADAIR:** No, no, I understand you're not. But when you
7 say the systems -- all the same issues came up, that's just not accurate. I mean I
8 understand it was probably somewhat loose language at the end of an answer to a
9 question, so I'm not being critical when I say that, but it's not accurate that all the same
10 issues came up.

11 **MR. BRIAN GUEST:** Not all the same issues came up.

12 **MR. JOHN ADAIR:** Right. And, sir, in addition to not having any
13 experience with a light rail project of anything like this size or complexity, you also, as I
14 understand it, back in 2011, when you were brought on, had no P3 experience?

15 **MR. BRIAN GUEST:** That's correct.

16 **MR. JOHN ADAIR:** And you were not, at the time, a professional
17 P3 consultant of any kind?

18 **MR. BRIAN GUEST:** No.

19 **MR. JOHN ADAIR:** And in terms of what expertise -- we spoke a
20 few minutes ago about the experts that the City had brought in and you were helpful
21 enough to mention some of them. In terms of the outside experts, among others, the
22 City had Infrastructure Ontario?

23 **MR. BRIAN GUEST:** Not at that point.

24 **MR. JOHN ADAIR:** In 2011, the City had Infrastructure Ontario.

25 **MR. BRIAN GUEST:** That came after I was brought on.

26 **MR. JOHN ADAIR:** Yeah, as it turns out, it came within weeks
27 after you were brought on.

28 **MR. BRIAN GUEST:** I know -- okay. I ---

1 **MR. JOHN ADAIR:** And we don't need to fight about the timing,
2 sir, but you're aware that Infrastructure Ontario was involved?

3 **MR. BRIAN GUEST:** For sure, worked closely with them.

4 **MR. JOHN ADAIR:** Right. And they were P3 experts?

5 **MR. BRIAN GUEST:** They were indeed.

6 **MR. JOHN ADAIR:** In fact, that was the core focus of
7 Infrastructure Ontario was P3 projects and procurement?

8 **MR. BRIAN GUEST:** Indeed.

9 **MR. JOHN ADAIR:** And they had actual real-world experience with
10 P3 projects and you did not?

11 **MR. BRIAN GUEST:** That's correct.

12 **MR. JOHN ADAIR:** Now, if we take an innovation that you refer to
13 in your letter to Mr. Craig there, for example, the Geotech risk ladder that gets worked
14 into the RFP, that's not something, I take, you came up with by yourself. That was a
15 group effort, right?

16 **MR. BRIAN GUEST:** That was a group effort in, I think -- yeah, I'm
17 not -- everything we did was a group effort. Yeah, it was a group effort.

18 **MR. JOHN ADAIR:** And the group that was part of the effort in
19 terms of how to structure the RFP and work in risk allocation, that group included
20 Infrastructure Ontario?

21 **MR. BRIAN GUEST:** Yes.

22 **MR. JOHN ADAIR:** Who were the experts on that very issue, right,
23 RFP expert ---

24 **MR. BRIAN GUEST:** Were expert ---

25 **MR. JOHN ADAIR:** Yes?

26 **MR. BRIAN GUEST:** Yeah, they were experts.

27 **MR. JOHN ADAIR:** Right. And then another independent expert
28 who was brought in by the City was Capital Transit Partners?

1 **MR. BRIAN GUEST:** Yes.

2 **MR. JOHN ADAIR:** They were engineering experts?

3 **MR. BRIAN GUEST:** Yeah, they were four firms that banded
4 together to support various aspects of the engineering that needed doing?

5 **MR. JOHN ADAIR:** Right. And they were firms that had expertise
6 with respect to all manner of light rail issues?

7 **MR. BRIAN GUEST:** Correct.

8 **MR. JOHN ADAIR:** And they had the education necessary to
9 approach engineering issues such as tunnel design?

10 **MR. BRIAN GUEST:** Yes.

11 **MR. JOHN ADAIR:** And they had the experience necessary to
12 allow them to approach engineering issues such as tunnel design?

13 **MR. BRIAN GUEST:** Yes.

14 **MR. JOHN ADAIR:** And you had neither the education nor any
15 relevant experience with respect to that issue?

16 **MR. BRIAN GUEST:** That's right.

17 **MR. JOHN ADAIR:** And the City paid Capital Transit Partners, I
18 believe, in the tens of millions of dollars for their expertise?

19 **MR. BRIAN GUEST:** Yes.

20 **MR. JOHN ADAIR:** I then I believe, also, Deloitte was involved as
21 a financial advisor?

22 **MR. BRIAN GUEST:** They were.

23 **MR. JOHN ADAIR:** And Deloitte was also paid, as I understand it,
24 millions of dollars for their expertise?

25 **MR. BRIAN GUEST:** Yes.

26 **MR. JOHN ADAIR:** And they had expertise -- Deloitte, among
27 other things, brought a team of accountants to the table?

28 **MR. BRIAN GUEST:** Accountants, and people with some

1 engineering background as well, some financial background.

2 **MR. JOHN ADAIR:** And financial analysis.

3 **MR. BRIAN GUEST:** Yeah, for sure.

4 **MR. JOHN ADAIR:** And those individuals had expertise with
5 respect to, for example, calculating the net present value of various issues?

6 **MR. BRIAN GUEST:** Yes.

7 **MR. JOHN ADAIR:** And how to work net present value
8 calculations into an RFP process?

9 **MR. BRIAN GUEST:** Yes.

10 **MR. JOHN ADAIR:** And you did not have experience or expertise
11 in that area?

12 **MR. BRIAN GUEST:** Oh, I wouldn't say that. I mean, I had quite a
13 bit of experience from my past in the Ministry of Finance and so on. So, I am very
14 conversant with the issues, but none of these roles that you are describing were the role
15 that I was invited to play by Mr. Jensen. These are what I was calling the disciplines or
16 the silos, and that was not -- obviously, I was -- if I had been offered an engineering
17 role, I would have said, "Not your guy," you know. If I had been offered a financial
18 structuring role, I would have said there are others that are better.

19 **MR. JOHN ADAIR:** Right. And I'm going to come to you, the role
20 that you specifically were brought in to play and did play, but if we look at your letter to
21 Mr. Craig, the third sentence of that second paragraph there, it says, "Boxfish
22 innovations included the risk table, price cap, and BV adjustments, et cetera." Those
23 were innovations, as we've just been through, where the City already had outside
24 experts being paid millions and millions of dollars, who were experts in that very subject
25 matter, in each case, and who had far more education and experience on those issues
26 than you did, fair?

27 **MR. BRIAN GUEST:** Yeah, I guess, you know -- look, I'm proud of
28 all of the innovations that we made together. Maybe I shouldn't have written it that way.

1 I was an important part of that team. I'm proud of all the innovations that we did
2 together. So, should I have said "Boxfish innovations"? Maybe not, I don't know. But
3 Gary knew what I meant.

4 **MR. JOHN ADAIR:** Okay. And then, sir, help me understand this:
5 where was the value add to the City, given that they were paying millions and millions of
6 dollars to CTP and Deloitte and Infrastructure Ontario, who had all the education and
7 experience necessary to address the very issues set out in your letter here? Where
8 was the value add that you brought for the hundreds of thousands of dollars you were
9 paid?

10 **MR. BRIAN GUEST:** Well, we had multiple values. We played an
11 important role for Mr. Jensen in helping him and his senior team knit together,
12 challenge, get all the disciplines working together. I don't know what was going on on
13 the project before I got there, but I certainly found that there were a number of issues
14 that were spinning between these disciplines that needed to get wrangled. I helped with
15 doing that.

16 I participated in meetings in a collaborative and kind of creative way
17 to help bridge where two groups were talking past each other and tried to find the right
18 middle ground or the right way to meet a challenge for the stakeholder, or what have
19 you. I was a facilitator of that sort of, kind of, internal group mechanic.

20 **MR. JOHN ADAIR:** Okay. And so, Mr. Guest, you referenced Mr.
21 Jensen, who was at the time the head of the Rail Implementation Office, RIO as it's
22 called?

23 **MR. BRIAN GUEST:** That's correct.

24 **MR. JOHN ADAIR:** And Mr. Jensen had 25 employees, or a little
25 more than that, working in the RIO office?

26 **MR. BRIAN GUEST:** That sounds about right.

27 **MR. JOHN ADAIR:** Mr. Jensen had a Bachelor of Science and a
28 Master's of Science; were you aware of that?

1 **MR. BRIAN GUEST:** No, I don't know -- I didn't know his education
2 at the time.

3 **MR. JOHN ADAIR:** And most of his professional studies were with
4 respect to transportation systems and indeed most of his professional experience was
5 managing transportation systems; were you aware of that?

6 **MR. BRIAN GUEST:** I had a sense of that, yeah.

7 **MR. JOHN ADAIR:** And he was very well qualified to be the
8 person in charge of the RIO office, taking information in from these experts and
9 synthesizing it, correct?

10 **MR. BRIAN GUEST:** He was qualified.

11 **MR. JOHN ADAIR:** And he did a good job at it?

12 **MR. BRIAN GUEST:** Yes.

13 **MR. JOHN ADAIR:** And he reported to Ms. Schepers?

14 **MR. BRIAN GUEST:** He did.

15 **MR. JOHN ADAIR:** Ms. Schepers is a professional engineer?

16 **MR. BRIAN GUEST:** She is.

17 **MR. JOHN ADAIR:** And she had a long period of time where she
18 worked at the MTO dealing with procurement issues?

19 **MR. BRIAN GUEST:** I don't know the ins and outs of her resume,
20 but she is very good at all matters transportation and planning.

21 **MR. JOHN ADAIR:** And so, sir, what is it that you were able to do
22 that Mr. Jensen and Ms. Schepers were not, in terms of synthesizing the information
23 from the various different corners and making sure it was passed on to Council in an
24 understandable fashion?

25 **MR. BRIAN GUEST:** As I said, I was a facilitator in the office. I
26 helped Mr. Jensen -- you know, you've got a very large team with lots of fast-moving
27 inputs. They need to be managed. And I have a strong competency in managing fast-
28 moving public policy issues from a career in public service where very complicated,

1 multidisciplinary issues have to get processed in a timely way with coherent outcomes.
2 So, that is what I understood I was being asked to support Mr. Jensen to do, and I felt
3 qualified to help him with that when invited to do so.

4 **MR. JOHN ADAIR:** And, sir, the City's evidence in this -- before
5 the Commission has been that they had more than enough time to deal with
6 procurement issues. The pre-procurement starts in 2009, we could quibble a little with
7 the month, but roughly 2009. Procurement really gets underway in a serious way in
8 2011, and the close is early 2013. The City's witnesses have said they had more than
9 enough time. I take it you'd agree with me at least that this wasn't a particularly fast-
10 moving environment. I don't mean to say it was slow, but time was given where it was
11 needed.

12 **MR. BRIAN GUEST:** Well, Mr. Adair, those are two different
13 concepts, right? Like, there was ample time to get it done, and to get ready for market,
14 for sure. But we weren't in a terribly good spot when I joined because there had been a
15 kind of a slavish focus on the deep cross-country alignment which was going to be more
16 expensive than had been assessed in 2009 and was going to be a poor outcome for
17 customers in the sense that it was so deep you'd have to take 11 switchback escalators
18 to get down to platform, which is one of the things you don't want in terms of attracting
19 customers.

20 So, at that time, although we had ample time to do it, there was
21 much more of a focus on responding to Council's direction, which was to assess the
22 budget and where we were, having done much more engineering than the Class D that
23 would have underpinned the EA. And so, what are you going to do about a project that
24 looks like it's at, you know, 3.2 billion and heading north because you've kind of
25 genuflected at the planning process in terms of origin and destination stuff for what the
26 best alignment was.

27 And so, there was a certain element of, okay, we really need to
28 think about whether this is going to come in as affordable, within the resources that the

1 City kind of had its foot nailed to the ground on in terms of senior orders of
2 government's contribution and the City's envelope for affordability, and for the general
3 nature of it.

4 I just remind you that this is a new council. It is inheriting a project
5 from the previous council, and it's asking the office to look at this and say, really, is this
6 the best way to do it? So that was the direction of, effectively, the Board of Directors, in
7 the form of Council, to staff and then down to the project office to look at those sorts of
8 things again, and we were doing that. So, it was fast moving in multiple ways.

9 **MR. JOHN ADAIR:** And so, the issue that was immediately
10 apparently to you as kind of holding things up when you arrived on the scene was a
11 slavish adherence, I guess, to use your phrase, to the tunnel location and depth, and
12 that was presenting an affordability problem. Do I have that roughly accurate?

13 **MR. BRIAN GUEST:** Yeah. There had not been a revisiting of the
14 EA alignment, so I don't know. Maybe "slavish" is too colourful, but they weren't look at
15 how do we do something else. That really started after the new council came in and
16 invited a review of where are we financially and what do we think about the resulting
17 project and what should be observed about that.

18 **MR. JOHN ADAIR:** All right. Just bear with me for one moment,
19 please, Mr. Guest.

20 **(SHORT PAUSE)**

21 **MR. JOHN ADAIR:** All right, sir, and then in terms of the other
22 innovations that you have addressed in your letter to Mr. Craig -- I know it's not up on
23 the screen now, and if you need us to call it up, we can, but in terms of the affordability
24 cap, you were aware at some point, I take it, that the City had a budget for the project of
25 \$2.1 billion.

26 **MR. BRIAN GUEST:** They did, and it was really set out too early,
27 and I think this is a flaw in the way all of these projects get done between the federal,
28 provincial, and municipal governments. They pin the budget against a Class D

1 estimate, which you shouldn't do because it's an estimate. But that's the reality of the
2 way the system works in Canada. The two other orders of government make a
3 commitment and it rarely changes after that commitment is made. So the municipality,
4 which has the least elastic tax base in that it doesn't grow in line with the economy, has
5 to pick up the difference. Once you set out that is your kind of envelope, you're either
6 going to get the project done largely for that or you're not going to do the project and
7 you're going to do something different and you're going to reapply for something
8 different in terms of support from other orders of government.

9 **MR. JOHN ADAIR:** Right. The simple point is that the budget was
10 \$2.1 billion.

11 **MR. BRIAN GUEST:** The budget was \$2.1 billion.

12 **MR. JOHN ADAIR:** And one of the innovations that you brought to
13 the table was -- or participated in was this affordability cap.

14 **MR. BRIAN GUEST:** The affordability cap was a way of
15 communicating to the marketplace the import of that number.

16 **MR. JOHN ADAIR:** Sorry. I didn't ask you what the affordability
17 cap was. It's one of the innovations that you participated in, correct?

18 **MR. BRIAN GUEST:** It is.

19 **MR. JOHN ADAIR:** And the way it was implemented in the RFP is
20 the RFP included what has been referred to as an affordability cap, which is effectively
21 communicating to the bidders that the City isn't going to accept a bid that's higher than
22 that if any bid comes in lower than that, right?

23 **MR. BRIAN GUEST:** No. It's communicating to the bidders that if
24 one of the competing teams achieves the affordability cap through its means and
25 methods, its innovations, its approach to the project within the output specification, while
26 adhering to the output specification -- if one does and the others don't, the others
27 receive zero in terms of their financial score. In effect, the winning proposal is the one
28 that solves the problem.

1 If that doesn't function properly in the sense that, as on Stage 2,
2 where there was a cap -- and the bidders came back in market and said, "Look, you've
3 got eight pounds of potatoes in a five-pound bag here", you have two choices. You can
4 look at what you'll de-scope, so you'll get rid of something that you thought you could
5 afford but you can't, like a deep underground station that's worth \$150 million. You
6 might say, "Okay. We're going to deal with that that way." Or you can say "all right",
7 then bid and see what your outcome is, and if the outcome is all above, then you'd have
8 salvage provisions that allow you to work with the best proposal to try to get it as close
9 to the number that you wanted as possible. And then council has to make a choice.

10 So in the course of finishing Stage 2, that's what happened ---

11 **MR. JOHN ADAIR:** Mr. Guest, I've got to cut you off. You will be
12 here until the end of the day Friday, which is a holiday, and I say that in jest but also
13 respectfully.

14 **MR. BRIAN GUEST:** I apologize.

15 **MR. JOHN ADAIR:** I'd rather you answer my questions, okay?

16 **COMMISSIONER HOURIGAN:** Yeah. You need to focus on what
17 the question is and answer the question, please.

18 **MR. BRIAN GUEST:** Yes, sir. I will.

19 **MR. JOHN ADAIR:** Sir, in fairness, I'm going to suggest it's not
20 hugely innovative, if you have a \$2.1-billion budget, to tell the bidders, effectively,
21 "You've got to stay within \$2.1 billion." Is that fair?

22 **MR. BRIAN GUEST:** Yeah, I guess that's fair. Sure. It's the
23 mechanism that was used in every project in Ontario subsequent to it.

24 **MR. JOHN ADAIR:** Right. And all of these innovations that you
25 described in your letter to Mr. Craig, where you summarized Boxfish's contribution to
26 the project at the pre-procurement and procurement stage, these were all part of a
27 group effort. I think you've already agreed with me.

28 **MR. BRIAN GUEST:** Yeah. I shouldn't have it written it as they

1 were ours. They were things we contributed to in a significant way.

2 **MR. JOHN ADAIR:** Right. And every other member of that group
3 had very specific education, training, and experience that allowed them to speak, with
4 the benefit of all that education, training, and experience, to these issues, and you did
5 not, fair?

6 **MR. BRIAN GUEST:** Can you give me that question again?

7 **MR. JOHN ADAIR:** Sure. When we look at the various
8 innovations -- the tunnel depth and location, the geotech risk ladder, the affordability
9 cap and how that gets worked into a P3 project -- all of the other consultants at the table
10 were people who had very specific education, training, and experience on the issues
11 they spoke to, correct?

12 **MR. BRIAN GUEST:** Yes.

13 **MR. JOHN ADAIR:** And you did not, correct?

14 **MR. BRIAN GUEST:** I brought something different, which was
15 depth of public policy, the understanding of the City and its approach to things. I
16 worked at the City for five years, so I knew it well. I'm pretty good at challenging and
17 thinking of new solutions -- challenged them with thinking, and if they didn't think they
18 were good ideas, we certainly had the expertise to say, at that table, that doesn't work
19 and here's why. But ---

20 **MR. JOHN ADAIR:** Right. And in terms of knowing the City and
21 how it operates and what its priorities are and how policy should be implemented, that's
22 the very role that Mr. Jensen and Ms. Schepers would play on large projects like this,
23 correct?

24 **MR. BRIAN GUEST:** Indeed, and I believe they also, having had
25 a chance to work with me, knew that I would be able to contribute and was skilled in
26 making sure that that happened in a way that they thought would be successful.

27 **MR. JOHN ADAIR:** And do you agree with me, sir, that the fact
28 that everyone else had either specific expertise or the existing role of implementing City

1 decisions, like Mr. Jensen and Ms. Schepers -- do you agree with me that that scenario
2 raises at least a question about whether you received these consulting contracts on the
3 basis of your value rather than perhaps personal and political relationships?

4 **MR. BRIAN GUEST:** I do not.

5 **MR. JOHN ADAIR:** So you would say the circumstances that
6 we've just been through, in terms of these experts being brought in and Mr. Jensen and
7 Ms. Schepers's role, do not raise any question about the circumstances in which you
8 were -- or the reasons for which you were awarded these contracts?

9 **MR. BRIAN GUEST:** I do not.

10 **MR. JOHN ADAIR:** All right. Now, when you were brought onto
11 the project in 2011, you already had fairly deep connections within the existing
12 Provincial Government?

13 **MR. BRIAN GUEST:** Sorry, give me that again.

14 **MR. JOHN ADAIR:** When you came onto this project in 2011, you
15 already had fairly deep connections to the Provincial Government of the day?

16 **MR. BRIAN GUEST:** I don't know what you mean, precisely.

17 **MR. JOHN ADAIR:** Okay, let's be more specific. You had worked
18 previously for a long time for Mr. Bob Chiarelli?

19 **MR. BRIAN GUEST:** Yes, I did know Bob Chiarelli.

20 **MR. JOHN ADAIR:** Well, you didn't just know him. You'd worked
21 for him for several years, correct?

22 **MR. BRIAN GUEST:** I'd worked for him for several years. I
23 considered him a friend and a mentor.

24 **MR. JOHN ADAIR:** Right. And he was in cabinet at the time,
25 provincially?

26 **MR. BRIAN GUEST:** At the time I joined?

27 **MR. JOHN ADAIR:** Yeah, in 2011.

28 **MR. BRIAN GUEST:** Yes, I believe he was.

1 **MR. JOHN ADAIR:** The Minister of Transportation, as it turns out?

2 **MR. BRIAN GUEST:** Was it transportation or infrastructure?

3 **MR. JOHN ADAIR:** Either way, he'd be a minister who had
4 significant involvement in deciding whether provincial funding should be allocated to a
5 project like this.

6 **MR. BRIAN GUEST:** I think it's infrastructure. So he was the
7 Minister for IO ---

8 **MR. JOHN ADAIR:** Right, so ---

9 **MR. BRIAN GUEST:** --- but I'm not ---

10 **MR. JOHN ADAIR:** Fair enough. Coming back to my question,
11 whether it was IO -- sorry, whether it was infrastructure or whether it was transportation,
12 he would be someone who would have a significant amount of influence over whether
13 provincial funding would be available and how that funding would be spent?

14 **MR. BRIAN GUEST:** Well, I believe the funding was committed
15 prior to that, but he would have certainly been a champion for the City in terms of if
16 there were additional things that were required, maybe additional monies before going
17 to market, Mr. Chiarelli would have been an important voice at the cabinet table.

18 **MR. JOHN ADAIR:** And you would -- when you worked for Mr.
19 Chiarelli, did you work Brendon McGuinty who was, by 2011, the premier's brother?

20 **MR. BRIAN GUEST:** I did.

21 **MR. JOHN ADAIR:** So my question a moment ago, which you said
22 you weren't sure what I was getting at -- my question a moment ago was, when you
23 were brought on in 2011, you already had fairly deep connections within the Provincial
24 Government of the day?

25 **MR. BRIAN GUEST:** I mean I knew Brendon from working for Bob,
26 and I knew Bob from working from Bob. So if that's what you meant as "deep
27 connections to the Provincial Government", I knew those gentlemen.

28 **MR. JOHN ADAIR:** And you had extensive ties to the Municipal

1 Government in Ottawa at the time as well, correct?

2 **MR. BRIAN GUEST:** I'd had an opportunity to work with most of
3 the senior officials at the City and had earned, through my professional work, a fairly
4 broad sense of respect and so on from them.

5 **MR. JOHN ADAIR:** Well, you had volunteered on Major Watson's
6 Mayoral Campaign in 2010?

7 **MR. BRIAN GUEST:** I did.

8 **MR. JOHN ADAIR:** And then you worked on his transition team?

9 **MR. BRIAN GUEST:** I did.

10 **MR. JOHN ADAIR:** And that was not -- that 2010 experience was
11 not your first professional contact with Mr. Watson, was it?

12 **MR. BRIAN GUEST:** Well -- can you give me that question again?

13 **MR. JOHN ADAIR:** Sure. The 2010 work you did on Mr. Watson,
14 as he then -- was his mayoral campaign and then on his transition team after he was
15 elected was not your first professional involvement with Mr. Watson, was it?

16 **MR. BRIAN GUEST:** I mean I had contact with Mayor Watson
17 when I worked for Mayor Chiarelli in that they were two protagonists both looking to run
18 for the City of Ottawa's initial mayoralty. Bob was the regional chair. So I was not close
19 to Jim. In fact, it was quite the opposite. I think I was -- I was someone who irritate Jim
20 in that we had significant battles over Lansdowne and other issues. So -- is that what
21 you mean?

22 **MR. JOHN ADAIR:** No, I wasn't getting into whether you irritated
23 Mr. Watson or not. But ---

24 **MR. BRIAN GUEST:** We weren't friends and I hadn't worked with
25 him. You know, I think you were characterizing it as I'd had professional dealing with
26 them prior to that. I had not ---

27 **MR. JOHN ADAIR:** But ---

28 **MR. BRIAN GUEST:** --- other than ---

1 **MR. JOHN ADAIR:** The -- I may have my fact wrong but I had
2 understood that Mr. Watson ultimately became a member of the Provincial Cabinet and
3 was including -- was the Minister of Health promotion in 2006. Do you remember that?

4 **MR. BRIAN GUEST:** Yes.

5 **MR. JOHN ADAIR:** And in 2006, when he was Minister of Health
6 Promotion, Mr. Watson announced a \$4M either investment or grant by the Ontario
7 Government into a company called Plasco. Do you recall that?

8 **MR. BRIAN GUEST:** I do.

9 **MR. JOHN ADAIR:** And you were an executive at Plasco at the
10 time?

11 **MR. BRIAN GUEST:** I was an advisor there, yeah.

12 **MR. JOHN ADAIR:** Plasco's CEO described you an executive. I
13 can take you to the article if you want? Were you a paid employee?

14 **MR. BRIAN GUEST:** I was not a paid employee, no.

15 **MR. JOHN ADAIR:** Were you an independent contractor?

16 **MR. BRIAN GUEST:** I was.

17 **MR. JOHN ADAIR:** And were held out as someone who had a
18 senior executive role?

19 **MR. BRIAN GUEST:** I sat on their executive team and attended
20 their executive meetings.

21 **MR. JOHN ADAIR:** So you would have been well aware of the
22 \$4M investment or grant that the Ontario Government made when Mr. Watson was
23 Minister of Health Promotion?

24 **MR. BRIAN GUEST:** Sure.

25 **MR. JOHN ADAIR:** And that was, in fact, Mr. portfolio -- that grant
26 or investment fell within Mr. Watson's portfolio because he's the one who actually
27 publicly announced the grant. Is that right?

28 **MR. BRIAN GUEST:** I guess so, yeah.

1 **MR. JOHN ADAIR:** So you had also had that professional dealing
2 with Mr. Watson?

3 **MR. BRIAN GUEST:** No, I had nothing to do with interacting with
4 Mr. Watson over that.

5 **MR. JOHN ADAIR:** All right. Plasco was in the business of waste
6 management, was it?

7 **MR. BRIAN GUEST:** It was developing an innovative technology
8 for reducing greenhouse gas associated with landfill, which is a very significant point
9 source for climate change, for greenhouse gasses that cause climate change, in that
10 methane is very potent, and it was seeking to turn mixed municipal waste into hydrogen
11 or an energetic gas that could create power that had a net negative, you know, impact
12 in terms -- you were making clean power that didn't have the same overhead that
13 natural gas would have.

14 **MR. JOHN ADAIR:** Right. I think for our purposes, we can say it
15 was in the business of trying to convert waste into energy in a clean way?

16 **MR. BRIAN GUEST:** Sure.

17 **MR. JOHN ADAIR:** All right.

18 **MR. BRIAN GUEST:** It was developing a technology to do that,
19 yes.

20 **MR. JOHN ADAIR:** Right. And in 2012, the City of Ottawa signed
21 a contract with Plasco for \$120M?

22 **MR. BRIAN GUEST:** Yes. But that was -- so important to think
23 about what was. As I remember it, and it was a long time ago, that was a commitment
24 that once the system could be shown to operate within certain parameters, it would pay
25 to divert waste into the new plant. So it was kind of like it wasn't an upfront, "We're
26 going to buy a plant."

27 **MR. JOHN ADAIR:** Right.

28 **MR. BRIAN GUEST:** "If the plant works the way you're

1 representing it will work, then we will be willing to -- we will be willing to send waste
2 there.”

3 **MR. JOHN ADAIR:** Right. It was a forward-linking contract. If
4 everything goes according to plan, the value would be \$120M?

5 **MR. BRIAN GUEST:** The number doesn't stick I my head, but I'll
6 take your word for it.

7 **MR. JOHN ADAIR:** And that was approved, rather, at the
8 Environment Committee level by the City of Ottawa in 2011?

9 **MR. BRIAN GUEST:** Again, if you say so.

10 **MR. JOHN ADAIR:** And you were still an executive -- a senior
11 executive at Plasco in 2011, correct?

12 **MR. BRIAN GUEST:** Yes, I was doing the role I described to you.

13 **MR. JOHN ADAIR:** Yeah. And Plasco's -- the contract, broadly
14 speaking, fell within the City of Ottawa's waste management plans?

15 **MR. BRIAN GUEST:** Broadly speaking, yes.

16 **MR. JOHN ADAIR:** And the person at the City of Ottawa who was
17 responsible for waste management was Mr. Chris Swail?

18 **MR. BRIAN GUEST:** Oh, I don't know about that. I don't recall
19 that.

20 **MR. JOHN ADAIR:** All right. Mr. Swail is married to your sister, is
21 he?

22 **MR. BRIAN GUEST:** He is.

23 **MR. JOHN ADAIR:** And he was back in 2011?

24 **MR. BRIAN GUEST:** Yes.

25 **MR. JOHN ADAIR:** So that makes him your brother-in-law?

26 **MR. BRIAN GUEST:** It does.

27 **MR. JOHN ADAIR:** And he joined the City, as I understand it, in
28 2010.

1 **MR. BRIAN GUEST:** Okay.

2 **MR. JOHN ADAIR:** Does that sound about right?

3 **MR. BRIAN GUEST:** I guess.

4 **MR. JOHN ADAIR:** That's what he told us in his formal interview.
5 I'm sure if I'm wrong, someone will point it out.

6 **MR. BRIAN GUEST:** Yeah, I just ---

7 **MR. JOHN ADAIR:** In 2011, he was chief of ---

8 **MR. BRIAN GUEST:** I didn't know ---

9 **MR. JOHN ADAIR:** Sorry?

10 **MR. BRIAN GUEST:** I don't have all that in my head, so I'm sure
11 he's right about it.

12 **MR. JOHN ADAIR:** That's okay. And in 2011, he was chief of staff
13 to Ms. Scheepers. Do you remember that?

14 **MR. BRIAN GUEST:** Yes.

15 **MR. JOHN ADAIR:** Ms. Scheepers had a prominent role in this
16 project at the pre-procurement and procurement phase?

17 **MR. BRIAN GUEST:** The Light Rail Project?

18 **MR. JOHN ADAIR:** Yeah.

19 **MR. BRIAN GUEST:** Yes.

20 **MR. JOHN ADAIR:** And she was also -- ultimately had under her
21 responsibility the City of Ottawa's Waste Management Strategy?

22 **MR. BRIAN GUEST:** Yes.

23 **MR. JOHN ADAIR:** And that's when you were -- at the same time
24 that you -- that Plasco obtained the contract for the 120 million, 2011, that's the same
25 time that you were brought aboard this light rail project, correct?

26 **MR. BRIAN GUEST:** It sounds like about the same time. I didn't
27 handle any of the direct contact with any of those individuals in respect of Plasco. That
28 was all Rod.

1 **MR. JOHN ADAIR:** I had understood, sir, that you attended some
2 of the meetings with the City where the Plasco contract was discussed. I think the way
3 Mr. Bryden put it in a newspaper article is, you didn't actually negotiate, but you
4 attended some of the meetings; is that fair?

5 **MR. BRIAN GUEST:** I think maybe two meetings with the City
6 manager, yeah.

7 **MR. JOHN ADAIR:** All right. And just coming to the City manager
8 then, at the time, the City manager was Mr. Kent Kirkpatrick, I'm sorry?

9 **MR. BRIAN GUEST:** That's correct.

10 **MR. JOHN ADAIR:** And your sister Robyn worked for Mr.
11 Kirkpatrick, correct?

12 **MR. BRIAN GUEST:** Let me think. At that time, I think that's
13 correct.

14 **MR. JOHN ADAIR:** So at the time that you got the Light Rail
15 Project contract in 2011, your brother-in-law was the chief of staff to Ms. Schepers and
16 your sister was working for Mr. Kirkpatrick?

17 **MR. BRIAN GUEST:** That's correct.

18 **MR. JOHN ADAIR:** And do you agree with me now, sir, that the
19 circumstances under which you got this contract at least raise some questions about
20 how you came to have the engagement?

21 **MR. BRIAN GUEST:** I don't. I mean, I understand that's what
22 you're implying, but I don't think that there's any substance to that.

23 **MR. JOHN ADAIR:** So you would say having been through the
24 evidence that we've been through so far, or at least the first hour, you would say that the
25 circumstances under which you got this contract, there is not one single question about
26 whether it was done for the right reasons?

27 **MR. BRIAN GUEST:** I know that Mr. Jensen, Ms. Schepers, and
28 Mr. Kirkpatrick thought that I had the requisite skills and invited me to do an important

1 role that I felt perfectly well qualified to do. That's what I know.

2 I also know the integrity of my sister and my brother-in-law, and I
3 know that they would never play any role other than to do their jobs.

4 So while I understand that you can make an -- you're making
5 inferences and so on, and how did you put it -- raise questions -- you're raising
6 questions, I understand that's what you're doing, but that's -- as far as I know, does not
7 accord with what those individuals would tell you directly, when asked.

8 **MR. JOHN ADAIR:** I mean, I think we can all agree that those
9 individuals would not specifically say that.

10 Let me ask you about the sort of back and forth from a paper
11 perspective of you getting involved in this project.

12 I understand, sir, that in 2011 -- whether it was also the case prior
13 to that is irrelevant -- but at least in 2011, the City had what was, in effect, like, a
14 standing list of consultants who could be available for engagement on particular
15 matters?

16 **MR. BRIAN GUEST:** Yeah.

17 **MR. JOHN ADAIR:** And Boxfish, your company, was on that
18 standing list?

19 **MR. BRIAN GUEST:** That's correct.

20 **MR. JOHN ADAIR:** And you came to be on that standing list by
21 submitting a proposal to the City?

22 **MR. BRIAN GUEST:** That's correct.

23 **MR. JOHN ADAIR:** If I can just call up a copy of that proposal?
24 The document number is COW593617.

25 **--- EXHIBIT No. 172:**

26 COW0593617 – City of Ottawa Addendum No. 1 Request for
27 Standing Offer Strategic Advisory Services 20 April 2010

28 **MR. BRIAN GUEST:** I don't ---

1 **MR. JOHN ADAIR:** Yeah, 593617, excuse me.

2 And sir, the first half of this document is sort of the -- not a request
3 for a standing offer, sort of like a tender document whereby the City sets out what you
4 have to do in order to get on the list, right?

5 **MR. BRIAN GUEST:** I presume.

6 **MR. JOHN ADAIR:** And if we go to page 3 of 34, just towards the
7 bottom of that page, there's a heading, "Estimated Utilization". And you'll see there that
8 the standing offer list, I'm going to call it, that the expectation would be that that would
9 be utilized for individual contracts up to \$150,000. Do you see that?

10 **MR. BRIAN GUEST:** I do.

11 **MR. JOHN ADAIR:** And that if the contract was going to exceed
12 \$150,000, or if the estimate was that it might exceed 150,000, then there may have to
13 be an open procurement?

14 **MR. BRIAN GUEST:** Or an extension, but yes.

15 **MR. JOHN ADAIR:** Yeah. Now, if we go to page 16, please -- and
16 sorry, just before we do that, the reason you would have that kind of trigger where
17 above \$150,000 there may be an open procurement is to mitigate against the risk of
18 sole sourcing -- effectively, sole sourcing larger contracts through the standing offer list,
19 right?

20 **MR. BRIAN GUEST:** I guess it was ---

21 **MR. JOHN ADAIR:** Makes sense?

22 **MR. BRIAN GUEST:** --- with the bylaw, the procurement bylaw, I
23 presume. I don't know where the \$150,000 business came from.

24 **MR. JOHN ADAIR:** Right. But as someone familiar with
25 procurement, what I suggested to you makes sense?

26 **MR. BRIAN GUEST:** Yeah. Sure.

27 **MR. JOHN ADAIR:** Now, if we go -- you have there page 16.
28 That's the Boxfish proposal, and the date there is April the 28th of 2011?

1 **MR. BRIAN GUEST:** That's what's written there, yeah.

2 **MR. JOHN ADAIR:** And that's the date on which you submitted
3 Boxfish for inclusion in the standing list?

4 **MR. BRIAN GUEST:** I presume, yeah.

5 **MR. JOHN ADAIR:** And after that, you submitted a specific
6 proposal for the LRT project?

7 **MR. BRIAN GUEST:** Yes.

8 **MR. JOHN ADAIR:** So Mitchell, I'm just going to ask you to call up
9 a new document, and Mr. Guest, I'm going to show you that specific proposal. It's
10 COW593619. `

11 **--- EXHIBIT No. 173:**

12 COW0593619 – Proposal of Supply of Consulting Services
13 by The Boxfish Group to the Rail Implementation Office City
14 of Ottawa, 13 June 2011

15 **MR. BRIAN GUEST:** Oh, I think you've gone on mute, Mr. Adair.

16 **MR. JOHN ADAIR:** Just bear with me one second, Mr. Guest.

17 Sorry.

18 Sorry about that, Mr. Guest.

19 And if we scroll down to page 4 of 9, please? This is the proposal
20 for the supply of consulting services to the LRT Project specifically, Mr. Guest?

21 **MR. BRIAN GUEST:** Could well be.

22 **MR. JOHN ADAIR:** And if you -- Mitchell, if I can ask you to go to
23 page 5 of 9, and then one more, sorry?

24 And under "Scope of Work", sir, that describes the scope of work
25 you were proposing to do?

26 **MR. BRIAN GUEST:** Yeah, at a high level.

27 **MR. JOHN ADAIR:** And in terms of -- then if we go down to
28 number 3, "Level of Effort", what you were proposing to do is, for the period July 4th,

1 2011 to December 31st, 2011, you were proposing to work seven hours a day, five days
2 a week? That's the 120 days?

3 **MR. BRIAN GUEST:** It appears so, yeah.

4 **MR. JOHN ADAIR:** And then the rate would be \$1,225 a day?

5 **MR. BRIAN GUEST:** Yeah.

6 **MR. JOHN ADAIR:** And if you do the math, sir, that's \$147,000?

7 **MR. BRIAN GUEST:** Okay.

8 **MR. JOHN ADAIR:** So just under the threshold above which a
9 public procurement might have to be considered?

10 **MR. BRIAN GUEST:** The threshold that pertained to this particular
11 or standing offer structure. I guess that's about right.

12 **MR. JOHN ADAIR:** And you were proposing effectively, when you
13 say seven hours a day, when you factor in, you know, reasonable time for lunch and
14 whatnot, something close to full-time work?

15 **MR. BRIAN GUEST:** Yeah. As I recall, it was considerably more
16 than full-time work, but I billed only for what I had agreed.

17 **MR. JOHN ADAIR:** And at the time, July 4 of 2011 and onward,
18 you were also still working as an executive at Plasco?

19 **MR. BRIAN GUEST:** I mean, I was going to their executive
20 meetings.

21 **MR. JOHN ADAIR:** And also attending a couple of meetings at
22 least with the City?

23 **MR. BRIAN GUEST:** Yeah, I think two, yeah.

24 **MR. JOHN ADAIR:** Yeah. And you were involved in advising
25 Plasco on what they could expect from the City, what they could do by way of -- what
26 Plasco could ask for from the City, what Plasco could expect to get back, that kind of
27 thing?

28 **MR. BRIAN GUEST:** I mean, I knew the City well. I understood

1 where a request by that technology company would be difficult for the City to agree to
2 and would likely not be something that they would consider. So, in that sense, yes.

3 **MR. JOHN ADAIR:** Right. And my point is simply that, in addition
4 to billing the City for full-time work, you were also billing Plasco?

5 **MR. BRIAN GUEST:** I was billing Plasco for my consulting
6 services, yes. I wasn't an exclusive -- I wasn't in an exclusive position, but I worked
7 longer than an eight-hour day and I have almost my entire life. So, yeah, I was able to
8 fit it all in for sure.

9 **MR. JOHN ADAIR:** You were also, at the time, managing Boxfish,
10 your company?

11 **MR. BRIAN GUEST:** I have a business partner that largely
12 manages it, yeah.

13 **MR. JOHN ADAIR:** And at the same time, I believe you were also
14 consulting for the City on other mandates like the budget?

15 **MR. BRIAN GUEST:** I believe the budget was before I started on
16 the LRT.

17 **MR. JOHN ADAIR:** My understanding, sir, is you consulted on the
18 budget for 2011 and 2012?

19 **MR. BRIAN GUEST:** I may well have, yeah.

20 **MR. JOHN ADAIR:** So, in addition to entering into a contract with
21 the City to give them full-time work, you were also working at Plasco, working at
22 Boxfish, and consulting on other City mandates; is that fair?

23 **MR. BRIAN GUEST:** Sure.

24 **MR. JOHN ADAIR:** And what happened, sir, is you were accepted,
25 we know, onto the standing list of available consultants, right?

26 **MR. BRIAN GUEST:** Yes.

27 **MR. JOHN ADAIR:** And then you were pulled off of that list to work
28 on the LRT project by virtue of this proposal you made, correct?

1 **MR. BRIAN GUEST:** Yeah, yeah.

2 **MR. JOHN ADAIR:** And this proposal you made was June of 2013
3 -- sorry, 2011, I'm sorry, and by July of 2011, you had your first contract for the LRT
4 work?

5 **MR. BRIAN GUEST:** If you say so.

6 **MR. JOHN ADAIR:** And the person who pulled you off the
7 standing offer list just a month and a half after you had been put on it and gave you the
8 LRT contract was Mr. Kirkpatrick, correct?

9 **MR. BRIAN GUEST:** I thought it was Mr. Jensen, but I would not
10 be surprised, given that I didn't know Mr. Jensen prior, that Mr. Jensen received advice
11 from Mr. Kirkpatrick and Ms. Schepers, and probably Ms. Simulik, about ---

12 **MR. JOHN ADAIR:** So, Mr. Kirkpatrick told us in his formal
13 interview that he was the one who decided to bring you in. You have no reason to
14 dispute that?

15 **MR. BRIAN GUEST:** I have no reason to dispute that. That makes
16 sense.

17 **MR. JOHN ADAIR:** Right. And Mr. Kirkpatrick is the City Manager
18 for whom your sister was working?

19 **MR. BRIAN GUEST:** That's correct.

20 **MR. JOHN ADAIR:** And he gave you a contract to go work with
21 RIO, where your brother-in-law worked?

22 **MR. BRIAN GUEST:** No, that's not correct.

23 **MR. JOHN ADAIR:** Sorry, he didn't give you a contract to go work
24 with RIO?

25 **MR. BRIAN GUEST:** No, Chris didn't -- my brother-in-law did not
26 work for RIO. My brother-in-law worked for Ms. Schepers in the planning department.
27 He did not ---

28 **MR. JOHN ADAIR:** Right. And Ms. Schepers oversaw RIO?

1 **MR. BRIAN GUEST:** Yes.

2 **MR. JOHN ADAIR:** Right. So, you're right, and thank you for the
3 clarification. Your brother-in-law didn't actually work at RIO. He was number two to Ms.
4 Schepers, who was ultimately responsible for RIO.

5 **MR. BRIAN GUEST:** Ultimately responsible -- RIO as a self-
6 contained, like, team, right? And it was reporting up through Mr. Jensen to Ms.
7 Schepers.

8 **MR. JOHN ADAIR:** Right. We can quibble, I guess, over the
9 meaning of self-contained, but RIO reports to Ms. Schepers, and your brother-in-law
10 was number two for Ms. Schepers.

11 **MR. BRIAN GUEST:** I don't know number two. He held a senior
12 role working with Ms. Schepers. I wouldn't want to characterize his role as -- she had a
13 lot of reports, and Chris was an important report. My brother-in-law, Chris Swail, was
14 an important report.

15 **MR. JOHN ADAIR:** Right. He was her chief of staff.

16 **MR. BRIAN GUEST:** Was that his title? Okay.

17 **MR. JOHN ADAIR:** Okay. And can we now agree, sir, that the
18 circumstances under which you were engaged on this project raised some real
19 questions about whether your engagement was appropriate?

20 **MR. BRIAN GUEST:** I understand your ---

21 **MR. JOHN ADAIR:** No, I'm sorry. I understand -- I know that you
22 understand the point and you understand the questions. What I am looking for is, will
23 you agree with me that the circumstances under which you were retained raise real
24 questions about whether that was appropriate?

25 **MR. BRIAN GUEST:** Listen, I was offered an opportunity that I
26 thought I could play an important role in that was interesting. The mechanics of how the
27 City got to that space and invited me into that opportunity, I didn't -- that's not -- I didn't
28 do any of that. I responded to an opportunity, and, you know, how that opportunity

1 arose, I think, has been clearly laid out. If Mr. Kirkpatrick says he initiated that and
2 thought that I was going to be useful, I will just -- like, that is all way outside my, kind of,
3 like, sphere or remit.

4 **MR. JOHN ADAIR:** But just following up, and I don't want to
5 belabour the point, but just following up on that last answer, I take it you're not saying
6 that you had no idea what the inner workings were that led to you ultimately getting the
7 contract? You're not saying that, are you?

8 **MR. BRIAN GUEST:** I actually didn't. I mean, I know that I got a
9 call from Mr. Jensen. He invited me into his office to talk about the challenges and the
10 issues that they were facing, and they -- he kind of kicked my tires and talked about
11 some of the issues with me, and then subsequently called me and asked me if I was
12 willing to help, and I said sure.

13 **MR. JOHN ADAIR:** And your evidence to the Commission is that
14 neither Mr. Swail nor your sister, Robin Guest, when they were sitting at the dinner table
15 with you on occasion in the spring of 2011, ever told you that any of this was coming? It
16 just came out of the blue one day?

17 **MR. BRIAN GUEST:** That's correct.

18 **MR. JOHN ADAIR:** All right. Now, sir, in terms of the first contract
19 that you had in 2011, that was, then, I believe renewed in a couple of successive years.
20 The last time it was renewed was mid-2013?

21 **MR. BRIAN GUEST:** If you say so.

22 **MR. JOHN ADAIR:** And if we can just take a look at the last
23 contract renewal. I'm just going to ask if we can get COW 593623. And just bear with
24 me one second, Mr. Guest. Sorry. You will see there, sir -- I just want to point out a
25 couple of things. First of all, the date this PO was created, if you look at the top-right
26 corner on the first page you'll see the date is June 14th of 2013. Do you see that?

27 **--- EXHIBIT No. 174:**

28 COW0593623 – City of Ottawa Changes to P.O. #45075221

1 The Boxfish Group 14 August 2013

2 **MR. BRIAN GUEST:** Yes.

3 **MR. JOHN ADAIR:** And then if you look at the bottom left corner of
4 the first page, you'll see "period of contract," and it runs from July 2nd of 2013 to June
5 30th of 2014?

6 **MR. BRIAN GUEST:** Sorry, the bottom left of ---

7 **MR. JOHN ADAIR:** Yeah, this is the bottom left of the first page.
8 Period of contract.

9 **MR. BRIAN GUEST:** Okay.

10 **MR. JOHN ADAIR:** Do you see that?

11 **MR. BRIAN GUEST:** Yes.

12 **MR. JOHN ADAIR:** So, this was for a contract renewal that would
13 run from July 2nd, 2013, through to June 30th of 2014?

14 **MR. BRIAN GUEST:** It appears so.

15 **MR. JOHN ADAIR:** And the description of what would be done is
16 up at the top of the -- or I guess the middle of the first page there, "To provide consulting
17 services for Light Rail Transit office," and it goes on to describe the areas in which you
18 would be consulting, correct?

19 **MR. BRIAN GUEST:** That's right.

20 **MR. JOHN ADAIR:** And when you look at the specific areas, they
21 included contract administration, project governance, document and report preparation,
22 among other things?

23 **MR. BRIAN GUEST:** Yes. It's basically a catch-all of things that I
24 was doing in the office.

25 **MR. JOHN ADAIR:** Right. And those are all important ongoing
26 tasks from the period between July 2 of 2013 and June 30th of 2014?

27 **MR. BRIAN GUEST:** Yes.

28 **MR. JOHN ADAIR:** And when you submitted your proposal to the

1 City to renew for an additional year ending in June of 2014, you believed, of course, that
2 you could deliver real value to the City in exchanged for the money it would pay you
3 under this contract.

4 **MR. BRIAN GUEST:** Of course.

5 **MR. JOHN ADAIR:** And the value of the contract -- we can scroll
6 down if we need to, but the value of the contract was \$140,000.

7 **MR. BRIAN GUEST:** The upside limit of it, yeah.

8 **MR. JOHN ADAIR:** Yeah. And you believe that the City needed
9 your help in the areas described and would receive value all the way up through to June
10 of 2014.

11 **MR. BRIAN GUEST:** I believed I could continue to provide value,
12 yes.

13 **MR. JOHN ADAIR:** And then, sir -- we looked at this earlier and
14 we can go back if we need to, but you then put an end to your engagement on
15 September the 10th of 2013.

16 **MR. BRIAN GUEST:** I did.

17 **MR. JOHN ADAIR:** And perhaps, Mitchell, we can just call up one
18 more document -- I apologize -- COW386.

19 On the first paragraph there, sir, you say that now that the project is
20 entering a more routine phase, your role would come to an end.

21 **MR. BRIAN GUEST:** That's right.

22 **MR. JOHN ADAIR:** And what changed between the middle of
23 June when you signed up for another year, ending June 2014 -- so the middle of June
24 2013, you submitted a proposal to get paid for another year for work that you believed
25 would deliver value. What changed between then and September 10th, when you
26 resigned because you didn't add value anymore?

27 **MR. BRIAN GUEST:** Well, we were going into the build phase
28 and I thought it had run its course in terms of -- I only want to do stuff where I'm adding

1 value, and I felt like in the next phase, the type of work the office would be doing would
2 be different in a way that wasn't as interesting. I was also very interested in all the great
3 projects that were starting to develop in Toronto and I wanted to pursue those.

4 **MR. JOHN ADAIR:** Right, but in terms of value and not believing
5 there to be value anymore, in June of 2013, when you submitted your proposal to re-up
6 for another year -- you've just told us that you believed there would be value for that
7 additional year. Surely in June of 2013 you knew the contract was into the construction
8 phase. You knew that, right?

9 **MR. BRIAN GUEST:** Yeah, but I didn't necessarily -- there was a
10 period of additional upside. That doesn't mean I thought I would bill all of that, and as
11 things went forward and we finished the procurement, I kind of did an assessment of
12 where things were going to go and what the type of work was going to be going forward,
13 and I made the choice to say to Gary, "I think I'm going to go do something else."

14 **MR. JOHN ADAIR:** Okay. And if we can scroll down to the third
15 paragraph of that letter, just take a minute to read that to yourself, sir, so that you have
16 it.

17 **MR. BRIAN GUEST:** Yeah.

18 **MR. JOHN ADAIR:** And sir, I'm going to suggest to you that the
19 reason you stepped down in September of 2013 is because people started to raise
20 questions about why you were involved, not because the project changed from June to
21 September of 2013. Do you agree with that?

22 **MR. BRIAN GUEST:** No.

23 **MR. JOHN ADAIR:** And sir, as someone who is involved in
24 government consulting and procurement efforts like this and receives contracts to do
25 work for government on public projects, your reputation and profile publicly is quite
26 important to you, correct?

27 **MR. BRIAN GUEST:** Yeah, and I'm a private person. I don't like
28 being in the newspaper, to be honest with you. So I appeared at council along with Mr.

1 Jensen when council was deliberating approving the results of the procurement, and I
2 remember the gobsmacked thing was Dave Reevely -- I think it was a tweet that he was
3 gobsmacked that I was sitting at the council table answering questions. That kind of
4 thing I just thought was -- I think Dave Reevely is a great reporter, by the way, so no
5 shade on him, but I wanted Gary to make clear to the media that I was going to go do
6 something else, rather than leave the impression that I was going to go continue to work
7 on the project, because I wanted there to be clarity about that. As it happens, Mr. Craig
8 never did that, and I think Mr. Reevely found out later, through an FOI, that I -- but I
9 don't think anyone ever did what I'd asked for here, which is, "Just make clear that I've
10 gone on to do something else, if you would for me."

11 **MR. JOHN ADAIR:** All right. Sir, for a project like this of this
12 complexity, there are number of participants, and I've just got to be careful to
13 distinguish. When I say "participants", I don't necessarily mean -- I don't mean, in fact,
14 participants in this Commission, but there are a number of different companies and
15 stakeholders that all worked together to try to pull the project off, correct?

16 **MR. BRIAN GUEST:** Yes.

17 **MR. JOHN ADAIR:** And it's crucial that all of those participants are
18 able to work together effectively.

19 **MR. BRIAN GUEST:** Yes.

20 **MR. JOHN ADAIR:** So just going back to the example you were
21 talking about in terms of the procurement phase, where you had IO and Deloitte and
22 CTP and yourself and the City at the table, you've all got to work together to pull it off.

23 **MR. BRIAN GUEST:** Yeah, and I would say to you that I
24 significantly contributed to that, and I think any of those people would tell you that I
25 contributed significantly to that thing working well and delivering the way it did.

26 **MR. JOHN ADAIR:** Right. Your presence was helpful to the
27 working together, collaborative approach, which is such an important aspect of pulling
28 off a project like this.

1 **MR. BRIAN GUEST:** Yes.

2 **MR. JOHN ADAIR:** And in order to work together effectively, of
3 course the various team members have to have mutual trust and confidence in one
4 another.

5 **MR. BRIAN GUEST:** Yes.

6 **MR. JOHN ADAIR:** They can have healthy debate and even really
7 challenge one another, but they have to trust one another and be confident in one
8 another.

9 **MR. BRIAN GUEST:** Sure.

10 **MR. JOHN ADAIR:** And you understood -- or at least you
11 understand now, I take it, that your presence, as a result of your personal and political
12 relationships, is something that caused other important team members to question the
13 process and to lose some confidence, correct?

14 **MR. BRIAN GUEST:** No, that's totally incorrect.

15 **MR. JOHN ADAIR:** All right. If we could have a document up,
16 please. It's IFO42507.

17 **--- EXHIBIT No. 175**

18 IFO0042507 – Email from John Traianopoulos to Megan
19 Mulligan Re: IO Media Clips – 17 February 2017

20 **MR. JOHN ADAIR:** Mr. Guest, I know you won't have seen this
21 email before this process, and in fact just very recently in this process, but this is a
22 forward of a media summary. And the first article that's referred to there -- it's from
23 February of 2017 -- is an article on the CBC website that you were back at Ottawa's rail
24 office, where your brother-in-law is the boss. Do you see that?

25 **MR. BRIAN GUEST:** Yes.

26 **MR. JOHN ADAIR:** And if we can scroll now up, please, just slowly
27 to the first email. Mr. Tralanopoulos at IO forwards that somebody else at IO, and then
28 Meghan Mulligan, the recipient, says, "Yeah. I BBM'ed you. Ridic." And then if you

1 can scroll up, lastly, Mr. Tralanopoulos says, "It's worse at Metrolinx. He didn't even go
2 through a procurement." Do you see those?

3 **MR. BRIAN GUEST:** I do see that.

4 **MR. JOHN ADAIR:** And you'd agree with me that your presence
5 and your personal and political relationships was something that caused IO to comment
6 negatively upon.

7 **MR. BRIAN GUEST:** Well, I think Meghan was responding to the
8 headline and the characterization that I was back at the rail office and hanging that on
9 the fact that my brother-in-law was there. In fact, I was helping, but two people in my
10 firm, Dominique and Raquel, were doing the heavy engagement. I wasn't doing that. I
11 was helping with strategic issues from time to time.

12 And then I would say -- and I don't know what "ridic" means, but if
13 you say you think it means "ridiculous", okay. I know Meghan. She's very talented. I
14 work with her all the time; we work well together.

15 John's statement there is totally false. I never did any work at
16 Metrolinx that was not subject to a procurement whatsoever, so I don't know what he
17 was saying there. He was probably just being a bit glib, but he's wrong, factually wrong.

18 **MR. JOHN ADAIR:** Okay. And I'm not here to suggest what did or
19 didn't happen at Metrolinx; I don't much care. But the IO is an important player in the
20 delivery of infrastructure projects in Ontario, agreed?

21 **MR. BRIAN GUEST:** They are.

22 **MR. JOHN ADAIR:** And your presence, at least as of February
23 2017, was causing them some degree of concern or negative comment. Is that fair,
24 without trying to parse every word of the email?

25 **MR. BRIAN GUEST:** I'm not parsing, Mr. Adair. I am saying I have
26 an excellent relationship with John Traianopoulos and I have an excellent relationship
27 with Meghan, and we work very well together. So, your reading into this several lines in
28 response to a -- I don't know, a suggestive headline a lot that isn't actually factual at all.

1 And, you know, if you thought it was factual and you wanted to know about that, you
2 know, did you ask John about his respect for me or not?

3 **MR. JOHN ADAIR:** Unfortunately, Mr. Guest ---

4 **COMMISSIONER HOURIGAN:** I'm sorry ---

5 **MR. JOHN ADAIR:** --- today is not the day where I am ---

6 **MR. BRIAN GUEST:** Fair enough. Good point.

7 **MR. JOHN ADAIR:** --- answering questions.

8 **MR. BRIAN GUEST:** Good point. Point and match.

9 **COMMISSIONER HOURIGAN:** Mr. Guest, please just, again,
10 focus on the questions. Counsel doesn't answer questions. So, listen to the question.
11 If you don't understand it, let is know, but if you do, please answer the question, all
12 right? Thank you.

13 **MR. JOHN ADAIR:** And then, Mitchell, if we could just have
14 another document up, please? It is MHH 38155.

15 **--- EXHIBIT No. 176:**

16 MHH0038155 – Email from George Tapas (AECOM) to
17 Daniel Farrell (Morrison Hershfield) RE: RFP – Fairness
18 Commissioner Services for LRT Stage 2 18 October 2016

19 **MR. JOHN ADAIR:** If we just scroll down a little bit, this refers to
20 Stage 2, Mr. Guest, so I am not going to spend a lot of time on it, but there is an email
21 exchange between a George Tapas of AECOM and a Daniel Farrell, at Morrison
22 Hershfield. And if we can just go to the bottom email, there is -- we don't need to get
23 hugely into the details of all this, Mr. Guest, but I obviously want to be fair and make
24 sure you get a chance to read it, but the emails concern bidding on various aspects of
25 Stage 2 of the LRT project. You will see that once you get a chance to look at this one,
26 and specifically, the Fairness Commissioner services for Stage 2.

27 **MR. BRIAN GUEST:** Yeah, I see that.

28 **MR. JOHN ADAIR:** And you will see that Mr. Swail is one of the

1 people copied on this email?

2 **MR. BRIAN GUEST:** Yes.

3 **MR. JOHN ADAIR:** And then if we scroll up one email, please,
4 there is an email from Chris Swail to Dan Farrell, where Chris asks Dan to phone him?

5 **MR. BRIAN GUEST:** Okay.

6 **MR. JOHN ADAIR:** And then Dan forwards that to George Tapas
7 and George is asking about whether there is any -- sorry, Dan is asking George whether
8 there is any word from Chris. So, the upshot of all of this, and I'm sure somebody else
9 will show you the detailed emails if you need to see them, but Mr. Farrell writes to Mr.
10 Tapas on October 18th and says, "George, no worries. You see what is happening.
11 The City wants Boxfish to run the procurement and they are putting the squeeze on
12 you." Do you see that?

13 **MR. BRIAN GUEST:** I do.

14 **MR. JOHN ADAIR:** And Mr. Tapas says, "Likely. All the best."
15 There was a perception, I gather, that the City wanted your -- that Mr. Swail wanted you
16 to be running Stage 2 of the LRT process, correct?

17 **MR. BRIAN GUEST:** So, as I read this, Dan and George wanted to
18 perform procurement services in addition -- they are members of CTP, I believe, and
19 they wanted to perform certain procurement processes as an addition to their scope and
20 not to have a procurement, but to just be handed that additional scope. And the request
21 would have been for -- and I'm not on this, I don't know what was going on, right? But I
22 think that the speculation that Mr. Farrell brings to this is that the City wants to have
23 Boxfish do it. I read it as the City wanted to have a procurement for these services, and
24 they did have a procurement, and I think there were multiple vendors who applied for
25 that work and we were successful.

26 **MR. JOHN ADAIR:** Right. And the ---

27 **MR. BRIAN GUEST:** So, I don't really ---

28 **MR. JOHN ADAIR:** --- value of your -- I'm sorry. Go ahead.

1 **MR. BRIAN GUEST:** I don't really know what Dan -- I mean, I don't
2 know what Dan and George are talking about here, but it is so speculative that I don't ---

3 **MR. JOHN ADAIR:** Fair enough. That's fair. Do you agree with
4 me, sir, independent of the emails that I have shown you, and in fairness, you weren't
5 on those, so I know you can't speak to the contents, but do you agree with me that if
6 there is a perception in the marketplace that the City is retaining consultants on the
7 basis of personal relationships rather than expertise, that's a problem?

8 **MR. BRIAN GUEST:** I don't think any gossip between George and
9 Dan is a problem.

10 **MR. JOHN ADAIR:** Sorry, that wasn't my question. If the
11 marketplace develops the perception or the belief that the City is handing out contracts
12 on the basis of personal relationships and political relationships rather than merit, that is
13 a problem, correct?

14 **MR. BRIAN GUEST:** That would be a problem.

15 **MR. JOHN ADAIR:** And your family relationship, albeit through
16 marriage, with Mr. Swail, who is in charge of Stage 2, could create that perception?

17 **MR. BRIAN GUEST:** Well, all I can tell you is the City would have
18 used all of the City's appropriate processes to make sure there was no conflict of
19 interest, and that any proposals for any procurement would be assessed within the
20 bounds of their procurement policies. So, you know, I don't have any visibility into that
21 other than to say I know they do that assiduously and I don't think the mere fact that
22 both my sister and her husband are in public service, you know, disqualifies me from
23 doing what I do and trying to help the projects where I think I can. And in this case, I
24 responded to a procurement, and we were successful, and I imagine that if you look at it
25 you will find that all the appropriate conflict checks were done and everyone who
26 needed to look at it from an evaluation -- who was evaluating it perspective, would have
27 been appropriate.

28 **MR. JOHN ADAIR:** Right. And just to be clear, I am not

1 suggesting that the mere fact that your sister and brother-in-law are in public service
2 disqualifies you, but it does go a little bit further than that, in fairness. Your brother-in-
3 law is the person who ran the Stage 2 procurement -- or, sorry, is responsible for the
4 Stage 2 project.

5 **MR. BRIAN GUEST:** He is, yes.

6 **MR. JOHN ADAIR:** Right. And that creates a serious risk of a
7 perception in the marketplace that these things are not being done appropriately.

8 **MR. PETER WARDLE:** Mr. Commissioner, if I could interject at
9 this point?

10 **COMMISSIONER HOURIGAN:** Mr. Wardle, yes?

11 **MR. PETER WARDLE:** I'd like to make an objection. So, as you
12 know, Mr. Commissioner, your mandate does not extend to Stage 2, nor does it extend
13 to the Stage 2 procurement. The City of Ottawa has not produced documents relating
14 to the Stage 2 procurement. The information I have about Mr. Swail in connection with
15 Stage 2 is that there was a formal process that they went through and that Mr. Swail
16 disqualified himself from having any role in the procurement process involving Boxfish.
17 But because your mandate is limited to Stage 1, those documents haven't been
18 produced. There has been no notice to Mr. Swail or anyone else relating to these
19 allegations which Mr. Adair is now making. So, I have to object to him pursuing them.

20 **COMMISSIONER HOURIGAN:** All right. And, again, I am not sure
21 that "allegations" is the correct term to be used, but Mr. Adair, what do you say to Mr.
22 Wardle's objection?

23 **MR. JOHN ADAIR:** Two things, Mr. Commissioner. First, Mr.
24 Wardle is not, as I understand it, counsel to Mr. Guest. If Mr. Wardle believes that there
25 is a fairness concern with evidence being put to witnesses, I'm sure Mr. Wardle will
26 have the opportunity to ask Mr. Guest questions. So, that is the first response that I
27 have.

28 And the second is, if Mr. Wardle is concerned that Mr. Guest's

1 involvement with Mr. Swail in the Stage 2 process and Mr. Guest winning that contract
2 is outside the Commission's mandate, he will have the opportunity to, I'm sure, make
3 that submission to the Commission. Third, I don't want to belabour this, but third, it is
4 not an allegation, just to be clear. I am asking questions about what happens in the
5 marketplace. So, those are my responses. But I, in any event, intend to move on.

6 **COMMISSIONER HOURIGAN:** All right. Go ahead ---

7 **MR. PETER WARDLE:** Well, so ---

8 **COMMISSIONER HOURIGAN:** --- and move on then. Sorry, Mr.
9 Wardle, he's going to move on.

10 **MR. PETER WARDLE:** Thank you.

11 **COMMISSIONER HOURIGAN:** Is there something you just wanted
12 to say?

13 **MR. PETER WARDLE:** I just wanted to indicate that I have been
14 representing Mr. Swail's interests in connection with Stage 1, where he was a witness.
15 He was not asked any of the questions relating to Stage 2 during his formal interview,
16 and I would highly object to Mr. Adair pursuing this further. Thank you very much.

17 **COMMISSIONER HOURIGAN:** Yeah, as he said, he's moving on.
18 So let's move on. Actually, why don't we take the break -- afternoon break.

19 **MR. BRIAN GUEST:** Very well.

20 **THE REGISTRAR:** Order, all rise. The Commission will recess for
21 15 minutes.

22 --- Upon recessing at 3:42 p.m.

23 --- Upon resuming at 4:01 p.m.

24 **THE REGISTRAR:** Order, all rise. The hearing has resumed.

25 **--- MR. BRIAN GUEST, Resumed:**

26 **COMMISSIONER HOURIGAN:** All right. Let's continue.

27 **MR. JOHN ADAIR:** Thank you, Mr. Commissioner.

28 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR, (cont'd). :**

1 **MR. JOHN ADAIR:** Mr. Guest, just very high level on your
2 involvement with this project, you had the pre-procurement and procurement role which
3 ended in September of 2013, as we've seen. And then, as I understand it , you're
4 involvement doesn't pick back up again until 2017?

5 **MR. BRIAN GUEST:** That's my recollection.

6 **MR. JOHN ADAIR:** And so that period of construction from 2013
7 through 2017 was not something in which you had any involvement?

8 **MR. BRIAN GUEST:** Well, the only thing I -- I was an ex-official
9 member of the executive steering committee and I attended, but I'm not quibbling with
10 your characterization.

11 **MR. JOHN ADAIR:** Okay, no significant involvement in any way,
12 anyway?

13 **MR. BRIAN GUEST:** Fair enough.

14 **MR. JOHN ADAIR:** And then, my understanding from your formal
15 interview is that you did -- you also did not have any involvement in the process of
16 arriving at and assessing substantial completion, RSA, and handover, is that right?

17 **MR. BRIAN GUEST:** That's correct.

18 **MR. JOHN ADAIR:** No meaningful discussions or analysis, or role,
19 or anything like that?

20 **MR. BRIAN GUEST:** That was done by, as I understand it, a pretty
21 dedicated, confined team, and I was doing Eglinton Crosstown, Finch, and Hurontario
22 for Metrolinx. And it was very engrossing, and I continue to this day to help deliver the
23 Ford Government's very ambitious rollout of subways and Go expansion, so yeah, I was
24 fully -- I was -- I was fully engaged in the Toronto world.

25 **MR. JOHN ADAIR:** Okay. And Mitchell -- I wonder if we might just
26 call up, Mr. Guest, your email to Mr. Chiarelli of October the 16th, 2021.

27 Mr. Commissioner, I'm not sure whether a document ID has been
28 assigned to this yet. It was part various notices but, in any case, we have the

1 document, I know.

2 Great, thank you. So Mr. Guest, I know you're familiar with this
3 email already?

4 **MR. BRIAN GUEST:** Yes.

5 **MR. JOHN ADAIR:** And I'm going to take you through a couple of
6 specific parts but if there's any point at which you need the opportunity to read more of
7 it, please just let me know, okay?

8 **MR. BRIAN GUEST:** Sure.

9 **MR. JOHN ADAIR:** So just the first sentence there after, "Forgive
10 me but I need to send you this note," you say:

11 "You know who you are screwing with, the support for
12 the judicial inquiry rights, someone who has always
13 been your loyal friend and servant." (As read).

14 And the loyal friend and servant you're referring to is yourself, of
15 course?

16 **MR. BRIAN GUEST:** Yes.

17 **MR. JOHN ADAIR:** And the reason that the inquiry would
18 potentially screw you is because it would shine a bright light on your role, including how
19 you came to have these contracts that we've just been discussing?

20 **MR. BRIAN GUEST:** No.

21 **MR. JOHN ADAIR:** Okay. Tell me the reason, then.

22 **MR. BRIAN GUEST:** Because I'm working 12 hours a day on
23 really important projects and having to -- and I'm a private person, and I -- it's very
24 disruptive to be involved in something like this. Remember, I'm talking about a judicial
25 inquiry at the time that's pushed by several councillors who I regard as having been
26 poorly motivated. I also -- you know, poorly motivated in the sense that they were
27 following a line of reasoning that, you know, the Canadian Labour Congress and the
28 NDP have characterized as privatization, when I don't think that's a fair characterization,

1 and also, that yeah, it was going to be a significant distraction from work that I'm very
2 passionate about. And that's what I meant.

3 **MR. JOHN ADAIR:** All right. And you -- just to be very clear, you
4 were not referring in any way to your financial interest in continuing to obtain contracts
5 like the ones we've been discussing here?

6 **MR. BRIAN GUEST:** No.

7 **MR. JOHN ADAIR:** That was not part of the consideration when
8 you said that that judicial inquiry might screw you, correct?

9 **MR. BRIAN GUEST:** No. It was strictly because I'm a private
10 person. I don't relish being in this sort of environment. I was -- I'm a very hard worker
11 at -- on very critical -- like, \$100 billion worth of capital projects in Toronto that is a big
12 leap forward for Toronto that the Ford government is pushing, and I am totally
13 committed to them.

14 So being distracted from that, which is you know, a challenging set
15 of undertakings that I have been, you know, really important part of in terms of --
16 important part of my life, I would say, in terms -- and I would say that the organization,
17 I've been there through three CEOs, three chief capital officers, they manifestly think I'm
18 very helpful in terms of delivering that agenda, and I didn't want to be distracted from it.

19 I also reflected on -- and I just want to say, I love the hell out of Bob
20 Chiarelli. I think he's, you know, a really -- he's always going to have a big soft spot in
21 my heart -- but I don't know if he was reflecting on the fact that when he was Minister of
22 Infrastructure, he strongly encouraged the use of the DBFM and the use of IO, and as I
23 understood it -- I wasn't on the phone, but I understood it, sort of second and third hand,
24 that, you know, he had been a powerful advocate for what we're doing here.

25 I also felt it would be very distracting for City staff to have to do this.
26 Now, I will say, in at least one respect, I was wrong, and that is, the Commission, to
27 what, you know, my casual kind of in and out, seeing -- you are getting into some of the
28 more nitty-gritty issues about the relations between the various Project Co. parts. I

1 didn't -- I was pessimistic, obviously, about that in this email.

2 But it was a private email, it was written quickly. You can tell by the
3 -- you know, typos and stuff in it. I wasn't expecting -- it wasn't like, you know, I wasn't
4 expecting it to land the way it did with Bob, and I regret that it did. And I certainly would
5 not use that kind of language again, and I probably shouldn't at the time.

6 But I am a strong believer in driving forward, using the windshield
7 and not the rear-view mirror, and while I appreciate that you've been very successful, in
8 my mind, of pulling together a lot of the details about what's gone on with the
9 subcontractors and some of the issues structurally within Project Co. -- and I think that's
10 -- the public benefits from that -- and you were obviously interrogating significantly the
11 handover, and there's lessons to be learned there for future projects, I think they --
12 future projects are learning from that, but to the extent that you guys are interrogating
13 that, it's useful.

14 I wasn't really thinking about it that way at the time. I was thinking
15 about it as you know, a guy that I care about, the way he was positioning himself, and
16 the motivations that I thought were behind the push for a JI, which I thought were almost
17 solely motivated by several councillors trying to get at the mayor, who isn't running
18 again, but they didn't know that at the time, and were positioning themselves to
19 potentially run themselves, and I thought that was the context, and I didn't see why Bob
20 was doing what he was doing. But I didn't mean for it to be like -- I didn't mean for it to
21 be something that he took poorly. I -- you know, I really care about his legacy and I will
22 continue to, and I think he's a good man.

23 **MR. JOHN ADAIR:** And let me just unpack a little bit of that, sir.

24 I take it when you wrote this email, you had no experience
25 participating in a judicial inquiry before?

26 **MR. BRIAN GUEST:** That's right.

27 **MR. JOHN ADAIR:** And so you really didn't know how much, if
28 any, of your time would be required to participate in a judicial inquiry?

1 **MR. BRIAN GUEST:** Well, I'm a logical person. I would have
2 understood that it cannot be ---

3 **MR. JOHN ADAIR:** How would you know -- how would you be
4 even able to ballpark how much of your time would be required in October of 2016 --
5 sorry, October 16th of 2021, before the inquiry had even been called? That's through
6 logic, is it?

7 **MR. BRIAN GUEST:** Well, I know -- remember, I'm not talking
8 about this process, I'm talking about a judicial inquiry that was motivated by a couple of
9 councillors, you know, to have something at council, right? And it wasn't hard for me to
10 speculate that I was going to have to spend a bunch of time doing that, and that it was
11 going to be a significant distraction. And frankly, I am over stretched as it is, so any
12 time that was going to take me off my focus was certainly unwelcome.

13 I don't like being in public. I don't like being in the paper. So you
14 know -- and look, I think I would -- I've said in my interview, did I over egg it by using the
15 S-word there? Yeah, I did.

16 **MR. JOHN ADAIR:** All right. And if you look down at the
17 paragraph below the one I've just read, the first few words are, "There's nothing to find
18 there anyway."

19 Do you see that?

20 **MR. BRIAN GUEST:** Indeed.

21 **MR. JOHN ADAIR:** And you, in fairness, sir, would have absolutely
22 no way of knowing that, given that you didn't participate in the major construction
23 portion of the project and had no involvement in trial running or handover, correct?

24 **MR. BRIAN GUEST:** I was speaking there about, you know, the
25 procurement and the issues in respect of the model.

26 **MR. JOHN ADAIR:** Right. But ---

27 **MR. BRIAN GUEST:** Fair enough. Look, you can say that that --
28 the second part of that sentence, which is that it would be backward looking versus

1 forward looking about making the system be what the people of Ottawa deserve, which
2 is a reliable system, was really my sentiment in that sentence.

3 **MR. JOHN ADAIR:** Right. But when you say there's nothing to
4 see here, nothing to find, you were not in a position to know that one way or the other,
5 correct?

6 **MR. BRIAN GUEST:** I don't think there is anything to find. Well,
7 there is going to be things that will be perhaps illustrative to the industry and perhaps
8 illustrative in terms of the history, but in terms of fixing the system and getting it stable
9 and reliable and consistent with what the people of Ottawa should expect, I didn't think
10 that there was much to contribute.

11 **MR. JOHN ADAIR:** So in terms of making sure we don't make the
12 same mistakes again, "we" meaning the public and public entities like the municipal
13 government, there may or may not be something there to find. You didn't know that at
14 the time that you wrote this?

15 **MR. BRIAN GUEST:** Yeah. Again, it was a quick email and it was
16 personal, and I -- you know, I'm not writing an opinion piece in the Ottawa Citizen. I'm
17 just saying that my view is, everyone should be focused on getting this system to be
18 super reliable. It's super critical because it's replacing a high-capacity bus way that the
19 people need, and it being unreliable and even just, like, it being unreliable really has an
20 impact on people's lives.

21 And the focus that everyone, in my esteem, should be having is on
22 what are the root causes, what are we going to do about those, why hasn't that been
23 done so far, given that the model itself should have pushed the Project Co. to rally to
24 put whatever commercial disputes they have on the back burner, fix the system, and
25 then go sort out whatever commercial disputes they have later, once the people of
26 Ottawa are being properly served, and they're getting their annual service payments.

27 And I don't -- I didn't believe -- and I still think you're only going to
28 get partway there because you can get at the subcontracts and the -- and you know,

1 some of the dropdowns and so on, but you know, as per the three main companies of
2 SNC-Lavalin and ACS and EllisDon and how they organized themselves and what
3 issues occurred there, I think it's going to be awfully challenging to get into that, and I
4 think there's a lot there. Look, I've already stipulated that I think more has come out of
5 this already than I would have thought and that I thought when I wrote that line.

6 **MR. JOHN ADAIR:** And you agree with me that outside of this
7 examination, you have a keen interest in best practices for procurement.

8 **MR. BRIAN GUEST:** I do.

9 **MR. JOHN ADAIR:** So wouldn't that mean you would welcome an
10 inquiry, because the whole point of it is to learn what we can do better next time with,
11 among other things, procurement? Wouldn't that be among the best things you could
12 get, because you have a huge amount of analysis, evidence, expert opinion on how to
13 do procurement better, and all you care about is doing procurement better?

14 **MR. BRIAN GUEST:** Yeah, but with respect, it's not like
15 Infrastructure Ontario and Metrolinx and other agencies in Calgary and Gordie Howe
16 Bridge are not aware of the issues that have arisen here. You may shine a new
17 perspective, additional light, on it. I hope you do.

18 **MR. JOHN ADAIR:** Right. And you would welcome that. And the
19 only reason you wouldn't welcome that is if you felt like it might affect your financial
20 interest.

21 **MR. BRIAN GUEST:** No.

22 **MR. JOHN ADAIR:** Okay. I take it, sir, that after the inquiry was
23 called, whether you want to go back to October of 2021 and the date of this email -- you
24 can take the email down. Thanks, Mitchell.

25 Whether you want to go back to the date of the email or November
26 after the inquiry was called, you knew that there would be some questions asked of you
27 about your role and how you came to acquire these contracts.

28 **MR. BRIAN GUEST:** I'm surprised by your focus on it today, for

1 sure. I did not think that ---

2 **MR. JOHN ADAIR:** Let me just clarify, if I can, and I'll give you
3 time to answer the question, as I think I have already. You knew that there would be
4 some questions about that, that some people might or might not take a look at whether
5 your role was appropriate.

6 **MR. BRIAN GUEST:** I don't know that I had any occasion to
7 speculate about that. It's not where my head space was. It was about the motivations
8 of certain councillors, the culture on council, where Bob was positioning himself, how
9 useful I thought the outcome would be. I know for a fact that other agencies in Ontario,
10 including Infrastructure Ontario and Metrolinx, are keenly interested in avoiding the
11 issues and certainly look at what's been learned. I wasn't thinking about it that way, no.

12 **MR. JOHN ADAIR:** All right. You were examined in a formal
13 interview by Commission counsel.

14 **MR. BRIAN GUEST:** I was.

15 **MR. JOHN ADAIR:** And you provided Commission counsel with a
16 copy of your CV as part of that interview.

17 **MR. BRIAN GUEST:** I did.

18 **MR. JOHN ADAIR:** And also later, through your counsel, sent
19 some additional answers to undertakings.

20 **MR. BRIAN GUEST:** I did.

21 **MR. JOHN ADAIR:** And I'm just going to ask if we can call up your
22 CV, which was Exhibit 1 to your interview ---

23 **MR. BRIAN GUEST:** Sure.

24 **MR. JOHN ADAIR:** --- which is TRN175.

25 **--- EXHIBIT No. 178:**

26 TRN00000175 – Brian Guest's Curriculum Vitae

27 **MR. JOHN ADAIR:** And you're going to have to bear with me, Mr.
28 Guest, because I've got to give you a bit of a lead-up to what I want to know about here,

1 but if we can scroll down, please, to the next -- to reference projects. These go in
2 reverse chronological order, so you've got Metrolinx in 2018, and then if we can go to
3 the next page, you've got the Ontario Line in 2018 and the Hurontario in 2017, et cetera.
4 And if we can just scroll down a little bit, I have one page, please. The Confederation
5 Line is the last of them, meaning the earliest chronologically, in 2011. Do you see that?

6 **MR. BRIAN GUEST:** Yes.

7 **MR. JOHN ADAIR:** And then under "Other Experience", it goes the
8 same way. It goes reverse chronological order, and the latest is 2005, right?

9 **MR. BRIAN GUEST:** That's correct.

10 **MR. JOHN ADAIR:** And then if we can go to your transcript for a
11 minute, which is TRN174, Ms. McGrann asked you about what you were doing between
12 2005 and 2010, the period that wasn't described on your resumé. Do you recall being
13 asked about that?

14 **MR. BRIAN GUEST:** Yes.

15 **MR. JOHN ADAIR:** And if we can go to page 7, please, line 9.
16 And then if we can just have from line 9 to the balance of the end of that page on the
17 screen, that would be great. We can probably get it all in.

18 Ms. McGrann asked you -- she says she noticed this gap in your
19 resumé between 2005 and 2010. She says:

20 "What were you working on during that period of
21 time?" (As read)

22 Your answer:

23 "I was working in climate change. So after I left the
24 Prime Minister's Office, I was a big climate change
25 guy, and so I got kind of into activism around that. I
26 also did some private work with environmental
27 companies that are pursuing new technologies that
28 can make a difference in the climate change space.

1 So we kind of went into a climate change zone for a
2 while there, and, you know, not a lot of work that, you
3 know, lends itself to a resumé. It was -- I also took a
4 good break, by the way, because politics is, you
5 know....” (As read)

6 And then Ms. McGrann goes on and asks you about other matters.
7 Do you recall being asked about that and giving those answers?

8 **MR. BRIAN GUEST:** I do, and I think at line 4 -- I don't know why it
9 didn't make it in the transcript, but I said, “you know, difficult”.

10 **MR. JOHN ADAIR:** Yeah. There's a minor correction here and
11 there, and I didn't mean to skate over those.

12 What was not on your resumé, sir, is your work with Plasco from
13 2005 to 2012.

14 **MR. BRIAN GUEST:** That's right. I was ---

15 **MR. JOHN ADAIR:** And that's work that brought ---

16 **MR. BRIAN GUEST:** This resumé ---

17 **MR. JOHN ADAIR:** I'm sorry. Go ahead.

18 **MR. BRIAN GUEST:** This resumé was the most recent and
19 focused on the kind of work I'm doing now, right?

20 **MR. JOHN ADAIR:** Right. And the Plasco work that wasn't on this
21 resumé is the work that brought at least your company into contact with Mr. Watson
22 when he was Minister of Health Promotion.

23 **MR. BRIAN GUEST:** Not my company, no.

24 **MR. JOHN ADAIR:** The company for which you were working.

25 **MR. BRIAN GUEST:** No.

26 **MR. JOHN ADAIR:** Sorry. Plasco got a \$4-million -- we've been
27 over this. Plasco got a \$4-million grant from the ministry from Mr. Watson when he was
28 Minister of Health Promotion, right?

1 **MR. BRIAN GUEST:** So first of all, I believe that Mr. Watson was
2 making that announcement as the regional minister, not because it was his department,
3 because I don't think health promotion ---

4 **MR. JOHN ADAIR:** You're going to get all the time you want to
5 answer this, but we've agreed already that the company for which you were working
6 received \$4 million from the provincial government under an announcement made by
7 Mr. Watson. We've already agreed on that, and all I'm suggesting to you is the
8 company that would lead us to that conclusion is not on your resumé, correct?

9 **MR. BRIAN GUEST:** A client of mine at the time received a grant,
10 yes, and Mr. Watson announced it, yes. I had no contact with Mr. Watson in respect of
11 that whatsoever at all.

12 **MR. JOHN ADAIR:** Right. And where you did have contact with
13 Mr. Watson is working on his campaign in 2010 and then his transition team, correct?

14 **MR. BRIAN GUEST:** I did, yes.

15 **MR. JOHN ADAIR:** And that's not on your resumé either.

16 **MR. BRIAN GUEST:** Well, that was volunteer work.

17 **MR. JOHN ADAIR:** You got paid, I believe, for your work on his
18 transition team.

19 **MR. BRIAN GUEST:** I got paid to write one speech.

20 **MR. JOHN ADAIR:** Right. And whether it was volunteer work or
21 not, you knew that we would be asking questions about your relationships with people
22 on City council, and you knew that we'd be shining a light on the manner in which you
23 got these contracts, and you didn't include your prior work with Mr. Watson on your
24 resumé, correct?

25 **MR. BRIAN GUEST:** I didn't ---

26 **MR. JOHN ADAIR:** You had to know we were going to be asking
27 those questions.

28 **MR. BRIAN GUEST:** No, I didn't. And by the way, this resumé

1 was not purpose built for this Commission. It was built for a totally different purpose,
2 which was bidding work in the field that I'm in now and focused on.

3 **MR. JOHN ADAIR:** And when Ms. McGrann asked you what you
4 were doing between 2005 and 2010, when she asked you that under oath, you did not
5 reference Plasco, you did not reference working for Mr. Watson, and you did not
6 reference some of the work that you did that created relationships with people at the
7 City, correct?

8 **MR. BRIAN GUEST:** I answered her accurately in that I said I was
9 doing environmental work, much of it advocacy work, along with most of the large
10 climate change groups in the country. I was ---

11 **MR. JOHN ADAIR:** Have a look at the top of page 8, lines 2 and 3:
12 "I took a good break, by the way, because politics is,
13 you know...." (As read)

14 That implies you took a break from politics, when in fact you were
15 volunteering on Mr. Watson's campaign.

16 **MR. BRIAN GUEST:** Well, I did take a break from politics.

17 **MR. JOHN ADAIR:** And now let me come to the suggestion and
18 be fair to you. I'm going to suggest to you that the reason you didn't include that stuff
19 on your resumé about your work for Plasco, which had relationships with the
20 government, and the reason you didn't include your work for Mr. Watson, is because
21 you knew we would be looking at your relationships with government and you didn't
22 want it to come out.

23 **MR. BRIAN GUEST:** No.

24 **MR. JOHN ADAIR:** All right. Those are all my questions for you.
25 Thank you, sir.

26 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
27 Mr. Guest, now you'll have questions from a number of lawyers
28 who are acting for participants in the inquiry. The first is the City of Ottawa.

1 **MR. PETER WARDLE:** Thank you. Peter Wardle, last name, w-a-
2 r-d-l-e, for the City of Ottawa.

3 **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

4 **MR. PETER WARDLE:** Mr. Guest, is it correct that you were not
5 asked about your relationship with Chris Swail or Robyn Guest during your formal
6 interview?

7 **MR. BRIAN GUEST:** That's correct.

8 **MR. PETER WARDLE:** And you may or may not know the answer
9 to this but is it also fair that Mayor Watson was never asked about your relationship with
10 Chris Swail or Robyn Guest during his formal interview? Do you know the answer to
11 that question?

12 **MR. BRIAN GUEST:** I don't know the answer. I haven't ---

13 **MR. PETER WARDLE:** And do you -- and do you know whether
14 Chris Swail was asked any of these questions during his formal interview?

15 **MR. BRIAN GUEST:** I do not.

16 **MR. PETER WARDLE:** And do know whether Kent Kirkpatrick was
17 asked any of these questions during his formal interview?

18 **MR. BRIAN GUEST:** I don't.

19 **MR. PETER WARDLE:** And ---

20 **MR. BRIAN GUEST:** I'd read a bit of Mr. Kirkpatrick's. I didn't see
21 it when I read it.

22 **MR. PETER WARDLE:** Would it come as news to you, Mr. Guest,
23 that on June 27th, 2022, I wrote to the Commission in response to some questions that
24 were asked of Mr. Swail and I advised on Mr. Swail's behalf as follows:

25 "We have been advised by Mr. Swail that neither he
26 nor his spouse, Robyn Guest, had any role in
27 connection with the Boxfish procurement. We
28 understand that Mr. Swail advised the Deputy City

1 Manager of his relationships with Robyn Guest and
2 her brother, Brian Guest, upon joining the City of
3 Ottawa from a potential conflict of interest perspective
4 and a formal declaration of conflict of interest was
5 filed by email the Deputy City Manager on January
6 28, 2014, following the City's 2013 update to the
7 Code of Conduct. This declaration including the fact
8 that his spouse, Robyn Guest was City employee and
9 that her brother was Brian Guest. The City has been
10 unable to locate a copy of this email." (As read).

11 Was my letter, Mr. Guest, put to you during your examination by
12 Mr. Adair?

13 **MR. BRIAN GUEST:** No.

14 **MR. PETER WARDLE:** Can we come back, perhaps, to the
15 subject matter of this inquiry, Mr. Guest, which is the trains and the technical
16 circumstances and contributing factors that led to the issues described in the terms of
17 reference?

18 **MR. BRIAN GUEST:** I'd be keen to do that.

19 **MR. PETER WARDLE:** Can we agree, sir, that Mr. Kirkpatrick, in
20 his formal interview, described you as "creative, constructively critical, and a big-picture
21 person"?

22 **MR. BRIAN GUEST:** Yes, I think I remember that.

23 **MR. PETER WARDLE:** And is it fair to say that Nancy Schepers,
24 both in her formal interview and in her evidence before this inquiry, made similar
25 comments?

26 **MR. BRIAN GUEST:** I didn't really spend as much time on Nancy's
27 transcript, but it wouldn't surprise me.

28 **MR. PETER WARDLE:** And is it fair to say as well that the people

1 you interacted with, City staff, at the time -- John Jensen, Kent Kirkpatrick, Nancy
2 Schepers, and others -- all thought your brought value to the project?

3 **MR. BRIAN GUEST:** I would hope so, yes, and I think that is true.
4 I also think that Mr. Pattison at IO believed that to be the case.

5 **MR. PETER WARDLE:** And is it fair to say that the value you
6 brought to the City of Ottawa included the ability to help manage large groups of people
7 engage in a complex undertaking like this project?

8 **MR. BRIAN GUEST:** Yes.

9 **MR. PETER WARDLE:** So, for example, in a meeting, or on a call
10 with 15 or 20 engineers, accountants, consultants, managers, you had expertise and
11 skill in facilitating discussion and help ensure consensus? Is that fair?

12 **MR. BRIAN GUEST:** That's fair. Such meetings do have a
13 tendency, from time to time, to spin and to lose the plot, and I'm helpful in large groups
14 in that respect, for sure.

15 **MR. PETER WARDLE:** And would it be fair to describe your role
16 as a bit of a change agent, somebody who could push back against established ideas
17 and come up with new ideas?

18 **MR. BRIAN GUEST:** That's what I do very well.

19 **MR. PETER WARDLE:** And is that something you did, for
20 example, in connection with the change to the tunnel alignment and the shallowing of
21 the tunnel?

22 **MR. BRIAN GUEST:** It is.

23 **MR. PETER WARDLE:** And was that something that, in your view,
24 has turned out to be beneficial for transit riders in the City of Ottawa?

25 **MR. BRIAN GUEST:** It saved a \$1B and it resulted in a better
26 program, so yes.

27 **MR. PETER WARDLE:** You stated, I believe, in your interview that
28 an affordability cap has been used on other infrastructure projects in the province after

1 this project, is that correct?

2 **MR. BRIAN GUEST:** That's correct.

3 **MR. PETER WARDLE:** How many projects? Can you give us a
4 rough idea?

5 **MR. BRIAN GUEST:** Well, I believe Waterloo used a gated cap. I
6 believe Eglinton used a gated cap. I believe Finch used a gated cap. I believe
7 Hurontario but I'm little less -- I'm not sure about the gating part on that one. But that's
8 my understanding, and I think that's all well public.

9 **MR. PETER WARDLE:** And, you know, I don't to go into this in
10 detail because we're not here to discuss Metrolinx projects, but you've built a very
11 successful career acting as a consultant to Metrolinx doing the same kind of work you
12 did for the City of Ottawa. Is that correct?

13 **MR. BRIAN GUEST:** On other -- and other clients. We have, you
14 know, a staff of 30, largely engineers that work on multiple projects including the
15 Metrolinx projects and overall scope, so I think we're making a big contribution to
16 infrastructure in Ontario and -- and I'm really proud of it.

17 **MR. PETER WARDLE:** All right, thank you. Those are all my
18 question.

19 **COMMISSIONER HOURIGAN:** All right. Thank, Mr. Wardle.
20 Next up is RTG.

21 **MS. LINDA ROTHSTEIN:** Thank you, Commissioner.

22 **--- CROSS-EXAMINATION BY MS. LINDA ROTHSTEIN:**

23 **MS. LINDA ROTHSTEIN:** Hello, Mr. Guest. My name is Linda
24 Rothstein, r-o-t-h-s-t-e-i-n, and I am on for the RTG parties.

25 **MR. BRIAN GUEST:** Hello.

26 **MS. LINDA ROTHSTEIN:** Hello. So just picking up on what you
27 were telling, Mr. Wardle, fair to say, sir, that, over the years, you've obtained extensive
28 experience assisting various contracting authorities and administering project

1 agreements in P3 situations?

2 **MR. BRIAN GUEST:** Yeah, every -- every -- pretty much every
3 project but Waterloo in Ontario I've been involved in in a significant fashion.

4 **MS. LINDA ROTHSTEIN:** And you've become, as a result, sir,
5 somewhat of an opinion leader in terms of what best practices should be in P3 projects?

6 **MR. BRIAN GUEST:** I don't know if I'm an opinion leader. I'm --
7 I'm ---

8 **MS. LINDA ROTHSTEIN:** A respected -- a respected opinion.
9 Can you go with that?

10 **MR. BRIAN GUEST:** I like to think so.

11 **MS. LINDA ROTHSTEIN:** And so, sir, I just want to talk to you a
12 little bit about your approach and philosophy to P3 relationships ---

13 **MR. BRIAN GUEST:** Sure.

14 **MS. LINDA ROTHSTEIN:** --- and what you think the right lessons
15 are about those. You've touched on it already. You're obviously aware that this project
16 agreement call for a 30-year term in its project agreement, right?

17 **MR. BRIAN GUEST:** I am.

18 **MS. LINDA ROTHSTEIN:** And that that's, in fact, one, not all, but
19 one of the things that distinguishes a P3 arrangement from lots of other commercial
20 contract situations, right? It's a very long-term deal?

21 **MR. BRIAN GUEST:** It's a term that's scaled to be long enough to
22 ensure that the contractor has a strong interest in making sure that the infrastructure
23 that they create, which they have great latitude on because you're doing an output
24 specification, and the constructor and the maintainer are meant to be working with the
25 designer to make sure that you get all that right so that the balance is maintained over
26 the period of the entire responsibility, not just the construction, but the good operation of
27 it, yeah.

28 **MS. LINDA ROTHSTEIN:** The maintenance, the operation, all of it.

1 So it's complicated and it's long-term. And I what I want to suggest to you, sir, is that for
2 the parties involved -- for the P3 parties, there is a greater emphasis than normal in their
3 being able to work constructively, fair?

4 **MR. BRIAN GUEST:** They should be working constructively.

5 **MS. LINDA ROTHSTEIN:** And to do that, I'm going to suggest to
6 you, sir -- and I think you agreed with Mr. Adair about that -- it requires that they give
7 priority to working collaboratively, working cooperatively, and actually compromising.
8 Do you agree with that as well?

9 **MR. BRIAN GUEST:** Yes, within the bounds of the scaffolding, the
10 framework of the -- of the foundational contract, and within the bounds of good
11 administration in respect of taxpayers' money, which must be husbanded and used
12 appropriately. But it is also important that the contracting authority, where a
13 supervening event has occurred, where there is a construction claim has occurred, and
14 where the causality is linked to an event that is covered by a supervening event, that's
15 point one.

16 And then point two would be, have the impacts been shown in
17 terms of delay, need to accelerate costs ---

18 **MS. LINDA ROTHSTEIN:** I'm not that far along. It is a pretty
19 simple proposition and it is meant only as a general principle, sir.

20 **MR. BRIAN GUEST:** Yeah, sure.

21 **MS. LINDA ROTHSTEIN:** I am not tying you to any specific facts.
22 As a matter of general principle, are we agreed that the parties including -- including,
23 you know, the City in Ottawa in this case, has to strive for cooperation and collaboration
24 and avoid being adversarial and litigious? Do you agree with that as a general
25 proposition, sir?

26 **MR. BRIAN GUEST:** You are not adversarial for the sake of it, but
27 at some points at which there is tension, where the parties are not aligned, you know,
28 cause adverse interests with each other, which you must deal with reasonably and

1 respectfully. So, those kinds of things do occur, and that's why I went to the
2 supervening events and what it means to make a claim.

3 **MS. LINDA ROTHSTEIN:** Okay. I understand all of that. Are you
4 prepared to agree with the general proposition, as indeed we heard from Mr. Morgan
5 this morning, I don't know if you heard him or not, that you can't dispute everything; do
6 you agree with that?

7 **MR. BRIAN GUEST:** You can't dispute everything. You shouldn't.

8 **MS. LINDA ROTHSTEIN:** You shouldn't. And you can't stick to
9 the letter of the contract. Do you agree with that?

10 **MR. BRIAN GUEST:** Where it is good for everyone, and especially
11 where it is good for the public to get the outcome, you should not treat the contract as a
12 ball and chain. You should be prepared to work constructively with one another to get
13 the best project outcome.

14 **MS. LINDA ROTHSTEIN:** Thank you. And you certainly shouldn't
15 bludgeon your partners in a P3; you would agree with that statement?

16 **MR. BRIAN GUEST:** I don't know in which context that term was
17 used, but I would say if you are being litigious about everything, you are not in the right
18 space.

19 **MS. LINDA ROTHSTEIN:** Can you agree with the very simple,
20 quite dramatic proposition that above all, you should not bludgeon your partners in a P3,
21 if you can possibly avoid it?

22 **MR. BRIAN GUEST:** I don't know what ---

23 **MS. LINDA ROTHSTEIN:** It's easy.

24 **MR. BRIAN GUEST:** I don't like the word, for sure. Yeah, I will ---

25 **MS. LINDA ROTHSTEIN:** That's easy, isn't it?

26 **MR. BRIAN GUEST:** I will agree with that, yeah. I just don't know
27 the context in which it was used, Ms. Rothstein.

28 **MS. LINDA ROTHSTEIN:** And it will have the effect of souring the

1 relationship?

2 **MR. BRIAN GUEST:** What will?

3 **MS. LINDA ROTHSTEIN:** Taking an unduly adversarial position
4 with the other parties in the relationship.

5 **MR. BRIAN GUEST:** Yeah, if you are taking an unduly,
6 unreasonably -- you know, you shouldn't do that because ---

7 **MS. LINDA ROTHSTEIN:** You shouldn't do that.

8 **MR. BRIAN GUEST:** --- that can cause strain that is best avoided
9 and should be avoided.

10 **MS. LINDA ROTHSTEIN:** And, indeed, it can have some
11 unintended consequences beyond the specific relationship that we are talking about.
12 Do you agree with Mr. Morgan, he told Commission counsel this morning that it may
13 make it difficult to get bidders on new future P3 projects if that is the attitude of a
14 particular contracting authority? Do you agree with that?

15 **MR. BRIAN GUEST:** The market -- one always has to be
16 cognizant of the market and how one is behaving in terms of future projects, because I
17 believe it does cause, you know, the large construction firms to form worries or
18 judgments about how they might end up in the administration of a future contract that
19 they are going to sign up for.

20 **MS. LINDA ROTHSTEIN:** I take that as agreement with the
21 proposition that I put to you. Generally speaking, it could have a deleterious effect on
22 the willingness of sophisticated contracting partners to bid in future P3s, you'll agree
23 with that, sir?

24 **MR. BRIAN GUEST:** Yes.

25 **MS. LINDA ROTHSTEIN:** Thank you. So, I am trying to square all
26 of that, where I think you and I largely agree, with some of the language that you used
27 in your email to Mr. Chiarelli that Mr. Adair took you to that he didn't -- he took you to
28 the email, but not this specific language. So, can we pull up, and I believe there is a

1 document number now, COMH 0000028?

2 **--- EXHIBIT No. 177:**

3 COMH000028 – Email from Brian Guest to Bob Chiarelli 16
4 October 2021

5 **MS. LINDA ROTHSTEIN:** And if you would go down to the – further
6 down on that page, please, to the last two paragraphs, and you will see, sir, that you
7 write, in the penultimate paragraph on that page,

8 “The LRT problems are a failure of the private sector
9 partner to properly design and construct and maintain
10 the system, pure and simple. They need to be held to
11 account, and will be under the contract. Now they are
12 exposed to 100 million Letter of Credit draw and a
13 billion in parental guarantees. It is really shitty that this
14 system has been unstable and the consortium has
15 failed to respond properly. They should lose their shirt
16 and we should default them, sue them, and spend what
17 it takes to fix what is wrong on their dime. This will be
18 fixed, but the answer is to use the P3 the way it was
19 designed to be used.”

20 So, let me start with this, Mr. Guest. Is this another example of
21 inflammatory language that doesn’t actually reflect your honest views about what
22 happened here?

23 **MR. BRIAN GUEST:** This was, again, a private email from me to a
24 friend, and was it more inflammatory than I would use in a different context? Yes. But it
25 reflected my view that Project Co. in this case has been tragically remiss. Years later
26 we are still suffering problems, and they appear, in my view, to be prioritizing their own
27 commercial interests vis-à-vis each other, vis-à-vis EJV, the engineering joint venture,
28 vis-à-vis Alstom, vis-à-vis Alstom as the construction -- as the provider of the vehicle to

1 the construction entity, they are responsible for that vehicle and all of its problems. So,
2 you can't just lay it off on Alstom. And in respect of the maintainer and any areas the
3 maintainer has dropped those down.

4 To me, my perspective on what's happened in Ottawa is that RTG's
5 response, given the really, really large reliability problems for a critical system, has been
6 shameful. And so, I believe ---

7 **MS LINDA ROTHSTEIN:** Mr. Guest, thank you for that.

8 **MR. BRIAN GUEST:** Yes.

9 **MS LINDA ROTHSTEIN:** But you have gone well beyond what my
10 question was. So, I take it, sir, that your advice to the City of Ottawa has aligned, in
11 general, with the position that you have set out in these two paragraphs, do I have that
12 right?

13 **MR. BRIAN GUEST:** No, I don't think so. I think I have been
14 tempered, and to the extent that I have been involved in any conversations in respect of
15 how to handle this situation, really, I have been focused on the construction claims,
16 which I do not believe have been demonstrated with appropriate foundation that would
17 allow a public government to make a payment, but that's aside from the point. The
18 main point is the system is not reliable years later and it is -- I have no explanation for
19 why RTG has not really focused on that with real intensity to get the people what they
20 deserve and then go litigate with each other about why it happened and whatever, go fill
21 your boots.

22 **MS LINDA ROTHSTEIN:** And, sir, you say all of that, having told
23 the Commission repeatedly today that your involvement since the procurement has
24 been extremely limited, so limited that you can't even tell Mr. Adair today how much you
25 billed the City of Ottawa in the last number of years; isn't that so, sir?

26 **MR. BRIAN GUEST:** It's been limited, but I am not an unintelligent
27 observer of ---

28 **MS LINDA ROTHSTEIN:** I see.

1 **MR. BRIAN GUEST:** --- what's gone on. And I also have lots of
2 contact with your clients in other contexts and I believe that what I have said is probably
3 as close a diagnosis for why they haven't behaved the way the model would have
4 expected as one can get.

5 **MS LINDA ROTHSTEIN:** Let me just understand, sir, what you just
6 said, because that is interesting to me. You are judging what happened in the City of
7 Ottawa on the basis of what you say are interactions with my clients in other contexts?
8 Did I get your evidence correct?

9 **MR. BRIAN GUEST:** I am informed by my experience ---

10 **MS LINDA ROTHSTEIN:** Thank you, sir.

11 **MR. BRIAN GUEST:** --- and I understand the way the model is
12 meant to work and I was involved in the claims part of Ottawa. And so, that is what I
13 am ---

14 **MS. LINDA ROTHSTEIN:** So let's call a spade a spade, Mr.
15 Guest. You have in fact encouraged the City of Ottawa to take an aggressive approach
16 to the administration of the project agreement for the reasons that you've just set out in
17 great detail to us, right?

18 **MR. BRIAN GUEST:** No, I have not.

19 **MS. LINDA ROTHSTEIN:** And sir, you have suggested to them
20 that that approach be quite rigid at times, have you not?

21 **MR. BRIAN GUEST:** In respect of making claims payments
22 against unsupported construction claims, I have advised that appropriate substantiation
23 needs to be in place and appropriate evidence of causality needs to be in place, and
24 that's the only way one could hold one's head up in front an auditor general and say, "I
25 made a very large payment."

26 In that respect, I don't describe that as rigid. I think you need to be
27 reasonable. But in the case of your clients in Ottawa, very little was proffered, and there
28 was no -- we were very much in a "help us help you; show us" -- that never happened.

1 That never happened, so in that respect ---

2 **MS. LINDA ROTHSTEIN:** And sir, you have been encouraging the
3 City to pursue litigation against RTG seeking a declaration that the City is entitled to
4 declare it in default. Isn't that so?

5 **MR. BRIAN GUEST:** I don't know what you mean.

6 **MS. LINDA ROTHSTEIN:** Okay. You've not been involved in that?

7 **MR. BRIAN GUEST:** To the extent I have been, it would have
8 been in any meeting that would have had ---

9 **MS. LINDA ROTHSTEIN:** Lawyers involved.

10 **MR. BRIAN GUEST:** --- lawyers at the table, and the advice that
11 would have been coming forward ---

12 **MS. LINDA ROTHSTEIN:** We don't want to hear about advice
13 from lawyers, sir. That wasn't the point of my question, so if that's the answer ---

14 **MR. BRIAN GUEST:** That's not my role. To encourage them or
15 discourage them from doing that is not my role. I was in and out, so I don't think that's a
16 fair characterization.

17 **MS. LINDA ROTHSTEIN:** Okay. But sir, if the Commissioner is
18 ultimately to find that the City has adopted an unduly aggressive or rigid approach to the
19 administration of this project agreement, you would say that is consistent with the
20 advice that you've given to play hardball at this point.

21 **MR. BRIAN GUEST:** No. I gave advice consistent with how I
22 answered you at the beginning of this little run, which is one needs to try to make things
23 work. One needs to be reasonable, but one needs to be at least principled before
24 making large construction payments. I think it is very disruptive to the city and very
25 troubling that we continue to have such serious issues this far in, and I have my own
26 feelings about why that's happening. I haven't been a major player in determining what
27 the City's strategy is in respect of how to get RTG to perform when it appears resolutely
28 unwilling to do so.

1 **MS. LINDA ROTHSTEIN:** Sir, just so we're clear, have you
2 advised the City of Ottawa, as you told Mr. Chiarelli you believed, that we should default
3 them, sue them, and spend what it takes to fix what is wrong on their dime? Effectively,
4 has that been your advice or not, sir?

5 **MR. BRIAN GUEST:** I have never given advice like that to the
6 City. I believe that if RTG wants to take five years to get the system into a position
7 where it performs, they're leaving the City with scant alternatives. It's a long time ---

8 **COMMISSIONER HOURIGAN:** Mr. Guest, that was a very specific
9 question. I think you've answered it, so ---

10 **MR. BRIAN GUEST:** Okay. My apologies.

11 **COMMISSIONER HOURIGAN:** --- let's move on.

12 **MS. LINDA ROTHSTEIN:** And those are my questions. Thank you
13 very much, Commissioner.

14 **COMMISSIONER HOURIGAN:** All right. Thank you, Ms.
15 Rothstein.

16 We'll move on to Infrastructure Ontario.

17 **MS. JULIE PARLA:** Good afternoon. Julie Parla, last name P-A-
18 R-L-A. We don't have any questions for this witness.

19 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
20 Next is STV.

21 **MS. EILEEN CHURCH CARSON:** Hello. Eileen Church Carson
22 for STV Incorporated. We have no questions for this witness.

23 **COMMISSIONER HOURIGAN:** All right. Thank you.
24 Province of Ontario.

25 **MS. HEATHER MACKAY:** Good afternoon, Commissioner.
26 Heather Mackay, M-A-C-K-A-Y for the province. We have no questions for this witness.

27 **COMMISSIONER HOURIGAN:** Thank you.

28 Now, Mr. Guest, the last counsel is for your firm, Boxfish, so he

1 may have some questions for you. Stand by.

2 **--- CROSS-EXAMINATION BY MR. JOHN MATHER:**

3 **MR. JOHN MATHER:** Good afternoon. John Mather, M-A-T-H-E-
4 R, for Boxfish and Mr. Guest.

5 Mr. Guest, I'll be brief. Mr. Adair asked you questions about two
6 emails that you had never sent or received, and I'm referring to an email sent by Mr.
7 Tralanopoulos and an email exchange between Mr. Farrell and Mr. Tapas. Do you
8 know what I'm referring to?

9 **MR. BRIAN GUEST:** I just saw them, yeah.

10 **MR. JOHN MATHER:** And are you aware that Commission
11 counsel provided notice to us, your counsel, that it may ask you questions about these
12 documents for the first time this morning?

13 **MR. BRIAN GUEST:** Yes.

14 **MR. JOHN MATHER:** And of the massive document production
15 that the Commission has received, the more than 80 interviews it's conducted, and the
16 testimony to date, are you aware of any other instances when anyone at the City, IO, or
17 any other City consultant expressed anything resembling concern about your
18 involvement in this project?

19 **MR. BRIAN GUEST:** I'm not aware of any of that sort of gossip,
20 no.

21 **MR. JOHN MATHER:** Those are my questions. Thank you.

22 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
23 Any re-examination?

24 **MR. JOHN ADAIR:** No. Thank you, Mr. Commissioner.

25 **COMMISSIONER HOURIGAN:** Mr. Guest, I want to thank you for
26 testifying today. It was very valuable for the Commission and we appreciate your time.
27 You're excused.

28 We're down until tomorrow at nine o'clock. Thank you.

1 **MR. BRIAN GUEST:** Thank you.

2 **THE REIGSTRAR:** Order. All rise. The hearing is now adjourned
3 for the day and will resume tomorrow at 9:00 a.m.

4 --- Upon adjourning at 4:51 p.m.

5

6

C E R T I F I C A T I O N

7

8 I, Mathieu Bastien-Marcil, a certified court reporter, hereby certify the foregoing pages to
9 be an accurate transcription of my notes/records to the best of my skill and ability, and I
10 so swear.

11

12 Je, Mathieu Bastien-Marcil, un sténographe officiel, certifie que les pages ci-hautes sont
13 une transcription conforme de mes notes/enregistrements au meilleur de mes
14 capacités, et je le jure.

15

16

A handwritten signature in black ink, appearing to read 'Mathieu Bastien-Marcil', is written over a horizontal line.

17 Mathieu Bastien-Marcil

18

19

20

21