



Public Hearing

Audience publique

Commissioner / Commissaire

The Honourable / L'honorable
C. William Hourigan

VOLUME 5

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

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100, Thomas More Private
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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 Vrantsidis
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

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Ottawa, Ontario

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--- Upon commencing on Friday, June 17, 2022 at 9:00 a.m.

COMMISSIONER HOURIGAN: Good morning. Our first witness is Antonio Estrada from RTG. Is the witness here? There he is.

MR. ANTONIO ESTRADA: Yes, I am.

COMMISSIONER HOURIGAN: Good morning, Mr. Estrada. You'll have a choice now. You can swear an oath to tell the truth or you can affirm that you tell the truth. There's no difference from our perspective. It's up to you. Which would you prefer?

MR. ANTONIO ESTRADA: I would prefer the first.

COMMISSIONER HOURIGAN: Okay, go ahead.

MR. ANTONIO ESTRADA: I swear to tell the truth.

--- MR. ANTONIO ESTRADA, Sworn:

COMMISSIONER HOURIGAN: Very good. Thank you, Mr. Registrar.

Ms. Mainville has some questions for you, sir, for Commission counsel.

Go ahead.

MS. CHRISTINE MAINVILLE: Thank you, Mr. Commissioner.

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

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

MR. ANTONIO ESTRADA: Good morning.

MS. CHRISTINE MAINVILLE: So we'll begin first with establishing your role on Ottawa's LRT project. You were RTG's first CEO, correct?

MR. ANTONIO ESTRADA: Yes.

MS. CHRISTINE MAINVILLE: And so you were CEO from March 2013 to March 2018?

MR. ANTONIO ESTRADA: Yes, to -- yes, about that, yeah.

1 **MS. CHRISTINE MAINVILLE:** Okay. So you came in right after
2 contract award. You were not involved in the procurement, correct?

3 **MR. ANTONIO ESTRADA:** Yes, correct.

4 **MS. CHRISTINE MAINVILLE:** Okay. And you worked for ACS,
5 one of the partners in the RTG consortium?

6 **MR. ANTONIO ESTRADA:** Yes.

7 **MS. CHRISTINE MAINVILLE:** And am I right that you were
8 interviewed for this role and your selection was approved by the City?

9 **MR. ANTONIO ESTRADA:** Yes, correct.

10 **MS. CHRISTINE MAINVILLE:** And so, to be clear, you were
11 interviewed by the City, by Mr. Gary Craig?

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MS. CHRISTINE MAINVILLE:** Okay. And that's because the City
14 has to approve key people on the project pursuant to the project agreement, correct?

15 **MR. ANTONIO ESTRADA:** Yes.

16 **MS. CHRISTINE MAINVILLE:** And the City can have them
17 removed?

18 **MR. ANTONIO ESTRADA:** Well, the City can request removal of
19 any member of the consortium of joint venture if they believe that they didn't perform.

20 **MS. CHRISTINE MAINVILLE:** Right.

21 **MR. ANTONIO ESTRADA:** So this -- this was, I think, part of the
22 contract. It was not -- it was not, I would say -- say for one -- so the City has to support,
23 of course, the position that this -- any person who was not performing and was -- has to
24 leave the project.

25 **MS. CHRISTINE MAINVILLE:** Right, it has to be justified. It can't
26 be done otherwise.

27 **MR. ANTONIO ESTRADA:** Yes.

28 **MS. CHRISTINE MAINVILLE:** Okay. And so the City, for instance,

1 has to also approve the project directors for OLRTC and the General Manager of RTM?

2 **MR. ANTONIO ESTRADA:** Yes, I -- I believe so, yes.

3 **MS. CHRISTINE MAINVILLE:** Okay. Does that -- do you know
4 whether that means they would have been interviewed as well every time they
5 changed?

6 **MR. ANTONIO ESTRADA:** Yes, unless -- unless they were the
7 same that were proposes -- proposed in the proposal.

8 **MS. CHRISTINE MAINVILLE:** Okay.

9 **MR. ANTONIO ESTRADA:** If there was a change in any key
10 person, the City has the right to interview them, has the right to disapprove or approve.

11 **MS. CHRISTINE MAINVILLE:** Okay, got it. Now, your experience
12 is not in rail, correct?

13 **MR. ANTONIO ESTRADA:** I have some experience in rail on the
14 construction side, but it was not very relevant. My -- my strong experience is in P3
15 contracts.

16 **MS. CHRISTINE MAINVILLE:** Right, so your rail experience is
17 more like construction -- infrastructure construction as opposed to the transit system,
18 correct?

19 **MR. ANTONIO ESTRADA:** Exactly, yes.

20 **MS. CHRISTINE MAINVILLE:** Yes. And you -- I understand from
21 our earlier interview that you believed the -- or you understood that the City valued your
22 experience managing P3 contracts more particularly?

23 **MR. ANTONIO ESTRADA:** Yes, my position was not a technical
24 position. It was more a management position.

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

26 **MR. ANTONIO ESTRADA:** So the city valued my experience in P3
27 contracts, I believe.

28 **MS. CHRISTINE MAINVILLE:** Okay. And can I just understand

1 what it is a about a public-private partnership that someone requires experience in
2 managing that type of contract? Why is it -- what's different about managing --
3 overseeing that type of contract than, for instance a Design Build?

4 **MR. ANTONIO ESTRADA:** So there's a big difference because in
5 this contract there are three parties, not two parties. They are the owner, the City.
6 There's the consortium company. And then there's the lenders, right. The lenders has
7 a -- a -- a -- so the -- the three contracts, or the -- are very, very linked. So there are
8 covenants in the financing documents that has similar covenants in the agreement and
9 covenants -- and the same for the construction contract that we have with the
10 constructor. So it's a different contractor frame

11 **MS. CHRISTINE MAINVILLE:** Right. So you're coordinating
12 different aspects of the project, including the financing.

13 **MR. ANTONIO ESTRADA:** Yeah.

14 **MS. CHRISTINE MAINVILLE:** But does that mean any kind of
15 difference in terms of approach taken?

16 **MR. ANTONIO ESRADA:** In terms of, I would say, supervising the
17 construction, it's not very different. The only difference is that, at the end, there are --
18 the City's risk -- sorry, the maintenance is on the private partner's risk. So there are
19 things that has on a impact on the maintenance that, at the end, will be supported by
20 the private partner, not by the owner.

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

22 **MR. ANTONIO ESTRADA:** In that case, the -- in the case of
23 Ottawa, of course, the City was the operator, so the City was saying the risk of the
24 operating system with the private partner, because the private partner was in charge of
25 the maintenance but the City was in charge of the operation.

26 **MS. CHRISTINE MAINVILLE:** Right. And I'll come back to this,
27 but -- so does RTG have any role in integrating the operations part of it -- part of the
28 project with the rest of the project?

1 **MR. ANTONIO ESTRADA:** So RTG was the consortium company,
2 and the consortium company has a Design Build contract with the constructor, with
3 OLRTC. So this Design Build contract was approved by the City and by the lenders,
4 right, before the -- before signing the contract with the City. And in this contract, all the
5 technical conditions were dropped down from the Project Co. -- Project Co. contract to
6 the construction contract.

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

8 **MR. ANTONIO ESTRADA:** So the constructor was responsible for
9 building the infrastructure, providing the rolling stock, and integrating the systems
10 according to the technical provisions of the Project Co. agreement.

11 **MS. CHRISTINE MAINVILLE:** And that would include coordinating
12 with the operator as part of the ---

13 **MR. ANTONIO ESTRADA:** Yes, that would include coordinating
14 with the operator.

15 **MS. CHRISTINE MAINVILLE:** Okay. Now, is it also important,
16 from your perspective, to have experience working on complex projects like this one ---

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. CHRISTINE MAINVILLE:** --- to be in your position, yes?

19 **MR. ANTONIO ESTRADA:** Yes.

20 **MS. CHRISTINE MAINVILLE:** Do you know whether any of your
21 counterparts at the City had this kind of experience?

22 **MR. ANTONIO ESTRADA:** Well, I think there was -- what I heard
23 when I was in -- at the beginning of the project is that this -- that the LRT was the
24 biggest project in Ottawa since the Rideau Canal, right? So I don't think the City and
25 the City team has experience in big projects, and I'm sure that this was the first P-3 that
26 they were dealing with.

27 **MS. CHRISTINE MAINVILLE:** Okay. And did anyone else on
28 RTG's team have rail experience?

1 **MR. ANTONIO ESTRADA:** Yes, I think so. In the constructor,
2 what is the -- what really, the responsible for the construction on the infrastructure, there
3 were people with rail experience, of course.

4 **MS. CHRISTINE MAINVILLE:** Right. So to be clear, you mean
5 with OLRTC, they had people with rail experience?

6 **MR. ANTONIO ESTRADA:** Yes.

7 **MS. CHRISTINE MAINVILLE:** But not so much with -- at RTG's
8 level, correct?

9 **MR. ANTONIO ESTRADA:** Not at the construction level, but yeah.

10 **MS. CHRISTINE MAINVILLE:** Okay, thank you.

11 Would RTG have any say in who OLRTC or RTM's senior officials
12 are, or who is on the executives or the boards for the project?

13 **MR. ANTONIO ESTRADA:** No.

14 **MS. CHRISTINE MAINVILLE:** Okay. Now, you agree with me that
15 there was no early focus on systems integration, correct?

16 **MR. ANTONIO ESTRADA:** Well, I don't agree with that. I ---

17 **MS. CHRISTINE MAINVILLE:** Do you -- yeah, go ahead.

18 **MR. ANTONIO ESTRADA:** So I think that the main reason they
19 were identified at the beginning of the project were mainly three. So the tunnel, it was
20 really one of the big issues in the concept of the big risks; the train, the vehicle, because
21 there was a train, was the first time that this train was supposed to be fabricated in
22 North America, so this train was a European train with different features, and to comply
23 with the Canadian content, the train must be fabricated in Canada for the first time. So
24 this was another risk.

25 And the first -- and afterwards, there was -- finally, the last risk that
26 was -- integration and testing, commissioning and integration testing.

27 And this is a common risk in all transit systems. This was nothing
28 specific in this project, other than the train was a new train fabricated for the first time in

1 Canada.

2 **MS. CHRISTINE MAINVILLE:** So that may be the case, those
3 were the three big risks, but do you recall indicating in your evidence earlier to the
4 Commission that during the first three years on the project, the focus was on
5 construction, not overall systems integration?

6 **MR. ANTONIO ESTRADA:** Yes, it is true.

7 **MS. CHRISTINE MAINVILLE:** That's true?

8 **MR. ANTONIO ESTRADA:** For the first three years, the focus was
9 the widening of the 417 was key ---

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

11 **MR. ANTONIO ESTRADA:** --- and the excavation of the tunnel.

12 **MS. CHRISTINE MAINVILLE:** Excavation of the tunnel, right.

13 So you had indicated that that was RTG's focus, the construction,
14 and you believed that it was also OLRTC's main focus?

15 **MR. ANTONIO ESTRADA:** Just at that time.

16 **MS. CHRISTINE MAINVILLE:** At that time, right.

17 And what role did RTG have in the overall integration of the various
18 systems and entities? So you did indicate that, of course, this was downloaded, for lack
19 of a better word, but to -- or flow down to OLRTC, the role of systems integrator, but as
20 it relates to integrating construction, maintenance, the -- and even the operations piece,
21 does RTG have any role in that overall integration?

22 **MR. ANTONIO ESTRADA:** Yes. We have a coordinating -- a
23 coordination role between the RTM, with the maintenance company, and RTG during
24 the construction phase. So RTM was reviewing and -- the design and the construction
25 to ensure that there will be no issues at the maintenance phase, and we were
26 coordinating these efforts with RTM and OLRTC.

27 **MS. CHRISTINE MAINVILLE:** Okay. But again, as we discussed
28 earlier, in terms of coordinating with the operator, would that have fallen to OLRTC,

1 more specifically?

2 **MR. ANTONIO ESTRADA:** Coordinating with OC Transpo, with
3 the operator?

4 **MS. CHRISTINE MAINVILLE:** Yes.

5 **MR. ANTONIO ESTRADA:** With -- for both RTM and OLRTC.
6 OLRTC has to do the -- I will say the training -- are the trainers for OC Transpo, but in
7 terms of maintenance, this coordination was more RTM ---

8 **MS. CHRISTINE MAINVILLE:** Okay, so not RTG?

9 **MR. ANTONIO ESTRADA:** Not RTG.

10 **MS. CHRISTINE MAINVILLE:** Okay. And do you agree that RTG
11 had an oversight role as it relates to systems integration?

12 **MR. ANTONIO ESTRADA:** No.

13 **MS. CHRISTINE MAINVILLE:** Okay.

14 **MR. ANTONIO ESTRADA:** I don't agree with that.

15 **MS. CHRISTINE MAINVILLE:** Let me take you just to minutes,
16 board meeting minutes at Document number COM0002117.

17 **-- EXHIBIT No. 060:**

18 COM0002117 – Meetings Minutes – Rideau Transit General
19 Partnership Regular Meeting No. 23 (#23) of the Board 27
20 June 2017

21 **MS. CHRISTINE MAINVILLE:** You'll see it shortly, Mr. Estrada, on
22 the screen. And if we could go to page 3? Keep going to 3.555 or sorry, 55. Yes, right
23 here.

24 So first of all, in terms of how we read these meeting minutes, Mr.
25 Estrada, when it says "AE", those are your initials, right, Antonio Estrada?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. CHRISTINE MAINVILLE:** Okay. So this is you speaking at
28 Item 355. Do you see there, it says:

1 "RTG intends to use services of a systems integration
2 consultant to assist in assessment of the OLRTC
3 plans, costing the -- of unused budgeted contingency
4 and consulting costs. RTG's responsibility for
5 systems integration is an oversight role, not unlike
6 that performed in civil works. RTG will try to add
7 necessary expertise to complement existing staff in
8 order to ensure overall project oversight is achieved."

9 (As read)

10 Did you see that?

11 **MR. ANTONIO ESTRADA:** Yes.

12 **MS. CHRISTINE MAINVILLE:** So do you agree with me there's
13 some oversight role?

14 **MR. ANTONIO ESTRADA:** Okay. So this oversight to inform the
15 board, yes. So the problem that we had with -- in that time with systems integration is
16 that we had very little information from the constructor. We were unable to inform the
17 board about risk and focus any problems or any issues that we may find in the systems
18 integration. We didn't really have a very clear idea of the status of the systems
19 integration at that time. So we decided to hire a consultant to really assess what is --
20 what was the status of the systems integration in the project and to assess the
21 possibility of delays or issues.

22 But I would say it was more an oversight for the board, RTG board,
23 that an oversight, assuming -- responsibility was the systems integration.

24 **MS. CHRISTINE MAINVILLE:** I see. So right. So you're saying
25 it's not that it's direct oversight of systems integration, it's oversight of the status of the
26 project, the flow, and risks to the schedule?

27 **MR. ANTONIO ESTRADA:** Yes.

28 **MS. CHRISTINE MAINVILLE:** And that's why you needed to

1 assess what was happening with systems integration because you were not getting
2 clear information from the constructor, correct?

3 **MR. ANTONIO ESTRADA:** Exactly.

4 **MS. CHRISTINE MAINVILLE:** Okay. And you said -- I just want to
5 be sure you said you were receiving varying information from the constructor?

6 **MR. ANTONIO ESTRADA:** We were receiving very little
7 information and we were really -- we needed -- we felt at the time that we needed some
8 independent assistance and what was going -- how the system integration was being
9 developed and how was the status of the system integration.

10 **MS. CHRISTINE MAINVILLE:** Right. There were concerns at that
11 point, correct, which prompted this review by SENER (phonetic)?

12 **MR. ANTONIO ESTRADA:** Yes. There were concerns, yes.

13 **MS. CHRISTINE MAINVILLE:** And just to be clear, I don't think we
14 went to the date but those were minutes from June 27th, 2017. So around that point in
15 time ---

16 **MR. ANTONIO ESTRADA:** Yes.

17 **MS. CHRISTINE MAINVILLE:** And do you recall --- and maybe we
18 can bring up that report just to refresh your memory --- RTC01094894.0001.

19 **MR. ANTONIO ESTRADA:** No. I don't ---

20 Commissioner Hourigan: Can you just repeat the number for us,
21 please?

22 **MS. CHRISTINE MAINVILLE:** Yes, sorry. RTC01094894.0001. It
23 was added this morning or late last night, if that assists.

24 I might ask you this, Mr. Estrada, in the meantime. Would
25 SENER's involvement in 2017 on this systems integration piece be sort of the first time
26 that RTG looks into this issue of systems integration on the project considering your
27 earlier evidence that for the three first years it wasn't really the focus?

28 **MR. ANTONIO ESTRADA:** Well, we were -- we were, as I said,

1 supervising, I mean supervising for our board the problems of the project in general.
2 And the systems integration being one of the key issues. At the end, so as I said, we --
3 at a certain point we felt that we really needed some independent expert to make an
4 assessment what was going on. That was the purpose of that.

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

6 **MR. ANTONIO ESTRADA:** At the end of completion was -- so
7 SENER produced a report that we shared with the constructor but really the main issue
8 was that the delay in the construction were delaying the systems installation and then
9 delaying other processes in duration. So the SENER was unable to do a real
10 assessment on the systems integration specifically because the construction was still
11 going on and the systems integration were not yet very very developed.

12 **MS. CHRISTINE MAINVILLE:** Right. They lacked a lot of
13 information to come to conclusions, right?

14 **MR. ANTONIO ESTRADA:** Because really the system was not
15 there yet.

16 **MS. CHRISTINE MAINVILLE:** Right. And then you recall they
17 expressed concerns on various fronts in terms of the systems integration piece?

18 **MR. ANTONIO ESTRADA:** Yes, because again this was
19 considered from the beginning one of the main risks of the project.

20 **MS. CHRISTINE MAINVILLE:** Right, okay. And so after that work
21 is done, do you recall at least during your time on the project up until March 2018 any
22 additional work of this nature being done or being initiated by RTG on systems
23 integration to monitor the progress?

24 **MR. ANTONIO ESTRADA:** No.

25 **MS. CHRISTINE MAINVILLE:** You don't believe there was any
26 further ---

27 **MR. ANTONIO ESTRADA:** In my term there was the only thing
28 that we did with SENER. I don't know what happened afterwards.

1 **MS. CHRISTINE MAINVILLE:** Do you know why -- why wouldn't
2 RTG have followed up, perhaps later in 2018, as things progressed to assess the status
3 at that point?

4 **MR. ANTONIO ESTRADA:** I don't know.

5 **MS. CHRISTINE MAINVILLE:** I don't think we need to document
6 any more, just for the benefit of the court operator. Thank you.

7 Now, you left the project in March 2018 at which point it was known
8 that the May 2018 RSA date was not going to be met, correct?

9 **MR. ANTONIO ESTRADA:** M'hm.

10 **MS. CHRISTINE MAINVILLE:** And I understand that you left at
11 that time because you had been scheduled to commence another project in mid 2018
12 which was supposed to coincide with the end of the Ottawa project, right?

13 **MR. ANTONIO ESTRADA:** Yes.

14 **MS. CHRISTINE MAINVILLE:** Okay. So your departure was not
15 tied to RTG's failure to meet the RSA date?

16 **MR. ANTONIO ESTRADA:** I don't think so, yes.

17 **MS. CHRISTINE MAINVILLE:** Okay. And evidently then the
18 project encountered delays during your time as CEO?

19 **MR. ANTONIO ESTRADA:** Yes. Yes, the main source of delays
20 in the project was the sinkhole of June 2016.

21 **MS. CHRISTINE MAINVILLE:** Right, near Rideau Station?

22 **MR. ANTONIO ESTRADA:** Yes.

23 **MS. CHRISTINE MAINVILLE:** Can you explain generally what
24 delays that caused to the project? What aspects were impacted primarily?

25 **MR. ANTONIO ESTRADA:** So the sinkhole delayed the critical
26 path -- I'm trying to remember -- between six and eight months. This is what the first
27 assessment that the OLRTC made. And there was the critical path. So there was the
28 tunnel, then the stations, and of course the tunnel with the rail and all the systems in the

1 tunnel and then the other stations and all the systems in the underground stations, and
2 everything was a delay in a section and important a key section in the line, right?

3 **MS. CHRISTINE MAINVILLE:** Right.

4 **MR. ANTONIO ESTRADA:** So there was ---

5 **MS. CHRISTINE MAINVILLE:** Indeed, how far along into the
6 tunnel construction did the sinkhole happen?

7 **MR. ANTONIO ESTRADA:** Well, the sinkhole happened when we
8 were excavating the last 50 metres of the tunnel.

9 **MS. CHRISTINE MAINVILLE:** Of the -- is it a three kilometre long
10 tunnel?

11 **MR. ANTONIO ESTRADA:** Yeah, about that.

12 **MS. CHRISTINE MAINVILLE:** And so that had a greater impact,
13 would you say, than if it had happened earlier in the tunnel excavation?

14 **MR. ANTONIO ESTRADA:** I think it was happened -- a sinkhole of
15 this kind and this interruption of the tunnel excavation and all the activities I think will
16 have caused the same delay ---

17 **MS. CHRISTINE MAINVILLE:** Okay.

18 **MR. ANTONIO ESTRADA:** --- at any time in the tunnel, I think.

19 **MS. CHRISTINE MAINVILLE:** Okay. And I think you had
20 previously indicated that it was an easier portion at the end of the tunnel than what had
21 been done already?

22 **MR. ANTONIO ESTRADA:** Well, what I said is that we were -- so
23 the Rideau as described was a very geotechnically difficult section. But the most
24 difficult part was the Rideau cavern, the Rideau Station cavern because it was much
25 bigger than the tunnel. So we completed the -- or the OLRTC completed the cavern
26 successfully.

27 **MS. CHRISTINE MAINVILLE:** The cover, you said?

28 **MR. ANTONIO ESTRADA:** The cavern.

1 **MS. CHRISTINE MAINVILLE:** Oh, the cavern.

2 **MR. ANTONIO ESTRADA:** The cavern.

3 **MS. CHRISTINE MAINVILLE:** The cavern, okay.

4 **MR. ANTONIO ESTRADA:** Yeah. And it was a huge cavern and it
5 was really much more difficult to excavate than the tunnel. So they completed the caver
6 successfully and then in the last 50 metres of the tunnel which was a much smaller
7 section, we had the sinkhole. So ---

8 **MS. CHRISTINE MAINVILLE:** Okay. And that also impacted the
9 connectivity of the entire line, correct?

10 **MR. ANTONIO ESTRADA:** Yes.

11 **MS. CHRISTINE MAINVILLE:** Okay. So what did OLRTC do in
12 response to the sinkhole in the immediate aftermath?

13 **MR. ANTONIO ESTRADA:** So I think their reaction was very quick
14 and very effective. So it was a very close coordination with the City in terms of traffic
15 closures and so on. And in one week working around the clock, I think OLRTC I think
16 basically reinstated all the services and the traffic in this are of Ottawa. And the City
17 was, I think, quite happy. So even we were -- we received congratulations for the effort.

18 But these just reinstating the -- so just covering the sinkhole and
19 reinstating everything on the surface.

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

21 **MR. ANTONIO ESTRADA:** But afterwards we have to start to see
22 what could be done to reinitiate the excavation of the tunnel.

23 **MS. CHRISTINE MAINVILLE:** Right.

24 **MR. ANTONIO ESTRADA:** And this -- all these assessment and
25 then the excavation and the completed excavation just was delayed. We delayed the
26 project by about eight months.

27 **MS. CHRISTINE MAINVILLE:** And, you know, this would be
28 OLRTC's responsibility -- area of responsibility, but to your knowledge, would resources

1 or focus have been moved away from other areas of the project to deal with this sink
2 hole issue?

3 **MR. ANTONIO ESTRADA:** I think that they -- there was a lot of
4 concentration on repairing -- at least in reinstating the streets and the surface of the
5 utilities of the City. That's for sure. I don't know details about people moving from one
6 side to other side, but, of course, the focus was that.

7 **MS. CHRISTINE MAINVILLE:** Right. And so, as you've described,
8 in the immediate aftermath of the sink hole, there was quite a collaborative effort
9 between RTG and the City ---

10 **MR. ANTONIO ESTRADA:** Yes, there was.

11 **MS. CHRISTINE MAINVILLE:** --- to address it, and that worked
12 well, correct?

13 **MR. ANTONIO ESTRADA:** Yes.

14 **MS. CHRISTINE MAINVILLE:** And the consortium had been close
15 to achieving a milestone relating to the completion of tunnelling, correct, milestone
16 number 7?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. CHRISTINE MAINVILLE:** Which meant a pay day, right, for
19 RTG and OLRTC?

20 **MR. ANTONIO ESTRADA:** Yes. Sorry, can you repeat ---

21 **MS. CHRISTINE MAINVILLE:** It meant a fairly significant payment
22 to complete the tunnel at milestone number 7?

23 **MR. ANTONIO ESTRADA:** Yes. Yeah.

24 **MS. CHRISTINE MAINVILLE:** And despite it not being completed
25 as a result of the sink hole, RTG requested and the City agreed to pay out that
26 milestone, correct?

27 **MR. ANTONIO ESTRADA:** Yes, but what I remember is that we --
28 we signed with the City a tunneling agreement, a tunneling agreement to put on hold all

1 the notices, contractual notices in relation to relief events, or claims, or whatever, while
2 both sides investigate the root causes of the sink hole. And part of the tunnelling
3 agreement was the payment of the milestone.

4 **MS. CHRISTINE MAINVILLE:** This was a standstill, I think you
5 said, agreement?

6 **MR. ANTONIO ESTRADA:** A standstill agreement. Yes.

7 **MS. CHRISTINE MAINVILLE:** So, everything was, you know, don't
8 bring your ---

9 **MR. ANTONIO ESTRADA:** Everything was put on hold
10 contractually.

11 **MS. CHRISTINE MAINVILLE:** Put on hold. Yes, sorry.

12 **MR. ANTONIO ESTRADA:** Yeah.

13 **MS. CHRISTINE MAINVILLE:** Put on hold contractually the claims.
14 Okay.

15 **MR. ANTONIO ESTRADA:** Yeah.

16 **MS. CHRISTINE MAINVILLE:** And so, the City agreed -- well, on
17 that basis -- to pay out the milestone and that is consistent with the collaborative
18 approach you would expect the City to take for the good of the project; is that fair?

19 **MR. ANTONIO ESTRADA:** Yes. Is that fair? Yes.

20 **MS. CHRISTINE MAINVILLE:** To ensure that RTG, and OLRTC
21 more specifically, had the cashflow it needed and had planned for to continue working?

22 **MR. ANTONIO ESTRADA:** Yeah.

23 **MS. CHRISTINE MAINVILLE:** And the City was, am I right,
24 collaborative and accommodating for some time after that, as it relates to the
25 milestones, but eventually their stance hardened? Is that a fair way to ---

26 **MR. ANTONIO ESTRADA:** Well ---

27 **MS. CHRISTINE MAINVILLE:** --- describe it?

28 **MR. ANTONIO ESTRADA:** --- after the sink hole, yeah, I would

1 say the situation changed a bit, because I think for the delays in the first place that the
2 City, of course, didn't like the project to be delayed, and probably because there were
3 the possibility of a claim from RTC -- to RTC, and then to RTC to the City was very real
4 about the sink hole. So, I think the City, I think, took a much more contractual approach
5 after that.

6 **MS. CHRISTINE MAINVILLE:** Right.

7 **MR. ANTONIO ESTRADA:** But in any case, I think the day-to-day
8 technical cooperation with the City, it continued more or less in the same way.

9 **MS. CHRISTINE MAINVILLE:** Okay. And just in terms of situating
10 us in time, if we could bring up RTG 00677410.0001? These will be RTG Board
11 minutes, Mr. Estrada, from February 2018. I can give the number again if it would
12 assist.

13 **--- EXHIBIT No. 061:**

14 RTG00677410.001 – Meeting Minutes – Rideau Transit
15 General Partnership Regular Meeting No. 26 (#26) of the
16 Board 28 February 2018

17 **COMMISSIONER HOURIGAN:** Go ahead.

18 **MS. CHRISTINE MAINVILLE:** RTG 00677410.0001. And if we go
19 to page 2, do you see these -- sorry, maybe let's just go back up for a second, I
20 apologize, just to see the date. Back up to the top. You see, Mr. Estrada, just so you're
21 situated, these are RTG Board minutes dated February 28th, 2018?

22 **MR. ANTONIO ESTRADA:** Yeah.

23 **MS. CHRISTINE MAINVILLE:** So, sorry, we can go back to page
24 2. At the executive summary, you'll see the second -- at the bottom of the page here,
25 second point, this is you again speaking?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. CHRISTINE MAINVILLE:** And you indicated "the City has
28 rejected approach to milestone acceptance" -- oh, if we can go back down again? Back

1 down a little bit. Okay.

2 And you indicate, "now more resistant than with previous
3 milestones in accepting deferred items"?

4 **MR. ANTONIO ESTRADA:** Yes.

5 **MS. CHRISTINE MAINVILLE:** And so, February 2018, that's not in
6 the immediate aftermath of the sink hole, so I take it by then things had evolved and the
7 relationship had changed to some extent?

8 **MR. ANTONIO ESTRADA:** Yes, the relationship changed to a
9 much more strictly contractual relationship, but I have to -- I would like to point out that
10 milestones were not payment events -- were payment events. So, the City was not
11 paying for the scope of the milestone. The City was paying the portion of the part that
12 the City was funding, the total part. One portion of that part, according to an event, was
13 a milestone, and this payment was supposed to be for the project progress in general,
14 not just for the scope of the milestone.

15 **MS. CHRISTINE MAINVILLE:** Correct. The payments -- the
16 amount of the payments was not tied to the scope of the milestone, necessarily.

17 **MR. ANTONIO ESTRADA:** Exactly. Exactly. So, the fact that the
18 tunnel was not completed 50 metres -- the City was not paying for that tunnel ---

19 **MS. CHRISTINE MAINVILLE:** Right.

20 **MR. ANTONIO ESTRADA:** --- that was not completed. They were
21 paying for the event of finishing the tunnel and not just for the tunnel.

22 **MS. CHRISTINE MAINVILLE:** Right. But which is why, at least
23 from RTG's perspective, there should be at times -- or, there should have been some
24 amendments or variations to the characterization of the milestones to account for
25 progress in the project generally, is that ---

26 **MR. ANTONIO ESTRADA:** Yeah. Yeah, exactly. And there's
27 some flexibility.

28 **MS. CHRISTINE MAINVILLE:** Right. Some flexibility. Okay. We

1 can bring this down. Thank you.

2 So, when you started off on this project, what were your
3 expectations regarding how the relationship with the City would unfold?

4 **MR. ANTONIO ESTRADA:** So, my expectations, as always are,
5 were to try to cooperate with the client as close as possible. So, one project of this size
6 and this complexity is -- you cannot move on with this being contentious every day with
7 your client. Both sides has to be flexible, and that's my approach in this -- in Ottawa
8 project and any other project I have been responsible for.

9 **MS. CHRISTINE MAINVILLE:** Okay. And I take it from your
10 evidence just now that, eventually -- well, would you say that was initially the approach
11 the City took, but that that changed to a stricter approach?

12 **MR. ANTONIO ESTRADA:** Well, just -- there was the City -- the
13 City was, I would say, was cooperative from the beginning, reasonably cooperative, and
14 after the sink hole, and not just after the sink hole, but especially after that -- it was
15 obvious that the sink hole would cause a huge delay in the project, I think that the
16 situation changed. And the project team, the technical team, I think I felt that they were
17 -- they were -- so the decisions were moved from them to a higher level, right? And this
18 higher level was less cooperative and more strictly contractual than used to be the
19 technical team until that time.

20 **MS. CHRISTINE MAINVILLE:** The technical team had been
21 resolving issues at their level quite well, you would say, but then as a result primarily of
22 anticipated delays in the project, higher ups ---

23 **MR. ANTONIO ESTRADA:** Yeah.

24 **MS. CHRISTINE MAINVILLE:** --- at the City are -- hierarchy, if you
25 will, came on board?

26 **MR. ANTONIO ESTRADA:** Yeah, I -- but what -- I'm telling you my
27 opinion, my impression that the decisions were made at a different level. Or most of the
28 decisions were made at a different level.

1 **MS. CHRISTINE MAINVILLE:** Okay. And we'll come to a bit of
2 that, but what did you make of the City's decision to step as long-term lender on the
3 project?

4 **MR. ANTONIO ESTRADA:** That was surprising because it's the
5 first case I know that the owner takes over the debt.

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

7 **MR. ANTONIO ESTRADA:** That was my first experience and the
8 first reaction was surprise. I didn't have a previous experience on this.

9 **MS. CHRISTINE MAINVILLE:** Am I right that RTG had no say in
10 that?

11 **MR. ANTONIO ESTRADA:** No.

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

13 **MR. ANTONIO ESTRADA:** The decided to negotiate that with the
14 lenders and agreed to take over the debt.

15 **MS. CHRISTINE MAINVILLE:** They negotiated the ---

16 **MR. ANTONIO ESTRADA:** The long-term debt, yes.

17 **MS. CHRISTINE MAINVILLE:** Sorry?

18 **MR. ANTONIO ESTRADA:** The long-term debt.

19 **MS. CHRISTINE MAINVILLE:** The long-term debt, yes, to be
20 clear. Would you say that that had implications for the project or the approach that was
21 taken to it?

22 **MR. ANTONIO ESTRADA:** Yes, at least -- so this happened
23 shortly before I left the project, and yes. I don't know what happened afterwards, but at
24 the beginning, there was a change.

25 **MS. CHRISTINE MAINVILLE:** You -- so you immediately noticed a
26 change?

27 **MR. ANTONIO ESTRADA:** Yes.

28 **MS. CHRISTINE MAINVILLE:** Could you give us a sense of that,

1 or some example?

2 **MR. ANTONIO ESTRADA:** So the City -- the City, I think, makes
3 the roles as owner and as lender, and so I -- there was -- I can remember one or two
4 cases. One case was when we proposed the lenders -- or the admin agent to review
5 the damages that the RTC had to pay after May 2018 for the delay to RTG. And the
6 admin agent said, "Okay, I don't think there's an issue with the banks, but I have to
7 check with the City."

8 So a couple of days afterwards -- it was a phone conversation. It
9 was a -- this was, like, a kind of exploratory conversation that I had before sending a
10 formal request as usually -- we usually do. So Julian called me one or two days
11 afterwards and said, "Antonio, the City is not inclined to provide the waiver." So I said,
12 "Do you mind if I call directly City?" He said no, you go ahead. And I call Marian
13 Simulik, and Marian Simulik was clear didn't want us to waive those.

14 So, in any case, after -- and I don't -- I don't -- I don't remember if I
15 signed the request or just was Peter, Peter Lauch, but after -- before, when I was
16 leaving, we, at the end, sent a formal request to the City, to the lenders, to the admin
17 agent, right?

18 **MS. CHRISTINE MAINVILLE:** And you left before that response?

19 **MR. ANTONIO ESTRADA:** I think -- I think I left before this -- this
20 was solved. I asked -- I don't remember. But we decided to send a formal request. I
21 don't remember if I was the one signing the request, or it was the CFO, or even Peter,
22 but we send it. And I think -- what I learned afterwards is that the City, at the end,
23 agreed after further conversations, either with us, or with the other lenders, I don't know.

24 **MS. CHRISTINE MAINVILLE:** Right, so -- sorry?

25 **MR. ANTONIO ESTRADA:** That was -- that was really -- in my
26 opinion, was due -- being asked as a lender, and responding as a city, as owner.

27 **MS. CHRISTINE MAINVILLE:** Okay. And just so you have it, Ms.
28 Simulik indicated in her evidence that she was not on the credit committee that the City

1 had struck up in respect of their new rule as lender. And so she doesn't recall that
2 conversation with you and says, given that she wasn't on the committee, she would be
3 surprised that she -- that you would have been having that conversation with her. So I
4 just want to allow you an opportunity to respond.

5 **MR. ANTONIO ESTRADA:** No, I remember the conversation. I
6 didn't call Marian because it was -- I didn't know if was or not in the committee.

7 **MS. CHRISTINE MAINVILLE:** Right.

8 **MR. ANTONIO ESTRADA:** But I call Marian because she was the
9 City Treasurer and -- I didn't know in the City were really responsible as a lender, but I
10 called Marian because I have a relationship with her and she was the City Treasurer.
11 But I remember. I do remember the conversation. But it was -- in any case, it was an
12 informal, exploratory conversation.

13 **MS. CHRISTINE MAINVILLE:** Right. Okay. And you can only
14 report what's reported to you. You don't have any insight into the discussions as
15 between the lenders or the administrative agent, correct? Just for the record, that's
16 correct?

17 **MR. ANTONIO ESTRADA:** No. That's correct, yes.

18 **MS. CHRISTINE MAINVILLE:** Okay. And you said you could think
19 of one or two examples. Is there anything else that comes to mind during the limited
20 time you were there after the City took over, or ---

21 **MR. ANTONIO ESTRADA:** Yeah, I remember a letter we received
22 from the City Manager, Mr. Kanellakos.

23 **MS. CHRISTINE MAINVILLE:** Yes. Okay, well, I was about take
24 you there shortly, so why don't we leave that. In terms of when the relationship begins
25 to sour, if you'll -- would you characterize it that way?

26 **MR. ANTONIO ESTRADA:** Yeah.

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

28 **MR. ANTONIO ESTRADA:** Yeah.

1 **MS. CHRISTINE MAINVILLE:** I don't want to ---

2 **MR. ANTONIO ESTRADA:** Yeah, there's -- I have to say that the
3 personal relationships were respectful and professional.

4 **MS. CHRISTINE MAINVILLE:** Okay.

5 **MR. ANTONIO ESTRADA:** So it was really the City hardened their
6 contractor position, but I wouldn't say -- I wouldn't use the word that you have used.

7 **MS. CHRISTINE MAINVILLE:** Okay, fair enough. Thank you for
8 correcting me. And so, first of all, just over a week after the sinkhole, OLRTC, through
9 RTG, gave preliminary notice of a delay event in the release event to the City, correct?

10 **MR. ANTONIO ESTRADA:** Yes,

11 **MS. CHRISTINE MAINVILLE:** And if -- if we could bring up
12 RTG00001675 -- so the sinkhole occurred on June 6 and, as a say, over a week after,
13 or as you've confirmed, a preliminary notice of a relief-in-delay event was sent, so
14 around June 14th. And very shortly after that, there is this correspondence dated June
15 21st, 2016. And you'll see there, if you go down a little bit, the City is notified, am I right,
16 that the -- that -- well, let's first have a look. So this a letter from you, correct?

17 **--- EXHIBIT No. 062:**

18 RTG00001675 – Letter from RTG to City of Ottawa 21 June
19 2016

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. CHRISTINE MAINVILLE:** To Mr. Cripps?

22 **MR. ANTONIO ESTRADA:** Yes.

23 **MS. CHRISTINE MAINVILLE:** Who is director, at the time, of RIO,
24 the Rail Implementation Office?

25 **MR. ANTONIO ESTRADA:** Yes.

26 **MS. CHRISTINE MAINVILLE:** And Mr. Cripps is the person with
27 whom you exchange formal correspondence in the normal course, correct?

28 **MR. ANTONIO ESTRADA:** Yes. It was the City representative

1 and I was the Project Co. representative.

2 **MS. CHRISTINE MAINVILLE:** Right. And so if we go down to
3 your forwarding letter from OLRTC, as you're the point of contact for the City, correct?

4 **MR. ANTONIO ESTRADA:** Yeah.

5 **MS. CHRISTINE MAINVILLE:** Sorry, for Project Company in
6 respect of the City.

7 **MR. ANTONIO ESTRADA:** Yeah.

8 **MS. CHRISTINE MAINVILLE:** So if we go down to page 2, to
9 OLRTC's letter, or -- yeah, so this is from OLRTC to yourself. And we'll start at the
10 paragraph, "The relief event", so if we could move down just a bit. So this is following
11 up on the sinkhole that's being described here from RTG or OLRTC's perspective as a
12 relief event:

13 "The relief event that occurred on June 8th, 2016, has
14 caused failure to OLRTC and thereby Project Co. to
15 perform its obligations under the project agreement as
16 it is preventing OLRTC/Project Co. to perform and
17 complete the design and construction works in
18 accordance with the work schedule and in
19 accordance with the other terms and conditions of the
20 project agreement." (As read).

21 Continue a bit after:

22 "As a result of the relief event, OLRTC and, thereby,
23 Project Co. will be unable to meet the scheduled
24 milestone acceptance dates associated to Milestone
25 No. 7, completion of tunnelling, and Milestone No. 8,
26 tunnel post-excavation. This relief event may also
27 impact Milestone No. 10, 2017 readiness, as well as
28 the required revenue service availability date." (As

1 read).

2 Do you see that?

3 **MR. ANTONIO ESTRADA:** Yes.

4 **MS. CHRISTINE MAINVILLE:** And so you are notifying the City at
5 this time in June 2016 that the sinkhole may impact RSA?

6 **MR. ANTONIO ESTRADA:** Yes.

7 **MS. CHRISTINE MAINVILLE:** And in the months that follow --
8 sorry, if you look at the next page, so right here, we see that towards the end of the first
9 paragraph, "Assuming we are resuming tunneling activities within the next few days,
10 OLRTC is anticipating a three-month delay. At this time, OLRTC cannot estimate the
11 period of time required to overcome the relief event and nor its effects."

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MS. CHRISTINE MAINVILLE:** And so, initially at the outset,
14 OLRTC estimated a three-month delay, but is conveying some uncertainty; is that fair?

15 **MR. ANTONIO ESTRADA:** Yeah, but they were estimating three
16 months delay assuming they're resuming tunneling activities within the next few days.
17 That didn't happen.

18 **MS. CHRISTINE MAINVILLE:** But -- I was going to ask you, that
19 did not happen? Okay. How long after, do you recall? Were they able to resume
20 tunnelling activities?

21 **MR. ANTONIO ESTRADA:** I don't remember, but it was, I think,
22 more in the order of months, because, at the end, they have to perform soil treatment,
23 and then they have to excavate the concrete that they were -- have used to cover the
24 sink hole. But the soil treatment took months. I don't remember how many. It took
25 months.

26 **MS. CHRISTINE MAINVILLE:** Okay.

27 **MR. ANTONIO ESTRADA:** It was attaining a solution that was
28 agreed upon with the City.

1 **MS. CHRISTINE MAINVILLE:** Okay. And so that ---

2 **MR. ANTONIO ESTRADA:** So, we couldn't be excavating the
3 tunnel just one week after the sink hole, it was impossible.

4 **MS. CHRISTINE MAINVILLE:** You could not? Okay. And in the
5 months that followed, then, the anticipated impact on the schedule increases?

6 **MR. ANTONIO ESTRADA:** Yes. Yes, because, as I said, they
7 were unable to start excavations in the next phase.

8 **MS. CHRISTINE MAINVILLE:** Okay. So, if we go to the next letter
9 -- we can take this down and pull up RTC 00580754.0001. RTC 00580754.0001.

10 And so, you see this is dated September 16th, 2016? Mr. Estrada,
11 do you see?

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MS. CHRISTINE MAINVILLE:** Okay. And this is another letter
14 from you to Mr. Cripps?

15 **MR. ANTONIO ESTRADA:** Yes.

16 **MS. CHRISTINE MAINVILLE:** Okay. And you'll see there you're
17 forwarding an attached letter from OLRTC which provides a revised work schedule
18 reflecting the consequences of the June sink hole event.

19 "Please note that the schedule has been generated as a
20 function of the current means and methods and is based
21 on no prior mitigation, which we recognize we have an
22 obligation to implement. The intent is to formally advise
23 the City of the ramifications of the sink hole while we
24 continue in our efforts to explore and implement
25 mitigation strategies."

26 And, sorry, we can go down a little bit to see that, what I've just
27 read. Right. You see that?

28 **MR. ANTONIO ESTRADA:** Yes.

1 **MS. CHRISTINE MAINVILLE:** Okay. And then, so, if we go to
2 OLRTC's letter at the next page, Mr. Court Operator, if we could go down to the next
3 page? Thank you.

4 And so, you'll see what OLRTC was conveying here to RTG is,
5 "Our current evaluation of the sink hole impacts are
6 reflected in the attached updated work schedule.
7 Excavation is expected to be completed by the end of
8 December 2016, which represents a six-month delay to
9 our excavation activities. This delay is dependent on
10 planned efficiencies, including the production and
11 effectiveness of our ground improvement measures."

12 And please just go down a little bit more on the page. Thank you.
13 "The unmitigated delay on revenue service availability is estimated to be over at five
14 months." Do you see that?

15 **MR. ANTONIO ESTRADA:** Yes.

16 **MS. CHRISTINE MAINVILLE:** And so, by September 2016, so just
17 a few months after the sink hole, OLRTC is saying over five months of delay will be
18 occasioned by the sink hole, but that's without having explored all mitigation measures.

19 **MR. ANTONIO ESTRADA:** Yeah.

20 **MS. CHRISTINE MAINVILLE:** And that is, in terms of mitigation
21 measures as is indicated in your cover letter, there is an obligation of the consortium
22 under the contract to try to catch up, correct, within the realm of what is reasonable?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. CHRISTINE MAINVILLE:** And do I understand that the City
25 wanted RTG to do what it could to catch up?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. CHRISTINE MAINVILLE:** Okay. And does the delay after this
28 correspondence continue to increase the anticipated delay to RSA?

1 **MR. ANTONIO ESTRADA:** I think so. I think, but I -- I think that
2 the excavation of the tunnel went beyond September 2016.

3 **MS. CHRISTINE MAINVILLE:** Okay.

4 **MR. ANTONIO ESTRADA:** Not the excavation on this -- I don't
5 remember very well, really, what happened, but I believe that there was some more
6 delays afterwards.

7 **MS. CHRISTINE MAINVILLE:** Okay. And do you recall informing
8 the Commission in your earlier interview that it became very difficult, if not impossible, to
9 catch up?

10 **MR. ANTONIO ESTRADA:** To catch up to the former date of May?

11 **MS. CHRISTINE MAINVILLE:** Yes.

12 **MR. ANTONIO ESTRADA:** Yes, really. So, I think that the
13 recovery plan that -- produced by RTC was, I would say, very aggressive. Probably not
14 impossible, but in a situation like this, to be able to recover, everything has to go nearly
15 perfect, and this usually doesn't happen.

16 **MS. CHRISTINE MAINVILLE:** Right. You can foresee that there
17 will be unforeseeable events?

18 **MR. ANTONIO ESTRADA:** Of course.

19 **MS. CHRISTINE MAINVILLE:** And so, despite these scheduling
20 challenges, though, OLRTC continues to target the May 2018 RSA date for some time?

21 **MR. ANTONIO ESTRADA:** Yes.

22 **MS. CHRISTINE MAINVILLE:** And why not push back the date at
23 that point in time?

24 **MR. ANTONIO ESTRADA:** Sorry, say it again?

25 **MS. CHRISTINE MAINVILLE:** Why not push back the RSA date
26 once it becomes clear that it's nearly -- difficult, if not impossible, to catch up?

27 **MR. ANTONIO ESTRADA:** I think in the first conversation with the
28 City, the City didn't want to hear about delays. The City wanted us to recover, and at

1 the end, we agreed. OLRTC agreed to try to recover and produce a recovery plan that
2 was, in my opinion, very aggressive. And I don't know, but probably the City was aware
3 of -- as well that the recovery plan was aggressive and difficult to achieve. But there
4 was an agreement. The City wants a recovery and OLRTC agreed to recovery with the
5 expectation that cost of the recovery would be compensated.

6 **MS. CHRISTINE MAINVILLE:** Sorry, repeat that? There was an
7 agreement?

8 **MR. ANTONIO ESTRADA:** There was an agreement -- I'm saying
9 there was a -- there was not -- it was a verbal agreement. OLRTC tried to recover and
10 to submit a recovery plan, anew RSA and RTC clearly told the City that they expected
11 to be compensated by the cost of the recovery.

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

13 **MR. ANTONIO ESTRADA:** The City didn't really commit to
14 anything, but at the end, we agreed to move on with the recovery plan.

15 **MS. CHRISTINE MAINVILLE:** Okay. And when did RTG
16 understand that it would not meet the May 2018 RSA date?

17 **MR. ANTONIO ESTRADA:** I would say that by, I think, the end of
18 the summer of 2018 ---

19 **MS. CHRISTINE MAINVILLE:** Or '17?

20 **MR. ANTONIO ESTRADA:** Seventeen, sorry, '17 of -- the fall of
21 2017, seeing the status of the construction, we were -- we had really felt that May 2018
22 was not achievable.

23 **MS. CHRISTINE MAINVILLE:** Right. And RTG needs to provide
24 notice to the City six months ahead of the RSA date to tell them whether that date will
25 be met or not, correct?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. CHRISTINE MAINVILLE:** And so, that was November 24th,
28 2017, right?

1 **MR. ANTONIO ESTRADA:** Yes.

2 **MS. CHRISTINE MAINVILLE:** And if notice is not given that the
3 date will be met, RTG would owe the City \$1 million in liquidated damages, correct?

4 **MR. ANTONIO ESTRADA:** Not exactly. I think if you -- if notice is
5 not given, you are delaying delivering service because the City needs six months to be
6 prepared. So if you give -- if OLRTC had given the notice in December, for instance,
7 the service would happen in June, not in May.

8 **MS. CHRISTINE MAINVILLE:** Right. And the ultimate impact of
9 that is that then you would owe a million ---

10 **MR. ANTONIO ESTRADA:** Well, the damages were if you give the
11 notice but you were unable to achieve revenue service in the six months. So if you
12 provide notice to the City and the City has started preparations for revenue service and
13 to start the operation, spending money in this preparation. And you were unable to
14 achieve revenue service at the time of the six months time, so the City charges \$1
15 million liquidated damages to be compensated for this preparation cost.

16 **MS. CHRISTINE MAINVILLE:** Okay. And was \$1 million material
17 to RTG in the context of a \$2.1 billion project?

18 **MR. ANTONIO ESTRADA:** Well, materiality is something relative.
19 Of course, it's \$1 million is a lot of money. But the amount of money they had to spend
20 in the recovery of trying to recovery, and the amount of money that they were obliged to
21 pay as liquidated damages to RTG in case of delay , if you compare it with all these,
22 probably it is not material.

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

24 **MR. ANTONIO ESTRADA:** Not -- it's not very substantial.

25 **MS. CHRISTINE MAINVILLE:** And could we bring up
26 COM0002118 which are RTG Board Meeting minutes. COM0002118.

27 You see these are Board Meeting minutes dated September 27th,
28 2017. That's from the Rideau Transit Group meeting of the Board. If we could go to

1 page 3, at Item 4.5? Keep going. Okay.

2 If we stop here, you'll see at 4.5.3 you indicate that the November
3 24th notice date -- so 180 day notice to the City, right, is critical.

4
5 **MR. ANTONIO ESTRADA:** Yes.

6 **MS. CHRISTINE MAINVILLE:**

7 "For the Project Agreement the City requires six
8 months notice prior to Revenue Service Availability. If
9 notice is provided and RTG fails to deliver then the
10 City could claim \$1 million in liquidated damages."

11 **MR. ANTONIO ESTRADA:** Yes. I know that.

12 **MS. CHRISTINE MAINVILLE:** So if RTG knows that it's not going
13 to meet the May 24th, 2018 date, why would it send a notice at that time?

14 **MR. ANTONIO ESTRADA:** Well, if they send us the notice we
15 have to resend the notice to the OLRTC. This is in the construction contract.

16 **MS. CHRISTINE MAINVILLE:** You mean if OLRTC sends RTG a
17 notice?

18 **MR. ANTONIO ESTRADA:** Well, we need to send -- even if we
19 think that there are really low probability for them to achieve revenue service, we cannot
20 keep the notice, or sending the notice to the City.

21 **MS. CHRISTINE MAINVILLE:** Okay. So OLRTC sent RTG a
22 notice indicating -- well, the relevant notice, and we'll look at it in a minute. But did you
23 have any understanding of whether OLRTC, like RTG, in fact believed that it could meet
24 the May 24th, 2018 RSA date?

25 **MR. ANTONIO ESTRADA:** So I -- this is a matter of opinion, of
26 course. But in my personal opinion -- and this is something that we discussed with my
27 team and even with the Board. It was that it was really difficult to achieve in November.

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

1 **MR. ANTONIO ESTRADA:** But again, if I received a formal notice
2 I have to resent the notice to the City.

3 **MS. CHRISTINE MAINVILLE:** Okay. And perhaps let's look at
4 that notice now. If we bring this down and pull up COW0159331. COW0159331.

5 Thank you. Do we still have Mr. Estrada? Because I don't see him
6 anymore.

7 Yes, we lost the witness? Okay.

8 Mr. Commissioner, we've lost Mr. Estrada, so perhaps we can ---

9 **COMMISSIONER HOURIGAN:** Yeah, just stand by. We'll try to
10 get him back.

11 Let's take a short break and we'll get him back.

12 Thank you.

13 **THE REGISTRAR:** Order. All rise.

14 The Commission will recess for a few minutes.

15 --- Upon recessing at 10:06 a.m.

16 --- Upon resuming at 10:11 a.m.

17 **--- MR. ANTONIO ESTRADA, Resumed:**

18 **COMMISSIONER HOURIGAN:** Mr. Estrada, you're back.

19 **MR. ANTONIO ESTRADA:** Yeah, sorry. I ---

20 **COMMISSIONER HOURIGAN:** It happens. Not to worry. Just
21 want to make sure you hear us and we see you.

22 **MR. ANTONIO ESTRADA:** Yes, sir.

23 **COMMISSIONER HOURIGAN:** Go ahead.

24 **--- EXAMINATION IN-CHIEF BY MS. CHRISTINE MAINVILLE (cont'd):**

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

26 So we had just brought up Document COW0159331.

27 All right. So you see here, Mr. Estrada, on November 24th, 2017,
28 you write to Mr. Cripps with the subject line, "Revenue Service Availability Notice"?

1 **MR. ANTONIO ESTRADA:** Yeah.

2 **MS. CHRISTINE MAINVILLE:** And you refer to the attached
3 communication from OLRTC. So if we could go there on the second page, Mr. Court
4 Operator, just to the second page? Thank you. And just a bit lower, if you could go just
5 a bit lower, lower, if we see the bottom.

6 So Mr. Creamer is the project director at that time for OLRTC,
7 right?

8 "Pursuant to section 26.7(a) of the project agreement,
9 we confirm that we will achieve revenue service by
10 the required revenue service date, as such date may
11 be extended pursuant to the project agreement,
12 including, without limitation, due to the occurrence of
13 delay events, whether or not told, variations, and any
14 other events or circumstances which may impact
15 achievement of revenue service." (As read)

16 Do you agree with me that this is not the clearest of languages?

17 **MR. ANTONIO ESTRADA:** Well ---

18 **MS. CHRISTINE MAINVILLE:** There's some commercial
19 positioning?

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. CHRISTINE MAINVILLE:** Right. And is it fair to say that
22 what's -- what OLRTC is seeking to achieve here is to get the date pushed back, but
23 they want the City to own that delay?

24 **MR. ANTONIO ESTRADA:** So they wanted to resolve the delay
25 lying with the City, and then if the delay event is -- was resolved in favour of OLRTC, the
26 revenue service will having a standard and the new contractual date will having
27 standard.

28 I -- so they considered that this could happen either before or after

1 May 2018, right? So but at the end, if the contract delay was extended, the date will
2 have been sent on time of the revenue service will be achieved on contractual time, not,
3 of course, May 2018.

4 But based on the notice, I agree with you that there were some
5 commercial aspect in the notice related to the relief event, but this is what they sent, just
6 to send the little notice to the City, the same ---

7 **MS. CHRISTINE MAINVILLE:** Right. But what you're saying is, if I
8 understand your response, is they're saying they can meet the required revenue service
9 date to the extent that that may be extended pursuant to an agreement with the City, or
10 pursuant to a delay event?

11 **MR. ANTONIO ESTRADA:** Yeah. Well, yes, if they are in an
12 agreement with the City, right.

13 **MS. CHRISTINE MAINVILLE:** In agreement with the City?

14 **MR. ANTONIO ESTRADA:** Yeah.

15 **MS. CHRISTINE MAINVILLE:** Yeah. And would you say that
16 effectively, what this is conveying is that OLRTC is not going to meet the May 24th, 2018
17 RSA date? You will need a new -- or they will need a new contractual RSA date as
18 extended by delay events?

19 **MR. ANTONIO ESTRADA:** So if -- reading the notice, they don't
20 mention May, I think, 2018. They say revenue service -- the contractual revenue
21 service date that may be extended.

22 **MS. CHRISTINE MAINVILLE:** May be a different date?

23 **MR. ANTONIO ESTRADA:** Yeah, maybe a different date.

24 **MS. CHRISTINE MAINVILLE:** Could we at least agree that what it
25 is not saying here is, "We're ready to go in May 2018"?

26 **MR. ANTONIO ESTRADA:** I agree.

27 **MS. CHRISTINE MAINVILLE:** And so indeed, the City deemed the
28 notice to be deficient, correct? I'll take ---

1 **MR. ANTONIO ESTRADA:** Yeah, I don't remember exactly, but
2 there were some discussions about the notice, yes.

3 **MS. CHRISTINE MAINVILLE:** Right, okay. I'll take you to it.
4 And leaving aside this letter, do you believe the City understood, at
5 that juncture, that OLRTC was not going to meet the May 2018 RSA date?

6 **MR. ANTONIO ESTRADA:** I think that by that time, the City was
7 convinced that revenue service in May was not possible any longer.

8 **MS. CHRISTINE MAINVILLE:** Okay.

9 And did you sit down with the City to discuss when, in fact -- so
10 subsequent to this letter -- when, in fact, RSA could be achieved regardless of whose
11 responsibility it was?

12 **MR. ANTONIO ESTRADA:** Yes, there were discussions with the
13 City and the City hired a consultant to assess OLRTC schedule and to try to assess the
14 risk of the -- I would say the earliest achievable revenue service date.

15 So -- and there were some discussions with the City and the
16 consultant. There was -- this happened just before I left, I remember, in regard to what
17 date, what revenue service date will be reasonable, achievable by OLRTC. There were
18 some meetings and some discussions, and at the end, they came to the conclusion that
19 November the 2nd, 2018, I remember it was at the beginning of November, I don't
20 remember if it was exactly November the 2nd, but I would say it has a good probability to
21 be achieved.

22 **MS. CHRISTINE MAINVILLE:** Okay. And so, what you receive in
23 response to this, however, from the City in writing, is a letter that we'll go to at
24 COW0523414. COW0523414. Okay. And we see here this now is on -- just stay up
25 top -- is on the letterhead of the City manager, if you could go back up, Mr. Steve
26 Kanellakos? Can we please go back up? Up to the top. Thank you.

27 This is now coming not from Mr. Cripps but from the City manager,
28 Mr. Kanellakos?

1 **MR. ANTONIO ESTRADA:** Yes.

2 **MS. CHRISTINE MAINVILLE:** And this is dated November 27th,
3 2017, and you'll see in the first paragraph -- now if we go down a little bit. Okay. We
4 can stop there. Thank you.

5 Mr. Kanellakos writes in the first paragraph that, "The City, in both
6 its capacity as counterparty to RTG under the project agreement and long-term lender
7 under the credit facility is extremely concerned about the current state of progress of the
8 project."

9 So, the City is writing here in its capacity as both owner and lender,
10 correct?

11 **MR. ANTONIO ESTRADA:** Yes.

12 **MS. CHRISTINE MAINVILLE:** And at paragraph 2, you'll see that
13 he writes,

14 "RTG's recent notice of November 24th, 2017, was
15 deficient and did not comply with the requirements of
16 section 26.7(a) of the project agreement. Specifically,
17 the notice required by section 26.7(a) requires Project
18 Co. to confirm that it will achieve revenue service
19 availability by the required revenue service date. Full
20 stop. The additional language about delay events and
21 variations only serve to confuse and increase the City's
22 level of concern about the ability to achieve the required
23 revenue service date."

24 Let me stop there. You'll recall, then, that the City deemed the
25 notice to be deficient, because it did not say effectively "We're going to meet RSA -- the
26 required RSA date," full stop?

27 **MR. ANTONIO ESTRADA:** Yes.

28 **MS. CHRISTINE MAINVILLE:** Without caveats, basically.

1 **MR. ANTONIO ESTRADA:** Yes.

2 **MS. CHRISTINE MAINVILLE:** And if we continue at paragraph 3,
3 Mr. Kanellakos indicates,

4 "This potential breach of the representations and
5 warranties RTG has made to the City and the lenders to
6 complete work on schedule will most certainly
7 compromise the City's reputation, negatively affect public
8 perception of the City, and will have a material adverse
9 effect on the planned availability of the transit service to
10 its customers. While the City did not insist on RTG's
11 obligation to meet all the requirements of the 2017
12 readiness milestone, in these circumstances, there can
13 be no forgiveness of a failure to achieve revenue service
14 availability by May 24th, 2018."

15 Do you recall that?

16 **MR. ANTONIO ESTRADA:** Yes.

17 **MS. CHRISTINE MAINVILLE:** And so, would you say the City is
18 making clear that it expects the required revenue service availability date of May 24th,
19 2018, to be met?

20 **MR. ANTONIO ESTRADA:** Yes. Well, no forgiveness means that
21 they will -- my interpretation of that will be that they will apply the contract in full if this
22 date is not achieved. But I think that -- this is what I -- so if the May 24th was impossible
23 to achieve, whether you can do that, apply the contract. So, you cannot -- for the
24 achievement, if it is impossible.

25 **MS. CHRISTINE MAINVILLE:** Okay. And, now, at paragraph 4,
26 the City is also saying it doesn't want RTG to compromise on certain things. So, if we
27 look at that -- if we go down a little bit and look at that paragraph,

28 "The City will not tolerate any attempt by RTG to

1 compromise the commissioning, compliance, training and
2 trial running acceptance of the project. It will not be
3 acceptable to recover the schedule by unreasonably
4 compressing the amount of time required to properly test
5 and commission the system. These activities are an
6 integral part of achieving the necessary reliability for the
7 project as of revenue service availability, and RTG must
8 meet the requirements under the testing and
9 commissioning provisions of the project agreement. All
10 of RTG's obligations must be fully dispatched with
11 adequate time to deal with issues that may arise and to
12 ensure full readiness for revenue service availability.”

13 So, I'll pause there. There's an insistence at this point in time from
14 the City that it expects all of these items that are listed to be done and not be
15 compromised on to ensure a reliable system at revenue service availability, correct?

16 **MR. ANTONIO ESTRADA:** Yes.

17 **MS. CHRISTINE MAINVILLE:** And then if we continue to the next
18 page, to the second page here, thank you, Mr. Kanellakos indicates that pursuant to
19 section 22.3 of the project agreement, you'll see there the second paragraph, “The City
20 hereby requires from RTG, within five business days of the receipt of this letter, a report
21 identifying a plan showing the steps that are to be taken by RTG to achieve revenue
22 service availability by May 24th, 2018.” Do you see that?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. CHRISTINE MAINVILLE:** And so, the City does -- is, am I
25 right, requesting that RTG produce a plan showing how it can achieve revenue service
26 availability by May 24th, 2018?

27 **MR. ANTONIO ESTRADA:** Yes.

28 **MS. CHRISTINE MAINVILLE:** And so, what do you make of this

1 letter, then?

2 **MR. ANTONIO ESTRADA:** So, OLRTC sent a notice which was
3 unclear, the revenue service date, because he mentioned possible time extensions due
4 to relief events and variations. The City considered the notice unclear or defective, as
5 they say, but they stick to May 24th as the contractual date in the letter.

6 **MS. CHRISTINE MAINVILLE:** All right. Is RTG ---

7 **MR. ANTONIO ESTRADA:** What is really surprising of the letter is
8 that they're writing as owner and as a lender at the same time.

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

10 **MR. ANTONIO ESTRADA:** Because the communications with the
11 lender have to follow a strict protocol, according to the financing documents, that the
12 City were not respecting in that case.

13 **MS. CHRISTINE MAINVILLE:** Right. And we'll come to your
14 response highlighting that, but can you tell me, is this a change in tone at this point in
15 time, or is this consistent with some of the earlier communications with the City?

16 **MR. ANTONIO ESTRADA:** No, this is -- in the first place, this letter
17 is not from Mr. Cripps. It's from the City manager. So, this is a -- this is a change, and
18 the tone is, I would say, is tougher than the usual tone in the correspondence with the
19 City.

20 **MS. CHRISTINE MAINVILLE:** Okay. Let's go to your response,
21 then, a few days later at RTG00001895.

22 So this is now dated November 30th, 2017. That's six days after the
23 notice to the City sent on the 24th.

24 If we go down just a little bit to the paragraph that starts, "In the
25 letter...", right here, so just a bit further down so we see the whole paragraph. Thank
26 you.

27 So you're writing, Mr. Estrada, as I said, to Mr. Kanellakos and you
28 indicate in the letter referencing the City's letter that we just went over.

1 “The City advised RTG that it was writing in its
2 capacity as both the counter party to the Project
3 Agreement, the authority and as a party to the Credit
4 Agreement, a long term lender as such term as
5 defined in the Credit Agreement.

6 “Based on the contents of the letter we note that it
7 appears that the City has conflated its various and
8 differing rights and obligations under these two
9 agreements. The letter suggests that the long term
10 lender is seeking to rely on terms and conditions of
11 the Project Agreement and that the authority is
12 seeking to rely on terms and conditions of the Credit
13 Agreement. For clarity’s sake, going forward, RTG
14 requests that all future correspondence from the long
15 term lender not be combined with correspondence
16 from the authority. This practice will avoid any
17 appearance that either the long term lender or the
18 authority is acting outside the scope of their
19 respective agreements in not fulfilling the terms and
20 conditions of those respective agreements in good
21 faith.” (As read)

22 Do you see that?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. CHRISTINE MAINVILLE:** And so can you help us understand
25 what the concern is exactly on RTG’s part, in terms of the differing rights and obligations
26 that are reflected in the two agreements and what RTG is concerned about?

27 **MR. ANTONIO ESTRADA:** These are -- the Project Agreement
28 and the financing documents are different contracts, different documents. And the

1 lenders -- the City is a lender and the City's owner has different risk in the contract. So
2 the City as a lender -- I would understand that the City as a lender is worried about our
3 ability to repay the debt, right? It is what is the main concern of the long term lenders.

4 And you cannot mix this with your interest and your interest as an
5 authority, as the owner of this. And in the first place, addressing -- the lender is sending
6 us a formal communication not through the admin agent, so in a different way. It's a
7 breach in the financing documents.

8 **MS. CHRISTINE MAINVILLE:** It's a breach of?

9 **MR. ANTONIO ESTRADA:** Of the financing contract, the financing
10 documents.

11 **MS. CHRISTINE MAINVILLE:** Okay. And so it's a red flag for
12 you?

13 **MR. ANTONIO ESTRADA:** Yes.

14 **MS. CHRISTINE MAINVILLE:** Okay.

15 **MR. ANTONIO ESTRADA:** We made this clear to the City and we
16 made this clear in conversations with the City as well.

17 **MS. CHRISTINE MAINVILLE:** Okay. And if we continue in the
18 letter, you address -- you go on to address the City's assertion that the notice is
19 deficient and just go down a little bit so we see the rest of the page.

20 Thank you.

21 So you indicate right at the bottom:

22 "As the Authority is aware..."

23 The Authority being the City as project owner.

24 "...there are a number of unresolved delay events and
25 variations that have affected the [scope of the -- that
26 have affected the] project as such terms are defined
27 in the Project Agreement. While RTG..."

28 Continue to the next page. "While RTG" -- right there, thank you.

1 “...continues to expend significant effort including with
2 that limitation acceleration measures to mitigate the
3 effects of these delay events and variations, to the
4 extent that those effects cannot be mitigated, the
5 Revenue Service Availability date will necessarily
6 need to be extended.” (As read)

7 Have I read that correctly?

8 **MR. ANTONIO ESTRADA:** Yeah.

9 **MS. CHRISTINE MAINVILLE:** Okay. And just to be clear, you
10 explained going to the next paragraph:

11 “The inclusion of such factual references...”

12 And so you're referring there to the references in RTG or OLRTC's
13 notice to delay events and variations, you indicate here:

14 “...does not nullify the notice. The reality is that the
15 achievement of Revenue Service Availability has
16 been and may in future be impacted by delay events
17 and variations and the Project Agreement
18 contemplates that the May 24th, 2018 date may be
19 adjusted to account for such impacts to the extent that
20 such impacts cannot be mitigated.” (As read)

21 And so you don't simply say that RSA may be impacted at that
22 point in time. What you are saying is -- am I right? -- that it has already been impacted?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. CHRISTINE MAINVILLE:** Okay.

25 And the City's response, if we could go to that next, is at
26 COW0579536. COW0579536. Thank you.

27 And first of all, this letter says January 22nd, 2017. But just, like the
28 best of us, we can make a date error in the new year. I think you should take for

1 granted this is a letter that should be dated January 2018, right? Because it references
2 the November 2017 letters. Okay?

3 **MR. ANTONIO ESTRADA:** Yeah.

4 **MS. CHRISTINE MAINVILLE:** Right. And so this one, as we'll see
5 when we get to the end, is from Mr. Cripps. So back to Mr. Cripps writing to you. And
6 what he indicates here -- first of all he summarizes your November letter, if we go down
7 just a little bit. The November letter that we just read and a subsequent December 7th
8 letter from yourself.

9 And so he indicates:

10 "Your November letter provides an explanation for the
11 ambiguous nature of your notice of November 24th,
12 2017. The notice implying that you cannot meet
13 Revenue Service Availability, RSA, by the required
14 Revenue Service Availability date, RRSAD, unless
15 and until this date is extended due to unresolved
16 delay events and variations.

17 "Your December letter reconfirms the notice that you
18 will achieve RSA by the RRSAD but further to a
19 November letter you now state your expectations that
20 the RRSAD will be extended due to circumstances
21 known of today's date, and then proceed to list the
22 previously submitted delay event notices, the delay
23 events." (As read)

24 So do you recall also your December letter conveying that the
25 Required Revenue Service Availability Date will be extended?

26 **MR. ANTONIO ESTRADA:** Yeah.

27 **MS. CHRISTINE MAINVILLE:** Okay. And so then what he
28 indicates at the bottom of this page -- first of all, he's indicating or conveying the City's

1 purpose to -- you'll see there:

2 "...establish a date with reasonable certainty when
3 the LRT system would be available for revenue
4 service."

5 Which is fair enough, right? If you are the City you want to know
6 what, with some reasonable certainty, what the actual revenue service date will be,
7 right?

8 **MR. ANTONIO ESTRADA:** Yes.

9 **MS. CHRISTINE MAINVILLE:** Okay. But then if we go to the next
10 page, Mr. Cripps, you see here, closes by saying:

11 "It is clear that the parties need to work together
12 towards a common objective of achieving RSA on
13 time in accordance with a work schedule that is both
14 realistic and provides reasonable certainty of
15 success." (As read)

16 So what do you make of this letter in terms of indicating that the
17 objective is to achieve RSA on time?

18 **MR. ANTONIO ESTRADA:** According to a realistic work schedule.

19 **MS. CHRISTINE MAINVILLE:** Okay. So, you don't -- sorry, go
20 ahead.

21 **MR. ANTONIO ESTRADA:** Yeah. And the last part of the letter
22 said the joint workshop that is currently underway is key to achieving that objective. So,
23 we had started at that time to work with the City and the City consultant to discuss and
24 to establish what both parties could consider a realistic work schedule in order to define
25 a realistic revenue service date.

26 **MS. CHRISTINE MAINVILLE:** Okay. Okay. So, from this point
27 on, you don't read this as the City requiring RTG to meet the May 2018 date.

28 **MR. ANTONIO ESTRADA:** No.

1 **MS. CHRISTINE MAINVILLE:** You viewed it as some discussion --
2 there is to be some discussion about what the RSA date will be?

3 **MR. ANTONIO ESTRADA:** It's clear in the letter that this is both
4 realistic and provides reasonable certainty of success.

5 **MS. CHRISTINE MAINVILLE:** Okay. And RTG, just to sum up,
6 first of all -- we can take this down. Thank you.

7 To sum up, initially, the City refused to extend the required revenue
8 service availability date, correct, after the sink hole?

9 **MR. ANTONIO ESTRADA:** Yes. So, at the end, extending the
10 revenue service date is a process of agreeing on a delay event, but the City never
11 agreed.

12 **MS. CHRISTINE MAINVILLE:** Okay. And the City conveyed its
13 desire that RTG catch up, right, and make up the time lost?

14 **MR. ANTONIO ESTRADA:** Yes.

15 **MS. CHRISTINE MAINVILLE:** And I think you've indicated that
16 OLRTC accordingly presented schedules that were -- you qualified as very aggressive.

17 **MR. ANTONIO ESTRADA:** I would say they were aggressive, yes.

18 **MS. CHRISTINE MAINVILLE:** They had no float?

19 **MR. ANTONIO ESTRADA:** Little or no float, yes.

20 **MS. CHRISTINE MAINVILLE:** Okay. And that, as we've seen
21 from some of this correspondence, created some tension?

22 **MR. ANTONIO ESTRADA:** Well, the tension appeared when there
23 was delays with respect to the recovery plan, the recovery schedule, because, at the
24 end, the things didn't go perfect.

25 **MS. CHRISTINE MAINVILLE:** Right. Which, as I think we've
26 indicated earlier, you've agreed with me, was foreseeable to the extent that you had to
27 foresee that things are not going to go perfectly on a project like this?

28 **MR. ANTONIO ESTRADA:** Usually, yes.

1 **MS. CHRISTINE MAINVILLE:** Okay. And you were not there until
2 any of the RSA dates, including the May 2018 one, right?

3 **MR. ANTONIO ESTRADA:** Hmm.

4 **MS. CHRISTINE MAINVILLE:** But would you say that -- in terms of
5 the relationship between the City and RTG, was that primarily -- in terms of the change
6 that we saw and that you've described, would you say this was primarily over the
7 schedule and the City's two roles as lender and owner that we have just identified
8 through the correspondence? Would that -- would those have been, from your
9 perspective, the two main elements that had an impact on the relationship between the
10 City and RTG?

11 **MR. ANTONIO ESTRADA:** Well, those two factors, of course they
12 have an impact. And then the City's expectation that OLRTC was preparing a
13 substantial claim in both money and time, and time, at the end, would have been, for the
14 City, money as well. I think this was another factor.

15 **MS. CHRISTINE MAINVILLE:** Okay. So, an additional third factor
16 is the fact that, at the end of the day, OLRTC was planning to and did claim -- make a
17 claim against the City in respect of the sink hole and the ---

18 **MR. ANTONIO ESTRADA:** Yes.

19 **MS. CHRISTINE MAINVILLE:** Okay. And just on that, I
20 understand that there was insurance for the sink hole?

21 **MR. ANTONIO ESTRADA:** Yeah, of course, of course. The claim
22 we made for the amount of money not covered by the insurance, there was an
23 insurance that covered the reinstatement of the tunnel.

24 **MS. CHRISTINE MAINVILLE:** Okay. But am I right that -- well,
25 explain to me why the insurance would not have been sufficient to alleviate concerns
26 about claims in relation to the sink hole.

27 **MR. ANTONIO ESTRADA:** I don't know. When I left, the
28 insurance was still -- they were discussing with the insurance, and the insurance were

1 paying part of the cost that were covered by the policy. I don't know what happened
2 afterwards. This process didn't end when I left.

3 **MS. CHRISTINE MAINVILLE:** Right. And the claims came later,
4 the official claims?

5 **MR. ANTONIO ESTRADA:** I didn't see a formal claim sent to the
6 City. What I was part of were conversations and negotiations to try to settle friendly the
7 consequences of the sink hole.

8 **MS. CHRISTINE MAINVILLE:** Okay.

9 **MR. ANTONIO ESTRADA:** But these conversations were not
10 successful, at least before I left.

11 **MS. CHRISTINE MAINVILLE:** Okay. And did these factors that
12 you've confirmed had an impact on the relationship, so the back and forth over the
13 schedule, the anticipated claims from OLRTC, and the City performing the role of lender
14 and owner, did this impact -- or did this result in a lack of trust from the City in relation to
15 RTG?

16 **MR. ANTONIO ESTRADA:** I don't know. I think this is a question
17 for the City, I think.

18 **MS. CHRISTINE MAINVILLE:** Right. Did you perceive -- I should
19 have perhaps framed it better. Did you perceive a lack of trust?

20 **MR. ANTONIO ESTRADA:** What I perceived was, as I said, was a
21 harder contractual position from the City's side.

22 **MS. CHRISTINE MAINVILLE:** Okay.

23 **MR. ANTONIO ESTRADA:** I perceived, as well, that the decision,
24 even technical decisions were removed from Steve Cripps and his team to a higher
25 level, meaning, basically, Joe Marconi and the City manager.

26 **MS. CHRISTINE MAINVILLE:** Mr. Kanellakos?

27 **MR. ANTONIO ESTRADA:** Mr. Kanellakos. Exactly.

28 **MS. CHRISTINE MAINVILLE:** Thank you. Those are my

1 questions.

2 **COMMISSIONER HOURIGAN:** All right. We'll take the morning
3 break.

4 **THE REGISTRAR:** All rise. The Commission will recess for 15
5 minutes.

6 --- Upon recessing at 10:46 a.m.

7 --- Upon resuming at 11:02 a.m.

8 **THE REGISTRAR:** Order. All rise. The Commission has
9 resumed.

10 **COMMISSIONER HOURIGAN:** All right. Next counsel is from the
11 City of Ottawa.

12 **MS. SHARON VOGEL:** Yes, Mr. Commissioner. Sharon Vogel, V-
13 O-G-E-L, for the City of Ottawa.

14 **COMMISSIONER HOURIGAN:** That's fine. Go ahead.

15 **--- CROSS-EXAMINATION IN-CHIEF BY MS. SHARON VOGEL:**

16 **MS. SHARON VOGEL:** I am. Good morning, Mr. Estrada.

17 **MR. ANTONIO ESTRADA:** Good morning.

18 **MS. SHARON VOGEL:** I'd like to ask you a few questions about
19 your experiences in dealing with the City. You found the City to be very professional
20 throughout your five years of dealing with them, correct?

21 **MR. ANTONIO ESTRADA:** Yes. The technical team was very
22 professional, yeah.

23 **MS. SHARON VOGEL:** And Steve Kripps and Gary Craig in
24 particular were experienced, qualified, and professional in your experience in dealing
25 with them, were they?

26 **MR. ANTONIO ESTRADA:** I think -- Steve Cripps was. I think
27 Seve has more experience than Gary in big projects, but both were professionals, yes.

28 **MS. SHARON VOGEL:** And your relationship with them with was

1 one of open communication and mutual respect?

2 **MR. ANTONIO ESTRADA:** Yes, I would say so.

3 **MS. SHARON VOGEL:** And early in the design and construction
4 period, a number of working groups were set up to cover the major project elements so
5 that any issues or disagreements could be resolved swiftly at the working level?

6 **MR. ANTONIO ESTRADA:** Yes.

7 **MS. SHARON VOGEL:** And that was before disputes arose,
8 correct?

9 **MR. ANTONIO ESTRADA:** Yes.

10 **MS. SHARON VOGEL:** And in relation to milestones, you were
11 asked some questions by Commission counsel this morning about the City's flexibility
12 on the milestone payments. And the City was flexible on the milestone payments, was
13 it not?

14 **MR. ANTONIO ESTRADA:** Yes. At the beginning, yes.

15 **MS. SHARON VOGEL:** And that helped ensure that RTG had
16 cashflow, correct?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. SHARON VOGEL:** And you were, as Commission counsel
19 discussed with you, in relation to the tunnelling milestone, or the MSF milestone, the
20 City cooperated and made the changes requested by RTG for the good of the project,
21 correct?

22 **MR. ANTONIO ESTRADA:** Yeah.

23 **MS. SHARON VOGEL:** And generally, in respect of milestones,
24 you're aware that in the proposal period, at the outset, milestones were selected by the
25 proponents. They were not proposed by the City of Ottawa, correct.

26 **MR. ANTONIO ESTRADA:** I was not involved in the proposal
27 stage. I believe it's the case, but I don't have direct knowledge of that.

28 **MS. SHARON VOGEL:** Commission counsel took you to minutes

1 of a February 28, 2018 RTG Board meeting, which I think was your last RTG Board
2 meeting, was it?

3 **MR. ANTONIO ESTRADA:** Yes, I think so.

4 **MS. SHARON VOGEL:** And Commission counsel -- I'm not going
5 to take you to the document -- she referenced the City's resistance to deferred works in
6 relation to the milestones at that point in time. But the City, it was not obligated to make
7 changes to the milestones, was it?

8 **MR. ANTONIO ESTRADA:** It was not.

9 **MS. SHARON VOGEL:** And after the sinkhole, the relationship
10 with the City continued to be professional, did it not?

11 **MR. ANTONIO ESTRADA:** Continued to be professional, yes.

12 **MS. SHARON VOGEL:** And rejected Commission counsel's
13 characterization of the relationship as "souring", correct?

14 **MR. ANTONIO ESTRADA:** I said that it was -- the City took a
15 hardened contractor position, but personally, with the City, the relationship remained
16 professional.

17 **MS. SHARON VOGEL:** And in the earlier days of the contract with
18 the 417 extension, you'd agree that working with Nancy Schepers of the City, that went
19 well, and the inclusion of the 417 Highway was a success, correct?

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. SHARON VOGEL:** It was completed on time and the parties
22 worked together cooperatively, correct?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. SHARON VOGEL:** I'm sorry?

25 **MR. ANTONIO ESTRADA:** Yes.

26 **MS. SHARON VOGEL:** And in relation to variations, hundreds of
27 variations were issued over the course of the project where the City recognized that
28 there was changes to what had been required under the project agreement and issued

1 changes, correct?

2 **MR. ANTONIO ESTRADA:** Yes.

3 **MS. SHARON VOGEL:** Over the course of the project, there were
4 about 385 variations, correct?

5 **MR. ANTONIO ESTRADA:** I don't remember the number.

6 **MS. SHARON VOGEL:** Do you recall that RTG was paid an extra
7 \$127M over the course of the project in relation to those variations?

8 **MR. ANTONIO ESTRADA:** Yeah, and -- but the big variations
9 were additional scope required by the City, mainly.

10 **MS. SHARON VOGEL:** And that additional scope, the \$127M that
11 RTG received, that was in addition to the lump-sum price that was paid for the base
12 scope, correct?

13 **MR. ANTONIO ESTRADA:** Yes, exactly.

14 **MS. SHARON VOGEL:** And as those variations were processed,
15 in your role as RTG CEO, that was a standing agenda item that you reported on to the
16 RTG Board, correct?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. SHARON VOGEL:** And in issuing those variations, the City
19 was accepting responsibility where there was a variation change or addition to the
20 requirements set out in the project agreement, correct?

21 **MR. ANTONIO ESTRADA:** Yes.

22 **MS. SHARON VOGEL:** So the City was accepting the risk of those
23 changes to the contract, correct?

24 **MR. ANTONIO ESTRADA:** Yes.

25 **MS. SHARON VOGEL:** And in respect of dispute, in addition to
26 those ordinary course variations, which were issued over the course of the project, there
27 were disputes that were resolved as well, correct?

28 **MR. ANTONIO ESTRADA:** Yes, there was some disputes

1 resolved, yeah.

2 **MS. SHARON VOGEL:** I understand that 17 disputes were
3 resolved over the course of the project and only 18 went -- only eight went to the
4 independent certifier, correct?

5 **MR. ANTONIO ESTRADA:** I don't remember the number. I'm
6 sorry.

7 **MS. SHARON VOGEL:** Are you aware that RTG was paid an extra
8 \$17M in relation to those 17 disputes?

9 **MR. ANTONIO ESTRADA:** I don't -- I know that there was pay in
10 addition, but I don't remember the figure.

11 **MS. SHARON VOGEL:** And so if you don't remember the exact
12 figure, is there -- do you recall that in resolving those disputes that the City appreciated
13 that in respect to those resolved disputes that it took on some risk?

14 **COMMISSIONER HOURIGAN:** Sorry, can you repeat that
15 question, please?

16 **MS. SHARON VOGEL:** Sure. In resolving these disputes, do you
17 understand that the City appreciated that in respect of these resolved disputes that it
18 took on some risk?

19 **MR. ANTONIO ESTRADA:** Well, the City -- so, basically,
20 variations were due to mainly two reasons. Some events that were not supposed to be
21 our risk under the contract and additional scope requested by the City. So I don't
22 understand very well what you are meaning by the City assuming risk.

23 **MS. SHARON VOGEL:** I'm trying to get at the point, Mr. Estrada,
24 that disputes were resolved in a practical way without any need for the independent
25 certifier to make a determination in respect of these 17 disputes that were resolved. So
26 the parties were able to sort it out between themselves because in addition to the
27 variations, in relation to these disputes, they were sorted out party to party at the lowest
28 level of management, the way the project agreement is supposed to work. Is that right?

1 **MR. ANTONIO ESTRADA:** Yes. Do you mean that the City
2 assumed the risk of settling, yes, they did.

3 **MS. SHARON VOGEL:** And the City did, in fact, settle these
4 disputes without needing the independent certifier's determination?

5 **MR. ANTONIO ESTRADA:** Yes.

6 **MS. SHARON VOGEL:** In relation to the sinkhole, Commission
7 counsel asked you a series of questions about what occurred after the sinkhole. And I
8 understand that post the sinkhole, the City and RTG worked cooperatively with each
9 other, particularly in the early days, to address immediate issues. Is that correct?

10 **MR. ANTONIO ESTRADA:** Yes.

11 **MS. SHARON VOGEL:** And, after the sinkhole, RTG had to do
12 grouting to stabilize the ground above sinkhole before resuming tunnelling. And I think
13 you referenced RTG working 24/7. But the City team, they assisted in that regard and
14 they rerouted buses so that RTG could have the work zone 24/7 over that period,
15 correct?

16 **MR. ANTONIO ESTRADA:** That's correct.

17 **MS. SHARON VOGEL:** And in relation to other examples of
18 cooperation, the City worked with RTG and accepted and the steel that RTG would be
19 using on the body of the revenue vehicles even though that was not was on the output
20 specification, correct?

21 **MR. ANTONIO ESTRADA:** There was a long discussion. That
22 was not in the specification, but it was in our proposal.

23 **MS. SHARON VOGEL:** And the City accepted the change from
24 Corten steel to a steel that Alstom used, correct?

25 **MR. ANTONIO ESTRADA:** Yes.

26 **MS. SHARON VOGEL:** And that change avoided delays to the
27 vehicle production schedule, correct?

28 **MR. ANTONIO ESTRADA:** Correct.

1 **MS. SHARON VOGEL:** And generally, in relation to the vehicles,
2 the City worked with you cooperatively to find innovative ways of meeting the Canadian
3 content requirements for the vehicles, correct?

4 **MR. ANTONIO ESTRADA:** This was a discussion that was -- that
5 took place more at the OLRTC level with the City team, technical team.

6 **MS. SHARON VOGEL:** So you would not have knowledge of that?

7 **MR. ANTONIO ESTRADA:** I was not part -- I think there
8 conversations, there was cooperation. I was not part of those conversations, so I can't
9 tell you exactly what happened.

10 **MS. SHARON VOGEL:** There is a mechanism in the project
11 agreement by which RTG agreed to explore and work with the City in investigating and
12 considering innovation and value engineering over the entire course of the design and
13 construction period, correct?

14 **MR. ANTONIO ESTRADA:** Yes.

15 **MS. SHARON VOGEL:** And a successful example of this
16 innovation and value engineering was that the City agreed to RTG's proposal to
17 substitute concrete secant piles for sheet piles at the east portal, correct?

18 **MR. ANTONIO ESTRADA:** Yes.

19 **MS. SHARON VOGEL:** And that allowed for faster production and
20 it allowed for the removal of track circuits, correct?

21 **MR. ANTONIO ESTRADA:** Yes.

22 **MS. SHARON VOGEL:** Then the City staff, who you've described
23 as professional, they understood the complexity of this system and that -- that RTG was
24 designing and building for the City, correct?

25 **MR. ANTONIO ESTRADA:** Correct.

26 **MS. SHARON VOGEL:** And they understood the complexity of the
27 vehicles and the infrastructure, including the maintenance and storage facility and the
28 track, et cetera, correct?

1 **MR. ANTONIO ESTRADA:** Well, not all the City team were familiar
2 with the vehicles and systems, but the ones who were, I believe they understood the
3 complexity, yes.

4 **MS. SHARON VOGEL:** And the City retained consultants to advise
5 them on technical issues, correct ---

6 **MR. ANTONIO ESTRADA:** Yes.

7 **MS. SHARON VOGEL:** --- where they needed that additional
8 technical expertise, correct?

9 **MR. ANTONIO ESTRADA:** Yes.

10 **MS. SHARON VOGEL:** And so in summary, on a number of
11 issues, you'd agree that the City was cooperative and agreed to compromise, correct?

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MS. SHARON VOGEL:** And in terms of your comments about a
14 change after the sinkhole showed that there were going to be delays, in terms of your
15 comments about the City decision making, you didn't participate in any internal decision
16 making of the City, did you?

17 **MR. ANTONIO ESTRADA:** No.

18 **MS. SHARON VOGEL:** So it was just your opinion that decision
19 making went to a higher level? You weren't involved in any of those discussions,
20 correct?

21 **MR. ANTONIO ESTRADA:** Correct. But it's not just my opinion,
22 it's what we discussed with the usual team that you expect to make decisions and they
23 say, "No, there is decision cannot be made at this table."

24 This is my -- I infer that, but I -- you are right, I was not part of the
25 City decision making process.

26 **MS. SHARON VOGEL:** And in relation to the City as lender, can
27 we agree that RTG was involved in the negotiations between the long-term lenders and
28 the City?

1 **MR. ANTONIO ESTRADA:** No.

2 **MS. SHARON VOGEL:** But you were -- you participated in and
3 were copied on correspondence relating to the negotiations; were you not?

4 **MR. ANTONIO ESTRADA:** At the negotiations of how the City
5 took over the debt, we were not part of that.

6 **MS. SHARON VOGEL:** But you understand that ultimately, the
7 City decided to assume the debt of the long-term lenders, correct?

8 **MR. ANTONIO ESTRADA:** The City communicated as that they
9 have decided to assume the debt, but they negotiated directly with the lenders.

10 **MS. SHARON VOGEL:** But didn't that require execution of a whole
11 series of documents, which included assumption -- an assumption and assignment
12 agreement between the City and those lenders?

13 **MR. ANTONIO ESTRADA:** When the decision was made, of
14 course, there was some documents to be signed, and the board approved the change,
15 and I signed the documents.

16 **MS. SHARON VOGEL:** That's right. And some of those
17 documents related to the assumption and assignment agreements. But another one of
18 those documents was a separate agreement that RTG had to sign in connection with
19 the finalization of the debt swap; is that correct?

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. SHARON VOGEL:** And that's known as the subordination
22 agreement, correct?

23 **COMMISSIONER HOURIGAN:** Sorry. You let the witness answer
24 his question.

25 **MS. SHARON VOGEL:** I'm sorry. Apologies.

26 **MR. ANTONIO ESTRADA:** No, what they say is that the decision
27 to take over the debt was a City decision made -- directly with the lenders.

28 Of course, afterwards, after that, as we were about half -- with the

1 lenders, we have to amend the documents, and this is what they did. But that doesn't
2 mean that we were part of the decision to take over the debt.

3 **MS. SHARON VOGEL:** But RTG had to sign the subordination
4 agreement?

5 **MR. ANTONIO ESTRADA:** Yes.

6 **MS. SHARON VOGEL:** Correct?

7 **MR. ANTONIO ESTRADA:** They did.

8 **MS. SHARON VOGEL:** And the reason that the subordination
9 agreement was required was because the City, as long-term lender, had to subordinate
10 its rights to those of the existing short-term lenders, correct?

11 **MR. ANTONIO ESTRADA:** I am not really -- I was not part, even in
12 our side of the negotiations of the discussions with the City. I was not familiar with the
13 preparation of the documents, so I signed the documents when the board approved the
14 documents. So I cannot say yes or no to what you are saying.

15 **MS. SHARON VOGEL:** Well, why don't we take a look at the
16 subordination agreement then? And I know we don't have much time this morning, but
17 it's Document number COW0593677, if that could be pulled up?

18 **THE REGISTRAR:** Just stand by.

19 **MS. SHARON VOGEL:** Thank you.

20 If we could go to page 4 of the PDF, which is page 4 of this
21 document, you see this is the subordination agreement, September 22nd, 2017. Does
22 this refresh your memory, Mr. Estrada?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. SHARON VOGEL:** And this agreement had to be executed by
25 RTG in order to finalize the debt swap, correct?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. SHARON VOGEL:** And in paragraph -- section 4 is headed
28 "Subordination and Postponement", and the first sentence states:

1 "Subject to the terms of this agreement, the
2 subordinate lender hereby expressly, irrevocably, and
3 unconditionally postpones and subordinates the right
4 to receive any payment of the subordinate
5 indebtedness." (As read)

6 And it continues from there.

7 So the City was, through this clause of this agreement,
8 subordinating its rights to those rights of the existing short-term lenders, based on the
9 face of the document, correct?

10 **MR. ANTONIO ESTRADA:** Yeah.

11 **MS. SHARON VOGEL:** And the arrangements between the City
12 and the long-term lender didn't become effective until RTG signed this agreement,
13 correct?

14 **MR. ANTONIO ESTRADA:** Yes.

15 **MS. SHARON VOGEL:** So in effect, RTG's consent was required
16 for the City to enter into the debt swap; isn't that the case?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. SHARON VOGEL:** And RTG did execute this subordinate
19 agreement, correct?

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. SHARON VOGEL:** We can take down the share. Thank you
22 very much.

23 Commission counsel asked you some questions about a discussion
24 you had with Marian Simulik, and I believe that you described that as an informal
25 exploratory discussion?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. SHARON VOGEL:** And that is what it was, correct?

28 **MR. ANTONIO ESTRADA:** Yes.

1 **MS. SHARON VOGEL:** And the City, at the end, did agree, after
2 you left, to a -- that it would consent to the request to reduce the delay liquidated
3 damages under the construction contract, correct?

4 **MR. ANTONIO ESTRADA:** I think so, yes.

5 **MS. SHARON VOGEL:** So your recollection of that conversation
6 with Marian Simulik, that is -- that doesn't reflect what actually happened in the end,
7 does it?

8 **MR. ANTONIO ESTRADA:** In the end, it happened otherwise, yes.

9 **MS. SHARON VOGEL:** Now, in relation to the sinkhole, the
10 sinkhole occurred on June 8, 2016, and RTG then provided a mitigation plan to the City,
11 correct?

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MS. SHARON VOGEL:** And that mitigation plan, which was in fact
14 prepared by OLRTC, indicated that RTG would achieve RSA by May 24, 2018, correct?

15 **MR. ANTONIO ESTRADA:** Right.

16 **MS. SHARON VOGEL:** And are you aware that after you left the
17 project, the independent certifier made a determination on the sinkhole dispute?

18 **MR. ANTONIO ESTRADA:** I have known this recently, yes.

19 **MS. SHARON VOGEL:** Have you read that decision?

20 **MR. ANTONIO ESTRADA:** Yes, I read the decision.

21 **MS. SHARON VOGEL:** So, you're aware that the independent
22 certifier concluded, following a review of expert reports from both the City and RTG, that
23 the sink hole was very likely due to OLRTC's tunneling activities, correct?

24 **MR. ANTONIO ESTRADA:** Yes.

25 **MS. SHARON VOGEL:** And the independent certifier determined
26 that RTG's theory that the sink hole was caused by the faulty installation of a HYMAX
27 coupler in a fire hydrant relocated by the City leading to a water main leak was rejected.
28 You are aware of that, having read the decision?

1 **MR. ANTONIO ESTRADA:** Yes.

2 **MS. SHARON VOGEL:** And the views of the City's expert, who
3 found that the sink hole was caused by RTG's tunneling activities was more persuasive,
4 as found by the independent certifier, correct?

5 **MR. ANTONIO ESTRADA:** Correct.

6 **MS. SHARON VOGEL:** And are you aware that the independent
7 certifier in that decision provided conclusions on the independent certifier's delay
8 analysis of the sink hole?

9 **MR. ANTONIO ESTRADA:** No, I am not aware of that. I have
10 read ---

11 **MS. SHARON VOGEL:** You're not aware?

12 **MR. ANTONIO ESTRADA:** I think that this report is from 2021.

13 **MS. SHARON VOGEL:** It is.

14 **MR. ANTONIO ESTRADA:** Three years after I left.

15 **MS. SHARON VOGEL:** So -- and I know you've read the
16 independent certifier's decision, and the independent certifier's decision indicates that
17 its delay analysis showed that in the first window, in the six months after the sink hole,
18 showed that in comparing the baseline schedule to the as-built schedule that the RSA
19 date, the revenue service availability date, was not affected by the sink hole given
20 remediation activities and RTG's schedule was maintaining that the project was not in
21 delay as of December 21, 2016. Are you aware of that?

22 **MR. ANTONIO ESTRADA:** Yes. This is what they said in the
23 report. I have read the report very quickly a few days ago.

24 **MS. SHARON VOGEL:** And in relation to the settlement with the
25 insurers, I believe you indicated that you were aware that the insurers paid an initial
26 settlement in relation to -- I believe you described it as "the tunnel reinstatement," but it
27 was direct costs related to the tunneling works that RTG needed to perform. And that
28 was -- that the insurer paid about \$40 million in relation to those costs, correct?

1 **MR. ANTONIO ESTRADA:** Yeah. I think that this was about the
2 number -- the figure that they paid before I left.

3 **MS. SHARON VOGEL:** And then after you left, are you aware that
4 the insurers paid about \$74 million for soft costs, delay-related costs, associated with
5 the tunnel?

6 **MR. ANTONIO ESTRADA:** I'm not.

7 **MS. SHARON VOGEL:** You stated that you were not there for the
8 testing portion of the project, but that the sink hole may have impacted the testing and
9 commissioning schedule. But you were not there at the time, correct?

10 **MR. ANTONIO ESTRADA:** So, I was there with -- at the initial
11 testing and testing preparations, but not when the testing started in full, I believe.

12 **MS. SHARON VOGEL:** So, in relation to the testing, you don't
13 have specific knowledge of what occurred over the testing and commissioning period?

14 **MR. ANTONIO ESTRADA:** I don't.

15 **MS. SHARON VOGEL:** And in relation to the vehicle choice, you
16 were aware that the Citadis was an existing vehicle used in Europe?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. SHARON VOGEL:** And the Spirit was the Citadis modified to
19 meet the City's requirements for weather and speed, and other requirements, correct?

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. SHARON VOGEL:** And RTG, through its design builder,
22 OLRTC and subcontractors like Alstom, they were capable of meeting the project
23 agreement requirements in relation to the vehicles, correct?

24 **MR. ANTONIO ESTRADA:** Yes.

25 **MS. SHARON VOGEL:** And Alstom, it's one of the top vehicle
26 suppliers in the world, correct?

27 **MR. ANTONIO ESTRADA:** I believe so, yes.

28 **MS. SHARON VOGEL:** And in relation to systems integration, as

1 you advised Commission counsel, RTG had an oversight role in systems integration,
2 correct?

3 **MR. ANTONIO ESTRADA:** RTG had a general oversight role to
4 inform -- RTG had a general oversight, not just testing and commissioning, everything,
5 construction, the project, to inform the board and to ensure that the contract conditions
6 were met.

7 **MS. SHARON VOGEL:** And it had concerns related to systems
8 integration, and it retained SENER in 2017 as a result, correct?

9 **MR. ANTONIO ESTRADA:** Yes. We retained SENER to make an
10 assessment of the status of the testing and commissioning at that time.

11 **MS. SHARON VOGEL:** Because you had concerns, correct?

12 **MR. ANTONIO ESTRADA:** We have concerns about possible
13 delays and about -- we didn't have a clear information about what was the status of the
14 testing and commissioning, and we felt that we need an independent assessment of
15 what was going on.

16 **MS. SHARON VOGEL:** And you passed the day-to-day
17 responsibility for systems integration down to OLRTC through the drop-down
18 mechanisms in the construction contract, correct?

19 **MR. ANTONIO ESTRADA:** Yes.

20 **MS. SHARON VOGEL:** And OLRTC was supposed to coordinate
21 between Alstom and Thales, correct?

22 **MR. ANTONIO ESTRADA:** Yes.

23 **MS. SHARON VOGEL:** And in relation to OLRTC's schedule, they
24 were responsible for the schedules on the project, correct?

25 **MR. ANTONIO ESTRADA:** Yes.

26 **MS. SHARON VOGEL:** And you acknowledge that their schedules
27 were aggressive?

28 **MR. ANTONIO ESTRADA:** The recovery schedules were

1 aggressive after the sink hole.

2 **MS. SHARON VOGEL:** And you advised Commission counsel that
3 RTG knew, as about the fall of 2017, that it would not meet the May 24, 2018, RSA
4 date, correct?

5 **MR. ANTONIO ESTRADA:** Yes, we have the feeling that this date
6 was no longer possible.

7 **MS. SHARON VOGEL:** Okay. And you were taken through a
8 series of correspondence, and I don't have time to take you through that
9 correspondence now, but it started with the November 24, 2017, notice that stated that
10 the May 24, 2018, RSA date would be met. But I believe you stated to Commission
11 counsel that, at that time, you believed that the May 24, 2018, date would actually be
12 very difficult to meet.

13 **MR. ANTONIO ESTRADA:** Yes.

14 **MS. SHARON VOGEL:** Correct? But your cover letter just passed
15 along the notice with no commentary, correct?

16 **MR. ANTONIO ESTRADA:** Correct.

17 **MS. SHARON VOGEL:** And you were, then, taken to a series of
18 correspondence back and forth with the City, including the City manager's letter, that
19 referenced that the City would not give forgiveness of the failure to achieve RSA.

20 **MR. ANTONIO ESTRADA:** Yes.

21 **MS. SHARON VOGEL:** And you indicated to you that it meant that
22 the City would apply the contract, correct?

23 **MR. ANTONIO ESTRADA:** This is my interpretation of this
24 unforgiveness, yes.

25 **MS. SHARON VOGEL:** And so, by applying the contract, did you
26 mean that ensuring that all the contractual requirements of revenue service availability
27 were met before revenue service availability was achieved?

28 **MR. ANTONIO ESTRADA:** Yes. And I think this was what the

1 letter said, the letter from the City.

2 **MS. SHARON VOGEL:** And the failure to achieve revenue service
3 availability, in and of itself, is not an event of default, is it? It is only the failure to meet
4 the long stop date, which is 365 days after the revenue service availability date that is
5 an event of default, correct?

6 **MR. ANTONIO ESTRADA:** Correct.

7 **MS. SHARON VOGEL:** And there was -- you described the
8 workshops that occurred from November 2017 through to the beginning of 2018,
9 discussing the revenue service availability date, correct?

10 **MR. ANTONIO ESTRADA:** Discussing a realistic schedule and
11 leading to a realistic revenue service availability date.

12 **MS. SHARON VOGEL:** And that, those workshops, what they
13 produced was the February 5, 2018, notice from RTG, which indicated that RTG would
14 achieve revenue service availability by November 2, 2018, correct?

15 **MR. ANTONIO ESTRADA:** Correct.

16 **MS. SHARON VOGEL:** And in terms of the discussions between
17 the parties at that time, the City did not accept the legitimacy of the sink hole as a delay
18 event, correct?

19 **MR. ANTONIO ESTRADA:** Correct.

20 **MS. SHARON VOGEL:** And you indicated that the City valued
21 your experience with P3 projects, correct?

22 **MR. ANTONIO ESTRADA:** Yeah, I believe so.

23 **MS. SHARON VOGEL:** And you taking on this role. And you are
24 part of the P3 division of ACS, correct?

25 **MR. ANTONIO ESTRADA:** Yes.

26 **MS. SHARON VOGEL:** And you would agree that the P3 model is
27 in wide use globally on major infrastructure projects, correct?

28 **MR. ANTONIO ESTRADA:** Yes.

1 **MS. SHARON VOGEL:** And ACS regularly bids on P3 models
2 around the world, correct?

3 **MR. ANTONIO ESTRADA:** Correct.

4 **MS. SHARON VOGEL:** It is heavily invested in this model,
5 correct?

6 **MR. ANTONIO ESTRADA:** Correct.

7 **MS. SHARON VOGEL:** And ACS believes that the model works
8 and it's profitable for contractors such as ACS, correct?

9 **MR. ANTONIO ESTRADA:** Yes, correct.

10 **MS. SHARON VOGEL:** And you believe that the P3 model works,
11 given your experience in ACS's heavy investment in P3s globally, correct?

12 **MR. ANTONIO ESTRADA:** Yes, correct. Correct.

13 **MS. SHARON VOGEL:** And you would agree with me that after
14 entering this Project Agreement with the City of Ottawa, ACS partnered with other
15 contractors in consortia for other LRTs in Ontario which used the same P3 model,
16 correct?

17 **MR. ANTONIO ESTRADA:** Correct.

18 **MS. SHARON VOGEL:** And it is still bidding on P3 projects in
19 Canada, including Ontario, and around the world as we sit here today, correct?

20 **MR. ANTONIO ESTRADA:** Correct. But I would like to make an
21 observation. I believe that after Ottawa we have not proposed any RT including the
22 rolling stop, including the train.

23 **MS. SHARON VOGEL:** Okay. ACS is one of the largest
24 construction companies in the world, correct? It's usually in the top one or two in global
25 listings, correct?

26 **MR. ANTONIO ESTRADA:** Yes.

27 **MS. SHARON VOGEL:** And SNC Lavalin and EllisDon are, of
28 course, two of Canada's largest construction companies, correct?

1 **MR. ANTONIO ESTRADA:** Correct.

2 **MS. SHARON VOGEL:** And the global revenues of ACS, which is
3 of course a publicly traded company over the last ten years, they range between \$30 to
4 \$40 billion a year approximately?

5 **MR. ANTONIO ESTRADA:** I think so, yes.

6 **MS. SHARON VOGEL:** And are you aware that the City of
7 Ottawa's operating budget is 4 billion a year?

8 **MR. ANTONIO ESTRADA:** No, I didn't know.

9 **MS. SHARON VOGEL:** But you would agree with me that ACS,
10 one of the three entities that make up the RTG consortium, is a much larger
11 organization with much larger revenues than the City of Ottawa, correct?

12 **MR. ANTONIO ESTRADA:** Globally, yes but not in Canada.

13 **MS. SHARON VOGEL:** But within Canada, ACS can draw on the
14 resources of the global entity, can it not?

15 **MR. ANTONIO ESTRADA:** Well, it's not so straightforward.

16 **MS. SHARON VOGEL:** And in relation to the City's review of
17 schedules, given your experience on P3 projects, you would agree with me that owners
18 can comment on or reject work schedules for a number of reasons, correct?

19 **MR. ANTONIO ESTRADA:** Yes.

20 **MS. SHARON VOGEL:** But an owner cannot take the schedule
21 function away from a Project Co. and redo the schedule to its liking and make it more
22 realistic, correct?

23 **MR. ANTONIO ESTRADA:** Correct.

24 **MS. SHARON VOGEL:** It is the construction contractor's schedule
25 and they are responsible for it, correct?

26 **MR. ANTONIO ESTRADA:** Correct.

27 **MS. SHARON VOGEL:** And you're aware that the City raised
28 concerns regarding the work schedules being unrealistic?

1 **MR. ANTONIO ESTRADA:** Yeah. In the discussions that we had
2 in the workshops that we have, yes, it was the concern..

3 **MS. SHARON VOGEL:** And those concerns in the end were
4 resolved to RTG's satisfaction when it delivered that February 5, 2018 notice of
5 Revenue Service Availability that it would achieve Revenue Service Availability by
6 November 2nd, 2018, correct?

7 **MR. ANTONIO ESTRADA:** Yes, it was -- the constructor was
8 satisfied that the November date was the material date.

9 **MS. SHARON VOGEL:** Okay. And in relation to a commitment to
10 achieve schedule, in relation to the MSF facilities, there were delays to the
11 commencement of manufacturing, correct?

12 **MR. ANTONIO ESTRADA:** Correct.

13 **MS. SHARON VOGEL:** And OLRTC said that Alstom was delayed
14 and not ready to set up its equipment. And Alstom said the facility was incomplete,
15 correct?

16 **MR. ANTONIO ESTRADA:** Correct.

17 **MS. SHARON VOGEL:** So there was finger pointing between
18 those two entities, correct?

19 **MR. ANTONIO ESTRADA:** Yeah.

20 **MS. SHARON VOGEL:** There was a failure to coordinate and work
21 collaboratively between Alstom and OLRTC, correct?

22 **MR. ANTONIO ESTRADA:** I wouldn't say so.

23 **MS. SHARON VOGEL:** David Whyte and Eugene Kramer, OLRTC
24 project directors, they were replaced due to poor performance, correct?

25 **MR. ANTONIO ESTRADA:** They replaced them but both was a
26 decision of the committee of the constructor that was not shared with us.

27 **MS. SHARON VOGEL:** Okay. But that certainly was not a
28 decision made by the City, was it?

1 **MR. ANTONIO ESTRADA:** No. It was not made by the City.

2 **COMMISSIONER HOURIGAN:** All right, Counsel. You're well
3 over time but if you want to wrap up for a couple of minutes, you can go ahead.

4 **MS. SHARON VOGEL:** Sure. You, in your position as CEO of
5 RTG, you were kept informed of OLRTC's progress of the work and the status of the
6 subcontractors' work as the project progressed; that was part of your job, correct?

7 **MR. ANTONIO ESTRADA:** Yes. The status of the work, yes.

8 **MS. SHARON VOGEL:** Including the subcontractors' work,
9 because you were the single point of responsibility for the City, correct?

10 **MR. ANTONIO ESTRADA:** Correct.

11 **MS. SHARON VOGEL:** Those are my questions. Thank you.

12 **MR. ANTONIO ESTRADA:** Thank you.

13 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
14 Next is Alstom.

15 **MS. LENA WANG:** Good morning. For the record it's Wang, W-a-
16 n-g, first initial L, counsel for Alstom.

17 **--- CROSS-EXAMINATION BY MS. LENA WANG:**

18 **MS. LENA WANG:** Good morning, Mr. Estrada.

19 **MR. ANTONIO ESTRADA:** Good morning.

20 **MS. LENA WANG:** I just have a few questions for you.

21 When you were interviewed last month by Commission counsel you
22 indicated that your view that Alstom delayed the validation testing of the prototype
23 vehicles. Do you recall that?

24 **MR. ANTONIO ESTRADA:** Yes.

25 **MS. LENA WANG:** Okay. And by "validation testing" you were
26 referring to LRVs one and two, validation testing of the prototype vehicles. You're
27 referring to one and two?

28 **MR. ANTONIO ESTRADA:** By validation testing I referred to the

1 tests that are required to validate the design.

2 **MS. LENA WANG:** Right. And that ---

3 **MR. ANTONIO ESTRADA:** I think that those tests were performed
4 over Car one and two, and over more cars. I don't remember exactly, but not
5 necessarily just over Car one and two.

6 **MS. LENA WANG:** But certainly ---

7 **MR. ANTONIO ESTRADA:** Yeah, okay.

8 **MS. LENA WANG:** I'm sorry. Certainly not for the whole 34
9 vehicles.

10 **MR. ANTONIO ESTRADA:** No, not for the -- validation testing is
11 what it is, a validation test. It has to be performed in a number of vehicles, not all the
12 vehicles.

13 **MS. LENA WANG:** Right. I'm going to show you a document, Mr.
14 Estrada.

15 Could I have a document put up and the doc ID is ALS0054399.

16 **COMMISSIONER HOURIGAN:** Right. Just stand by.

17 **MS. LENA WANG:** Thank you.

18 **COMMISSIONER HOURIGAN:** Just stand by. It's a large file so
19 we're just getting it.

20 **MS. LENA WANG:** Yeah, no problem.

21 **(SHORT PAUSE)**

22 **MS. LENA WANG:** Are you seeing the document, Mr. Estrada?

23 There we go. Now I'm seeing it. Okay.

24 So have you seen this document before?

25 **MR. ANTONIO ESTRADA:** No.

26 **MS. LENA WANG:** Okay. And I want to be clear to you, sir, this
27 document is dated, as we can see here, August 26th, 2019. And I understand that that's
28 after you left the project.

1 **MR. ANTONIO ESTRADA:** Correct.

2 **MS. LENA WANG:** Is that right?

3 **MR. ANTONIO ESTRADA:** Yes.

4 **MS. LENA WANG:** Okay. But as we can see here -- and you can
5 just scroll up a little bit so that it shows that it's on RTG letterhead.

6 Okay. Well, maybe it doesn't show on this one.

7 But I'm going to -- if you scroll down, actually, sorry. Underneath
8 the image it says "RTG".

9 This is an RTG submission to the independent supervisor and it
10 appears to be a submission under the dispute resolution of the project agreement which
11 you discussed a little bit with my friend, counsel for the City of Ottawa. And if we can go
12 to page 4 of the PDF, just page 4, yeah.

13 So, just to set you up, sir, the first paragraph under executive
14 summary, and the first sentence says, "This dispute concerns undue delays by the City
15 of Ottawa in selecting and approving design elements of the vehicles being supplied by
16 Alstom." Do you see that?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MS. LENA WANG:** Okay. And if we can go down to page 26. And
19 just scroll down so that we get to paragraph 91, please. Okay. Right there.

20 This paragraph says, "As set out in the independent report of FTI
21 Consulting, the delays to the design both delayed procurement activity and
22 manufacturing of prototype vehicles of LRV 1 and 2." Do you see that?

23 **MR. ANTONIO ESTRADA:** Yes.

24 **MS. LENA WANG:** Okay. And then it goes on to say, "The delay
25 in," and then if you can scroll down to the next page, please. "The delay in prototype
26 manufacturing also resulted in a delay to serial production.

27 Paragraph 92 goes on to say that the delays --

28 "The 87-day delay would have been longer but for

1 Alstom's attempt to mitigate by relocating vehicle
2 production to the MSF earlier than planned, but the
3 delays to LRVs 1 and 2 caused RTG to move the benefit
4 of testing the prototypes prior to serial manufacturing."

5 Having reviewed these paragraphs, sir, would you agree that the
6 reasons advanced by RTG for the delays to the prototype manufacturing are contrary to
7 your evidence?

8 **MR. ANTONIO ESTRADA:** So, my evidence is what I heard at that
9 time, and it was mainly the concern of the lender standing as advisor when we reviewed
10 the status of the initial manufacturing, and this observation was related to the risk of
11 advancing the manufacturing without the valuation testing, and the risk of having to
12 retrofit the fleet of the vehicles, or on a substantial number of vehicles, if some of the
13 testing didn't pass. But I don't know, right? So, I'm not familiar with all these -- the
14 dispute between OLRTC and Alstom, and I'm not familiar with the details of this report.
15 I'm sorry.

16 **MS. LENA WANG:** And that's fine, sir. Your evidence is based on
17 what you heard. What I'm asking you is, what we see here, the positions and the
18 reasons taken by RTG for the delays that you're talking about, that's different than what
19 you told Ms. Mainville last month when she interviewed you.

20 **MR. ANTONIO ESTRADA:** Yes, apparently, yes.

21 **MS. LENA WANG:** Okay. If we can continue to page 429 of the
22 PDF. Okay. So, this, sir, is an FTI document called "LRV Design and Retrofit." And
23 earlier, we saw a reference that FTI prepared an independent expert delay analysis.
24 So, now we're going to look at that report just a little bit.

25 If you can go to page 444. Just for the sake of time, I'm going to
26 take you to the summary and the conclusion reached. If you can go down a little bit.

27 And just to put it in context, sir, FTI's conclusion and the report
28 prepared by FTI substantiated RTG's claim made to the IC, to the independent certifier?

1 Yes, I'm looking forward to that paragraph, 2.51 where it says,
2 "The City was required to approve the LRV design book
3 in August 2013; however, the City only approved the LRV
4 design book a year later in August 2014. The delay to
5 the approval of the LRV design book delayed
6 procurement activity, and, in turn, delayed prototype
7 manufacturing."

8 Do you see that?

9 **MR. ANTONIO ESTRADA:** Yes.

10 **MS. LENA WANG:** And delays to prototype manufacturing would
11 delay validation testing of the prototype vehicles, wouldn't it?

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MS. LENA WANG:** So, sir, we can agree that Alstom's validation
14 testing was delayed, but the expert analysis performed by RTG's independent experts
15 conclude that the delay to the validation testing was the result of the City's failure to
16 approve the LRV design book; isn't that right?

17 **MR. ANTONIO ESTRADA:** According to the report, yes.

18 **MS. LENA WANG:** And that's inconsistent with your memory and
19 the evidence you've given Ms. Mainville.

20 **MR. ANTONIO ESTRADA:** Apparently, yes.

21 **MS. LENA WANG:** Those are all my questions.

22 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.

23 Next is IO.

24 **MR. SOLOMON McKENZIE:** Good morning. My name is
25 Solomon McKenzie, M-C-K-E-N-Z-I-E, counsel for Infrastructure Ontario.

26 **--- CROSS-EXAMINATION BY MR. SOLOMON McKENZIE:**

27 **MR. SOLOMON McKENZIE:** Good morning, sir.

28 **MR. ANTONIO ESTRADA:** Good morning.

1 **MR. SOLOMON McKENZIE:** I have a couple of questions for you,
2 but just to begin, can I get the opening statement up? I don't believe it has a document
3 number, but (technical difficulty)

4 **COMMISSIONER HOURIGAN:** Sorry, you're looking for what?

5 **MR. SOLOMON McKENZIE:** The (technical difficulty)

6 **COMMISSIONER HOURIGAN:** Opening statement for the Inquiry?

7 **MR. SOLOMON McKENZIE:** Yes.

8 **COMMISSIONER HOURIGAN:** All right. We're going to see if we
9 have it available.

10 **MR. SOLOMON McKENZIE:** I believe it's publicly posted on the
11 website, if that's of any assistance.

12 **COMMISSIONER HOURIGAN:** All right. We'll just try to get it to
13 you. It is helpful to let us know in advance what documents you need available,
14 especially those that aren't in the participant database. When you ask for documents
15 that aren't there, we then have to figure out how and where we can get them. So, we're
16 going to do that, so standby.

17 **MR. SOLOMON McKENZIE:** My apologies. If it's of assistance,
18 we can also screen share.

19 **COMMISSIONER HOURIGAN:** No, just standby. We're on it.
20 Thank you.

21 **(SHORT PAUSE)**

22 **MR. SOLOMON McKENZIE:** Thank you. If we could go to page 9
23 of the PDF. It's displaying as a straight line for us. I'm not sure if that's true for
24 everyone's feed?

25 **COMMISSIONER HOURIGAN:** I'm sorry, it's displaying as what?

26 **MR. IMBESI:** Oh, I see what he means. On the Zoom screen on
27 my computer, it is showing as a black screen.

28 **COMMISSIONER HOURIGAN:** Oh, okay. It's showing up fine for

1 me.

2 **MR. SOLOMON McKENZIE:** Mr. Estrada, are you able to ---

3 **MR. ANTONIO ESTRADA:** I can't see. I can't see the document
4 on the screen.

5 **MR. SOLOMON McKENZIE:** You can, or you cannot?

6 **MR. ANTONIO ESTRADA:** I can't.

7 **MR. SOLOMON McKENZIE:** You cannot. Thank you.

8 **COMMISSIONER HOURIGAN:** How big a section of this are you
9 going to refer to?

10 **MR. SOLOMON McKENZIE:** I am going to put two (technical
11 difficulty)

12 **COMMISSIONER HOURIGAN:** Can you do it without having the
13 document in front of you? Can you read it out to us?

14 **MR. SOLOMON McKENZIE:** Sure.

15 **COMMISSIONER HOURIGAN:** Hang on. Let's just see. We're
16 going to try it again.

17 **MR. ANTONIO ESTRADA:** I can see it now.

18 **MR. SOLOMON McKENZIE:** Okay, wonderful. So, it's page 9 of
19 the PDF, please. Apologies, I'm looking for paragraph 23, so I think you're going to
20 need to go down a couple more pages. Perfect, thank you.

21 So my friend, Ms. Vogel, has taken you through paragraph 23 in
22 the section starting, "The RTG parties are expert at designing, constructing, and
23 retaining the transit system." She's asked you some general questions about the nature
24 of consortium. If you -- I think you would agree that these opening statements lay out in
25 quite a bit of detail the extensive experience the consortium members have with transit
26 P3s and large infrastructure projects, correct?

27 **MR. ANTONIO ESTRADA:** Correct.

28 **MR. SOLOMON McKENZIE:** And this substantial experience with

1 transit projects is what lead RTG to say on the following, starting at paragraph 24 -- I
2 believe we'll just be scrolling down, so could we just go to the next, please, at paragraph
3 24 where is says:

4 "The individual professionals who designed and built
5 the Confederation Line, and who now maintain the
6 system, brought decades of experience and top
7 qualifications in their field."

8 Do you agree with this statement?

9 **MR. ANTONIO ESTRADA:** I do.

10 **MR. SOLOMON McKENZIE:** Okay. And you'd agree that that
11 expertise was tailored to this project as well?

12 **MR. ANTONIO ESTRADA:** Yes.

13 **MR. SOLOMON McKENZIE:** And it's fair to say that the consortium
14 members care about the quality of their work?

15 **MR. ANTONIO ESTRADA:** Yes.

16 **MR. SOLOMON McKENZIE:** That RTG aimed to provide high-
17 quality work on all aspects of the project?

18 **MR. ANTONIO ESTRADA:** Yes.

19 **MR. SOLOMON McKENZIE:** And aimed, to the best of their
20 efforts, to act in the best interests of the project at all times?

21 **MR. ANTONIO ESTRADA:** Yes.

22 **MR. SOLOMON McKENZIE:** And would agree that you brought
23 this commitment to quality in general to the OLRT project?

24 **MR. ANTONIO ESTRADA:** Yes.

25 **MR. SOLOMON McKENZIE:** And you'll agree that although there
26 were challenges on the project, the line is working well now?

27 **MR. ANTONIO ESTRADA:** I don't know. I have been in California
28 since 2018.

1 **MR. SOLOMON McKENZIE:** Fair enough, sir. Could we go to
2 paragraph -- sorry, paragraph 9. We could find at page 4. So I think you're going to
3 need to scroll up about 10 pages. Scroll down, please, one more. There you go. Up
4 again. No. No, no, I'm looking for -- oh, sorry, yes, you have it on the screen.

5 You have your reason to disagree with the statement that the
6 Confederation Line currently has a service reliability of 99.8 percent?

7 **MR. ANTONIO ESTRADA:** No.

8 **MR. SOLOMON McKENZIE:** Which has increased over the last
9 six months from 99;2 percent?

10 **MR. ANTONIO ESTRADA:** No. I have no information about that,
11 but I do disagree with that.

12 **MR. SOLOMON McKENZIE:** But no reason to disagree, okay.
13 And as you stated, the -- that the consortium has expertise in P3s, and transits, and in
14 complex projects.

15 **MR. ANTONIO ESTRADA:** Yeah.

16 **MR. SOLOMON McKENZIE:** And as you raised with my friend,
17 Ms. Mainville, this experience extended to understanding and planning for common
18 issues and risks that might arise on a project like this?

19 **MR. ANTONIO ESTRADA:** Yes.

20 **MR. SOLOMON McKENZIE:** And you identified a couple of those
21 risks today, like integration and the fact that things will not perfectly?

22 **MR. ANTONIO ESTRADA:** Well, things not going perfectly is a
23 general risk in every project.

24 **MR. SOLOMON McKENZIE:** M'hm. But it's a risk that considered
25 and you would have ---

26 **MR. ANTONIO ESTRADA:** Of course.

27 **MR. SOLOMON McKENZIE:** Of course. And you have no reason
28 to disagree with your colleague, Riccardo Cosentino, when he said that the -- and this is

1 a loose paraphrase -- the consortium has expertise in legal, technical, and financial
2 issues that may arise on a construction project and RTG had all the resources they
3 needed to create a comprehensive and realistic proposal during the bid phase?

4 **MR. ANTONIO ESTRADA:** Yes.

5 **MR. SOLOMON McKENZIE:** And you would have brought that
6 expertise to bear when you were deciding whether to bid on the project?

7 **MR. ANTONIO ESTRADA:** Say it again, please?

8 **MR. SOLOMON McKENZIE:** You would have brought this
9 expertise to bear when you were deciding whether to bid on this project in the first
10 place?

11 **MR. ANTONIO ESTRADA:** Yes.

12 **MR. SOLOMON McKENZIE:** When you were preparing bid
13 materials?

14 **MR. ANTONIO ESTRADA:** I -- well, I was not involved in the
15 tender process. I was to -- to the project after finance had closed, so I ---

16 **MR. SOLOMON McKENZIE:** Of course. But it would have been
17 your expectation that the consortium members of RTG would have brought that -- that
18 expertise to bear in preparing their bid materials?

19 **MR. ANTONIO ESTRADA:** Yeah, it would have been, yes.

20 **MR. SOLOMON McKENZIE:** And in putting together a pricing for
21 this?

22 **MR. ANTONIO ESTRADA:** Yeah.

23 **MR. SOLOMON McKENZIE:** Okay. And you'd agree that mass-
24 transit projects are complex and one of the common challenges is delay?

25 **MR. ANTONIO ESTRADA:** Yes.

26 **MR. SOLOMON McKENZIE:** And accordingly, RTG would have
27 considered this common issue when deciding whether to bid on the project?

28 **MR. ANTONIO ESTRADA:** It was not my decision to propose for

1 this project. I suppose so, but I can't tell.

2 **MR. SOLOMON McKENZIE:** Okay, but you have no information,
3 and you would have expected them to have considered this in bidding on it?

4 **MR. ANTONIO ESTRADA:** I presume that they would have
5 considered this, but I was not part of the discussion during the proposal process.

6 **MR. SOLOMON McKENZIE:** Of course, understood. The same
7 for preparing bid materials?

8 **MR. ANTONIO ESTRADA:** The same thought.

9 **MR. SOLOMON McKENZIE:** Okay. And the same thought -- you
10 were not part of the process but you would presume that they would have.

11 **MR. ANTONIO ESTRADA:** Yeah, when I assume there's
12 possibility of meeting a project, I assume the tender team has -- did their job properly,
13 so.

14 **MR. SOLOMON McKENZIE:** And the "job properly" would have
15 been considering delay?

16 **MR. ANTONIO ESTRADA:** The "job properly" would have been
17 consider enough float in the settle to mitigate that risk.

18 **MR. SOLOMON McKENZIE:** And "enough float" meaning it would
19 have also been included in the bid price -- in the proposed pricing?

20 **MR. ANTONIO ESTRADA:** I think so, yes.

21 **MR. SOLOMON McKENZIE:** Thank you. I'd like to take you to a
22 document that Ms. Mainville took you to today. It's RTG674410.001. I believe it's
23 Exhibit 61. Could I please have that on the screen.

24 **COMMISSIONER HOURIGAN:** All right, sorry. Can you repeat
25 what you're looking for slowly, please?

26 **MR. SOLOMON McKENZIE:** Of course, yes, RTG677410.001.
27 It's a Board -- It's "Regular meeting of the Board of RTG from February 2018". I believe
28 it's Exhibit 61. Thank you so much. And could we go to page 2, please? So just to the

1 second page. Please continue scrolling, thank you. No, there you go. Okay, thank
2 you.

3 So Ms. Mainville took you to the section that reads:

4 "The City has rejected the approach to milestone
5 acceptance." (As read).

6 Do you remember that?

7 **MR. ANTONIO ESTRADA:** Yes.

8 **MR. SOLOMON McKENZIE:** I just want to take you to the section
9 beneath where it says:

10 "DBJV has been notified of RTG debt situation
11 relating to the delay of Milestone 11 completion.
12 However, DBJV appears to be focused on critical path
13 items rather than a special focus on the completion of
14 the Milestone 11 items." (As read).

15 So DBJV is a Design Build joint venture, i.e., it's OLRTC on this
16 project?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MR. SOLOMON McKENZIE:** And what this note is saying is
19 saying is that OLRTC continue to focus its efforts on completing construction on the
20 critical path to complete -- to reach completion of the project, correct?

21 **MR. ANTONIO ESTRADA:** Yes.

22 **MR. SOLOMON McKENZIE:** And that they were not diverging
23 resources to focus on the completion of Milestone 11?

24 **MR. ANTONIO ESTRADA:** Well, there were not enough resources
25 to meet the milestone.

26 **MR. SOLOMON McKENZIE:** M'hm.

27 **MR. ANTONIO ESTRADA:** That meant that we -- we will run out of
28 money to complete ---

1 **MR. SOLOMON McKENZIE:** M'hm.

2 **MR. ANTONIO ESTRADA:** And they have to make a tough choice
3 to focus on the milestone or to focus on the vehicle part.

4 **MR. SOLOMON McKENZIE:** And when they had a choice to make
5 between the principal part and the milestone, they decided to prioritize the principal
6 part?

7 **MR. ANTONIO ESTRADA:** Apparently, yes.

8 **MR. SOLOMON McKENZIE:** Thank you. Those are all my
9 questions.

10 **COMMISSIONER HOURIGAN:** All right, thank you.
11 STV is up next.

12 **MR. JAMES DORIS:** James Doris for STV, and I have no
13 questions.

14 **COMMISSIONER HOURIGAN:** All right.
15 Next, Province of Ontario?

16 **MR. JEFFREY CLAYDON:** Good morning -- or good afternoon,
17 Commissioner. Jeffrey Claydon for the Province, C-l-a-y-d-o-n. We do not have any
18 questions for this witness.

19 **COMMISSIONER HOURIGAN:** All right. Thank you.
20 Thales?

21 **MS. MARIA BRAKER:** My video's not showing because the host
22 has stopped it.

23 **COMMISSIONER HOURIGAN:** Ms.-- do you have questions?

24 **MS. MARIA BRAKER:** No, no.

25 **COMMISSIONER HOURIGAN:** Oh, it's Ms. Braker. I apologize.
26 Do you have questions? We see you now.

27 **MS. MARIA BRAKER:** No, I don't ---

28 **COMMISSIONER HOURIGAN:** All right, thanks.

1 RTG/EGV?

2 **MR. MICHAEL VRANTSIDIS:** Thank you, Mr. Commissioner.

3 Michael Vrantsidis for EJV. We do not have any questions for this
4 witness, thank you.

5 **COMMISSIONER HOURIGAN:** All right.

6 Transportation Action Canada?

7 **MR. DAVID JEANES:** Yes. David Jeanes, J-e-a-n-e-s.

8 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

9 **MR. DAVID JEANES:** Hello, Mr. Estrada. My perspective is more
10 that of the public than an involved party.

11 I just wanted your opinion first. We had a lot of discussion earlier
12 about geotechnical risk, and I would like your opinion on whether the sinkhole, as a
13 delay event, was beyond what RTG had accepted in the contract as geotechnical risk?

14 **MR. ANTONIO ESTRADA:** So the geotechnical risk was allocated
15 in the contract, I think, to the -- to RTG because we choose this option in the tender
16 documents, but the matter with the milestone was not if we have the geotechnical --
17 whether we have the geotechnical risk that we had. The question with the milestone --
18 with the sinkhole was whether the sinkhole was caused by geotechnical conditions or
19 for other circumstances. That was the discussion.

20 **MR. DAVID JEANES:** Okay. And at the time, RTG felt that it was
21 beyond the geotechnical conditions?

22 **MR. ANTONIO ESTRADA:** At that time, when it was there, this is
23 where -- what RTG thought, yes.

24 **MR. DAVID JEANES:** Right. Now, earlier -- and I think this is
25 within your time there -- there was extensive test drilling along the entire route that was
26 done before the start of tunnel construction. It was very visible to the public. It involved
27 many street closures, and I'm wondering, was RTG responsible for determining the
28 extent of this drilling, how much was required, and also, was RTG responsible for

1 interpreting the results of the test drilling?

2 **MR. ANTONIO ESTRADA:** So I think that the test drilling was
3 made -- so there was a geotechnical -- I -- exactly what testing you mean, but there was
4 a geotechnical information including the tenders documents. This was provided by the
5 City after -- during campaign.

6 I think that our contractor completed some of this inspection, but I
7 don't remember exactly when, if it was before the tender or after the tender.

8 **MR. DAVID JEANES:** Right. So ---

9 **MR. ANTONIO ESTRADA:** And -- was the contractor responsible
10 to assess the risk of the tunnelling in the -- of the information available.

11 **MR. DAVID JEANES:** Right. So based on that drilling, for
12 example, which you say had been at least started by the City prior to the bid process?

13 **MR. ANTONIO ESTRADA:** Yes. But again, as I said before, I was
14 not involved in the ---

15 **MR. DAVID JEANES:** No. No, I -- and -- yeah. No, I understand
16 that. It's just -- my question was whether that part of the evaluating the geotechnical
17 risk occurred while you were there.

18 So can you tell me -- and again, if this is within your experience --
19 what were the reasons for choosing sequential tunnelling instead of a boring machine,
20 and as far as you're concerned, did this introduce additional risks when working in
21 perhaps unpredictable ground conditions?

22 **MR. ANTONIO ESTRADA:** I am not a tunnel expert. I know that
23 OLRTC retained a tunnel engineering expert and they decided -- they were the ones
24 decided the means and methods of the tunnel excavation. I was not ---

25 **MR. DAVID JEANES:** You were not involved in that decision? No.
26 Okay.

27 Now, you also mentioned, after the correspondence with Mr.
28 Kanellakos in early 2018, was your direct contact with the project team reduced or

1 limited and replaced by acting with Mr. Manconi and Mr. Kanellakos?

2 **MR. ANTONIO ESTRADA:** I wouldn't say was replaced, I would
3 say was complemented. So I continued dealing with Mr. Cripps and the technical team
4 and I have had dealings with Manconi and Kanellakos as well, but as I did before with
5 Nancy Schepers and Kent Kirkpatrick. They were the former responsables of the
6 project.

7 **MR. DAVID JEANES:** Thank you very much. Those are all my
8 questions.

9 **COMMISSIONER HOURIGAN:** All right. Thank you very much.
10 It's RTG next.

11 **--- CROSS-EXAMINATION BY MR. JEAN-CLAUDE KILLEY:**

12 **MR. JEAN-CLAUDE KILLEY:** Hello, Mr. Estrada. Jean-Claude
13 Killey for the RTG parties.

14 Forgive me asking you a question that may seem a bit obvious.
15 The original project schedule that contemplated achieving revenue service availability in
16 May 2018 didn't include having to deal with a sinkhole in June 2016?

17 **MR. ANTONIO ESTRADA:** No, it didn't.

18 **MR. JEAN-CLAUDE KILLEY:** And I know, in the prior questioning,
19 Commission counsel and Ms. Vogel, you've been taken through a bunch of letters sort
20 of throughout the -- charting to some degree the aftermath of that, but I'm hoping to get
21 a sense from you of the evolution of RTG's understanding of the impact that the
22 sinkhole would have, so at what point did it become clear or apparent to RTG that
23 sinkhole would have an effect on the schedule?

24 **MR. ANTONIO ESTRADA:** Well, at the beginning, they have
25 discussion with -- we knew that there would be an impact for sure. The discussion
26 where whether that impact, will we be able to mitigate in part or not, right?

27 We had discussions with the City after the sinkhole in which we
28 more or less told the City that there will be a substantial impact, a substantial delay.

1 The City wanted to mitigate, to recover as much as possible.

2 Of course, we have the obligation under the contract to mitigate,
3 within what is reasonable means, so I don't think that includes spending any amount of
4 money in the mitigation.

5 So at the end, OLRTC developed a recovery plan with mitigation
6 measures that was rather aggressive, as I said, and we agreed with the City to follow
7 the plan.

8 So there was some expectation from OLRTC that the City will
9 compensate for the additional costs of this mitigation, but was not any commitment from
10 the City, was not -- or anything like that. It was just conversations, and the City didn't
11 commit to anything. And then, they start working according to the plan.

12 **MR. JEAN-CLAUDE KILLEY:** So when -- once you -- once RTG,
13 the constructor, realized there's going to be an impact on the schedule, as a practical
14 matter, what are the options for responding to that ---

15 **MR. ANTONIO ESTRADA:** So ---

16 **MR. JEAN-CLAUDE KILLEY:** --- on RTG's side?

17 **MR. ANTONIO ESTRADA:** Yeah. There are basically -- so the
18 first to mitigate what seems reasonable, especially if the City is not prepared to
19 compensate for the mitigation cost, and to assume that revenue service is going to be
20 delayed and to discuss with the City, and to even discuss with the lenders the delay,
21 because there are covenants in the financial documents related to the delays. This is
22 one option. And the other option is to try to mitigate in full a hundred per cent of the
23 delay, or a substantial portion of the delay, and discuss and develop a recovery plan.
24 But this is what we did at the end, in agreement with the City.

25 **MR. JEAN-CLAUDE KILLEY:** Did you discuss both of those
26 options with the City?

27 **MR. ANTONIO ESTRADA:** Well, I think the City didn't want to
28 hear about delays at that time, in June 2016, and then at the end RTG agreed to

1 develop a plan and to try to recover. And I think they obviously believed at the
2 beginning that even that the plan was aggressive, they could be able to reach the PSA
3 in revenue service in May 2018.

4 **MR. JEAN-CLAUDE KILLEY:** In terms of accelerating the
5 schedule, what kinds of things are we actually talking about implementing?

6 **MR. ANTONIO ESTRADA:** So, of course, the obvious ones were
7 double shifts, working weekends, increasing resources. But in the case of the tunnel,
8 but this -- it's a linear construction. It is important to have a different access to the
9 tunnel to be able to work in different fronts. And this is what we couldn't have exactly,
10 precisely because of the sink hole, because there was a portion of the tunnel that was
11 flooded, and there was -- it took, I don't remember how long, but it took a substantial
12 amount of time to re-establish the communication between -- in the tunnel, the access
13 to the front, the excavation front.

14 **MR. JEAN-CLAUDE KILLEY:** You were asked about and then
15 gave evidence about your view towards the end of summer of 2017 that there was, I
16 believe, as you put it, a low probability of achieving revenue service in May 2018?

17 **MR. ANTONIO ESTRADA:** Yes.

18 **MR. JEAN-CLAUDE KILLEY:** As the CEO of RTG, did you do
19 anything about that opinion at the time?

20 **MR. ANTONIO ESTRADA:** I gave my opinion to -- of course. I
21 informed the board. I told the RTG board that, in our opinion, my and the technical
22 director, Peter Lauch, this date was hardly achievable. And I have some discussions
23 with the contractor as well about that. But they choose to stick to the date.

24 **MR. JEAN-CLAUDE KILLEY:** All right. And you were asked, also,
25 about November 27, 2017, letter from the City. I think I can ask my questions of you
26 about that without needing to pull it up. That was the response from the City to the RSA
27 notice ---

28 **MR. ANTONIO ESTRADA:** Yes.

1 **MR. JEAN-CLAUDE KILLEY:** --- from a few days before. Do you
2 recall the letter I am talking about?

3 **MR. ANTONIO ESTRADA:** Yes.

4 **MR. JEAN-CLAUDE KILLEY:** That I think you described as an
5 example of the City's hardened contractual position. So my question is how -- or I
6 guess I should say whether the City's hardened contractual position impacted RTG's or
7 OLRTC's ability to make progress toward revenue service availability.

8 **MR. ANTONIO ESTRADA:** Well, it was -- what was really
9 concerning to us in the letter was not the hardening of the -- not so much the hardening
10 of the City's contractual position, at the end of the day they can choose to be by the
11 book in the contract. What concerned us is that they were obviously, in the letter, they
12 were prepared to use their position as long-term lender as a leverage in the contract.
13 And that was responded in our letter to Mr. Kanellakos afterwards. This was really
14 concerning.

15 Of course, when you -- when the other party choose to go by the
16 book in a contract like this, progress is always more difficult in all aspects, right? Even
17 the difficulties or the lack of flexibility in negotiating the terms of the milestones and the
18 cost restrictions that they may impose on the contractor, that makes our life much more
19 difficult in a situation that was very difficult already.

20 **MR. JEAN-CLAUDE KILLEY:** Perhaps you have already
21 answered this question in the sort of last portion of your answer there. But why or how
22 does it make your life more difficult?

23 **MR. ANTONIO ESTRADA:** Well, because you have to -- at the
24 end, you have to discuss about everything. Discussions take time, and you cannot
25 proceed until the discussions are settled, if they are settled. So it is a general thing.

26 **MR. JEAN-CLAUDE KILLEY:** You were asked by Ms. Vogel a few
27 questions about your view of P3 contracts for infrastructure projects and your
28 experience with them in infrastructure projects. Are there any considerations in your

1 view about using P3 contracts and a P3 model on transit projects specifically as a
2 subcategory of infrastructure projects that you would share that qualify any of your
3 answers?

4 **MR. ANTONIO ESTRADA:** No, I have no concerns with that. My
5 only -- and I think this is not mine. This is ACS and other companies as well. And I
6 think that they are now -- when tendering transit projects, they are quite reluctant to
7 tender for a project in which you have to assume the risk of providing the vehicle.

8 **MR. JEAN-CLAUDE KILLEY:** And why is that?

9 **MR. ANTONIO ESTRADA:** Because it is a risk which is really
10 difficult to manage, because you depend on a big company that's -- with a big -- it's
11 much bigger than us, with a manufacturing calendar that you really don't know. Not
12 only they are not producing just vehicles for you, they are producing vehicles for
13 everybody and everywhere in the world. So, this is a risk that this really -- probably
14 sometimes it is beyond our means to manage. But this is my opinion, and really I
15 believe that there has been some steps in the construction companies to -- not to tender
16 or to be very careful for transit projects when the project includes a vehicle risk.

17 **MR. JEAN-CLAUDE KILLEY:** Thanks, Mr. Estrada. I don't have
18 anymore questions for you.

19 **COMMISSIONER HOURIGAN:** All right. Re-examination?

20 **--- RE-EXAMINATION BY MS. CHRISTINE MAINVILLE:**

21 **MS. CHRISTINE MAINVILLE:** I only have one question for you,
22 Mr. Estrada, in relation to Ms. Vogel's questions regarding the Stage 2 negotiations and
23 the subordination agreement that RTG signed.

24 **MR. ANTONIO ESTRADA:** Yes.

25 **MS. CHRISTINE MAINVILLE:** First of all, were you involved in
26 those negotiations?

27 **MR. ANTONIO ESTRADA:** No.

28 **MS. CHRISTINE MAINVILLE:** Okay. And so, just to verify your

1 knowledge of this, Mr. Cosentino gave evidence to the Commission about those
2 negotiations indicating that RTG had been threatened with termination for convenience
3 if they didn't come up with a solution to the Stage 2 project amendment -- Project
4 Agreement amendment? Are you aware of that?

5 **MR. ANTONIO ESTRADA:** I was not aware of that.

6 **MS. CHRISTINE MAINVILLE:** Okay. Those are all my questions.
7 Thank you.

8 **COMMISSIONER HOURIGAN:** All right. Thank you, sir, for your
9 testimony. You're excused.

10 We'll take the break and back at two o'clock with Rupert Holloway
11 of OLRTC as the next witness. Thank you.

12 **THE REGISTRAR:** Order, all rise. The Commission has
13 adjourned until 2:00 p.m.

14 --- Upon recessing at 12:23 p.m.

15 --- Upon resuming at 1:58 p.m.

16 **COMMISSIONER HOURIGAN:** We can, and we can see you.
17 You have the choice between swearing an oath or affirming to tell the truth. Which
18 would you prefer?

19 **MR. RUPERT HOLLOWAY:** I'm happy to swear an oath.

20 **COMMISSIONER HOURIGAN:** All right. Hang on.

21 **--- MR. RUPERT HOLLOWAY, Sworn:**

22 **COMMISSIONER HOURIGAN:** All right, thank you.

23 Mr. Holloway, you'll be examined first by Commission counsel, Mr.
24 Harland.

25 Go ahead.

26 **MR. FRASER HARLAND:** Thank you, Mr. Commissioner.

27 **--- EXAMINATION IN-CHIEF BY MR. FRASER HARLAND:**

28 **MR. FRASER HARLAND:** Mr. Holloway, my name's Fraser

1 Holloway and I'm counsel for the Commission. Can you hear me clearly?

2 **MR. RUPERT HOLLOWAY:** Yes, thanks.

3 **MR. FRASER HARLAND:** Okay. As you know, I'm going to be
4 asking you a number of questions this afternoon. If at any point you don't understand a
5 question, please just let me know and I can repeat it or rephrase it for you, okay?

6 **MR. RUPERT HOLLOWAY:** Sure.

7 **MR. FRASER HARLAND:** As a preliminary point, Mr. Holloway, do
8 you recall being previously interviewed by Commission counsel, Christine Mainville and
9 Anthony Imbesi on April 6th, 2022?

10 **MR. RUPERT HOLLOWAY:** Yes, I do.

11 **MR. FRASER HARLAND:** Okay. And just so you understand, if
12 I'm referring to your Commission interview or your previous interview this afternoon,
13 that's the interview I'm referring to, okay?

14 **MR. RUPERT HOLLOWAY:** Yeah.

15 **MR. FRASER HARLAND:** If we can start with your educational
16 and professional background, you're a civil engineer by training, is that right?

17 **MR. RUPERT HOLLOWAY:** Correct.

18 **MR. FRASER HARLAND:** And the majority of your professional as
19 an engineer has been on rail projects?

20 **MR. RUPERT HOLLOWAY:** Yeah, the majority. I've also worked
21 in oil and gas, and telecommunications as well, but the bulk of my career has been tied
22 up with rail projects.

23 **MR. FRASER HARLAND:** Okay. And we have your CV so I won't
24 ask you to detail each project, but is it fair to say that you have over 25 years of
25 experience working on rail projects in the UK, Europe, Australia, and Canada?

26 **MR. RUPERT HOLLOWAY:** Correct.

27 **MR. FRASER HARLAND:** Okay. And much of that experience
28 has been as a project manager, is that right?

1 **MR. RUPERT HOLLOWAY:** Yeah, that's correct.

2 **MR. FRASER HARLAND:** And in your interview, you distinguished
3 between project management and the more construction side. Can you just explain that
4 distinction for us a little bit, please?

5 **MR. RUPERT HOLLOWAY:** Yeah, the distinction I drew, actually,
6 was between those who choose to select into a design approach and those who choose
7 to go to the construction management approach. So, typically, most people in civil
8 engineering will choose either to focus on design consultancy type of activities or to go
9 to construction management. The bulk of my experience has all been in construction
10 management and not design.

11 **MR. FRASER HARLAND:** Okay. And to talk specifically about
12 Stage 1 of Ottawa's Light Rail Transit Project, during your time working on this project,
13 you were the Senior Vice President, Construction for SNC-Lavalin, is that right?

14 **MR. RUPERT HOLLOWAY:** That's correct, yes.

15 **MR. FRASER HARLAND:** Okay. And I understand that you had
16 two specific roles on the project. So first, you were a member of the OLRT Executive
17 Committee throughout 2017 and into May 2018. Is that right?

18 **MR. RUPERT HOLLOWAY:** Yes, that's correct.

19 **MR. FRASER HARLAND:** Okay. Could you briefly that role and
20 the role of the executive committee, please?

21 **MR. RUPERT HOLLOWAY:** Certainly. So the -- the construction
22 consortium was formed through three companies, and once they formed a team to
23 deliver the project, which is, you know, selected personnel from all three companies,
24 and from the market as well, on a best-for-project basis, who's the best caliber of
25 individual -- so they form one cohesive team in the delivery of the work. That work is
26 then overseen by the joint venture, you know, oversight committee, which is the one
27 you're referring to there, the one I was part of.

28 And that committee would visit the job, typically monthly, review the

1 progress of the project, primary focus around, you know, the critical elements of the
2 project, which is obviously safety, progress, quality, those sorts of dimensions, review a
3 monthly report with the management team, and try and understand any emergent
4 issues or risks that the project team required support from the -- you know, the
5 constituent companies to, you know, bolster resources, or provide expertise, or
6 whatever it might be.

7 So it's a means -- it was a means as much as oversight as it was
8 for the project personnel themselves to draw on the capability of the three constituent
9 companies.

10 **MR. FRASER HARLAND:** Okay. And those three partner
11 companies, that's Dragados, Ellis Don, and SNC-Lavalin, is that right?

12 **MR. RUPERT HOLLOWAY:** That's correct, yes.

13 **MR. FRASER HARLAND:** And so you would have been there as
14 one of the representatives for SNC-Lavalin on the executive committee, correct?

15 **MR. RUPERT HOLLOWAY:** That's correct, yeah.

16 **MR. FRASER HARLAND:** Okay. So you had that more -- that
17 board position, or committee position, until about May of 2018, and then I understand
18 that you were asked to serve as the Project Director for OLRTC, is that right?

19 **MR. RUPERT HOLLOWAY:** Yeah, that's correct, yeah.

20 **MR. FRASER HARLAND:** And you held that role from May 2018
21 to about May of 2019?

22 **MR. RUPERT HOLLOWAY:** Yeah, around there. I think I finished
23 around at the end May 2019, that's correct, yeah.

24 **MR. FRASER HARLAND:** Okay. And could you briefly explain the
25 project director role for us, please?

26 **MR. RUPERT HOLLOWAY:** Yeah. So the -- as I mentioned
27 before, the construction consortium, you know, they'll pool their resources to try and
28 bring the best capability they can to deliver the project. But ultimately, that needs to be

1 under the oversight of one individual who's effectively the guiding mind for delivering --
2 on overseeing the project, and that's the project director. So it's the -- ultimately, the
3 person with ultimately accountability in terms of the delivery of the project, which then
4 reports back to the Joint Venture Board and also to RTG as the consortium's client.

5 **MR. FRASER HARLAND:** And would it be fair to say, then, that
6 you went from more of a monthly supervisory role to a much more day-to-day-
7 involvement-on-the-project role moving from one to the other?

8 **MR. RUPERT HOLLOWAY:** Yeah, 100 percent. I moved to
9 Ottawa for that year to help deliver the project.

10 **MR. FRASER HARLAND:** Okay. And then where did you go after
11 May of 2019?

12 **MR. RUPERT HOLLOWAY:** I left the company and I returned to
13 Australia, which is where I'd come to Canada from. And now I'm back in Australia
14 working in Australia.

15 **MR. FRASER HARLAND:** And did your departure have anything
16 to do with issues on the project or concerns with your performance, anything like that?

17 **MR. RUPERT HOLLOWAY:** Oh, no, not at all. It was really a
18 personal move that I wanted to get back to my family in Australia.

19 **MR. FRASER HARLAND:** Okay.

20 **MR. RUPERT HOLLOWAY:** I'd like to turn now to discuss the
21 sinkhole that appeared in June 2016 on Rideau Street and the effect that that had on
22 the project. So that event would have preceded your involvement on the project. Is that
23 fair?

24 **MR. FRASER HARLAND:** Yeah, I was the project director at the
25 time, but I was certainly aware of it through my role at SNC, and, you know, I -- you
26 know, obviously the consequential downstream impact of that was very much present
27 through the course of 2017, and it still resonated through into the time that I was project
28 director as well.

1 **MR. RUPERT HOLLOWAY:** Okay. And in your Commission
2 interview, you stated that the sinkhole had -- I think I'm quoting now -- "An incredible
3 disruptive impact on the overall project." Could you explain just a little more what you
4 meant by that, please?

5 **MR. FRASER HARLAND:** Certainly. So the sequence into the
6 project depended upon, you know -- or was constructed out a certain sequence of
7 activities and a certain flow of resources from one workplace to another. When you
8 disrupt that sequence, it means that you're forced to re-plan significantly all subsequent
9 activities.

10 And the sinkhole happened in an area which just at the edge of the
11 Rideau cavern, from memory, from the running tunnel as the running tunnel met the
12 cavern at Rideau Station, and that actually was probably one of the worst locations
13 where we could have had a problem because Rideau cavern was our critical for the
14 overall project, which means it's the -- you know, the --- the element of the project that
15 was going to be the last to be completed in many of the testing aspects.

16 So where the actual delay occurred, or where the disruption
17 occurred, forced a rescheduling of all of the activities, not only in relation to Rideau, but
18 actually had a consequential impact on the other stations as well because it disrupted
19 our supply chain in terms of how we were bringing materials into service-to-station
20 construction, you know, how we were going to cascade trades from one station to the
21 next, working out of sequence, revised temporary work.

22 So there was a number of issues and I liken it a little bit to, you
23 know, you throw a pebble a pond, the ripples are biggest right where the pebble went in,
24 so, in time --- you have a lot of disruption immediately. Obviously, you've got to fix the
25 sinkhole, and there's a lot of things to do immediately, but the consequences and the
26 echoes of that, that impact continued for a long time afterwards. And so I think we were
27 probably still dealing with the consequential of the sinkhole all the way through to then
28 end of the project, because ultimately, it did impact in terms of the way that the testing

1 and commissioning was undertaken.

2 **MR. FRASER HARLAND:** And we heard from Antonio Estrada
3 just this morning, and he said his estimate would have been that the sinkhole created
4 six to eight months of critical path delay on the project. Do you think that's a fair
5 statement, or what would your take on that be?

6 **MR. RUPERT HOLLOWAY:** I mean, I haven't done the -- so
7 disruption delay analysis, but it seems, in order of magnitude, correct, to be honest with
8 you.

9 The challenge with these sorts of events is, you don't have a
10 benchmark to compare, you know, but for this, we would have achieved that. So you
11 really -- it's really quite a complex process to do the detailed schedule analysis. And
12 one of the impacts is that you will have assumed a certain productivity, right, you know,
13 in terms of being able to achieve work at a certain rate with a certain number of work
14 force. And you may find that because you're now in a changed working environment,
15 you're not able to achieve that same productivity.

16 So it's quite an insidious type of impact that can occur in
17 construction programs. Disruption events are really the hardest ones to try and exactly
18 nail down what the impact is, but I would say, you know, anywhere between six and
19 nine months seems like a reasonable estimate.

20 **MR. FRASER HARLAND:** And I think you said this, but I want to
21 be sure. There was a particular impact on testing and specifically, integration testing; is
22 that fair, from the sinkhole?

23 **MR. RUPERT HOLLOWAY:** Yes. Yeah.

24 **MR. FRASER HARLAND:** Can you just explain a little bit more?
25 And you may have covered it to some extent, but focusing on testing, why that would be
26 the case?

27 **MR. RUPERT HOLLOWAY:** Yeah, no problem.

28 So I'll just try and provide some context. So the -- it's probably

1 useful to think about the project in two distinct phases of activity or types of activity.

2 There's a very significant civil engineering challenge associated
3 with driving a tunnel, forming the station caverns, and you know, that's a, you know,
4 really significant -- and there is an amazing world class piece of engineering that's been
5 achieved in Ottawa through that two and a half kilometre tunnel through the middle of
6 the City with those large station caverns. That's one type of activity.

7 But each one of those stations forms essentially a digital hub, so
8 the purpose of the station is not only to be a station for, you know, the access of the
9 travelling public to the railway, but it's also the nodal points for where we concentrate a
10 lot of the digital assets inside each station.

11 So there are huge amounts of -- like, Rideau Station is basically like
12 a 10-storey building in the ground, right? So there's a huge amount of digital assets,
13 there's a huge amount of electrical assets, there's a huge amount of sort of
14 telecommunications and ITS that's inside that building.

15 So if you delay the progress of that building, it delays your ability to
16 do not only the testing of those assets individually, but also testing of those assets as
17 they link together. And they don't only link together within the station, they link together
18 within the running tunnel and they link together with the other stations as well.

19 So this whole system has to work as a 3:09 in a whole. And that
20 was really the problem that we had, was when you delay at Rideau, it has a -- you
21 know, a really deleterious effect in terms of the overall testing -- you know, your ability to
22 affect the overall integration testing as a whole. Did that communicate?

23 **MR. FRASER HARLAND:** Yes. I mean, at a risk of
24 oversimplifying, part of what you were saying is that it could be impossible to test -- you
25 know, to finish testing and to ensure that all the systems are working together across
26 the whole system until Rideau is complete, because of the impact that Rideau has on
27 the whole system; is that fair?

28 **MR. RUPERT HOLLOWAY:** That's correct. I think, you know, if

1 we really get into the detail of that, you could potentially say, "Well, could you run the
2 railway without Rideau Station?"

3 You possibly could. You would have to do certain things to make
4 that possible so that the rest of the system could work. You wouldn't dare to do it
5 completely without any of the digital assets in that station, but there was -- there's
6 probably a middle ground where you could still make the whole system work without
7 everything being 100 percent at Rideau, but then you would be denied from the
8 opportunity of using the station itself.

9 So there's a whole bunch of systems inside the station which are
10 specific to the station, things like, you know, the climate control, the intrusion and
11 access control, the fire detection alarm system, passenger information systems, all
12 those sorts of things.

13 So if you didn't want to use the station, you wouldn't necessarily
14 have to advance all those bits of testing, but the way that the -- that those other assets
15 inside the station interface with the running tunnel, the railway as a whole, and the other
16 stations, are certainly true.

17 **MR. FRASER HARLAND:** Okay. I understand that OLRTC would
18 have taken steps to mitigate the delay from the sinkhole; is that right?

19 **MR. RUPERT HOLLOWAY:** Yes. Yeah.

20 **MR. FRASER HARLAND:** So what were some of the things that
21 OLRTC did in terms of mitigation?

22 **MR. RUPERT HOLLOWAY:** Yeah. So one of the -- and I've just
23 touched on the fact that each one of these stations is essentially a digital hub for, you
24 know, as a receptacle for a whole bunch of equipment -- so one of the things that we did
25 was -- and I mentioned as well that, you know, the critical path runs through the testing
26 process, so that's the last thing to be complete.

27 So one of the things we did was we looked to see how we could
28 accelerate certain elements of the work to make equipment rooms where the equipment

1 was going to be housed ready sooner. So we did things to try and see well, how can
2 we reschedule what we're doing to make sure this room is brought forward -- you know,
3 not one room, several rooms -- how can we bring these rooms forward in the schedule
4 so that we can commence to finish those rooms, because there's a kind of handoff that
5 you have to achieve where the room needs to be -- to be able to put digital equipment
6 inside a room, you've obviously got to, you know, you've got to achieve a certain level of
7 finish in that room so that, you know, you don't have dust, you don't have, you know,
8 any ingress from construction dust or kind of any water or anything like that.

9 So advancing those rooms to a level of completeness where the
10 equipment could get fitted was one of the key strategies we deployed.

11 But we did many other things as well, you know. We increased
12 work force. We tried to accelerate through longer shifts. We tried to -- brought actually
13 longer shifts, but more shifts, additional shifts. We looked to bring in additional
14 contractors to complement the existing work force that we had. We brought in
15 additional supervision. So we did a number of things to try and recover the delay.

16 And it's iterative, right, so you try something, is it working? Hang
17 on, that didn't work, let's try something else, because you can't just -- with these
18 projects, unfortunately, you can't just resources at them because there's a constrained
19 available workforce at any moment, because the logistics of supplying equipment,
20 material, and humans to the workforce is obviously constrained by the fact that you're
21 now in a station cabin. And you know, you can't have people working -- literally working
22 on top of each other where you may generate safety concerns.

23 So there was quite a lot of devil in the detail of trying to make that
24 acceleration occur.

25 **MR. FRASER HARLAND:** Okay. In terms of the mitigation and
26 acceleration, was the focus on the issue after the sinkhole, would that have pulled
27 people and resources from other parts of the project and other stations after that?

28 **MR. RUPERT HOLLOWAY:** Yeah. I don't think we so much --

1 well, I think we added to the resources that we had, and I would certainly say that what -
2 - when I -- I can only really speak with authority about the time that I was there, but no,
3 what we did look to do was try and bring -- you try to bring your best athletes to the
4 biggest problem, right? So we were looking, okay, who do we need to -- we've got a
5 real problem here. Who do we need to reallocate from another area that can
6 concentrate on tackling this challenge?

7 But it doesn't mean that we necessarily denuded the project from
8 overall resources, because I think we had resources to backfill in other places. And this
9 is one of those times where the steering committee was extremely useful, because we
10 were able to tap into the respective organizations of the three companies to help us fall
11 through additional resources.

12 So we did bring in -- you know, we brought in additional staff.
13 Alstom were particularly supportive in bringing in additional supervision and
14 superintendent staff. We had some additional staff come in from the railway side from
15 SNC, and Dragados were always excellent at bringing in people to support us through
16 the tunnelling activities.

17 **MR. FRASER HARLAND:** To switch gears a bit here, I want to
18 move on to discuss the concept of a soft opening or a soft start. Given your extensive
19 rail experience, can you explain what a soft opening on a rail project is, please?

20 **MR. RUPERT HOLLOWAY:** Yeah. So I suppose it's a bit of a
21 term of ours which may be termed something else by the people, but essentially, when,
22 with these very -- okay. So the first thing probably just -- we just -- it's worth just a
23 sentence in terms of reference here.

24 It depends on the complexity of the asset. So simple assets are
25 brought -- new simple assets are brought into use by, you know, seasoned railway
26 operators without, you know, too much concern, because it's conventional technology,
27 they're well used to it, they don't have to do any unique training or a learning curve to go
28 through using their asset. So it's a very normal thing for large rail authorities to bring on

1 new assets which are, you know, consistent with their existing asset portfolio without
2 soft opening.

3 But when there's a new different asset, and the asset is complex or,
4 you know, more demanding in some ways, so it's got features which are unique, it has
5 to be operated in a different way, it has to be maintained in a different way. There's
6 training required with it, there's familiarization required with it, and especially when an
7 asset is so digitally dense, as the one that we are talking about in Ottawa where you
8 actually have to change the way in which -- you know, it's a paradigm shift the way that
9 operators maintain is actually related to the asset because the -- digitization.

10 Typically we see the large operators around the world and these
11 companies like MTR out of Hong Kong, Deutsche Bahn in Germany, Network Rail, all
12 adopt a strategy where they won't go on Day 1 and open to the full capacity of the
13 railway. What they'll do is they'll open in a staged approach and it will depend on their
14 level of confidence and it will depend on their level of confidence with the amount of
15 complexity. But they will have a period where they will basically run that system, in
16 what I call like a degraded mode or a less than full service mode.

17 So they afford themselves the opportunity to learn how the interplay
18 between the asset the maintainer and the operator all needs to play out before they're in
19 the crucible of the very challenging environment where you're running very hard on a
20 full service peak to peak. Most railways will operate, you know -- they revolve around
21 the two peaks, the peak for people commuting in the morning and people commuting
22 home at the end of the day.

23 And if you're trying to learn how to operate a new highly unique,
24 highly complicated digital asset for the first time with a new maintainer and new operator
25 and you're not familiar with the asset, it to me seems like a big challenge to be trying to
26 put the asset into full use from the outset. It would make a lot more sense to have a
27 staged phased approach to that opening.

28 Now, I suppose that the example for that, if we look worldwide at

1 the moment there's the Crossrail project in London which opened the link maybe two
2 weeks ago. It's several years late and so it was due to open in 2018 but it actually
3 opened, I think, just at the back end of May. But they have taken a -- and it's a massive
4 job. So it's a 40 kilometre tunnel with a 78 kilometre -- a 78 mile railway overall.

5 But they've taken an approach with a soft opening where they're
6 going to run effectively in quite a limited way for the rest of this calendar year and move
7 to a full opening next year. So that -- it's that sort of initiative which I would term as
8 being a soft opening.

9 **MR. FRASER HARLAND:** Okay. And I understand that from your
10 previous evidence, that you think a soft opening would have been a good idea for this
11 project. Is that right? For all -- I guess, for all of the reasons that you've just given us
12 now. Is that right?

13 **MR. RUPERT HOLLOWAY:** Yeah. I mean, I think when you've
14 got something that's really quite new and different and you're not very experienced with
15 it, to me it would make sense to try and take some time to build confidence in the way
16 that you're going to operate before you put yourself under the pressure of having to
17 service all the travelling public in a peak with full service.

18 **MR. FRASER HARLAND:** And to your knowledge, during your
19 time on the project, was this proposed to the City as something that could be done
20 when opening the project?

21 **MR. RUPERT HOLLOWAY:** We did. I think we did have some
22 discussions to that effect. I mean, the opportunity that we saw, you know, it was just in
23 for -- just to kind of build up the link in a little bit more. Because we were sort of
24 suggesting, well, look. We're delayed on the project, you know. We're obviously
25 suffering issues with the project. Perhaps we go part of the project; you could then use
26 the part that's open as potential soft opening type of opportunity. We could carry on
27 doing the bits that are not ready yet and it's a win-win outcome insofar as, you know, we
28 get a bit more time to work on things that we need to work on. You get the time to get

1 some reps but not with the full service.

2 I think it was a fairly preliminary discussion and it didn't get many
3 likes or we, you know from my memory we didn't pursue it too far.

4 **MR. FRASER HARLAND:** Just to be clear, what was the City's
5 response in those discussions?

6 **MR. RUPERT HOLLOWAY:** They weren't interested in our
7 approach, as I recall.

8 **MR. FRASER HARLAND:** And I understand that a soft start could
9 take different forms. So it could mean, for example, running fewer vehicles along the
10 whole alignment or it could be running all of the vehicles along part of the alignment. Is
11 that fair? There's different forms this could take?

12 **MR. RUPERT HOLLOWAY:** One hundred (100) percent. So you
13 could have -- you know, there could be options where you could open up part of the
14 network or you could say "We're going to open up the whole network but not all the
15 stations." Or you know, there's many different -- or you could say, "We're going to open
16 up the whole network and all of the stations but at a reduced frequency."

17 So there's many different options there.

18 If you look at the Crossrail example, I think they've taken a sort of
19 middle ground of that so they've opened up, I think, most of the network but not all of it.
20 And they haven't opened up all of the stations but they're running a reduced service on
21 a partial network. So there's -- you know, again, it's really down to the operator to make
22 those determinations about how they think, you know, they want to build their
23 confidence there. And also, it clearly links back to us at readiness as well.

24 **MR. FRASER HARLAND:** So do you know what form of soft start
25 would have been suggested to the City in those discussions you referenced?

26 **MR. RUPERT HOLLOWAY:** I -- honestly, I don't think we really
27 advanced that other than the conceptual discussion of like, should we explore this a bit
28 further, because it's one that needs to be done through dialogue rather than one party

1 trying to enforce it on the other one.

2 **MR. FRASER HARLAND:** And to the extent that a soft start
3 happened, would -- sorry, let me rephrase.

4 What would have been expected by RTG and OLRTC in terms of
5 payment in the event of the soft start? Would they still be seeking full payment of their
6 milestones if there could have been a negotiated compromise on this issue?

7 **MR. RUPERT HOLLOWAY:** Well, like, I mean, it's a bitt of a
8 hypothetical because I don't think we got very far with it. But we certainly wouldn't be
9 expecting full payment if we haven't provided full service. We were just trying to look for
10 the win-win outcome in all of this. Where how do we get the public benefit but at the
11 same time provide us to, you know, the opportunity to keep working on things in
12 parallel.

13 So -- but I don't think there was a lot of -- I couldn't speak to the fact
14 that there was any commercial analysis done or how that might work because I don't
15 think the idea got enough traction.

16 **MR. FRASER HARLAND:** Okay. Would you say, given your
17 experience, the soft opening, soft start is an industry best practice particularly for a new
18 system, new vehicles, new operator like this project?

19 **MR. RUPERT HOLLOWAY:** It's all situational. But and again I'm
20 not an operator so I just want to qualify what I say. I'm a civil engineer. I've seen
21 projects and I obviously interact with operators and I understand through analysis, you
22 know, what the likes of MTR, Deutsche Bahn, Network Rail did because we
23 commissioned those studies to try and understand, you know, what it could look like.
24 And I do think that represents good practice.

25 **MR. FRASER HARLAND:** Am I right, though, that there was no
26 provision in the Project Agreement in this -- for this particular project for a soft opening
27 or a soft start?

28 **MR. RUPERT HOLLOWAY:** Yeah. That's my understanding.

1 **MR. FRASER HARLAND:** Okay. And can you speak to why that
2 would not have been included if it's an industry best practice?

3 **MR. RUPERT HOLLOWAY:** I can't talk to that. I don't know what
4 the thinking was there. I mean, I presume, you know, there's another way of looking at
5 this if you're from a client's perspective that says, "I'm engaging you, Mr. Contractor, to
6 do your job by this time. And I expect perfection. So when I go and -- the full thing and
7 the works 100 percent, the way that I'm expecting it, the way that I'm, you know,
8 contracting you to deliver it. And that's not -- you know, that's I suppose, a legitimate
9 approach. I just think tht knowledge of these mega projects and the complexity that
10 goes with them means that that's probably not -- that's probably a fairly inflexible
11 approach.

12 **MR. FRASER HARLAND:** We have also heard evidence about the
13 possibility of something called a bedding-in period at the start of a project. Are you
14 familiar with that concept?

15 **MR. RUPERT HOLLOWAY:** Yeah. So again, I would probably
16 term it something else. But I think it's probably the same thing. So for me that would be
17 what we would call a reliability growth period. So if we think about the project from a
18 life cycle point of view we build the project, the assets, you know, constructed. All of the
19 digital devices are installed. You then go through a period of testing and commissioning
20 when you're proving that the asset, each individual component works as it should do
21 and then they work as they should do in combination. And that's a massive challenge
22 on a railway as complex as this one.

23 Once you've proven that all these things work in the way that they
24 should -- and bear in mind, you're talking about thousands, tens of thousands of digital
25 and physical assets that are connecting together. You proved it all works. What is
26 normal then is to have a period of reliability growth or maybe to use your term "bedding
27 in" where you basically are cycling the asset through repetitions of use. You're not -- it's
28 not with the travelling public but you're cycling it through repetitions of use just to make

1 sure that you're understanding how the asset works, that you're understanding the
2 interplay between, you know, any issues that might be arising in terms of how the
3 operator uses the asset, any nuances, any, you know -- certain things will only manifest
4 in this problem through the exposure of, like, you know, many many repetitions.

5 So for example, I mean, I'm in Australia at the moment. There's a
6 number of large projects underway on the east coast of Australia and I know, you know,
7 in one of those projects, for example, the operator on one of those projects which is a
8 tunnel, which is -- it's not -- it's a bigger project than -- a bigger project than Ottawa in
9 terms of extent but similar in terms of the digital complexity.

10 The plan is to, you know, basically run six months of reliability
11 growth before going for a soft opening. So they're going to soak the project for six
12 months in terms of number of reps, you know, simulated operation effectively, making
13 sure everything's working in the way that it wants, tuning their relationship between the
14 operator and the maintainer before the travelling public come onto the network. So that
15 to me is kind of akin to the term that you've used for bedding in.

16 **MR. FRASER HARLAND:** Okay, that's helpful. I mean, just to be
17 clear for the record, I think that the language that is often being used in this project for
18 what you've just been discussing is "trial running." As far as a bedding in period, I
19 understand that on some projects there can be lower deduction. This would be after the
20 traveling public is on the system, but there's lower deductions given, particularly it
21 relates to service at the start of a project. So, is that also something that you would be
22 familiar with? Have you seen that in contracts?

23 **MR. RUPERT HOLLOWAY:** Yes. Let me just check my
24 understanding. So, basically, once you're in delivery, you're in -- the travelling public is
25 using the system, there are abatements if you fail to perform; is that what you're
26 suggesting?

27 **MR. FRASER HARLAND:** Yeah, so there would be deductions
28 built into the contract for failure to perform, but these would be less at the start of the

1 project than they would be down the road, if that makes sense.

2 **MR. RUPERT HOLLOWAY:** Yeah, yeah. Look, I haven't worked
3 on one of those projects before, but it makes perfect sense if we think about the fact
4 that, you know, there is a learning curve and the learning curve is an actual part of the
5 maturity of the system. Therefore, you would think, well, you know, that seems to fit a
6 kind of natural justice sort of approach, doesn't it?

7 **MR. FRASER HARLAND:** Okay. But, again, that wasn't part of
8 this project, as far as I understand it.

9 **MR. RUPERT HOLLOWAY:** Not as far as I know, no.

10 **MR. FRASER HARLAND:** And I assume you wouldn't be able to
11 speak to why that didn't make it into the contract?

12 **MR. RUPERT HOLLOWAY:** No.

13 **MR. FRASER HARLAND:** Okay. So, I would like to spend some
14 time now talking about systems integration. It's my understanding that OLRTC was
15 responsible for all the systems and for overseeing the testing and integration of all the
16 systems on the project; is that correct?

17 **MR. RUPERT HOLLOWAY:** Yeah. A hundred per cent correct,
18 yeah.

19 **MR. FRASER HARLAND:** Okay. And can we draw a distinction
20 between overall systems integration and the integration between specific subsystems
21 such as between the signalling system and the rolling stock, for example? I mean, they
22 -- so, I just want to discuss those separately, if that's okay.

23 **MR. RUPERT HOLLOWAY:** Yeah, yeah.

24 **MR. FRASER HARLAND:** Go ahead.

25 **MR. RUPERT HOLLOWAY:** No problem. I'll have a go and tell
26 me if I'm hitting the spot.

27 **MR. FRASER HARLAND:** So, we established that OLRTC is
28 responsible for overall systems integration on the project. What does that require?

1 **MR. RUPERT HOLLOWAY:** So, let's just, if we can, we will just
2 take a step back as well. So, the clients require a certain amount of functionality. They
3 say, look, I want to have this sort of outcome in terms of the way the railway is going to
4 operate. And the consortium, then, went and designed a solution for how that could
5 occur, and that involved an amount of physical and digital assets.

6 At the end of the project, there's two things that need to really occur
7 and one follows the other. So, you have to be able to demonstrate that all of the assets
8 work in the way that they were designed to work and are then meeting the functionality
9 that was anticipated by the design. And you also have to be able to provide the
10 evidence to show that that's the case. And that sounds like a statement of the obvious,
11 but in railways, where you're dealing with fire -- with life critical systems, that is actually,
12 you know, a very prescriptive way in which you go about articulating that confirmation.

13 So, ultimately, this is all in service of the assurance case, and the
14 assurance case is the argument that you make back to the client that says, "Hey, we
15 finished this railway and this is why it's safe to..." -- there's two things. "We've finished
16 this railway. This is the evidence that it works together, and this is why it is safe to use."
17 So, a lot of the testing and commissioning is done in service of that assurance argument
18 and in terms of that assurance case. So, it's useful to think about integration and
19 assurance as being, you know, kind of two sides to the same coin, I suppose.

20 In terms of the overall project, again I did mention, it is a super-
21 digitally dense project. So, you've got a lot of different subsystems that have to
22 interrelate, and they are, you know, like literally tens of thousands of digital and physical
23 assets. Each one of those has to work in their own subsystem as it's designed, and
24 then you have to check whether it links back to the other assets that it might need to
25 interface with.

26 So, I'll give an example. For the tunnel vent system, which is a
27 critical safety system inside the tunnel, so if we have a train fire or a fire inside the
28 tunnel, we need to be able to make sure that we can evacuate people and that they've

1 all got a tenable -- you know, evacuate people from the fire, and that they're not going to
2 suffer from smoke inhalation. So, you have to be able to pull clean air into the tunnel or
3 into the station cabins and funnel it towards the -- to where the people would be
4 evacuating the station. And, to make that work, that system has to interface with a
5 whole bunch of other systems.

6 So, if I just take you through the journey, for example, it would be,
7 we have an Alstom vehicle, and onboard the Alstom vehicle there is a computer that
8 basically controls the vehicle in terms of, you know, its propulsion, braking system,
9 doors activation, fire detection alarm, all that kind of stuff. That computer needs to then
10 talk to, in this case, the Thales computer, which is also mounted inside the train. So, if
11 there is a fire detected inside the train, the Alstom computer will communicate, "Hey,
12 I've got a fire detection alarm," and it will talk to the Thales computer. The Thales
13 computer will then send a signal through the wayside equipment, through to the control
14 room at Belfast Road -- I'm sorry -- yeah, it is Belfast Road, I think, so I'm getting the
15 locations of every one -- through to the control room and say, "Hey, we've got a train,
16 it's heading towards, let's say, Rideau Station. It's going to be there in, let's say, 60
17 seconds. We are getting a fire detection alert." Then that system will then automate:
18 okay, that means that we need to notify the fire brigade. We need to sound the
19 evacuation alarm in Rideau Station. We need to pan-tilt-zoom all the cameras on the
20 platform where the train is going to come in, where people are going to be evacuating.
21 We need to blow open the louvre doors at the surface. We need to turn on the tunnel
22 vent system, and we need to select fan mode number whatever, because it will have
23 different fan modes depending on what the situation is. And we had better tell all the
24 other trains in the system where to go and where to hold so they don't try and bring
25 more people into the fire area or into the station where the fire is. And we had better
26 turn off all the vertical transportation, so we stop funnelling people down towards where
27 the fire is, et cetera, et cetera. Right?

28 So, there is a whole bunch of systems there. So, you have just

1 touched the signaling system, the onboard train system, the tunnel vent system, the
2 passenger information system, the intercom system, the fire detection alarm system.
3 So, all of those things need to integrate, and each one of those needs to be tested in
4 isolation. They need to be tested in combination. Then they need to be tested in a
5 wider combination. So, this is the challenge associated with integration. And then all of
6 that testing needs to be demonstrated such that you can make the assurance argument
7 back to the independent safety advisor that, "Hey, this all works, and we're confident
8 that it's safe." And in the case of the tunnel vent, we also have to satisfy the fire brigade
9 too. Does that ---

10 **MR. FRASER HARLAND:** Yeah, that's helpful. I mean, I think you
11 said in your previous interview that -- and it would be fair to say that systems integration
12 is one of the biggest challenges of a modern rail project like this; is that right?

13 **MR. RUPERT HOLLOWAY:** A hundred per cent. I mean, I would
14 just go back to it, because it is so pertinent in terms of the time frame, but we talk about
15 the cross-rail project, essentially that project was built, in terms of the physical asset,
16 back in 2018. They have spent, since 2018 to 2022, trying to accomplish the integration
17 and the assurance challenge on that project. And, you know, that's pretty well
18 documented actually, because there have been some quite comprehensive reports from
19 the UK government in terms of, you know, the challenges that the project had.

20 Because, like us in Ottawa, they went through a number of
21 iterations where they kind of kept revising opening dates because they thought, "No,
22 we've got it nailed now. Oh, hang on, new problem." So, they went through, obviously
23 on a larger scale because their project is larger, but it's analogous in terms of the digital
24 complexity, they went through the same sort of evolution of challenge that we did in
25 Ottawa as well in terms of that kind of integration challenge, making it all work together
26 as a coherent whole, and then bringing together the assurance argument that supports
27 it.

28 **MR. FRASER HARLAND:** And so, it's central for the success of a

1 system like this that systems integration is done right; that's fair to say?

2 **MR. RUPERT HOLLOWAY:** Crucial. Yeah, you can't open
3 without doing that piece of work correctly.

4 **MR. FRASER HARLAND:** And so, given all the complexity you
5 have just outlined, and the importance, you would agree that systems integration needs
6 to be addressed from the very beginning of a project and followed through ---

7 **MR. RUPERT HOLLOWAY:** Yes.

8 **MR. FRASER HARLAND:** --- throughout the project.

9 **MR. RUPERT HOLLOWAY:** I would just say that, you know, that I
10 suppose what -- the other thing to say is that, you know, like I said, the project does run
11 in different phases, right? So, the first thing you've got to do, before you get to system
12 integration, is you've got to make sure that you can build the civil asset to allow the
13 digital systems to be housed. So, in Ottawa, there was a lot of focus, and rightly so, on
14 building the very complex and challenging two-and-a-half-kilometre tunnel and forming
15 the station cabins. And I would say that with hindsight, you know, we can see us, as the
16 delivery entity, put a lot of energy and focus on getting that right or -- you know, and that
17 was -- it is a world-class piece of civil engineering. There's no doubt about it. But it did
18 lead to us losing some focus on the integration challenge.

19 And I think, again, I would say that -- well, I'm not trying to justify it,
20 but we're not alone in that, right? If you look at other projects of similar nature, you can
21 see a similar challenge, partly because the people-skill mix that you need for delivering
22 the civil challenge is very different from the people-skill mix that you need for delivering
23 the integration and assurance challenge. And it's making sure that you do that
24 transition between those two -- it's not as simple as just saying it's two teams, but, you
25 know, in moving the emphasis away from heavy civils, tunnelling, mining tunnels, you
26 know, very specialist activity, very challenging activity, towards, now, system integration
27 and assurance, completely different skillset.

28 You know, if you took a systems integrator, they couldn't tell you

1 how to -- you know, how to form the umbrella required to drive the tunnel -- you know,
2 the road header tunnelling activity, but neither can you expect a tunneller understand
3 how to do the system integration challenge. And so making sure that you transition
4 between those two phases effectively is really important. And I'd be the first to say that
5 we didn't get that right.

6 **MR. FRASER HARLAND:** Okay. So, at least in hindsight, you
7 would recognize that OLRTC didn't have a good enough focus on systems integration
8 from the beginning of the project. Is that fair?

9 **MR. RUPERT HOLLOWAY:** Yeah. I mean I think there was a
10 focus, I don't think that we had -- like, hindsight's a wonderful thing, and obviously you
11 have to look at the consortium experience and say, "We were late, and we planned not
12 to be late, and therefore we didn't get it right, so we didn't have the right" -- whether it
13 was the right focus or the people-skill mix, we certainly failed in regards of tackling that
14 challenge as effectively as we could have done.

15 **MR. FRASER HARLAND:** The Commission heard from Michael
16 Burns who was the Project Director for Thales. In his interview, he stated that OLRTC
17 struggled to assign a resource or a group to fulfill the role systems integrator. Would
18 you agree with that?

19 **MR. RUPERT HOLLOWAY:** Yeah, I think -- I mean we did
20 understand that that was a challenge with Thales -- no, sorry, not challenge with Thales,
21 but Thales were challenging us on that. And we did respond to that, obviously, by
22 changing our organization structure and bringing in some additional personnel for that
23 system integration and assurance phase in the period where I was, actually, as the
24 project director as well.

25 **MR. FRASER HARLAND:** Okay. And OLRTC had a subcontract
26 with an entity called RTG EJV is that right?

27 **MR. RUPERT HOLLOWAY:** Yeah.

28 **MR. FRASER HARLAND:** And they were subcontracted to do the

1 design. Is that right?

2 **MR. RUPERT HOLLOWAY:** Correct, yeah.

3 **MR. FRASER HARLAND:** And it's my understanding that during
4 the course of the project there was a dispute between OLRTC and EJV with respect to
5 who was responsible for what in terms of systems integration on the project. Are you
6 aware of that?

7 **MR. RUPERT HOLLOWAY:** Yeah.

8 **MR. FRASER HARLAND:** And would that be another indication,
9 would you agree, that OLRTC hadn't done as much as it could have, especially from the
10 beginning of the project, to assure that the right people were in the right place for
11 systems integration?

12 **MR. RUPERT HOLLOWAY:** Yeah, I think there was -- so the
13 systems integration, you know, certainly on these really unique jobs, is really quite a
14 challenge, and is -- you know, I think, as an industry, we're still learning our way into
15 how to tackle some of these challenges. And I think -- when I look back on it with
16 hindsight, you'd think that we probably -- the fact that we ended up in -- with a lack of
17 clarity between what the construction component of the team were doing versus what
18 the design component were doing, and how that integration was being dealt with --
19 because there is a handoff between those two, right, and it was really, I think, from
20 memory, the issue was around -- about, where does that handoff occur? That indicate
21 to me that we didn't have the right personnel involved from the construction side.

22 **MR. FRASER HARLAND:** Okay. And in or about October 2017,
23 OLRTC engaged a company based out of the UK, if I understand, called SEMP, s-e-m-
24 p ---

25 **MR. RUPERT HOLLOWAY:** Yeah.

26 **MR. FRASER HARLAND:** --- to assist with systems integration. Is
27 that right?

28 **MR. RUPERT HOLLOWAY:** Yeah. Yeah, well, they were more to

1 focus system assurance but, obviously, as I mentioned before, to get to assurance, you
2 have to go through integration, yeah.

3 **MR. FRASER HARLAND:** Okay. And I'd suggest that part of the
4 reason SEMP was brought on was because of some of the challenges with systems
5 integration that OLRTC had been experiencing up to this point. Is that fair?

6 **MR. RUPERT HOLLOWAY:** Yeah, I -- again from memory, I think
7 we were becoming concerned about our readiness for the integration and assurance
8 challenge. Obviously, you know, Michael and the Thales guys flagged some of those
9 issues to us as well. SEMP was seen as being a -- a real kind of -- you know, kind of
10 best-in-call type of outfit to provide some oversight and insight in terms of our readiness.
11 And again, like, it was really more around that assurance piece. You know, how are we
12 going to construct our safety argument. That was really the focus. And we brought
13 SEMP in. They -- we -- from memory, they did a report.

14 There was a -- there's a number of deficiencies identified in that
15 report, and we used that a catalyst for changing some of the things that we were doing
16 on the project. We changed our organization structure. And also, we engaged a whole
17 bunch of specialists out of the UK to support us in trying to close the gaps that were
18 identified through that report. So, you know, off the cuff, I think we probably -- we
19 probably somewhere -- well, tens of millions of dollars in flying people in from the UK to
20 support us with closing some of those assurance gap problems.

21 **MR. FRASER HARLAND:** I just want to take you to that report
22 briefly that's -- it was a system engineering health check.

23 It's RJV11498, court operator. Yeah, I think that's omitting the
24 zeros, but -- RJV -- maybe it might be 0011498.

25 Mr. Holloway, can you see this document?

26 **MR. RUPERT HOLLOWAY:** I can't at the moment, unfortunately.
27 Oh, there, now I can.

28 **MR. FRASER HARLAND:** Okay. So you'll see this is from SEMP.

1 And if we can just scroll down, dated November 2017. If we can go to page 2 of the
2 report, which is page 3 of the PDF, and I just want to look at the second to last
3 paragraph of this executive summary here. And it says:
4 “Summarizing the level of system engineering on the project to date is considered to be
5 substantially below the minimum acceptable level for a project of this size and
6 complexity.” (As read).

7 I’m going to let you read the rest of it.

8 **MR. RUPERT HOLLOWAY:** Yeah.

9 **MR. FRASER HARLAND:** But do you think this is a fair
10 assessment of where the project was and OLRTC was in terms of systems integration
11 and systems engineering at this point on the project?

12 **MR. RUPERT HOLLOWAY:** Yes, I suppose there’s a couple of
13 things to say, if you don’t mind me just providing some context here as well. So I think
14 there’s two things -- we did mention earlier about the primary of the SEMP guys is really
15 about the assurance argument, right. So in the assurance argument -- it’s a bit like
16 when you do your math homework in school. It’s not good enough to get the right
17 answer, you also need to show your working. And there’s a very prescribed way in
18 systems engineering to be able to articulate how you got to the solution.

19 And what my understanding is from the process with SEMP was
20 not so much that there was a fundamental problem with the engineering that had been
21 done. What hadn’t been done is that the way it had been structured and set out with a
22 guiding mind in service of the assurance argument hadn’t been done, which we fully
23 accepted, because ultimately what we did was we engaged SEMP, and a number of
24 other specialists, to come and help us construct that safety argument and look at how
25 that systems engineering had to be made, and we didn’t materially change the
26 engineering solution.

27 So what this tells me is -- was this a point a time? And it was
28 obviously, you know -- and I’ve got no criticism of the SEMP guys at all because they

1 helped us massively. They've taken a snapshot and they've said look, "We can't see
2 the evidence of how you've got to your engineering solutions," and this is the report that
3 they wrote.

4 What I think's useful to understand is that they -- we then brought
5 SEMP in, and I'd like to say we spent north of \$20M in terms of bringing a whole bunch
6 of guys in from the UK to support us with this. But what they didn't do is they didn't
7 reengineer the engineering output in any material way, maybe a few peripheral things.
8 But what they did do was help us instruct the rationale and the argument for why we
9 had achieved that outcome. So, to me, I don't know if that communicates, but there is a
10 distinction here. I didn't -- the ultimate end product here wasn't that the engineering that
11 had been done was invalid, inappropriate, unprofessional, or anything like that, not at
12 all. What we hadn't done was we hadn't gone about -- and I say "we" in the broadest
13 possible sense, you know, including the designers -- what we hadn't done is we hadn't
14 instructed the way that that design had been composed with a guide in mind to be able
15 to explain from a systems engineering perspective why they had made certain decisions
16 that they've made.

17 When you construct -- so, we ended up following the CENELEC
18 standard for the assurance, right, which is the Euro norm 50126, I think, from memory,
19 and that gives you a very prescriptive -- in fact, I think it is probably in this report. There
20 is a V-lifecycle type of thing. See, there is a very prescriptive way that you have to go
21 about from one stage to another stage, and you build your argument through a series of
22 steps. What this report evidenced, to me anyway, was that we hadn't gone through
23 those steps in a way that was coherent or recoverable. And what we ended up doing
24 was bringing them back in to help us construct that argument.

25 **MR. FRASER HARLAND:** Okay. But could we agree that at the
26 very least, I mean, this report is dated November -- can we go back up to the first page?
27 I don't want to misstate.

28 **MR. RUPERT HOLLOWAY:** 2017, yeah.

1 **MR. FRASER HARLAND:** So, we're months away from the first
2 stated revenue service availability date. I mean, at the very least, can we agree that it
3 may have been better for some of this work to be done early on and to be planned
4 earlier in the project?

5 **MR. RUPERT HOLLOWAY:** A hundred percent. I mean, I don't
6 disagree with that at all. And I think that goes back to the point I was making is that,
7 you know, we got very fixated on this civil challenge, and rightly so because it was a big,
8 very challenging problem, but that did lead to distraction in terms of how we focused on
9 the system engineering side. And this was a real catalytic moment for us in terms of
10 changing our approach.

11 **MR. FRASER HARLAND:** Okay, thank you. I would like to turn
12 briefly to talk about the specific interface between Alstom and Thales, between the
13 rolling stock and the signalling system. And so, OLRTC would have been responsible
14 for that interface and for the integration between those two systems as well; is that
15 right?

16 **MR. RUPERT HOLLOWAY:** Correct.

17 **MR. FRASER HARLAND:** And is it fair to say that that interface is
18 a key interface for the project? I think you will agree with me on that.

19 **MR. RUPERT HOLLOWAY:** A hundred percent, yeah.

20 **MR. FRASER HARLAND:** And are you aware that this was the
21 first time that a Thales CBTC system was being integrated with a low-floor LRV?

22 **MR. RUPERT HOLLOWAY:** I wasn't aware of that, no.

23 **MR. FRASER HARLAND:** Okay. But do you have any reason to
24 dispute that?

25 **MR. RUPERT HOLLOWAY:** No.

26 **MR. FRASER HARLAND:** Okay. And are you aware of anyone --
27 sorry, are you aware of whether there was anyone responsible for integration of those
28 systems at the beginning of the project?

1 **MR. RUPERT HOLLOWAY:** So, I wasn't involved at the beginning.
2 Certainly, in the time that I was there from -- in the JV board sense, we had a number of
3 individuals there. Some ex-Bombardier people who took charge of the integration
4 between those two principal sub-suppliers. That changed over the course of the
5 project. And through the life of the project, we continued to strengthen our oversight of
6 that area.

7 **MR. FRASER HARLAND:** Okay. I understand that one of those
8 people would have been someone by the name of Jacques Bergeron, who came onto
9 the project around January 2014 and left in August 2018; is that

10 **MR. RUPERT HOLLOWAY:** Correct, yeah.

11 **MR. FRASER HARLAND:** Does that sound right to you? Yeah.

12 **MR. RUPERT HOLLOWAY:** Yeah.

13 **MR. FRASER HARLAND:** Do you recall working with Mr.
14 Bergeron?

15 **MR. RUPERT HOLLOWAY:** Yeah.

16 **MR. FRASER HARLAND:** The Commission has heard some
17 evidence that after Mr. Bergeron left, which would have been around August 2018, the
18 two subcontractors, Alstom and Thales, were being dealt with in silos and that the
19 relationship between them deteriorated. Did you witness that happening on the project?

20 **MR. RUPERT HOLLOWAY:** I can't -- honestly not so much. I
21 mean, we -- I mean, I was reasonably hands on. So, we would have daily meetings
22 with both Alstom and Thales in visual management process. So, we used to run a daily
23 visual management process at Belfast Road, which was chaired by our systems
24 director. And that would lead to -- each lead representative from -- we had Alstom
25 there, we had Thales there, we had our lead tester in charge there, we had our systems
26 delivery guy there as well. There was someone else there, too. I'm trying to recall who
27 else, but potentially another person as well. And every day we would review progress in
28 relation both in individual silos, if you like, and also have a hand-off between product

1 that was occurring between the two entities.

2 Inevitably, on construction projects, you can get issues, and on big
3 projects, you get big issues. And so, sometimes there are hard conversations that
4 appear in those forums. But I actually thought the relationship got better over the
5 course of 2018, to be honest with you. That's just my recollection of it.

6 So, in terms of the day-to-day interaction at a working level, and as
7 we progressed through, it was difficult at the beginning. I do recall in the beginning of
8 my tenure there, because I didn't go to every one of those daily stand ups, but I did go
9 to quite a few. Our systems director went to every one of them. But in the early days,
10 there were some issues in quality hand-offs between Thales and Alstom. But once we
11 had resolved those, you know, it seemed to settle into more of a, you know, kind of a
12 consistent cadence of relationship, which was functional. So, I don't recall -- that's not
13 my recollection is that things got worse after Jacques left.

14 **MR. FRASER HARLAND:** Fair enough. If we could speak now
15 about the procurement model for the project. In your previous interview, you spoke
16 about some of the challenges that a public-private partnership, or a P3 model, can
17 cause, based on your extensive experience in rail projects. Could you elaborate on
18 some of those for me, please?

19 **MR. RUPERT HOLLOWAY:** Yeah. I think the -- I mean, one of my
20 principal concerns is that really large projects, really complex projects, are more likely to
21 be successful when you get high degrees of cooperation between all the parties. And
22 procurement models that encourage high degrees of cooperation between all the
23 parties are preferable to ones that don't. And the P3 model, because of its very hard
24 allocation of risk and risk transfer, is not one of those models that really -- there is lip
25 service given to how the relationship is going to work, but the actual commercial
26 contractual incentivization is not in relation to a win-win outcome, right? So, it is more of
27 a zero-sum game type style of contract, more traditional. So, it doesn't naturally lend
28 itself to eliciting that cooperation. And I think that's really one of the challenges, where

1 you get more complex type of projects, which require more intimate cooperation to have
2 a procurement model that provides more facility for that, would seem to me to be a good
3 idea. Does that make sense?

4 **MR. FRASER HARLAND:** Yeah. And to be clear, would you say
5 that OLRTC experienced some of the issues that you are describing with a P3 project
6 on this project?

7 **MR. RUPERT HOLLOWAY:** Yeah. I mean, we -- I've worked on --
8 the term of art with the traditional procurement, I suppose, in construction is the hard
9 dollar, right? So, you've got an allocation of risk. As a contractor, you have to own that
10 risk, you have to deliver within your risk profile, and that can generate, you know, issues
11 with the client in terms of claims, in terms of extensions of time. And it consumes a lot
12 of energy in terms of putting energy into managing the contractual relationship, which is
13 distracting your construction professionals away from actually building the project.

14 I have also worked on a number of large projects which have been
15 diverted through the Alliance model, which is more of a -- it is based around a risk-
16 sharing model, so you don't get this hard kind of win-lose dynamic. It's more of a win-
17 win or lose-lose type arrangement, either we all win together or we all lose together.
18 And, in those models, what tends to happen is people are more freed up to spend all of
19 their time working on the engineering technical challenges of the job, as opposed to
20 trying to manage -- put large amounts of their effort into managing the commercial
21 contractual relationship.

22 So, from my point of view, it's just a lot -- I don't want to say
23 "healthier," but it's just a much more productive way. You don't have to -- you don't
24 have to go through the small "L" litigation of issues on a daily basis, you know, and all of
25 the potential conflict that flows from that, which just distracts from delivering the project.
26 Especially, you know, the more complex the project, the challenge is not linear, it's
27 convex, right? It's -- you know, it goes up exponentially in terms of the more the
28 complexity, the bigger the requirement for cooperation.

1 **MR. RUPERT HOLLOWAY:** So, you mentioned your experience
2 on Alliance models. For those who aren't familiar with that procurement model, can you
3 explain the key differences between that and a traditional P3 model?

4 **MR. FRASER HARLAND:** Yeah. So, Alliance has been around for
5 a little while, but it probably had its genesis in the North Sea oil fields off the coast of the
6 UK in the early '90s. At the time the oil companies were finding that they couldn't,
7 because they were very deep drilling platforms that were required in that location and
8 they found that they could no longer be competitive using conventional procurement
9 methods with other oil-holding jurisdictions around the world, likely the Gulf of Mexico or
10 whatever, because of the typographical constraints. And they realized that they needed
11 a different procurement model if they were going to take cost and time out of the
12 process. So they tried the alliancing model which is basically one which says, look,
13 we're going to share all of the cost risk with you, the contractor, you're still going to be at
14 risk for your profit and your overhead, so if you failed to deliver, you're not going to
15 make any profit, but if you failed to deliver – sorry, if there is an overrun, you're not
16 going to be at risk of the increased cost. So this is a really important distinction for
17 contractors because obviously the thing that contractors worry about is being able to
18 recover their cost base. And if you don't have certainty that you can recover your cost
19 base, you're obviously adopting a very defensive posture. What the industry in the
20 North Sea found that when they gave the contractors the security net of saying, "Look,
21 we'll cover your cost base", it freed up a whole bunch of innovation and cooperation and
22 collaboration because the contractors were liberated in terms of engaging with the client
23 in a different way and in a more cooperative environment. The case study there I think
24 took 30 per cent out of the cost base and they were bringing the oil platforms on many
25 months ahead of schedule.

26 So most alliancing models follow – In current use, follow some form
27 of that original concept, which is the cost risk is shared but – sorry, the cost risk is held
28 by the client but the contractor holds risk against their profit and their corporate

1 overhead.

2 **MR. FRASER HARLAND:** And you mentioned in the notes key
3 contacts, but have you seen this model being used in rail or transit projects?

4 **MR. RUPERT HOLLOWAY:** Oh yeah, it's extensively used in the
5 U.K. We've got numbers of projects, billions of dollars in Australia and alliance projects
6 as well typically used on the more complex projects where there's really a complex
7 interface back into a difficult operational environment or, you know, where there's a
8 brownfield engagement. So, you know, there's a live operational airway implication.
9 Because it allows for more creative and constructive discussions in the evolution of not
10 only the design, but also the construction approached, the staging and also the testing
11 and commissioning. So, yeah, it's a very well-established methodology here in
12 Australia.

13 **MR. FRASER HARLAND:** And would that have been a realistic
14 option at the start of this project or is that something that's sort of developed as a
15 phenomenon or since this project started?

16 **MR. RUPERT HOLLOWAY:** No, no, it's been around since way
17 before, way before the Confederation Line Project. I think the challenge with – you
18 know, again, I'm just a contractor, right? So I'm not at the table when people are
19 deciding what procurement model is to be selected. I suppose the issue about why
20 you'd go for P3 is you want to get, you know, the contractor to bring skin in the game
21 from the, you know, by putting this stake in the project. Maybe they're looking for the
22 fun thing; I don't know; there's other factors involved in why people would choose a P3
23 and not an alliance which I don't fully appreciate. I'm just talking from a contractor's
24 perspective about what I've seen work.

25 **MR. FRASER HARLAND:** Fair enough. You also gave some
26 evidence about P3 projects where you said you've seen them work better where there's
27 one entity responsible for design, build, finance, maintain and the key one, operation.
28 So what could be called a "DBFOM" model as opposed to the "DBFM" model of this

1 project; is that right?

2 **MR. RUPERT HOLLOWAY:** Yeah, and I think that's really back to
3 that point of when you have one – when you have it all under one roof it forces those
4 integration discussions to happen in a more constructive way because you're not going
5 across – when you have the operation split out, not only have you got a contractual
6 boundary to get across, but you've also got a professional and technical boundary to get
7 across as well because they're different in skillsets from the constructor. So I think all of
8 that just generates noise in terms of making that work effectively. So when it's all under
9 one roof, I think it does streamline the process.

10 **MR. FRASER HARLAND:** And you told us in your previous
11 interview that OLRTC had a fractious relationship with the operator; could you explain
12 that a little more for us, please?

13 **MR. RUPERT HOLLOWAY:** Yeah, I think – you know, obviously
14 as the pressure came on and we were late and we were struggling to give certainty in
15 schedule, I mean, you know, for some of the reasons we've talked about already about
16 integration challenging, you know, the fact that we kept finding new issues on a
17 progressive emergent basis, that that put a lot of strain on the relationship because
18 obviously the City were, you know, wanted certainty and we were struggling to give
19 them the certainty that they wanted, and I think, you know, over time that led to the
20 relationship deteriorating. Certainly in the time of my tenure as the Project Director, I
21 felt that the relationship sort of declined over the time that I was there. And I mean its
22 understandable; everyone is under a lot pressure; right? You know, you're trying to –
23 everyone's working really, really hard to try and deliver the project; no one likes to be
24 late, but it did generate quite a bit of stress in the relationship between the two entities.

25 **MR. FRASER HARLAND:** Would there have been a better way to
26 approach the Ottawa project as it relates to the interface with the operator within the
27 context of DBFM? Can you see ways that that could have been better in retrospect?

28 **MR. RUPERT HOLLOWAY:** I haven't really expended too much

1 thought on it. I mean I suppose – what might have been a good idea would be to have
2 found a way of getting a more active engagement with the operator earlier in the
3 process, you know, through embedding in the construction team potentially. You know,
4 that's something that I know is one of the learnings that's come from Cross Rail, is that
5 they've said, you know – that one of their big learnings was they should have brought
6 the operator into the fold far earlier in the process than they actually did. And I don't
7 think that was necessarily a contractual mechanism necessarily for that to occur on
8 OLRT – sorry, on the Confederation Line project, but that doesn't mean that we couldn't
9 have done it. But I think that's something that I would look to – if we were doing it all
10 again tomorrow, we should look at that.

11 **MR. FRASER HARLAND:** Okay. And then this particular P3
12 Project used a milestone payment structure; is that fair?

13 **MR. RUPERT HOLLOWAY:** Yeah.

14 **MR. FRASER HARLAND:** And in your experience on other
15 projects, have other payment structures been used where it's, you know, progress-
16 based or earned-value type approaches?

17 **MR. RUPERT HOLLOWAY:** Most of the P3s I've seen have all
18 got some form of milestone usually, but that's not to say there aren't other models, it's
19 just the ones I've seen.

20 **MR. FRASER HARLAND:** In your experience with the milestone
21 structure, do you see the phenomenon milestone chasing where emphasis is being put
22 on milestones instead of the overall benefit of the project?

23 **MR. RUPERT HOLLOWAY:** Well, there's probably a couple of
24 things to say about that. I suppose the end milestone, which is the critical one of
25 completion, you can't fake it; you've got to get the assurance argument in the way that it
26 needs to be done; right? So, you know, to chase the interim milestones is kind of a –
27 how can I put it? It's not in service of making short – let me just try and rephrase it. To
28 make our assurance argument at the end we're talking like tens of thousands of

1 different pieces of evidence that you've got to collect; right? You don't collect them all
2 at the end, you collect them progressively. So these jobs, really if you're doing them, if
3 you're optimum in the way you're progressing them, you're progressively providing
4 assurance as you go.

5 I think what we see from the same report is that we weren't
6 progressing the assurance as effectively as we could have been as we went, and we
7 ended up having to do a lot of catch up at the end. But I don't put that down to
8 milestone chasing, I just think that's – you know, the fact that we came to the realization
9 that we'd undercut the assurance piece, so – half way through or part way through the
10 project. So I don't really – I didn't really see any issue with milestone chasing per se or
11 had it had a deleterious effect on the overall project.

12 **MR. FRASER HARLAND:** Okay. And I just want to put a
13 question to you that if I don't ask you, I'm sure my friends from the City or Infrastructure
14 Ontario will. I mean to be fair, OLRTC went into this project with its eyes wide opened;
15 right? It knew the risks that it was taking on; it knew the type of contract that it was
16 signing up; is that fair?

17 **MR. RUPERT HOLLOWAY:** 100 per cent, yeah.

18 **MR. FRASER HARLAND:** So there may be better models in
19 retrospect, but that doesn't mean that OLRTC was unaware of the kind of project or
20 agreement that it was involved in at the time; is that fair?

21 **MR. RUPERT HOLLOWAY:** No, we fully understood what we
22 were committed to do and contracted to do and we undertook to do it, you know, and
23 that was – and we understood the risks we were taking and the challenge that was in
24 front of us.

25 **MR. FRASER HARLAND:** Okay. I want to move on to talk about
26 some of the schedule pressure that was experienced, especially once you stepped into
27 the role of Project Director in May of 2018.

28 First of all, can I ask, what was the OLRTC Executive Committee's

1 reason for making a change in management at that time when you came in in May
2 2018?

3 **MR. RUPERT HOLLOWAY:** Yeah, I think it was tied up with the
4 people's skillsets that I mentioned earlier so we were moving the phase of the project
5 from one where it was transitioning from the heavy civil and the building and moving
6 towards one around the system integration, the testing and assurance. And so it made
7 sense to bring in personnel with more experience and track record in those areas.

8 **MR. FRASER HARLAND:** Okay. And so the May 2018 Revenue
9 Service Availability date had just been missed or was just about to be missed. Did that
10 not have anything to do with the executive committee's decision to change management
11 at the time?

12 **MR. RUPERT HOLLOWAY:** No. I mean, I think the decision had
13 been made way before that because -- but it takes time to reorganize organizations and
14 get people available. So you know, I think when we saw where things were trending at
15 the back of 2017 -- and this is my recollection. So when we saw how things were
16 trending at the back end of the 2017 we knew we needed to do something different in
17 terms of the old structure. It took us a bit of time to work that out.

18 **MR. FRASER HARLAND:** Okay. And were you getting specific
19 instruction from the executive committee about the changes that needed to happen or a
20 new management style that would be required as you stepped into the project and you
21 know ---

22 **MR. RUPERT HOLLOWAY:** No. No, you know, the executive
23 committee were nothing but supportive in terms of, you know, tell us what you need; tell
24 us how we can help you. They weren't directive in saying, "You've got to be like this, or
25 you've got to be like that." It was more about, like, "You're here to try and get this
26 project across the line. What do you need from us to help you do that?"

27 **MR. FRASER HARLAND:** Whereas we did hear from other
28 witnesses that there was a change in how the project management was being

1 conducted at this time, and I'll give you an example which is from Bertrand Bouteloup
2 who is Alstom's project director. And he described the project as moving into what he
3 called a rushing phase in the summer of 2018. Can I just get your comment on whether
4 that's fair and what was going on once you came on to the project as project director?

5 **MR. RUPERT HOLLOWAY:** I think that's -- well, I couldn't
6 characterize it as that. So I mean, I think rushing has got connotations of people are
7 being reckless, are being -- they're being injudicious about the way they're doing things.
8 I don't think we were doing that at all. Were we being challenging? Were we having
9 harder conversations with our suppliers about meeting their commitments? Were we
10 being more clear about who's got to do what by when? Yes, we were doing all those
11 things and that was -- that's how I run projects and that's, you know, what I thought was
12 useful in terms of trying of to drive the project to a conclusion.

13 You know, these large mega projects are, to a certain degree -- you
14 know, they require -- they require you to challenge -- how can I put it -- what's
15 predictable. If you just go along with what's predictable you're going to end up with a
16 much longer construction period. So you have to have a degree of challenge. That
17 doesn't mean that you're rushing. What it means is you're challenging people's decision
18 and you're challenging why they've chosen to do something in a certain way if you think
19 there may be a better way of doing it.

20 And generally what you're trying to do is harness the collective
21 intelligence of the wider team, right? So this is not about one -- not one person can sit
22 on top of these jobs and say, "You, go do this. You, go do that," because no one
23 person's got the -- there isn't a human on the planet who's got the skillsets to be able to
24 give direction across all the different facets of this project, you know, from rolling stop to
25 telecoms, to IT to -- you know, there isn't anyone who can do that.

26 So this is all about how do you engender a healthy challenge inside
27 the team and a clear regime of accountability. Now the daily digital management
28 process -- it can be quite challenging., right, because if you fail to deliver the thing that

1 you've convinced everyone that you can deliver the day before, you know, those are
2 hard conversations. But it's tough on the issue, not tough on the person. And it takes
3 time for people to get into that way of working. And that's not, you know -- it's not a
4 made-up technique. You know, it's a well-established technique, the use of the visual
5 management tool. And we actually flew a guy in from Australia to help us construct
6 those score cards and to support us in that process. So you know, we're trying to
7 leverage what the best practices were. And it's the same system again, interestingly,
8 that Crossrail have used to get their project over the line at the end as well.

9 **MR. FRASER HARLAND:** Okay. So you would reject the
10 characterization of rushing, which is fine. But it is fair to say that you were doing
11 whatever you could to get the project over the line and you were working to accelerate
12 the project as much as you possibly could. Is that fair?

13 **MR. RUPERT HOLLOWAY:** That was my job.

14 **MR. FRASER HARLAND:** Okay. And OLRTC was under
15 significant financial pressure at the time that you were project director; is that true?

16 **MR. RUPERT HOLLOWAY:** Correct. Yeah.

17 **MR. FRASER HARLAND:** Okay. So I just want to run ---

18 **MR. RUPERT HOLLOWAY:** I must say that, you know, to be fair
19 to the executive committee, you know, that was never -- they did a good job of giving
20 me air cover on that, right? So I never -- I don't think I ever had one conversation with
21 any executive from either the steering committee or from SNC that said, "Hey,
22 Holloway, you'd better get this job done. We're losing a lot of money."

23 No one ever said that to me, right?

24 It was all about the go forward position. It's all about, "What do you
25 need?" So I didn't get -- look, you feel the pressure, right, whether anyone says it to
26 you or not, for sure because no one wants to be late. But I wasn't getting, you know,
27 kind of -- I didn't feel -- I wouldn't want to work in a place where people were doing that
28 to me because for me, one of the most important things -- and this is why I really

1 contend Bertrand's comment. The most important thing for me is safety. The job can
2 be late. We can lose money. But if we hurt someone, that's staying with me forever.
3 So I was very very focused on the safety and if you look at the hard facts, in the time
4 that I was there on that project the safety stats improved across the board on every
5 single metric which indicates to me that we were going about work in a more planned
6 and measured way than we had been before, even though we were in quite a complex
7 phase of activity with, you know, doing testing at the same time as construction, so
8 you're needing trains. You've got live electrical systems. You've got, you know, live
9 panels in stations, et cetera. So we had a lot of risk there. But the safety performance
10 was really good in that period while I was there. And to me that's some evidentiary fact
11 about why we weren't rushing and we were going about things in a measured and
12 appropriate way.

13 **MR. FRASER HARLAND:** Okay.

14 I want to just come back to some of the pressure that you were
15 experiencing and I take the point that the executive committee wasn't putting pressure
16 on you in terms of numbers. But I'd suggest that those financial pressures were still
17 there. And I just want to go through a quick chronology of that if I could.

18 So the first RSA date was May 24th, 2018. And that was missed,
19 correct?

20 **MR. RUPERT HOLLOWAY:** Yeah.

21 **MR. FRASER HARLAND:** And then that RSA date was extended
22 to November 2nd, 2018 and eventually November 30th, 2018 and both of those dates
23 were missed; is that fair?

24 **MR. RUPERT HOLLOWAY:** Yes.

25 **MR. FRASER HARLAND:** And then in early May 2019 OLRTC
26 applied for substantial completion and that was rejected by the City and the
27 independent certifier, correct?

28 **MR. RUPERT HOLLOWAY:** Yes.

1 **MR. FRASER HARLAND:** And throughout this time, OLRTC is
2 missing out on a milestone payment of about \$59 million for substantial completion; is
3 that correct?

4 **MR. RUPERT HOLLOWAY:** I'll take your word for it; I don't know
5 the number.

6 **MR. FRASER HARLAND:** And then also missing out on a
7 payment of about \$202 million for Revenue Service Availability?

8 **MR. RUPERT HOLLOWAY:** I don't know the numbers, no. But
9 yes.

10 **MR. FRASER HARLAND:** Okay. And then there were paying
11 liquidated damages of about \$128,000 each day for every day that Revenue Service
12 was missed; is that fair?

13 **MR. RUPERT HOLLOWAY:** I remember it being a significant
14 number but I couldn't tell the exact dollar amount.

15 **MR. FRASER HARLAND:** Okay. So all of those pressures then
16 forced the partners to inject more cash into project; is that correct?

17 **MR. RUPERT HOLLOWAY:** Yeah. Yeah.

18 **MR. FRASER HARLAND:** Okay. So I would just suggest to you
19 that OLRTC was under an enormous financial pressure at this time. Is that fair?

20 **MR. RUPERT HOLLOWAY:** We were certainly under pressure. I
21 think what you've got to understand is in context. These are three very large
22 construction companies that are used to dealing with large projects. Any number of
23 your large projects are going to be at any point in time in distress. So this is not that
24 unusual and, you know, certainly if you look at other projects inside the SNC portfolio at
25 the time, this was, you know -- it was a very large portfolio and there were some
26 projects that were under pressure. This was not -- this was not an outlier necessarily in
27 that sense. So you know, I don't think -- what I wouldn't want to do is see it
28 characterized as like extreme examples, very different from everything else in the

1 portfolio. No, you know, when you have enough big enough business, this is normal
2 that you're going to get certain projects that go -- that, you know, don't perform and that
3 you have to inject cash into. And this is certainly one of those.

4 Like I say, you know, what the --- I can only speak for my own
5 personal experience and we never -- I never felt any additional pressure coming from
6 management in relation to how I discharged my job. And neither would I have accepted
7 it because I wouldn't have compromised on the safety challenge.

8 **MR. FRASER HARLAND:** So if I suggest to you that this created
9 an incentive to compress the testing and commissioning schedules as much as
10 possible, would that be fair?

11 **MR. RUPERT HOLLOWAY:** I don't think we -- well, obviously
12 you're trying to compress everything, right? You're trying to accelerate, you're trying to
13 compress, you're trying to overlap; these are all standard practices for how you mitigate
14 a delay. So yes, we were looking at all of those things. What I wouldn't want to do is
15 characterize that as like, taking shortcuts or not doing the right thing because we
16 couldn't anyway, because we had to make sure that we had constructed the appropriate
17 safety argument and all of the evidence that goes with, you know, demonstrated safe --
18 that the test is safety completed.

19 So I would never have accepted any shortcuts in relation to testing
20 that would, you know, that would have any kind of safety consequence or impact, and
21 nearly all of the testing relates back to safety.

22 So were we compressing? Yes. Did we overlap activities? Yes.
23 Is that a standard tactic in all of these sorts of projects? Yes, it is. Did it always have
24 the benefit that we hoped it would? No, it didn't, and that's partly why we kept missing
25 dates.

26 **MR. FRASER HARLAND:** Right. Was there also an incentive to
27 defer as much work as possible until after substantial completion and after revenue
28 service for OLRTC?

1 **MR. RUPERT HOLLOWAY:** Yeah. I think the -- well, again, it's
2 some years ago now, but I think the approach in terms of -- that we'd adopted in relation
3 to the substantial completion was, we felt there was element of minor -- I will say
4 cosmetic or you know, peripheral tertiary type work that was not germane to the
5 beneficial use and operation of the system that we thought could be done post-
6 substantial completion.

7 And we certainly made the argument that that was our position and
8 we were hoping to get the City's support in that in terms of the way that we submitted
9 the substantial completion request. Obviously, the City took a different view on that,
10 and that's their provident to do so.

11 **MR. FRASER HARLAND:** I just want to take you to a couple of
12 documents on these two points. If we could go to RTG422175?

13 So this is an email from Peter Lauch to Francois Poirier, and the
14 date, sorry, it's been covered by my picture here. So Court Operator, I'm sorry, can I
15 just get you to -- perfect thanks? So it's September 17th, 2018.

16 And you are cc'd on this email. Do you see that?

17 **--- EXHIBIT No 071:**

18 RTG00422175 – Email from Peter Launch to François
19 Poirier et al 17 September 2018

20 **MR. RUPERT HOLLOWAY:** Yeah.

21 **MR. FRASER HARLAND:** So if we can just go down a little bit?
22 I'm interested mostly in these last two bullets, so if we can up a little more, sorry?

23 "So obviously, the big issue is the last two vehicles.
24 We need to show we'll have 30 LRVs, 15 coupled in
25 trial running configuration by substantial completion,
26 and 31 LRVs in RSA configuration by 30th of
27 November. Need to think about the definition of
28 substantial --- "

1 SC, which I'd suggest is substantial completion ---
2 "--- and a particular substantial completion of the fixed
3 component system calls out. See all supporting
4 systems and improvements. Is the final LRV an
5 improvement? Have we substantially provided the
6 improvement? I would argue yes, with 15 LRVs, meet
7 Service level 1 plus one spare. I think we can make
8 the case. LRV 17 is a minor deficiency, and
9 therefore, substantial completion can be attained
10 without it." (As read)

11 So would you agree with me that RTG and OLRTC are trying to find
12 creative ways here to get to substantial completion as soon as possible?

13 **MR. RUPERT HOLLOWAY:** So you know, this language implies
14 some sort of -- like, craftiness or something. But we're trying to operate within the
15 contract we've been given and we're trying to work out whether we are able to get
16 through substantial completion with the asset that we've got. I don't -- you know, I don't
17 see -- that's -- that again, that's quite normal on all construction projects. You're going
18 to go and have a close look at the actual frame of reference you've been given
19 contractually and see if you can comply with it.

20 **MR. FRASER HARLAND:** But is it fair -- I understand that you're
21 within the contract, but RTG and OLRTC are looking for how they can interpret the
22 contract in such a way that they can move as many requirements as possible until after
23 substantial conclusion so that they can get to that milestone as quickly as possible?

24 **MR. RUPERT HOLLOWAY:** If it's appropriate to do so within the --
25 under the contract, yes.

26 **MR. FRASER HARLAND:** Okay. You can take that document
27 down, and I want to go to another document, which is RTG387024.0001.

28 So this is a slide deck that was part of an RTG board meeting dated

1 September 26th, 2018. Do you see that?

2 **--- EXHIBIT No 072:**

3 RTG00387024.0001 – Confederation Line Project: Tunney's
4 Pasture to Blair Station 26 September 2018

5 **MR. RUPERT HOLLOWAY:** Yeah.

6 **MR. FRASER HARLAND:** And if we can go to Slide 10? The next
7 slide, sorry. Perfect.

8 And if we look on number 2 here, "Trial Running", the dates we see
9 are the 12th of November to the 23rd of November, but it says it was going to the 21st of
10 September to the 2nd of November.

11 So what we have here is that it's been shortened from about 6
12 weeks to 12 days. Would you agree with that?

13 **MR. RUPERT HOLLOWAY:** Sorry, just remind me again, sorry? It
14 was?

15 **MR. FRASER HARLAND:** Well, it says here it was going to be the
16 21st of September to the 2nd of November, which is about a six-week period, and then
17 it's changed to being from the 12th of November to the 23rd of November. Do you see
18 that?

19 **MR. RUPERT HOLLOWAY:** I do, but I -- again, this -- yeah, well, it
20 could my misremembering, but I understood that the trial running was a contractual
21 obligation that was a two-week period, no? Or am I -- that could be me
22 misremembering it.

23 **MR. FRASER HARLAND:** Well, I'm just suggesting that it looks to
24 me that RTG has -- is again, looking for ways to shorten periods as much as possible at
25 this point in the project, and this was an example of that. Would you agree with that?

26 **MR. RUPERT HOLLOWAY:** Of course, we're looking to try and
27 expedite things. Like, I don't deny that. But I think the trial running period was a
28 defined period of time that we had to provide certain reliability demonstration, and I think

1 that was like-ish a two-week period. So the fact that we originally gave ourselves six
2 and then decided we'd try and do it in twos is not necessarily a bad thing. If we --
3 maybe we wanted to have float; maybe we wanted to practice. I don't know. I can't
4 remember what the logic was.

5 **MR. FRASER HARLAND:** Okay. Fair enough. We can take that
6 document down.

7 Would you agree with me that it was also, in light of these financial
8 pressures, in OLRTC's interest to push as much work as possible onto the maintainer?
9 There was work, retrofits, maintenance that could be pushed to the maintainer. It was
10 in OLRTC's financial benefit to do so; was it not?

11 **MR. RUPERT HOLLOWAY:** Look. I mean, I think that sort of
12 happens on every project anyway, so there's always a bit of a discussion about what
13 gets transferred into it. So generally, what will happen is, you know, as you get towards
14 the end of these projects, when you get through the testing process, you'll find certain
15 issues which will either turn up with, A) a maintenance -- sorry, either a functionality
16 restriction or a maintenance restriction. This is very, very normal, right? And again,
17 we're back to the many, many tens of thousands of assets being tested. Not all of them
18 work exactly the way that you want them to.

19 So sometimes, the fix is when we can fix the sort of maintenance
20 arrangement. Now, there's a prescribed way that you should go about transferring that
21 to the maintainer, and that's a perfectly acceptable and normal practice. And I can't, off
22 the top of my head, remember which ones for that we did, but there was -- that, to me,
23 is not an unusual circumstance at all.

24 **MR. FRASER HARLAND:** Okay. I mean, in Matt Slade's
25 evidence, the Commission heard him saying -- and I'm paraphrasing -- but he said,
26 "We're bleeding money from OLRTC and Tashco. We're hurting the parent companies,
27 so we thought that if we had to suffer bleeding from RTM at the beginning, so be it."

28 So I mean, that suggests to me that OLRTC was looking at RTG, at

1 whatever they could to push things onto the maintainer if they could, and as necessary.

2 **MR. RUPERT HOLLOWAY:** Well, you transfer things where you
3 can do so. I think, you know, you've got -- we still got to get through the safety
4 assurance argument that that's an appropriate thing to do right? So in terms of making
5 the argument that the railway is fit for use, you have to demonstrate either that it passed
6 the test or if you haven't passed the test, you've changed the operational procedure so
7 you've reduced functionality. And there may have been some instances of that on the
8 project. In fact, I'm pretty sure there were in relation to some of the signalling operation.
9 Or you make a maintenance accommodation for dealing with that.

10 So there's a process to go through and don't just like randomly drop
11 stuff on the maintainer. It's got to be through consultation, they've got to accept it, it's
12 got to be an appropriate thing to do. So, that's my perspective on it anyway.

13 **MR. FRASER HARLAND:** Could it be that the maintainer ended
14 up with more work than it would have been anticipating earlier in the project or the
15 beginning of the project?

16 **MR. RUPERT HOLLOWAY:** Well, a seasoned maintainer would
17 know that that's likely to occur, and I think we did have a seasoned maintainer.
18 Certainly, some of the personnel involved maybe not -- I knew the ones back at the, you
19 know, the parent companies, and this was something that had happened on other
20 projects before. So, it is a source of tension, right, because they don't want to take on
21 more work than they have to, but it is an inevitable side-effect of these jobs that you end
22 up sometimes having to regulate some of the work back into the maintainer's portfolio.

23 **MR. FRASER HARLAND:** Okay. I guess where I'm going with all
24 of this, and I'll just be very clear with you, is that, you know, I think we have the idea of
25 we're compressing, testing and commissioning, we're pushing requirements as possible
26 to after substantial completion, we're pushing issues onto the maintainer, and so would
27 you agree that all of that taken together, when OLRTC is doing that under significant
28 financial pressure, there can at least be an increased risk to the overall reliability of the

1 system at the end of the day?

2 **MR. RUPERT HOLLOWAY:** No, I don't accept that. And the
3 reason I don't accept that is back to the assurance argument, because we have to make
4 -- we have to make an assurance argument based on the facts that we have passed
5 test procedures. And those test procedures were vetted not only by our own testing
6 team, they were also vetted by the SEMP personnel that we brought in to provide
7 oversight to this process, and they were vetted by the independent safety assessor, and
8 the PIC, or the independent certifier, as well as the City. So, I don't accept that -- I
9 absolutely do not accept that there were things done in shortcut ways that led to some
10 sort of liability consequence for the asset. I don't support that at all.

11 **MR. FRASER HARLAND:** Okay. Fair enough, sir. If we can turn
12 onto the public communications around reliability service. Near the end of your
13 Commission interview, you said that there were expectations being set by the City and
14 with the public about when the project would be delivered, and if you need me to take
15 you there, I can, but I can just read a section of your transcript if you want to listen to it.

16 **MR. RUPERT HOLLOWAY:** Yes.

17 **MR. FRASER HARLAND:** You said,

18 "There was clearly a lot of pressure to get the job
19 completed and, you know, that was in part obviously a
20 political concern. I think, you know, just from living in
21 Ottawa at the time and seeing what was being written in
22 the press and what communications were being put out,
23 you know, there was obviously some expectations being
24 set by the City with the public about what was going to be
25 delivered and when it was going to be delivered, and I
26 am sure that imposed some pressure on all involved on
27 the City side in terms of trying to meet those
28 expectations."

1 Do you remember that?

2 **MR. RUPERT HOLLOWAY:** Yeah.

3 **MR. FRASER HARLAND:** So, I guess what I was trying to figure
4 out there is are you saying that the City was announcing dates and creating
5 expectations based on information of its own making, as opposed to the information it
6 was receiving from OLRTC or RTG?

7 **MR. RUPERT HOLLOWAY:** No, not -- no, sorry, I didn't mean to
8 imply that if that's how it read.

9 **MR. FRASER HARLAND:** And you may not have. I'm just trying
10 to be clear for the ---

11 **MR. RUPERT HOLLOWAY:** No, I think the point I was trying to
12 make was probably more of a -- well, I don't know if there's more -- well, I'll just send
13 you a different one anyways. I think with these projects, as you -- okay, so -- and,
14 again, I going to go back to Crossrail, because I think they have published some
15 collateral on this recently, which is really useful.

16 What you will find with -- what's a more useful way is rather than
17 trying to stick to a hard date, we are going to be open on date X. You talk about
18 windows. Because of the complexity, because of the difficulty in understanding how the
19 testing process is going to shake itself out, you know, new problems come to light, new
20 work gets identified, it is really super difficult to forecast the completion, which is why we
21 kept slipping, right? I mean, it's -- you know, we thought -- every time we made a
22 commitment, we thought we had a legit plan to do it. It obviously turned out to be
23 flawed because we found either new work, or we had a failed test, or the failed test had
24 a consequence that we didn't see, or we found -- or something failed somewhere in the
25 process. And these are really complex, complicated layers of activity together, so very,
26 very, very hard to forecast accurately.

27 So, I think fixing hard dates politically is to create a hostage to
28 fortune, which is unhelpful for everyone in the process. And if there is something that

1 we, as an industry, should all try and reflect on in relation to how we do these things in
2 the future, I think taking a leaf out of the learnings from Crossrail, in terms of looking at
3 windows and trying to not lock in on hard dates, is probably a useful way to go forward,
4 because I think what it does is it just generates another level of stress on everyone
5 involved in the process about date chasing.

6 And I think date chasing -- as, you know, I've said that you've got to
7 have a certain level of challenge, right? You've got to challenge the predictable to get
8 these jobs delivered. And there is a point at which challenging the predictable tips over
9 into overoptimism, and sometimes those things can be as a result of people really being
10 fixated around dates. And I think that was more -- it was more of an ephemeral point, I
11 suppose, I was making about how useful is it to really say dates when it's probably
12 better to say, you know, first half of the year or second half of the year, or something,
13 you know, those sorts of bigger windows, and keeping people informed. I'm really
14 talking about the public benefit component: how do we keep people informed in the
15 progress. And I think, as an industry, we've still got some way to go in terms of getting
16 better at understanding how to do that effectively on these big, super complicated
17 projects.

18 **MR. FRASER HARLAND:** I take that point, and I think that may be
19 helpful going forward. But looking on this particular project, I guess what I'm interested
20 in is what role OLRTC may have played in pushing the City or leading the City to
21 announce certain dates? So, I just want to go through that a bit with you, if I could, sir.

22 **MR. RUPERT HOLLOWAY:** Yes, sure. I mean, I don't think we
23 were trying to encourage them to give any dates, to be honest with you, but okay.

24 **MR. FRASER HARLAND:** Okay. Well, let's just go through a
25 couple documents if I could. If we can go to RTC 00850350.0002? So, do you
26 recognize this as minutes from OLRTC Executive Committee Meeting?

27 **--- EXHIBIT No 073:**

28 RTC00850350.002 – Ottawa LRT Executive Committee

1 Meeting 20 July 2017

2 **MR. RUPERT HOLLOWAY:** Yeah.

3 **MR. FRASER HARLAND:** Dated July 20, 2017?

4 **MR. RUPERT HOLLOWAY:** Yes.

5 **MR. FRASER HARLAND:** And if we see in the second column
6 there, that's your name, Rupert Holloway?

7 **MR. RUPERT HOLLOWAY:** Yeah.

8 **MR. FRASER HARLAND:** I take it the checkmark means that you
9 were present at this meeting?

10 **MR. RUPERT HOLLOWAY:** I am guessing so, yeah.

11 **MR. FRASER HARLAND:** Okay. So, if we can go down to page
12 4, and it says 47.9 on the left side there, and the schedule here. So, I am interested in
13 this first paragraph. It says, "EXCO will be meeting with the City this afternoon. The
14 City is concerned about meeting RSA date of May 24, 2017."

15 I'm going to suggest to you, sir, that there may be a typo here,
16 because I don't think 2017 was ever the RSA date, so I think this should probably say
17 May 24, 2018. Would you agree with that?

18 **MR. RUPERT HOLLOWAY:** Yeah, yeah, yeah.

19 **MR. FRASER HARLAND:** Yeah? Okay. It says, "The City has
20 indicated that they would like to move the public opening date to August 2018. We
21 need to look at our schedule to understand where we are before speculating. John
22 M..."

23 And I am assuming that refers to John Manconi; would that be fair?

24 **MR. RUPERT HOLLOWAY:** Yeah.

25 **MR. FRASER HARLAND:** "John Manconi needs to understand
26 that however he announces it, that the construction groups do not think that they require
27 additional time to reach RSA. In preparation, EXCO met with each of the segment
28 managers."

1 So, I'd suggest to you, Mr. Holloway, that the executive committee
2 is saying here, "We're going to meet the RSA date. We think we can meet it, and the
3 City should not be changing the dates that it's going to be announcing, because we can
4 meet our revenue service date in May 2018."

5 **MR. RUPERT HOLLOWAY:** Let me just read it again because
6 I didn't quite get that from that. Hold on.

7 So, I don't get where you -- I didn't quite get how you got to the
8 assumption that we were trying to change the City's date, sorry. Which bit of that
9 paragraph indicates that to you?

10 **MR. FRASER HARLAND:** Well, not that you are trying to change
11 the City's date, sir, but that the constructors are saying, and they're certain here, that
12 they can meet revenue service date, and so there doesn't need to be a change of
13 announcements, that we can stick to the May 2018 date here. Is that not what this
14 says?

15 **MR. RUPERT HOLLOWAY:** Oh, okay. Sorry. "We need to look at
16 our schedule to understand where we are before speculating." Well, I think that's what
17 it is saying.

18 **MR. FRASER HARLAND:** But "the construction groups do not
19 think they require additional time to reach RSA," that's -- I think that's the ---

20 **MR. RUPERT HOLLOWAY:** John M. needs to understand that
21 however he announces it that the construction groups do not think that they require
22 additional time. So what I take that to mean is that John wants confirmation from us
23 that we're satisfied that our construction teams don't think they need additional time.

24 **MR. FRASER HARLAND:** Right, and you're providing that
25 confirmation, correct?

26 **MR. RUPERT HOLLOWAY:** In preparation that's coming with
27 each of the segment managers, okay. Okay, so just go back to what your question was,
28 sorry.

1 **MR. FRASER HARLAND:** Well, I'm just suggesting to you that this
2 is -- this is evidence of OLRTC thinking at this time that it won't have an issue meeting
3 the May 2018 ---

4 **MR. RUPERT HOLLOWAY:** Yeah, yeah, sorry, I misunderstood,
5 yes. Well, I don't know whether -- like, we'd have to read on to find out what the result
6 of the EXCO meeting with each of the segment managers was, but I mean clearly, at
7 the time, there we were going to hit May, I guess, or around that point, so yeah.

8 **MR. FRASER HARLAND:** Okay, that's fine.

9 **MR. RUPERT HOLLOWAY:** Sorry, like, I was lost in your
10 question. That was my -- it's five o'clock in the morning here. Sorry, I'm not at my best.

11 **MR. FRASER HARLAND:** I'm sure that I could have been clearer.
12 That's not problem. So I just want to go to another document, which is ALS7232, and
13 this is a document from Thales and I'm just wanting to look at the second -- sorry, you
14 can go back up to the top there where Thales is saying:

15 “Thales outlook for revenue service has slipped again
16 one month from 8th of November to 6 of December
17 2018 due to the continuing delays on our critical path
18 activities.” (As read).

19 And this is dated the 10th of April 2017, which is two months before
20 that board meeting. So I guess I'm just suggesting to you that OLRTC would have had
21 information from its subcontractors that the RSA date was going to be difficult to meet,
22 but OLRTC was continuing to communicate to the City who then, in turn, communicated
23 to the public the RSA of May 2018 could be met. Would you agree?

24 **MR. RUPERT HOLLOWAY:** Yeah. So I think just one letter isn't
25 really enough to really understand the full context. So sure, we have this letter. I'm
26 sure this was briefed back to the stakeholders as well, but we also have countervailing
27 evidence from the people managing this element of work inside the project that they
28 thought that Thales were overstating their issues and that they could be brought back to

1 deliver in time. We subsequently went and engaged with Thales.

2 And, you know, quite often you will get these sorts of letter from
3 your suppliers, which is normal practice, where they'll say -- you know, they'll give they
4 outside envelope of what's possible, you know, of what -- you know, of their forecast as
5 a means of, you know, driving a commercial outcome or bringing you to the table for a
6 commercial negotiation.

7 Certainly, Thales were delayed, and we did then engage in a
8 process of renegotiation with them. And part of that process involved them accelerating
9 their activities. So without understanding all of the other subsequent pieces, I don't
10 think you can just look at this and say, "We knew we were late. We knew we were late
11 in April. Why weren't we -- why weren't we coming clean?" because we accept letters
12 like this and then we get to work on hand and we try and mitigate those delays, and it
13 was the combination of not only are we getting briefed back that actually it is
14 recoverable but, also, we're then engaging with Thales with a commercial discussion as
15 well to try an affect acceleration.

16 **MR. FRASER HARLAND:** Okay. We also heard from Antonio
17 Estrada this morning that by the summer of 2017, he and RTG thought that the RSA
18 date was unachievable, so it looks like we have the City, the subcontractors, and RTG
19 all feeling that RSA date is unachievable but OLRTC taking a different position. Would
20 you -- do you see that?

21 **MR. RUPERT HOLLOWAY:** Yeah, I mean -- I mean, ultimately,
22 they were correct, right? So I think that it was a dawning -- it was a dawning realization
23 as we understood more facts about where the status of the project was, what the true
24 representation of the progress was. You know, we were getting, obviously, data that
25 indicated that it could be made, and we were obviously getting some feedback from the
26 construction team that it could be made, and we were getting feedback from the
27 systems team that despite the fact that we were getting letters like this, they though they
28 could recover the schedule. Ultimately, that proved to be an over -- level of

1 overconfidence and -- but I don't think it was like one blinding insight. I think it was a
2 progressive of facts as we advanced through the year and we got to the point where we
3 realized that we were really going to struggle.

4 **MR. FRASER HARLAND:** If we can go to one other document,
5 COW462871, and this is a slide deck from a joint City/RTG workshop, and this was
6 relation not in -- was in relation not to the May RSA date but the November RSA date,
7 which was also missed.

8 **--- EXHIBIT No. 074:**

9 COW0462871 – Confederation Line Stage 1 Joint City/RTG
10 Workshop Review of OLRTC's RSA Readiness Timeline 25
11 October 2018

12 **MR. RUPERT HOLLOWAY:** Yeah.

13 **MR. FRASER HARLAND:** If we can go to slide 13, please. That --
14 can we go up? Oh, "Summary Findings", so down one. So the summary findings out of
15 this were that OLRTC's new leadership is making progress, so I guess that's a credit to
16 you, but failing to meet they're ambitious schedule. OLRTC consistently
17 underestimating challenges associated with system assurance, operational readiness,
18 tunnel ventilation, station occupancy permits, light rail vehicle issues, state of the
19 overhead, catenary system. So would agree that, at least in retrospect, this is a fair
20 characterization with OLRTC in the schedules?

21 **MR. RUPERT HOLLOWAY:** Yes.

22 **MR. FRASER HARLAND:** And in light of all of the information that
23 OLRTC had, can we suggest, goes so far as to say that OLRTC was misleading the
24 City and the schedules that it had provided given the information that it had?

25 **MR. RUPERT HOLLOWAY:** I don't -- I mean, again, I think that's
26 stretching too far. I mean part of -- part of the problem was, the full scope of what was
27 left to be done was not fully understood. And as the work progressed, it revealed more
28 new and emerging challenges, and they made -- and they were becoming harder to

1 forecast going forward.

2 So I don't think we were misleading the City, personally. I think
3 what we were doing -- yes, we were putting forward an aggressive acceleration regime
4 to try and recover the schedule, and I think that's all said, that, you know, we're -- what
5 is it -- underestimating challenges. I think, in hindsight, that's a legitimate criticism. But
6 we were -- we felt -- I felt we were putting forward some attainable solution.

7 And I'm back into that space, is if you don't challenge on these
8 projects, delays -- it will be longer, right. So you have to challenge the predictable. We
9 were challenging the predictable. Obviously, in hindsight, we didn't get that right. I
10 didn't get that right and I take accountability for that. But it wasn't a campaign of trying
11 to mislead people. We were just trying to do as efficiently and effectively as we possibly
12 could to make sure that we finished as fast we could because of the criticality of it.

13 **MR. FRASER HARLAND:** Understood. Thank you for that, sir.
14 I'm mindful of the time and I want to just cover one other topic with you if I could. And I
15 also -- I was going to ask you at the beginning, but you're testifying from Australia, so I
16 understand it's very early in the morning, is it?

17 **MR. RUPERT HOLLOWAY:** Yes, yeah.

18 **MR. FRASER HARLAND:** So we thank you for making yourself
19 available at what's quite an inconvenient time for you. We appreciate that. So I want to
20 turn to one last topic which is OLRTC's relationship with RTM.

21 **MR. RUPERT HOLLOWAY:** Yeah.

22 **MR. FRASER HARLAND:** And just to take a quick step back, RTG
23 had a contract with the City for the Design Build Finance and Maintenance of the
24 project. Is that right?

25 **MR. RUPERT HOLLOWAY:** Yes.

26 **MR. FRASER HARLAND:** And then RTG had two major
27 subcontracts, one with OLRTC for the design and construction, correct?

28 **MR. RUPERT HOLLOWAY:** Yes.

1 **MR. FRASER HARLAND:** And the other was with RTM for the
2 maintenance, correct?

3 **MR. RUPERT HOLLOWAY:** Correct, yeah.

4 **MR. FRASER HARLAND:** Okay. And so, necessarily, there would
5 have needed to be some coordination between OLRTC and RTM as the project moved
6 from construction to operations and maintenance, fair enough?

7 **MR. RUPERT HOLLOWAY:** One hundred (100) percent, yeah.

8 **MR. FRASER HARLAND:** Okay. And in your time as project
9 manager, you were involved in helping to prepare the handover from OLRTC to RTM, is
10 that fair?

11 **MR. RUPERT HOLLOWAY:** Yes, yeah.

12 **MR. FRASER HARLAND:** So what were some of the things that
13 needed to be done to allow a successful handover?

14 **MR. RUPERT HOLLOWAY:** So, again, the -- there's a huge
15 amount of information that needs to be transacted from the constructor to the
16 maintainer, and that involved manual, just, you know, data about the built asset, you
17 know, the condition of the asset, inspection and test plans, those sorts of things, but as
18 well as preparing training packages and, to a certain degree -- I'm not sure if we actually
19 delivered training packages. Maybe we might have done some train the trainer delivery.
20 But this where they'll actually, you know, build capability within their own organization to
21 use the asset that's being supplied, so we would facilitate our OEMs, you know, the
22 original equipment manufacturer to provide training to RTM and knew some things like
23 the overhead line or substation switch gear or that sort of thing. So it's a fairly large
24 amount of data to be transacted. That said, not all of the data are of critical importance
25 in the day-to-day operation of the railway. You know, there's a lot amount of
26 information, so it is something that needs to be triaged in terms of you need to make
27 sure that you transact the important stuff first, recognizing that there is a vast volume of
28 stuff to be provided.

1 **MR. FRASER HARLAND:** Okay. And I understand that there was
2 a bit of a dispute between OLRTC and RTM about whether sufficient maintenance
3 documentation was being transferred and how it was being transferred; is that fair?

4 **MR. RUPERT HOLLOWAY:** Yeah, I think that, again, I would say,
5 you know, these are the normal tension points on these jobs where you have a different
6 maintainer from the constructor – you know, there's always going to be a little bit of an
7 arm wrestle between, you know, I didn't get the information I want; I didn't have the right
8 quality that I wanted; I didn't get in the time that I wanted; you know, those sorts of
9 things are highly usually. In fact the projects I'm dealing with right here in Australia right
10 now, we've got exactly the same challenges between the maintainer and the
11 constructor.

12 What we did do, is we brought in a gentleman to focus solely on
13 that who was a seasoned railway maintainer, so from the construction side we had a
14 seasoned railway maintainer to try and help triage that effort to make sure that we were
15 really getting, you know, the right – the critical documents transacted and that they had
16 the right quality to them. And we did, you know, that was – you know, we did have a
17 few twists and turns along the way; I wouldn't deny that it was a smooth sailing process,
18 but we felt that we had discharged the critical information to RTM to allow them to
19 maintain the asset.

20 **MR. FRASER HARLAND:** And in terms of those twists and turns,
21 I just want to put one document to you in the time remaining; it's RTC01179531.

22 **--- EXHIBIT No. 075:**

23 RTC01179531 – Email from Rupert Holloway to Matthew
24 Slade et al 20 March 2019

25 **MR. FRASER HARLAND:** So we've got an email chain here; if we
26 go down to the bottom of it to start; so this is from Dale Clark to Jonathan Wilkinson
27 saying "Jon, I'm sure you're aware of this, but our RTM team is concerned about the
28 amount of information required to be handed over and reviewed by Revenue Service

1 and which is still outstanding. Attached is a summary note that highlights the main
2 points. Just FYI as I know that teams are working to resolve but lots to do and could
3 impact our ability to wrap up operationally.” If we can scroll up, please. We see that
4 this is forwarded from Jonathan Wilkinson to you, and then we go to the top we have
5 your response of March 20th, 2019. If we could scroll down just a little bit, please.

6 And you’re saying – so you’ve supplied 90 per cent of their critical
7 documents, so what would those documents be?

8 **MR. RUPERT HOLLOWAY:** I would imagine – look, I can’t
9 remember but I would imagine they’re things like training manuals and critical, you
10 know, data for the asset. Oh, no, the manual is the next one – sorry. Critical document.
11 So William who’s mentioned, I think, in here, was the William Orman, who is the guy
12 that we appointed from the construction site to do the interface part with the maintainer.
13 He would have worked through what the critical documents were; I couldn’t recall off the
14 top of my head what they actually are.

15 **MR. FRASER HARLAND:** And then we’ve got a 163 manuals, 87
16 per cent of spares; what are the word “spares” referred to?

17 **MR. RUPERT HOLLOWAY:** Yeah, so we also have to supply –
18 so where you have specific, you know, new assets of a type that’s not common or
19 widely available, we would have to provide what’s called “critical spares”. So these are
20 – as part of the construction process we’re building an asset but we know that there’s
21 certain components of that asset that are going to wear at a certain rate. So we would
22 not only buy the number of componentry that’s required to build the asset, but we also
23 had to buy an additional amount that could be held as spares for the maintainer to hold
24 and then they are to effect their maintenance of it. So I think that’s all implying all the
25 things that we’ve identified as what’s being critical spares, we provided 87 per cent of
26 them.

27 **MR. FRASER HARLAND:** And so if we set aside whether it was,
28 you know, OLRTC or RTM here, you would agree with me that there is an issue at this

1 time of RTM saying that they don't have the documentation that they need to maintain
2 the system at this time?

3 **MR. RUPERT HOLLOWAY:** I agree that they've said it; I don't
4 agree that they didn't have the information they needed.

5 **MR. FRASER HARLAND:** Fair enough. And then the
6 Commission –

7 **MR. RUPERT HOLLOWAY:** Which, I think, is the essence of that
8 email; right?

9 **MR. FRASER HARLAND:** Right. The Commission has heard
10 evidence from Mr. Yang Wu is Alstom's Maintenance Engineer Manager. And he stated
11 that even once the system had started service, Alstom who is a subcontractor to RTM
12 maintaining the system, was missing key maintenance manuals, particularly as they
13 related to communication systems. And to paraphrase his evidence, he said that
14 Alstom had requested that information from RTM and RTM said they were still waiting to
15 receive that information from OLRTC. So would you agree that that's an indication that
16 the issues between OLRTC and RTM hadn't been properly resolved, even after
17 Revenue Service?

18 **MR. RUPERT HOLLOWAY:** Well, it appears so, but I mean I think
19 the point is, is that we felt – sorry – when we've identified at this point that we supplied
20 90 per cent of the critical documents, those critical documents would have been ones
21 that we had agreed to with RTM. So the issue is, had they identified that document as
22 being critical earlier had we triaged it – like don't forget, there's many thousands of
23 documents here. So, you know, maybe you will get the odd occasion where certain bits
24 of information are not transacted, they weren't seen as being critical, they were
25 subsequently seen as being critical that wasn't prioritized. If that happened, certainly it
26 could happen.

27 You know, my personal recollection of this is that the maintainer
28 were asking for stuff but they weren't reviewing it. And I think you can see here that we

1 supplied 90 per cent of the documents but they hadn't actually accessed those
2 documents to review them. So that, to me, says – they're in there saying, "Look, I just
3 want everything; just give me everything" as opposed to having intelligent design about,
4 you know, what do I specifically need first and why is it important and let's have the
5 conversation about the critical few. So, you know, I don't think it was managed on
6 either side quite as well as it might have been done. And, you know, again, perfection
7 is very difficult to achieve on these projects because they are so complicated.

8 **MR. FRASER HARLAND:** Okay. I mean setting aside this conflict
9 between OLRTC and RTM we can agree, I'm sure, that it's concerning from a reliability
10 perspective if the maintainer is saying that they don't have the maintenance manual
11 that's needed while the system is operating; is that fair enough?

12 **MR. RUPERT HOLLOWAY:** Well, if that's true, certainly. I mean I
13 would question why would the maintainer have taken maintenance responsibility if they
14 felt they were missing critical information? That seems – that doesn't seem entirely
15 appropriate to me.

16 **MR. FRASER HARLAND:** That's right. And I think those may be
17 questions for other witnesses, but I just wanted to get your take on this conflict. Mr.
18 Holloway, those are my questions. Thank you, Mr. Commissioner.

19 **COMMISSIONER HOURIGAN:** All right. Thank you, counsel.
20 We'll take the afternoon break for 15 minutes.

21 **THE REGISTRAR:** Order, all rise. The Commission will recess
22 for 15 minutes.

23 --- Upon recessing at 3:55 p.m.

24 --- Upon resuming at 4:12 p.m.

25 **THE REGISTRAR:** Order. All rise. The Commission has
26 resumed.

27 **--- MR. RUPERT HOLLOWAY, Resumed:**

28 **COMMISSIONER HOURIGAN:** All right. The first lawyer for the

1 parties is the City of Ottawa.

2 Do we have the witness? I have Mr. Wardle.

3 Just stand by.

4 **THE REGISTRAR:** Oh, is he coming back?

5 **MR. RUPERT HOLLOWAY:** I'm here, but I can't take my video
6 back off. The host is blocking me from my video.

7 **COMMISSIONER HOURIGAN:** Okay. Okay. Hold on.

8 I see Mr. Holloway. I see Mr. Wardle.

9 Okay? Mr. Wardle, everybody can see everybody?

10 **MR. PETER WARDLE:** I think so. Thank you very much, Mr.
11 Commissioner.

12 Peter Wardle for the City of Ottawa.

13 **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

14 **MR. PETER WARDLE:** And Mr. Holloway, again, thank you for
15 getting up at a very early hour to accommodate us.

16 I wanted just to ask a few questions about the sinkhole. Do you
17 recall, Mr. Holloway, that there was a dispute between the City and RTG, OLRTC, with
18 respect to the sinkhole and the delay issue?

19 **MR. RUPERT HOLLOWAY:** Yes, I do.

20 **MR. PETER WARDLE:** And I know you weren't present for this,
21 because by this time, you'd left the project, but RTG took that dispute to the
22 independent certifier. Do you recall that?

23 **MR. RUPERT HOLLOWAY:** No, I'm not across that, to be honest
24 with you.

25 **MR. PETER WARDLE:** Okay. And I'm just going to show you a
26 report from the independent certifier, and this is dated February 5, 2021. It's
27 COW0317235.

28 **--- EXHIBIT No. 076:**

1 COW0317235 – Ottawa Light Rail Transit Project
2 Independent Certifier Determination Dispute Between The
3 City of Ottawa and Rideau Transit Group General Sinkhole
4 Delay 5 February 2021

5 **MR. PETER WARDLE:** And you'll see if we just scroll down the
6 first page, that'll give you the page, it will give you the date, February 5, 2021, and I'm
7 going to ask if we can go to page 14 of the document. So it should be "Sinkhole Event"
8 at the top of the page, and you'll see that in the second paragraph, Altus -- do you recall
9 that Altus was the independent certifier?

10 **MR. RUPERT HOLLOWAY:** Sorry, I've lost that detail, but I've no
11 reason to say that they weren't. Yeah, I just can't remember.

12 **MR. PETER WARDLE:** All right. And in the paragraph, you'll see it
13 starts by saying:

14 "Altus has performed a high-level delay analysis by
15 selecting two windows after the occurrence of the
16 sinkhole." (As read)

17 And then if we go down the page, you'll see they refer to Window
18 number 1, and it starts by saying:

19 "This window utilized the December 21, 2016
20 schedule update which was after the occurrence of
21 the sinkhole by almost six months to determine the
22 impact of the sinkhole on the RSA date and identify
23 the new critical path for the project." (As read)

24 And this, of course, would be the OLRTC schedule, correct?

25 **MR. RUPERT HOLLOWAY:** Yeah.

26 **MR. PETER WARDLE:** And if you -- we go down to the bottom of
27 the page, you'll see a reference to the baseline schedule, and then comparing it to the
28 as-built schedule, December 21, 2016, and the independent certifier concludes:

1 "It is apparent from the delay analysis chart --- "

2 And I'm not going to take you there ---

3 "--- that the RSA date had not been impacted, and the
4 date remains unchanged." (As read)

5 If we go over to the next page, i.e., the top of the next page, May
6 23, 2018. And then in the middle of that page, right in the section, the last line of the
7 section we're looking at now, you'll see it says:

8 "Therefore, six months after the sinkhole event, RTG
9 were still maintaining that the project was not in delay
10 as of December 21, 2016." (As read)

11 Do you see that?

12 **MR. RUPERT HOLLOWAY:** I see that it says that, yeah.

13 **MR. PETER WARDLE:** And then Altus also does an analysis of
14 the delays that take place from December 21, 2016 to December 21, 2018. And if we
15 go to the next page in this report, you'll see that analysis which they call Window 2, and
16 you'll see they indicate in the second paragraph we're looking at:

17 "After reviewing the schedule update, dated
18 December 21, 2018, and comparing it with the
19 December 21, 2016 as-built schedule, it is apparent
20 from the delay analysis chart --- "

21 Again, there's a figure 2 ---

22 "--- that the dominant cause of delay is related to
23 stations construction activities and vehicle
24 manufacture and testing." (As read)

25 And then it ends by saying:

26 "These activities are not related to the sinkhole event
27 and are causing a critical delay to the RSA date." (As
28 read)

1 See that?

2 **MR. RUPERT HOLLOWAY:** Yeah.

3 **MR. PETER WARDLE:** So I want to just talk a little bit, if we could,
4 about a topic you've already covered with Mr. Harland. We can take this down now.

5 And I'm going to try and approach this slowly and maybe at a little
6 higher level than Mr. Harland did it.

7 The original RSA date was May 24, 2018. You recall that?

8 **MR. RUPERT HOLLOWAY:** Yeah.

9 **MR. PETER WARDLE:** And do you recall that there was a 180-day
10 notice period that had to be given of RSA by RTG under the Project Agreement? In
11 other words, six months before the date, they had to serve a notice. Does that ring a
12 bell?

13 **MR. RUPERT HOLLOWAY:** That does, yeah.

14 **MR. PETER WARDLE:** And I'm going to suggest to you that the
15 reason that notice was there was because the City sought -- required some advance
16 notice in order to start to carry out the work for the significant changes that needed to be
17 made to the rapid bus network; does that seem fair?

18 **MR. RUPERT HOLLOWAY:** Yeah.

19 **MR. PETER WARDLE:** Okay. And again, we don't need to go to
20 it, but on November 24, 2017, RTG confirmed that it would achieve RSA by that
21 required date. And I won't take you to the letter, but it's COW0523285.

22 And then as Mr. Harland took you to, in February 2018, RTG wrote
23 to the City advising for the first time that the RSA date would be moved to November 2,
24 2018.

25 And again, I'm not going to ask -- we're not going to look at the
26 document, COW0532703.

27 And RTG and OLRTC then missed that date, correct?

28 **MR. RUPERT HOLLOWAY:** Correct, yeah.

1 **MR. PETER WARDLE:** And ultimately, as Mr. Harland took you
2 through, there were a series of misses to the RSA date that went right into 2019, fair?

3 **MR. RUPERT HOLLOWAY:** Correct, yeah.

4 **MR. PETER WARDLE:** Okay. And I'm going to suggest to you,
5 because you were there at the time, that in late 2017, the people at the City -- and I'm
6 really referring to Mr. Cripps, Steven Cripps, the rail office director ---

7 **MR. RUPERT HOLLOWAY:** Yeah.

8 **MR. PETER WARDLE:** --- and Mr. Manconi from OC Transpo, you
9 had dealings with both these gentlemen?

10 **MR. RUPERT HOLLOWAY:** Yeah.

11 **MR. PETER WARDLE:** Is it fair to say they developed concerns
12 about whether OLRTC schedules could be relied upon?

13 **MR. RUPERT HOLLOWAY:** I can't remember those discussions at
14 that time, to be honest with you. I know certainly, we had those discussions later in the
15 project, but I'm not saying they didn't occur, but I can't -- that doesn't spring to mind.

16 **MR. PETER WARDLE:** And I'm going to suggest to you that Mr.
17 Manconi actually brought in his own team of experts to review OLRTC's schedules. Do
18 you remember that?

19 **MR. RUPERT HOLLOWAY:** Yes. Yeah. I think STV? Maybe I'm
20 wrong in remembering that.

21 **MR. PETER WARDLE:** STV was part of that group, and they were
22 -- he called them the independent assessment team. You may not recall that phrase.
23 Does that seem ---

24 **MR. RUPERT HOLLOWAY:** Yes.

25 **MR. PETER WARDLE:** Does that ring a bell?

26 **MR. RUPERT HOLLOWAY:** Yes.

27 **MR. PETER WARDLE:** And those folks came from various
28 locations. Some of them were rail experts from the United States, do you recall that?

1 **MR. RUPERT HOLLOWAY:** Yes.

2 **MR. PETER WARDLE:** And they could up to Ottawa and actually
3 walk the site and review the state of the construction, and then meet with RTG and
4 OLRTC, do you remember that?

5 **MR. RUPERT HOLLOWAY:** Yes. Certainly.

6 **MR. PETER WARDLE:** And I'm going to suggest that the reason
7 for that was that the City had to know with some certainty the RSA date because of all
8 the work that needed to be done to reroute the bus system. And you're nodding, but
9 you have to answer for the record.

10 **MR. RUPERT HOLLOWAY:** Oh, sorry. Yes. Yes, yes. Sorry.

11 **MR. PETER WARDLE:** Thank you. And I don't know if you knew
12 this, Mr. Holloway, but I'm going to suggest to you that the City of Ottawa has a
13 transparency policy.

14 **MR. RUPERT HOLLOWAY:** I wasn't aware, but that doesn't
15 surprise me.

16 **MR. PETER WARDLE:** And I'm going to suggest that City staff in
17 connection with this project had to report on a regular basis to a City committee called
18 FEDCO. Do you remember that?

19 **MR. RUPERT HOLLOWAY:** Yes, I do.

20 **MR. PETER WARDLE:** Okay. And so, they had to report on a
21 regular basis on the status of construction activity, right?

22 **MR. RUPERT HOLLOWAY:** Yes.

23 **MR. PETER WARDLE:** And I'm going to also suggest that FEDCO
24 meets and operates largely in public, and so, reports to FEDCO would become public.

25 **MR. RUPERT HOLLOWAY:** Yes.

26 **MR. PETER WARDLE:** And so, as a result, over the period that
27 we've been looking at, 2017/2018, the rail office and Mr. Manconi had an obligation first
28 to tell FEDCO what it was hearing from you and your people about the schedule, right?

1 **MR. RUPERT HOLLOWAY:** Yes.

2 **MR. PETER WARDLE:** And then that information made its way
3 into the public domain.

4 **MR. RUPERT HOLLOWAY:** Yes.

5 **MR. PETER WARDLE:** So, every time OLRTC assured the City it
6 would meet a specific date, that eventually got communicated to the public, isn't that
7 fair?

8 **MR. RUPERT HOLLOWAY:** Yeah, and of course, we had the
9 independent assessment team vetting what we were saying as well.

10 **MR. PETER WARDLE:** Right. And so, I'm going to suggest to you
11 that any loss of public confidence in Ottawa, or controversy over when the system was
12 going to open, was due in large part to OLRTC making promises about the schedule
13 that it ended up not being able to live up to.

14 **MR. RUPERT HOLLOWAY:** I think that's fair.

15 **MR. PETER WARDLE:** Okay. Can we just turn briefly to the
16 question of a soft launch or public -- partial opening? So, first of all, I understand you've
17 got a lengthy background in rail, but is it fair to say, Mr. Holloway, that your background
18 is really construction management?

19 **MR. RUPERT HOLLOWAY:** A hundred per cent, and I qualify all
20 my responses in relation to soft opening that I'm not an operator or an expert in that
21 area.

22 **MR. PETER WARDLE:** Okay. And that's really what I was going
23 to start with. As you said yourself, soft opening is a term of art, fair?

24 **MR. RUPERT HOLLOWAY:** Oh, yes. Sorry. Yes.

25 **MR. PETER WARDLE:** And I know it's 5:00 in the morning, but
26 you have to say yes or no. You can't just nod.

27 **MR. RUPERT HOLLOWAY:** Sorry, I didn't realize that was a
28 question. I was waiting for more.

1 **MR. PETER WARDLE:** No, no, it's my fault, but for the record, you
2 can't just nod. You have to say yes or no.

3 **MR. RUPERT HOLLOWAY:** Yes, okay.

4 **MR. PETER WARDLE:** And your description of it earlier today was
5 running less than full service or reduced or degraded service?

6 **MR. RUPERT HOLLOWAY:** Yes.

7 **MR. PETER WARDLE:** Okay. And in your interview, you said soft
8 or partial openings can take a number of different forms, and every operator will make
9 their own judgment based on their asset and their own level of experience.

10 **MR. RUPERT HOLLOWAY:** Correct.

11 **MR. PETER WARDLE:** Okay. You were asked, I think, what
12 would have been appropriate for the system, and in your formal interview, you said, "If
13 you are asking me to speculate, I would say six months." Do you recall saying that?

14 **MR. RUPERT HOLLOWAY:** Correct. Yes.

15 **MR. PETER WARDLE:** Okay. But is it fair to say that you don't
16 have the expertise to provide a professional opinion on this subject?

17 **MR. RUPERT HOLLOWAY:** Agreed. I have commissioned
18 studies from network rail consulting in other projects where we've done analysis into
19 this, but for other projects, not related to OLRTC, so -- sorry, in relation to Confederation
20 Line. So, I have some appreciation of it, but I'm absolutely not an operator, and
21 therefore, I wouldn't say that I'm competent to make a judgment.

22 **MR. PETER WARDLE:** All right. And just to complete that -- and I
23 know you were using this as an example, but Crossrail, as I understand it from your
24 evidence, Crossrail involved 70 miles of track?

25 **MR. RUPERT HOLLOWAY:** Yeah, I believe so, but the point that I
26 was making, really, was that the issue here is not the extent of the track; it's the digital
27 density of the network that's being tested and commissioned, and in that sense, there is
28 some comparison.

1 **MR. PETER WARDLE:** I've got all that, Mr. Holloway. I think I
2 understand you, but I want to make sure that the Commissioner understands the scope
3 of Crossrail. Seventy miles of track, right?

4 **MR. RUPERT HOLLOWAY:** Correct. Yes.

5 **MR. PETER WARDLE:** Forty miles of tunnel?

6 **MR. RUPERT HOLLOWAY:** Correct.

7 **MR. PETER WARDLE:** Forty-one stations?

8 **MR. RUPERT HOLLOWAY:** Yes.

9 **MR. PETER WARDLE:** And a lot more interfaces with other
10 elements of a rapid transit system than would exist in Ottawa, isn't that fair?

11 **MR. RUPERT HOLLOWAY:** The scale is larger and, therefore,
12 yes.

13 **MR. PETER WARDLE:** Okay. Let's talk about the proposal for a
14 partial opening. So, I'm going to suggest to you that in September of 2018, you and
15 your colleagues came to Mr. Manconi and made a proposal for a partial opening.

16 **MR. RUPERT HOLLOWAY:** I think we did have a discussion. I
17 can't remember exactly what the content of that proposal was.

18 **MR. PETER WARDLE:** Okay. So, I'm going to suggest that it
19 came at a time when OLRTC was trying to achieve the November 2018 RSA date.

20 **MR. RUPERT HOLLOWAY:** Yes.

21 **MR. PETER WARDLE:** Does that seem right?

22 **MR. RUPERT HOLLOWAY:** Yes.

23 **MR. PETER WARDLE:** And it was in RTG's interest, and OLRT's
24 interest, to try to achieve that date by asking the City to accept a system that had only
25 some stations open.

26 **MR. RUPERT HOLLOWAY:** Yes, and I think, you know, our point
27 was that there was a confirmative win-win associated with that, which was why we
28 thought it was a viable option.

1 **MR. PETER WARDLE:** Well, first, let's just go through the
2 proposal so that we understand the proposal. As I understand the proposal, there was
3 going to be a modification to the fleet size, do you recall that? Sorry, you've frozen, Mr -
4 --

5 **MR. RUPERT HOLLOWAY:** I can't ---

6 **MR. PETER WARDLE:** Uh ---

7 **COMMISSIONER HOURIGAN:** Just standby. Just give it a
8 second.

9 **MR. PETER WARDLE:** I just wanted to make sure it wasn't me
10 who had frozen, Mr. Commissioner.

11 **COMMISSIONER HOURIGAN:** No, it's just Mr. Holloway, so we'll
12 just see if he comes back.

13 **(SHORT PAUSE)**

14 **MR. RUPERT HOLLOWAY:** I can't recall, but I'll tell you what --
15 can you hear me?

16 **COMMISSIONER HOURIGAN:** Okay, Mr. Holloway?

17 **MR. RUPERT HOLLOWAY:** Yes, I'm getting a message that my
18 internet isn't stable. It may be better if I leave my video off. Will that work?

19 **COMMISSIONER HOURIGAN:** Well, Mr. Wardle, what's your
20 position?

21 **MR. PETER WARDLE:** I think I'm happy to complete it. If Mr.
22 Holloway can see the screen and follow along with me, I think that's fine.

23 **COMMISSIONER HOURIGAN:** Can you see it, Mr. Holloway?

24 **MR. RUPERT HOLLOWAY:** Yeah, I can see the screen. I can see
25 Mr. Wardle. I can turn it back on if you'd prefer. I'm just mindful of the fact that it might
26 be a bandwidth issue.

27 **COMMISSIONER HOURIGAN:** Okay. There we are. Very good.
28 Okay, you can see us now?

1 And we have the document, Mr. Commissioner.

2 **COMMISSIONER HOURIGAN:** Sorry. I can see the document.

3 Can everyone see the document? The O-Train Confederation Line Project Update?

4 Unfortunately, I'm looking at what looks like an email screen. It
5 looks like an output. That's it. All right, thank you.

6 **MR. PETER WARDLE:** All right, Mr. Holloway, I think we're back
7 on track. If we could go to page 33 of this. And before I go -- sorry, before I go to the
8 page 33, this is a document that you have not seen, sir. This is a presentation to the --

9 **COMMISSIONER HOURIGAN:** Can we get it up?

10 **MR. PETER WARDLE:** --- to the City committee called FedCo.

11 You'll see that and you see the date, September 10, 2018?

12 **MR. RUPERT HOLLOWAY:** Yeah. But it's gone again. Oh, there
13 we go. We're good.

14 **MR. PETER WARDLE:** Okay. So if we go to page 33.

15 So you'll see on this slide it starts by saying:

16 "RTG has been meeting with the City to discuss the
17 November 2 RSA date. RTG position is that they can
18 achieve the November 2, 2018 RSA date with the City
19 agreeing to a revised and reduced scope of work.

20 RTG has tabled a proposal that the City has reviewed
21 in detail." (As read)

22 And just stopping there, you would have been involved in those
23 discussions; is that fair?

24 **MR. RUPERT HOLLOWAY:** Yeah. I can't really -- I mean, I've got
25 a vague recollection of having a discussion but I -- as I mentioned earlier, but not the
26 detail of it, yes.

27 **MR. PETER WARDLE:** Okay.

28 **MR. RUPERT HOLLOWAY:** But it would have been -- certainly, I

1 certainly would have been involved.

2 **MR. PETER WARDLE:** All right. And it goes on to say:

3 “It includes a modification to the fleet size, partial
4 station openings, and reducing the requirements
5 prescribed in the trial running...”

6 And “trial” is misspelled “trail”, but I assume it’s “trial”.

7 “...clause to the Project Agreement.” (As read)

8 And is that consistent with your recollection?

9 **MR. RUPERT HOLLOWAY:** Yes.

10 **MR. PETER WARDLE:** Okay. And then it goes on to say:

11 “Other high level options were also tabled with the
12 City, such as partial line openings and soft starts.”
13 (As read)

14 Is that fair?

15 **MR. RUPERT HOLLOWAY:** Yeah.

16 **MR. PETER WARDLE:** And then you’ll see:

17 “The City reviewed and assessed all the options and
18 they have all been rejected based on the following.”
19 (As read)

20 And I, not going to take you through all of this because it goes on
21 for some pages. But I will take you to page 36. You’ll see under “City Position” it says:

22 “RTG has been contracted to design, build, test, and
23 commission the entire system. They are obligated to
24 complete all these tasks and the City has been firm in
25 its position in that we will hold RTG accountable to its
26 contractual obligations.” (As read)

27 And it’s true, is it not, that RTG was obligated to complete all of the
28 tasks set out in the Project Agreement?

1 **MR. RUPERT HOLLOWAY:** One hundred (100) percent true.

2 **MR. PETER WARDLE:** Okay. And then it goes on to say in the
3 next paragraph:

4 “The options put forward by RTG transfers the risks to
5 the City on many fronts including operationally,
6 reputationally, and potentially additional costs.” (As
7 read)

8 And I'm not asking you to agree with that, sir, but do you recall that
9 that was the position the City took with you and your colleagues at the time?

10 **MR. RUPERT HOLLOWAY:** Well, I remember that they declined
11 to proceed with it. I couldn't -- I can't honestly -- I'm reading this now but I can't actually
12 recall what the rationale for that was. And obviously we -- I mean, I personally wouldn't
13 agree that it is a risk transfer because I think it is also a mitigation effort to deal with
14 some other risks that would occur later. But there was definitely -- there was definitely
15 associated with this, you know, there would have been a reputational risk for the City. I
16 totally take that on board. And you know, we were obviously asking for the City to do
17 something that was not contemplated by the contract. So I totally accept that as well.

18 **MR. PETER WARDLE:** And then just very briefly:

19 “Our customers have undergone significant changes
20 and they should not be subject to any additional
21 changes in their daily commutes.” (As read)

22 And do you recall that there had already been a significant
23 disruption to the Rapid Bus, the network, as a result of all the construction activity?

24 **MR. RUPERT HOLLOWAY:** Yes.

25 **MR. PETER WARDLE:** Okay. All right. Thank you. We can take
26 that document down.

27 And we can also agree, Mr. Holloway, that there is nothing in the
28 Project Agreement that contemplates either a partial opening or a soft start, right?

1 **MR. RUPERT HOLLOWAY:** That's my understanding, yes.

2 **MR. PETER WARDLE:** In fact the word RSA stands for Revenue
3 Service Availability, right?

4 **MR. RUPERT HOLLOWAY:** Yes.

5 **MR. PETER WARDLE:** And what that actually means is that under
6 the Project Agreement, the day after the RSA date the City could start running the
7 system; isn't that fair?

8 **MR. RUPERT HOLLOWAY:** Yes. Again, I go back to the point of
9 to take a highly complex digitally dense system like that straight into full operation has
10 got its own risks. But that was the implication.

11 **MR. PETER WARDLE:** And that's going to take me to another
12 very brief topic. You were asked some questions about, you know, whether OLRTC
13 was under pressure to cut corners. Do you recall that?

14 **MR. RUPERT HOLLOWAY:** Yeah.

15 **MR. PETER WARDLE:** And in the spring of 2019, OLRTC, while
16 you were still there, applied for substantial completion; do you recall that process?

17 **MR. RUPERT HOLLOWAY:** Yeah.

18 **MR. PETER WARDLE:** And do you recall that the City pushed
19 back and said ---

20 **MR. RUPERT HOLLOWAY:** Yes.

21 **MR. PETER WARDLE:** --- and said you weren't ready?

22 **MR. RUPERT HOLLOWAY:** Yes.

23 **MR. PETER WARDLE:** And do you also recall that the
24 independent certifier agreed with the City's position, correct?

25 **MR. RUPERT HOLLOWAY:** I do. Yes.

26 **MR. PETER WARDLE:** And then after that -- and this is not
27 uncommon in these kinds of projects, OLRTC went back to the drawing board. They
28 came up with a plan to achieve revenue service -- sorry, to achieve substantial

1 completion which was achieved, in fact, in July, shortly after you left.

2 **MR. RUPERT HOLLOWAY:** Correct.

3 **MR. PETER WARDLE:** And so, is it fair to say that certainly from
4 what you knew at the time, the City wasn't rushing to get the system into operation, they
5 were taking their time and making sure the requirements of the project agreement were
6 complied with; is that fair?

7 **MR. RUPERT HOLLOWAY:** I think that's fair. I think the thing I
8 would just also say is that the way that you phrased your question implied that that is
9 evidence of us taking shortcuts, which I would contest.

10 **MR. PETER WARDLE:** And I am going to come to that now. The
11 people that were working for you at the time, as you approached substantial completion
12 and trial running, those people were focused on safety and reliability, correct?

13 **MR. RUPERT HOLLOWAY:** Well, they were focused on all the
14 technical requirements, but safety and reliability are crucial for us to be able to
15 demonstrate that the asset is fit for use.

16 **MR. PETER WARDLE:** And there are certain safety requirements
17 that have to be met by OLRTC in order to hand the system over to the City, correct?

18 **MR. RUPERT HOLLOWAY:** One hundred per cent, yes, correct.

19 **MR. PETER WARDLE:** And you were focused, up until the time
20 you left, on making sure that all of your staff were making sure that those requirements
21 were met ---

22 **MR. RUPERT HOLLOWAY:** Correct.

23 **MR. PETER WARDLE:** --- is that not fair?

24 **MR. RUPERT HOLLOWAY:** Yes.

25 **MR. PETER WARDLE:** And you have no reason to believe that
26 that changed at any point up to revenue service availability?

27 **MR. RUPERT HOLLOWAY:** I wasn't there but I -- like, I don't
28 know, so I can't comment. But I know that while I was there, we -- I mean, look, we

1 invested, like I said, tens of millions of dollars in trying to make sure that we did that --
2 we constructed that assurance argument with rigor and detail. And we had -- well, they
3 weren't independent, because we had hired them, but outside of the three companies,
4 experts come in to support us with that. And it is all overseen by the independent safety
5 advisor as well, which is an entity retained by the City to oversee, you know, all of those
6 assurance documents are being correctly compiled.

7 So, that was the critical, I suppose, stage gate that you have to go
8 through for acceptance, was making sure that the ISA, the independent safety advisor,
9 was happy with the safety argument that was being presented. And, although I wasn't
10 there, that would have been a crucial stage for RSA.

11 **MR. PETER WARDLE:** Thank you. And just a couple of questions
12 in closing about, first of all, shadow operator and the Alliance model. So, you, in your
13 formal interview, gave some evidence about your experience that on occasion that
14 shallow operators -- shadow operators -- I shouldn't call it shallow operators -- shadow
15 operators are used to support the constructor in understanding the operator's
16 environment, right?

17 **MR. RUPERT HOLLOWAY:** Correct. Yes.

18 **MR. PETER WARDLE:** Okay. And is it fair to say that you told
19 Commission counsel that a shadow operator was not necessary in this case because
20 SNC was involved, and SNC did have operators experience, and that we did actually
21 bring in controllers from the Canada Line project to support the OC Transpo guys in the
22 control room?

23 **MR. RUPERT HOLLOWAY:** Correct. I think we also brought
24 some training staff in as well from -- they were no longer working for SNC, but they
25 worked -- sorry, as direct employees, but they had been involved in training the
26 controllers for the Canada Line and they were part of the network, so we brought those
27 guys -- I think it was one particular individual who came in to help with the training as
28 well.

1 **MR. PETER WARDLE:** And, you may not recall this, because I
2 know you had left at a certain point, but do you recall that Mr. Manconi and his staff also
3 brought in some of the experts that had been involved from STV at earlier stages to
4 assist in connection with the launch?

5 **MR. RUPERT HOLLOWAY:** Like, I don't know. But, I mean, STV
6 certainly have capability and they were on the City side for sure. Exactly what their role
7 was and when it was, I don't know.

8 **MR. PETER WARDLE:** Okay. Last couple of questions. The
9 Alliance model, and you may not know this from your own background, but can you
10 agree that this model was not used in Canada in 2012?

11 **MR. RUPERT HOLLOWAY:** I don't know. I don't know.

12 **MR. PETER WARDLE:** Okay. And your evidence about the
13 Alliance model, which you gave here today, which has been helpful, you indicated to my
14 friend that you are just talking from a contractor's perspective; is that correct?

15 **MR. RUPERT HOLLOWAY:** Hundred per cent correct, yes. So,
16 there are many decisions that go into deciding or selecting the appropriate procurement
17 mechanism, which transcend just what the contractor wants. And so, I am being
18 completely transparent about that. I am not in that position and, therefore, I don't
19 understand all of the other forces that might lead to selecting one model versus another.
20 I just know that in these large complex projects, there is a track record of successful
21 performance, and it is a model that many rail clients are moving towards in other
22 comparable jurisdictions.

23 **MR. PETER WARDLE:** Thank you very much, Mr. Holloway.
24 That's been very helpful. I have no further questions.

25 **COMMISSIONER HOURIGAN:** All right. Thank you. Next is
26 Alstom.

27 **MR. MICHAEL VALO:** Good afternoon, Commissioner. Is my
28 video on or do I need permission here?

1 **COMMISSIONER HOURIGAN:** No, your video is on. We see you.
2 Go ahead.

3 **MR. MICHAEL VALO:** Okay. Excellent.

4 **--- CROSS-EXAMINATION BY MR. MICHAEL VALO:**

5 **MR. MICHAEL VALO:** How do you do, Mr. Holloway? My name is
6 Michael Valo. I'm a lawyer for Alstom and I have got just a few questions for you today.
7 Sir, as OLRTC's project director, you were responsible for construction of the entire
8 project; is that right?

9 **MR. RUPERT HOLLOWAY:** Correct.

10 **MR. MICHAEL VALO:** And that is for all of the elements, you
11 know, the TBSS, the track, the trains, the signalling, everything?

12 **MR. RUPERT HOLLOWAY:** A hundred per cent, correct.

13 **MR. MICHAEL VALO:** And given the scale of the project, which
14 everyone agrees is a significant project, the only way for you to manage as the senior
15 executive in charge is for you to rely on your team below you; is that right?

16 **MR. RUPERT HOLLOWAY:** Yes, a hundred per cent.

17 **MR. MICHAEL VALO:** And your team, you've got contract
18 managers and construction managers; they would feed up reports to you and that's
19 where you would get your information from?

20 **MR. RUPERT HOLLOWAY:** Yes, but I was a bit more involved
21 than that, to be honest with you. Like I mentioned earlier, I would regularly go and
22 engage with the Alstom staff who are actively leading the project on a day-to-day basis,
23 and that was almost -- not quite a day-to-day, but close to a day-to-day involvement
24 because I used to attend their daily scorecard process, which was conducted by our
25 systems director.

26 **MR. MICHAEL VALO:** That daily scorecard process you are
27 talking about, those daily meetings, that started later in 2019?

28 **MR. RUPERT HOLLOWAY:** Well, that started as soon as I got

1 onto the project. We were up and running within, you know, four weeks of me getting --
2 I flew a guy in from Australia to help me construct the process. So, we had the
3 scorecard running through 2018.

4 **MR. MICHAEL VALO:** Okay. You talked, sir, about the
5 importance of the collective intelligence feeding decision making on the process. You
6 are talking about, I suppose, exactly this, you interfacing with your subcontractors, your
7 contract manager and construction managers, everyone feeling up, taking as much
8 information as possible, relying on our people in order to make decisions about the
9 project, is that right?

10 **MR. RUPERT HOLLOWAY:** Yes. So, I think, you know, the way
11 that manifested itself on a daily basis, so with the implementation of the scorecard or
12 the visual management process, what you are trying to do is you are trying to triage
13 issues as they emerge through the group, the affected group. So, we would have
14 Thales in the room, we would have Alstom in the room, we had the systems lead from --
15 because there were certain systems that were being tested by the consortium as well.
16 We had the guys providing some of the infrastructure for the wayside equipment for
17 Thales there as well, which again were OLRTC people, and we would sort of talk
18 through, all right, what are we trying to achieve? You would start off, what are we trying
19 to achieve this month? Okay. How does that affect our next week? Okay. How does
20 that break down into a day? You're talking about, right, today, did we achieve what we
21 said we would do? No? Yes? Okay, where it's no, what are we all going to do about
22 it?

23 Now, generally, those discussions transcend just one party's
24 responsibility. So, there might be a bit of give and take between parties in terms of,
25 hang on a minute, I will try and make this workface available for you faster, so that you
26 can divert your resource onto this workface. You know, so there is give and take
27 between the parties to make the schedule work. So, that is really what the daily
28 process was.

1 **MR. MICHAEL VALO:** I'm not even sure that was a response to
2 my question, but I take ---

3 **MR. RUPERT HOLLOWAY:** Well, you said I only make judgments
4 when I get reports and I am saying we weren't waiting for reports to make judgments.

5 **MR. MICHAEL VALO:** Sorry, if that's how you took my question, I
6 am sorry, that's not what I meant. I was just trying to understand where all the
7 information comes that you use in order to make your decisions.

8 **MR. RUPERT HOLLOWAY:** Yeah.

9 **MR. MICHAEL VALO:** Do you recall, sir, in your interview with
10 Commission counsel, you were asked about OLRTC's coordination of Alstom and
11 Thales' schedules, do you recall that?

12 **MR. RUPERT HOLLOWAY:** Yes.

13 **MR. MICHAEL VALO:** And I think you would agree that Alstom
14 and Thales shared an intimate and complex interface?

15 **MR. RUPERT HOLLOWAY:** Yes.

16 **MR. MICHAEL VALO:** I think you described it actually today to Mr.
17 Harland as a key interface for the system?

18 **MR. RUPERT HOLLOWAY:** Correct.

19 **MR. MICHAEL VALO:** And Ms. Mainville, at the time of your
20 interview, asked about the EOT, the extension of time, that OLRTC had granted to
21 Thales in December 2007 that pushed the revenue service availability date to
22 November 2018. And she asked you whether OLRTC had disclosed that information to
23 Alstom. Do you recall that discussion?

24 **MR. RUPERT HOLLOWAY:** Yes, I do.

25 **MR. MICHAEL VALO:** And, in fact, actually, on the project,
26 OLRTC granted to Thales three separate extensions of time, didn't they?

27 **MR. RUPERT HOLLOWAY:** Possibly. I can't recall. But that
28 doesn't sound incorrect.

1 **MR. MICHAEL VALO:** Right, one in 2017 that we just saw. So the
2 one in October 2018, you would have been project director at that time?

3 **MR. RUPERT HOLLOWAY:** Yeah, possibly. Like, I can't recall.
4 That was a while ago, but yes, okay.

5 **MR. MICHAEL VALO:** And another in March 2019, just for the --
6 doesn't ring a bell to you?

7 **MR. RUPERT HOLLOWAY:** Look, as a job extends, you're going
8 to have to provide extensions of time if you feel that there's an entitlement for one. And,
9 obviously, the judgment was that we felt Thales were entitled to an extension of time.

10 **MR. MICHAEL VALO:** Right. And you did not feel Alstom was
11 entitled to an extension of time and did not ever grant Alstom an extension of time. Isn't
12 that correct?

13 **MR. RUPERT HOLLOWAY:** A hundred (100) percent correct.

14 **MR. MICHAEL VALO:** Right. And you didn't even tell Alstom --
15 not you, sir, but OLRTC didn't even tell Alstom that RSA had been pushed out to
16 November 2018. Isn't that true?

17 **MR. RUPERT HOLLOWAY:** Well, I seem to recall that was
18 mentioned to me. Look, again, my question back to you in relation to that would be, to
19 what end? Alstom had a contract. They had to deliver. The actual location of the RSA
20 date didn't really invalidate Alstom's responsibilities to delivery their obligations to us.

21 **MR. MICHAEL VALO:** Well, we'll get to exactly that, sir. And in
22 this process, unfortunately, I've got to ask the questions ---

23 **MR. RUPERT HOLLOWAY:** Yeah.

24 **MR. MICHAEL VALO:** --- not -- not the other way around. But I
25 think what you had said to Commission counsel, in the context of your interview, was
26 that when -- sometimes it's appropriate for a contractor like OLRTC not to communicate
27 everything between subcontractors because when one supplier is dealing with -- in
28 relation to another sub-supplier, you want to keep that competitive tension in your sub-

1 supply chain, right? And that was your evidence. Do you stand by that today?

2 **MR. RUPERT HOLLOWAY:** I think I corrected my language and
3 said I meant "schedule tension".

4 **MR. MICHAEL VALO:** Right. And I think, in fact, you went a step
5 further in that correction. You said, really, what you were trying to do is motivate Alstom
6 ---

7 **MR. RUPERT HOLLOWAY:** Sure.

8 **MR. MICHAEL VALO:** --- by holding back that information, right?

9 **MR. RUPERT HOLLOWAY:** Well, no, sir, my -- yeah, it wasn't
10 really about holding back information. It's just why share it if it's not pertinent to the
11 other supplier when they're not necessarily impacted by that.

12 **MR. MICHAEL VALO:** Right. So -- well, let's just get right into
13 that. Revenue service availability is a project milestone, isn't it?

14 **MR. RUPERT HOLLOWAY:** Correct.

15 **MR. MICHAEL VALO:** Right. It's a milestone that accounts for all
16 of the different elements of the project coming together at once. Would you agree?

17 **MR. RUPERT HOLLOWAY:** Correct.

18 **MR. MICHAEL VALO:** And it wouldn't be possible for Alstom to
19 achieve revenue service availability without, for example, the track being complete.

20 **MR. RUPERT HOLLOWAY:** Obviously.

21 **MR. MICHAEL VALO:** Or Thales being complete?

22 **MR. RUPERT HOLLOWAY:** Correct.

23 **MR. MICHAEL VALO:** So if Thales has a milestone RSA date
24 that's November 2018, it's impossible, isn't it, for Alstom to achieve RSA any earlier
25 than that?

26 **MR. RUPERT HOLLOWAY:** Yes, I agree with that.

27 **MR. MICHAEL VALO:** And so, in that context, given that
28 interdependency, you didn't feel it was relevant to Alstom to know that the date had

1 moved ---

2 **MR. RUPERT HOLLOWAY:** No.

3 **MR. MICHAEL VALO:** --- the date on which they had a significant
4 milestone payment due?

5 **MR. RUPERT HOLLOWAY:** No. No, I didn't feel it was relevant.
6 And the reason why was because Thales were always ahead of Alstom in their delivery,
7 so there was no dependency the other way, right? So it wasn't like Alstom were being
8 delayed by Thales. It was that the project was being delayed by Alstom.

9 **MR. MICHAEL VALO:** Well -- and I want to come to that, and we'll
10 get there in just a moment. But coming back to your interview with Ms. Mainville, I think
11 you had indicated that OLRTC's failure to disclose the new RSA date to Alstom really
12 was just OLRTC, and I'm quoting here, saying:

13 "Look, keep doing what you're doing and make sure
14 you deliver those vehicles as fast as you can, please."
15 (As read).

16 Do you recall that evidence?

17 **MR. RUPERT HOLLOWAY:** Yes, I do.

18 **MR. MICHAEL VALO:** Now, I don't know if you've seen this letter.
19 I'd like to share a letter with you, if it could be put up, ALS7300.

20 **--- EXHIBIT No 078:**

21 ALS0007300 – Letter from OLRT Constructors to Alstom 16
22 February 2018

23 And is it's queuing up, I'll just give you the context, sir. This is a
24 letter from February 2018 in which OLRTC was responding to a letter from Alstom
25 updating their schedule. And if we scroll down, you can see it's 16 February 2018, and
26 you can see it's an OLRTC letter. And if we could just see a little more of the body of
27 the letter, please. We can see here the letter says:

28 "Mr. Lacaze, with reference to ALS2140, OLRTC has

1 reviewed the proposed schedule, V9. OLRTC notes
2 that the schedule has slipped by more one month
3 since the last schedule eight weeks ago.” (As read).

4 And then, if we scroll down a little bit more, please.

5 “Please note that no schedule relief has been granted
6 by the City and therefore the contractual dates for
7 substantial completion remain Revenue Service
8 Availability 24 May 2017.” (As read).

9 I think that’s a typo. That should be “2018”, right? Revenue
10 service availability was never going to be 2017?

11 **MR. RUPERT HOLLOWAY:** Correct.

12 **MR. MICHAEL VALO:** Right. So what OLRTC, if I understand this
13 letter correctly, is saying is that the City hasn’t changed the RSA date and so Alstom is
14 still being held to this May 24 date. Would you agree?

15 **MR. RUPERT HOLLOWAY:** Yes.

16 **MR. MICHAEL VALO:** Are you aware that on February 8, the City
17 announced to the entire City of Ottawa, in public, that revenue service was now going to
18 be November 2018?

19 **MR. RUPERT HOLLOWAY:** I don’t deny it, but I don’t recall it.

20 **MR. MICHAEL VALO:** Right. And yet, in letters to Alstom,
21 OLRTC’s maintaining this fiction that the revenue service availability date is May 24.

22 **MR. RUPERT HOLLOWAY:** Well, I think, really, you’d probably
23 find that there were a number of these letters sent -- and I haven’t looked at the
24 correspondence record -- and it’s probably a cut and paste from other previous letters
25 that also asked for extensions of time, and this is form letter that were sending back,
26 potentially. That may be that’s why that occurred.

27 But the point stands is that we’re trying to say to Alstom, “Look, you
28 don’t have entitlement to delay. Deliver the obligations.” Now, we may have said that

1 inappropriately, and we may have used the wrong dates, and maybe that wasn't very
2 judicious, but at the end of the day, the essence of the communication was we wanted
3 to hold Alstom to account to deliver as planned.

4 **MR. MICHAEL VALO:** I appreciate that. Can we scroll down just a
5 little further, please, to the bottom of the letter? Oh, I'm sorry. Maybe we could just --
6 up a little bit. Sir, this letter came from Dr. Sharon Oakley. Do you know who that is?

7 **MR. RUPERT HOLLOWAY:** Yes, I do, yeah.

8 **MR. MICHAEL VALO:** And who is that?

9 **MR. RUPERT HOLLOWAY:** She was the contract administrator
10 for the Alstom contract for the OLRTC consortium.

11 **MR. MICHAEL VALO:** Okay. And I -- what you'll see here is, at
12 the bottom of the letter, OLRTC puts Alstom on notice:

13 "Please be aware the delay liquidated damages will
14 be calculated according to the baseline V5 Schedule."
15 (As read).

16 Do you see that, sir?

17 **MR. RUPERT HOLLOWAY:** Yeah.

18 **MR. MICHAEL VALO:** So, in fact, in this letter, rather than, you
19 know, what I think your evidence to Commission counsel was in the interview, you
20 know, saying to Alstom, "Please deliver these vehicles as fast as you can," that's not
21 what we're seeing. We're seeing a very contractual letter here threatening liquidated
22 damages, measured to a date that's been made impossible by OLRTC. And I suggest
23 to you, sir, that this doesn't quite accord with the way you suggest the Alstom
24 subcontract was managed by OLRTC. Would you agree with that?

25 **MR. RUPERT HOLLOWAY:** No, I wouldn't, and I'd contend your
26 position as well because I think you're getting cause and effect mixed up. The vehicles
27 need to be delivered to allow us to achieve RSA. The vehicles were late. We were
28 putting pressure on Alstom to hold their program. Really, all we're saying here -- and I -

1 - you can flex it as threatening -- we're just implementing the contractual provisions of
2 the contract which is the application of liquidated damages when people fail to hit their
3 deadlines.

4 **MR. MICHAEL VALO:** I'm just trying -- sir, if we had four hours, I
5 could walk you through a whole host of letter to prove that what you just said isn't
6 necessarily true. And we're going -- I'm going to come to a shortcut to that in a
7 moment, but what I'm trying to reconcile is your evidence to Commission counsel that
8 for intimidate and complexes interfaces, you needed to share this kind of information,
9 and yet what we're seeing is OLRTC wasn't. Isn't that right?

10 **MR. RUPERT HOLLOWAY:** No, I would dispute that as well, and
11 let me explain why, because the interface between Alstom and Thales was complex,
12 was repetitive. So once the -- once the integration effort had been made between the
13 onboard control unit from Thales and the TCMS system from Alstom, the integration
14 challenge for Thales had largely been completed, right, once that had been proven,
15 which it had been, right.

16 So the issue then becomes one of Alstom providing more vehicles
17 and this equipment getting fitted. That's different -- that's a different challenge from the
18 integration challenge writ large. Because it's a replicable process, that challenge had
19 been solved earlier in the piece, and now it's a position where we were expecting
20 Alstom to provide more vehicles so that they can be fitted with the Thales equipment.
21 Each one of those instances is not a really intimate start-from-scratch bespoke
22 integration challenge because they're a cookie-cutter approach of what's already been
23 achieved.

24 Now, the other thing that I would say about this is, Thales' process -
25 - and again, like, I'm not a civil engineer but I have some appreciation of it, Thales
26 process is that when that first fitment of onboard control unit from their system fits
27 together with the onboard control unit or the TCMS from the Alstom system, the vehicle
28 that that configuration is done for needs to be representative of the fleet, the so-called

1 “golden vehicle”. So it needs to be –

2 **MR. MICHAEL VALO:** Mr. Holloway, I apologize for interrupting
3 and, Mr. Commissioner, I apologize for interrupting; were just off on a bit of tangent.

4 **MR. RUPERT HOLLOWAY:** I don’t think we are, but – okay.

5 **MR. MICHAEL VALO:** This is –

6 **COMMISSIONER HOURIGAN:** Mr. Holloway, can you finish your
7 answer fairly quickly?

8 **MR. RUPERT HOLLOWAY:** Yeah, I will; I’ll get straight at it. So
9 the point is, Thales needs consistency from Alstom. The challenge that we were getting
10 was, Thales weren’t getting consistency from Alstom and we didn’t get the golden
11 vehicle which was reflective of the whole fleet. Therefore, Thales were forced into the
12 rework consecutively because Alstom’s were changing the configuration of the vehicle
13 through the process. That was the delay process. This is why I was talking about
14 “cause and effect” being – I’m content in your cause and effect argument.

15 **MR. MICHAEL VALO:** Okay, I understand. So do I take it then,
16 based on that answer, that it wouldn’t surprise you that the person responsible for
17 Alstom’s scheduled updates had no knowledge of anything related to Thales’ schedule?

18 **MR. RUPERT HOLLOWAY:** Well, I think to say that Alstom had
19 no knowledge of Thales’ schedule, it’s not correct. Because I’ve stood in the room with
20 both representatives when we’ve been talking about the schedule.

21 **MR. MICHAEL VALO:** Okay. So I’d like to put up a document,
22 please. It’s ALS0009613 and while that’s cuing up I’ll give you the context, Mr.
23 Holloway.

24 After you left – this will be a document you’ve never seen. This is
25 an arbitration award, sir, a final award that was issued in an arbitration between OLRTC
26 and Alstom. Were you aware that after you left OLRTC sued Alstom for \$250 million
27 and significant delay damages?

28 **MR. RUPERT HOLLOWAY:** No, I’m not aware.

1 **MR. MICHAEL VALO:** Well, that happened; and what I'm going to
2 show you is the award. And after reviewing all the evidence between the parties,
3 hearing three weeks of testimony from the witnesses, I want to bring your attention to
4 certain conclusions from the arbitrator who concluded something different than what
5 you're telling us here today.

6 I'd like to ask the operator to take us to paragraph 190 which is at
7 page – it should be about page 53, please.

8 And here the arbitrator is making findings of fact with respect to
9 how Dr. Oakley and OLRTC generally managed the subcontracts. And what he says is,
10 “Despite her apparent lack of awareness concerning the status of the Thales’
11 subcontract schedule”, “she” being “Dr. Oakley” – candidly admitted that she did not
12 submit Alstom’s proposed schedule or visions to the person responsible for integrating
13 the work of those two subcontractors or to the scheduling staff at OLRTC. She simply
14 took it upon herself to reject the proposed scheduled revisions with no analysis other
15 than her determination that they would cause now out of date, RSA date, to be missed.

16 So I'm asking, again, are you surprised to learn, sir, that the person
17 in charge for OLRTC of Alstom’s subcontract was completely unaware of the Thales’
18 schedule and scheduled update?

19 **MR. RUPERT HOLLOWAY:** Sir, I think the point I'd make is, Dr.
20 Oakley wasn't responsible for the subcontract. She was responsible for the contract
21 management component of the subcontract. The person responsible for the
22 subcontract was the Systems Director. The Systems Director was well aware of it and
23 the Systems Director was having daily conversations with Alstom and Thales about
24 scheduling.

25 **MR. MICHAEL VALO:** You would agree, sir, that all
26 correspondence between the parties, all requests for variations, schedule updates, all
27 go through the contract manager?

28 **MR. RUPERT HOLLOWAY:** Sure. But projects don't get built

1 through correspondence.

2 **MR. MICHAEL VALO:** I agree with you, but certainly things don't
3 – variations don't get made and schedules don't get updated if contract managers never
4 pass them on either; and that's not a way to run a project; is it?

5 **MR. RUPERT HOLLOWAY:** Well, we were running the project
6 through the use of the visual management tool. So, you know, we weren't waiting for
7 contractual correspondence to transact between us to be able to update what – which
8 work phase we were going to attack next. We were trying to use that collective
9 intelligence approach in the daily visualization process.

10 **MR. MICHAEL VALO:** Would you agree that Dr. Oakley really
11 didn't share your collective intelligence approach?

12 **MR. RUPERT HOLLOWAY:** Well, Dr. Oakley had a different
13 agreement; she's there to administrate the contract. What she's there to do is to look
14 and see whether Alstom had entitlement under their contract terms and responded
15 accordingly, which is what she did.

16 **MR. MICHAEL VALO:** Can we go to paragraph 184, please.

17 The arbitrator, and I'm going to bounce between a few paragraphs
18 here just to shortcut some of the work here and all of the evidence. At 184 Arbitrator
19 Morrison concluded: "I find it very disturbing that OLRTC, in reviewing these scheduled
20 revision systems unabashedly held Alstom to an RSA date that it knew at the time was
21 completely unrealistic given its own difficulties with the project infrastructure and its
22 awareness of Thales' failure to meet the scheduled requirements for the project as well
23 as the granting of a significant and undisclosed extension of that date to the interfacing
24 contractor. The extension granted to Thales made it impossible for Alstom to meet the
25 milestone date set out in Schedule 5 yet OLRTC sought to hold Alstom to those dates
26 that on this basis alone, it had rendered impossible." And I just want to now move to
27 194.

28 **MR. RUPERT HOLLOWAY:** Is that a question there?

1 **MR. MICHAEL VALO:** There will be, sir, I promise I will ask you a
2 question but I need this evidence in. As I said, if we had the time I would take you
3 through all the letters that prove this out, but I can only show you the findings of fact
4 given constraints of time.

5 At 194, I'm now in the middle of the paragraph, sir. "Dr. Oakley,
6 she admitted that she did not do any analysis of the causes of delay and made no
7 investigation to determine whether Alstom's forecast was realistic. Moreover, she
8 admitted she did not bother running Alstom's schedule up the flagpole to anyone more
9 senior, nor to any OLRTC project schedulers who, she admitted, would have had a
10 clearer picture than her of the status of the integrated project schedule."

11 And now just one last paragraph, sir, before I do get to my
12 question, paragraph 207, please, if we could. And I'm again in the middle of the
13 paragraph, Mr. Holloway: "Given, the critical interfacing nature of their work ..." – I think
14 you agree with that, and you have agreed with that – "... in my view it ordered an
15 unconscionable on the part of OLRTC to not make every effort to facilitate complete
16 transparency concerning the schedule of the respective scopes of work of these two
17 subcontractors."

18 And now my question, Mr. Holloway, is, as you're aware, we've
19 heard from you and we've heard from other executives at OLRTC and RTG, that Alstom
20 was late because of its own failings. And that's your position today, and it's the position
21 of the Executives that we've heard from. Do you agree?

22 **MR. RUPERT HOLLOWAY:** Correct.

23 **MR. MICHAEL VALO:** Yet, what we see here, is that none of the
24 schedules that Alstom was preparing, none of the information they were submitting to
25 your contractor manager was making its way up to those executives.

26 **MR. RUPERT HOLLOWAY:** Well, that's not true. Because, you
27 know, like I said, I went to the daily meetings where Thales and Alstom were
28 collaborating together about what they're working on on a daily, weekly, monthly basis;

1 right? And I think the other point I'd make about this is, we still are getting the cart
2 before the horse in terms of cause and effect.

3 Thales, being given an extension of time, is not necessarily
4 deleterious to Alstom, it caused them more delay. If Alstom had accelerated their
5 schedule and managed to get back on track and then Thales were delayed, we would
6 have given them an extension of time, but that didn't occur.

7 **MR. MICHAEL VALO:** So I just want to go to 206; it's right here.
8 Because it addresses the point you just made, Mr. Holloway. You're absolutely
9 convinced Alstom was the source of the delay and was later than Thales. And as I said,
10 if I could go through all the letters I would to prove it to you, but let's look at 206. After
11 hundreds of pages of evidence, three full weeks of cross-examination, full argument
12 from both sides – and keep in mind, OLRTC was looking to collect \$250 million. This is
13 the conclusion the arbitrator reached: "I am further satisfied, on a balance of
14 probabilities that the missed critical design phrase and interphase dates for the
15 CBTVOBC specifications. The P25 radio data and design and installing the information
16 as well as the late delivery of the test track and the fully energized Confederation Line
17 which is set out in portions of Appendix "K" of the subcontract would have entitled
18 Alstom to scheduled relief."

19 So notwithstanding that you keep telling us that Alstom was the
20 source of delay, this matter has been arbitrated and a competitive arbitrator, with
21 jurisdiction, has found in fact Alstom wasn't the cause of delay and Alstom was entitled
22 to scheduled relief and OLRTC was awarded nothing from Alstom in the arbitration.
23 And I'm going to suggest nothing from Alstom in the arbitration. And I'm going to
24 suggest to you, Mr. Holloway -- I'm going to ask whether you agree or not.

25 I'm going to suggest to you that the reason OLRTC senior level
26 management did not have an accurate picture of the impacts of Alstom's work is
27 because it was not being given accurate or even any relevant information from its
28 middle managers. And I wonder if you agree with that.

1 **MR. RUPERT HOLLOWAY:** No, I don't agree. And more to the
2 point, I'd say that just because the arbitrators found that some schedule release should
3 have been provided, that doesn't necessarily equate to the statement you just made
4 which was that Alstom weren't the source of the delay.

5 **MR. MICHAEL VALO:** Well, I ---

6 **MR. RUPERT HOLLOWAY:** It doesn't say that, right? What
7 you've just read doesn't say that.

8 **MR. MICHAEL VALO:** Sorry. I'll disagree. If Alstom was the
9 source of delay legally it would be required to pay liquidated damages, for example, and
10 none were awarded. No time was awarded to OLRTC in the arbitration. And in fact
11 OLRTC was required to pay Alstom a significant amount of money, I think \$35 or \$0
12 million.

13 I don't want to get into that debate with you but I'm just wondering
14 and a lot of these, you know -- these delays we're talking about preceded your daily
15 meetings in late 2018 and 2019. And I'm wondering if it's possible that the disconnect
16 here, as found by the arbitrator is the OLRT's management wasn't employing the
17 techniques you say are so critical in these projects of collective intelligence, open
18 information sharing, particularly in the context of close complex interfacing
19 subcontractors.

20 **MR. RUPERT HOLLOWAY:** I'm back to the point, just because
21 you get schedule relief doesn't mean necessarily that you're not causing the delay in the
22 rest of the schedule as well. And it's my believe, Alstom were late. Alstom had
23 accountability for that. And you know, this -- we're muddying the waters by trying to
24 throw Thales in the mix of that because that wasn't -- that wasn't the cause and effect
25 relationship in my recollection.

26 **MR. MICHAEL VALO:** And to be clear, I'm not suggesting Thales
27 was a cause or effect of any way. I have no interest in Thales. I'm simply saying we
28 know their RSA was extended. We know that RSA date impacted Alstom because

1 Alstom can't achieve RSA without Thales or anyone else, for that matter. And yet they
2 were never told.

3 **MR. RUPERT HOLLOWAY:** I mean, look, you had a bunch of very
4 seasoned construction professionals from Alstom on the project. They understand the
5 situation. I think it's -- and it seems slightly unrealistic to say that you can't know
6 something unless you receive it in a letter.

7 **MR. MICHAEL VALO:** I'm not sure that's what I said. But in any
8 event, Mr. Holloway, those are my questions today for you. Thank you very much. I
9 appreciate you up so early this morning.

10 **MR. RUPERT HOLLOWAY:** Thanks, cheers.

11 **COMMISSIONER HOURIGAN:** All right. Thank you.

12 Next is IO.

13 **---- CROSS-EXAMINATION BY SOLOMON McKENZIE:**

14 **MR. SOLOMON McKENZIE:** Good afternoon, Mr. Holloway. And
15 Good morning, Mr. Holloway.

16 **MR. RUPERT HOLLOWAY:** Hi.

17 **MR. SOLOMON McKENZIE:** I have a couple of quick questions
18 for you today.

19 **MR. RUPERT HOLLOWAY:** Go.

20 **MR. SOLOMON McKENZIE:** You talked to my friends, Mr. ---

21 **COMMISSION HOURIGAN:** Sorry. Just to be fair to the witness,
22 this lawyer is on for Infrastructure Ontario. Okay?

23 **MR. RUPERT HOLLOWAY:** Thank you.

24 **MR. SOLOMON McKENZIE:** You talked to my friends, Mr.
25 Harland and Mr. Wardle about the assurance process.

26 **MR. RUPERT HOLLOWAY:** Yes.

27 **MR. SOLOMON McKENZIE:** Can I please have IFO375 put up?
28 This is the main body of the Project Agreement and I don't believe it's in evidence at the

1 moment. This will just take a moment, Mr. Holloway.

2 **--- EXHIBIT No. 079:**

3 IFO0000375 – Project Agreement – Ottawa Light Rail

4 Transit Project – Execution Version

5 **MR. RUPERT HOLLOWAY:** No problem.

6 **(SHORT PAUSE)**

7 **MR. SOLOMON McKENZIE:** Thank you so much. Could we go to
8 page 96 of the PDF, please? And just scroll down. Just where it says “Commissioning
9 and completion.”

10 So you provided us with a quite detailed review of the assurance
11 process. Just to link your review to the Project Agreement, you will agree with me that
12 section 26 here lays out the process for commissioning and certification?

13 **MR. RUPERT HOLLOWAY:** Yeah.

14 **MR. SOLOMON McKENZIE:** That’s all. Thank you. You can take
15 that document down.

16 You have provided us with a very fair description of some of the
17 constructor benefits of the alliance model. And I just have a couple of additional
18 questions around those.

19 You will agree that in Australia and in the U.K. the alliance model is
20 only one of the methods that is used in construction delivery?

21 **MR. RUPERT HOLLOWAY:** One hundred (100) percent, yeah.
22 As with any procurement selection, there’s a lot of situational factors that you have to
23 decide to choose whether it’s the right one in any given circumstance. I totally accept
24 that.

25 **MR. SOLOMON McKENZIE:** And you -- and consistent with that,
26 you've said that there are some upsides but there are additionally some downsides to
27 the alliance model. For example, as you mentioned, it’s possible for everyone to lose
28 so you all lose together and that can result in cost overruns which the owner has to

1 pay?

2 **MR. RUPERT HOLLOWAY:** Correct. I mean, I think the other
3 piece with this is that what you tend to find with alliance is that it does provide better --
4 not only better cost certainty and better schedule certainty, so there's a trade-off with
5 that. But you're absolutely right. You don't affect the risk transfer to the contractor. I
6 think the point that is worth just reflecting on -- and again, it's just part of one of the
7 many series of judgements that you have to choose -- is that on some big mega
8 projects which are, you know, City building projects, it's a question about how effectively
9 the risk really transfers to the contractor anyway. And so I think some of the
10 jurisdictions decided, well, if we can't really -- we're not really practically effecting this
11 transfer because we still end up with reputational risk if this project is late. Therefore
12 we'll trade that off for some cost risk.

13 So I think it's all part of the judgement process that has to be made.

14 **MR. SOLOMON McKENZIE:** Of course. And you would agree
15 that to actualize the process does require a degree of specialized skill. You need to
16 know -- all the parties need to know how to engage in the alliance process?

17 **MR. RUPERT HOLLOWAY:** Yes. It's definitely a large component
18 of behavioural capability required to make that model work but actually that's true in all
19 construction projects because, you know, corporations have a fundamental tenet of
20 being able to achieve any project.

21 **MR. SOLOMON McKENZIE:** Of course. But you would
22 additionally agree that the onus team -- their needs, expertise and anything else that
23 engage in the alliance model?

24 **MR. RUPERT HOLLOWAY:** Yeah. I mean, if they don't have
25 expertise they would certainly need specialized coaching.

26 **MR. SOLOMON McKENZIE:** And I think you've reflected this by
27 providing a fairly balanced review of the process. But it's not a panacea. It doesn't
28 resolve ---

1 **MR. RUPERT HOLLOWAY:** No, no.

2 **MR. SOLOMON McKENZIE:** And you would also agree that there
3 have been projects that have used the alliance process and it has not been so
4 successful?

5 **MR. RUPERT HOLLOWAY:** Yeah. I mean, I think there are sort
6 of circumstances where I think to grab your turn of phrase, alliance was seen as a
7 panacea, certainly in Australia and it was used in a lot of probably inappropriate
8 contexts where contractors then took advantage of the clients. And I think that led to a
9 kind of right-sizing of the approach in terms of let's try and concentrate on using this
10 technique specifically where we have these big complex challenges.

11 I think where the asset is mor straightforward and the risk transfer
12 is more achievable, other methods are more appropriate for clients.

13 **MR. SOLOMON McKENZIE:** And you've pre-empted me a little bit
14 here, that some of the early Australian examples with the model did go somewhat ---

15 **MR. RUPERT HOLLOWAY:** Yeah. There was certainly -- and I
16 can't quite carry it but there's certainly some road projects , I think, which are inherently
17 less complex by nature. I think there was a review that they felt that the state
18 government -- and I think it was Victoria -- felt that they didn't get value for money on a
19 couple of those projects, and moved away from the model for a period of time.

20 **MR. SOLOMON McKENZIE:** M'hm. This is the Victoria review in
21 2008?

22 **MR. RUPERT HOLLOWAY:** Yes.

23 **MR. SOLOMON McKENZIE:** Okay. And for maybe another
24 extreme example, not of a road project but something a little bit more complex, you're
25 aware of the HP Iron Plant in Port Headland? It was constructed under an alliance
26 model and it resulted in a fatal accident and a decommissioning of the entire plant?

27 **MR. RUPERT HOLLOWAY:** I've not run across that one but I've
28 no reason to contend that it's true.

1 **MR. SOLOMON MCKENZIE:** Okay. Well, fair enough. And I
2 appreciate that it's an extreme example.

3 I say it only just to say that you will agree with me that there are
4 issues that kind of rise that is with the use of this model, and that as stated, it's not a
5 panacea.

6 **MR. RUPERT HOLLOWAY:** Yeah, I think the thing is that at the
7 end of the day, all procurement methods are words on a page, and they still have to be
8 brought into operation by humans. So, the black letter of the law is not good enough to
9 say, if I write these words down, I'm always going to get this result, or if I write those
10 words down, I'm always going to get that result. I think the point with the alliance is it
11 allows the black letter of the law to at least not be an impediment to cooperation on
12 these more complex jobs. I suppose that's the limit of the -- you know, the kind of
13 opportunity with these things.

14 **MR. SOLOMON MCKENZIE:** Excellent. Those are all my
15 questions. Thank you so much.

16 **MR. RUPERT HOLLOWAY:** Thanks.

17 **COMMISSIONER HOURIGAN:** All right, thank you. Next is
18 Thales.

19 **MR. PETER MANTAS:** Thank you, Mr. Commissioner. Can you
20 hear me, Mr. Holloway?

21 **MR. RUPERT HOLLOWAY:** Yes, I can.

22 **--- CROSS-EXAMINATION BY MR. PETER MANTAS:**

23 **MR. PETER MANTAS:** Great. So, my name is Peter Mantas, and
24 I am counsel to Thales. Thanks for your attentive testimony so far. Impressive, given
25 the hour of the day. Let's see if we can wrap up your examination in time for breakfast.

26 So, I am just going to just address two brief issues. I've got a few
27 quick questions. We are going to get through this very quickly. So, I am going to ask
28 you, first of all, about Thales' system. Thales was a straightforward signalling system,

1 correct?

2 **MR. RUPERT HOLLOWAY:** It was straightforward in the sense
3 that I think it was a very -- how can I put it? It was a well-established piece of
4 technology that Thales had implemented in a number of other comparable projects.
5 Straightforward, I would probably not characterize it as that because it is a
6 communication-based train control system, which is at the extreme end of signalling in
7 terms of complexity, but to Thales, it was a replicative -- a replication of something that
8 they had done consistently successfully before.

9 **MR. PETER MANTAS:** Thank you. And my second issue is the
10 use of Thales and Alstom. I take it it's not unusual for different companies to provide
11 rolling stock in a signalling system, am I correct?

12 **MR. RUPERT HOLLOWAY:** Yes, that's -- in my career, I've seen
13 that several times before and, you know, in fact, the project I am working on right now
14 has exactly that circumstance as well.

15 **MR. PETER MANTAS:** Would it be fair for me to say that Thales
16 was a world leader in signalling systems?

17 **MR. RUPERT HOLLOWAY:** Yes.

18 **MR. PETER MANTAS:** Okay. And RTG's interest in Thales for the
19 signalling system therefore would not have been surprising?

20 **MR. RUPERT HOLLOWAY:** No, because I mean I think we had
21 used or worked with Thales before successfully, and had confidence in the system and
22 the technology.

23 **MR. PETER MANTAS:** Would be fair for me to say that what RTG
24 is looking for is best in class and Thales provided the best in class signalling system?

25 **MR. RUPERT HOLLOWAY:** Yes, in terms of CBTC, I think that's
26 true.

27 **MR. PETER MANTAS:** Okay, great. Those were all my questions.
28 Thank you, sir. Thank you, Commissioner.

1 **COMMISSIONER HOURIGAN:** All right, thank you. Next is STV.

2 **MR. MICHAEL O'BRIEN:** Good afternoon, Mr. Commissioner. It's
3 Michael O'Brien for STV. We have no questions for this witness.

4 **COMMISSIONER HOURIGAN:** All right, thanks. Next is RTG
5 EJV.

6 **MR. MICHAEL VRANTSIDIS:** Yes, good afternoon, Mr.
7 Commissioner. I can't start my video, but it is Michael Vrantsidis for the EJV here. We
8 don't have any questions.

9 **COMMISSIONER HOURIGAN:** All right, very good. Thank you.
10 Next is Morrison Hershfield.

11 **MR. KYLE LAMBERT:** Good afternoon, Mr. Commissioner. Kyle
12 Lambert for Morrison Hershfield. We do not have any questions for Mr. Holloway.

13 **COMMISSIONER HOURIGAN:** All right, thank you. Next is the
14 witness' counsel, RTC.

15 **MS. JESSE WRIGHT:** Thank you, Mr. Commissioner. My name is
16 Jesse Wright. J-E-S-S-E, W-R-I-G-H-T, counsel for the RTG parties.

17 **--- CROSS-EXAMINATION BY MS. JESSE WRIGHT:**

18 **MS. JESSE WRIGHT:** So, Mr. Holloway, you spoke with both Mr.
19 Wardle and Commission counsel about the idea of a soft launch, and Mr. Harland asked
20 you about the benefits of a soft launch. You said that it would be a win-win outcome
21 and that there would be a public benefit. Can you just explain what you meant by that?

22 **MR. RUPERT HOLLOWAY:** Yeah, sure. So, I mean, I think the
23 issue we were facing was a soft launch provided the opportunity to accelerate opening
24 part of the network, which would be a public benefit because we would start to put the
25 system into use. It would benefit the City, in my view, because they would have the
26 chance to, you know, work on that subtle ecosystem between the operator, the
27 maintainer, and the asset, and start to build competence in a live but, albeit, reduced
28 risk environment, while the travelling public is operating. And it would benefit,

1 obviously, the contractors, because it would allow us to carry on working on the things
2 that we were stuck on elsewhere in the network. So, you know, from my point of view,
3 that's where the win-win gets characterized but, obviously, we're just giving -- I'm just
4 giving my perspective.

5 **MS. JESSE WRIGHT:** Right. That's helpful. Thank you. So, you
6 were pretty clear in your responses to Mr. Valo that you believe that Alstom was
7 delayed. What is your recollection of why Alstom was delayed?

8 **MR. RUPERT HOLLOWAY:** Alstom had a number of issues
9 through the life of the project. From memory, I think that, you know, the fact that we had
10 local content requirements did put some challenges on Alstom in terms of their need to
11 re-engineer their supply chain. Vehicle production, and again, I am not a rolling stock
12 engineer, but my understanding is it is an assemblage of many thousands of
13 components, and those components are sourced through a global supply chain. And
14 for existing vehicles, Alstom have got, obviously, a well -- all vehicle manufacturers
15 have a well-established supply chain network, some of which involves doing elements
16 of design of the supply chain components within the supplier themselves.

17 So, when you rewire -- if you pardon me, a term of art -- if you
18 rewire the supply chain, obviously, you've got to recreate some of that. And I think that
19 was a challenge. I think the fact that we chose to assemble onsite the vehicles as well
20 presented another challenge, because we are moving away from, you know, an
21 established factory environment that is purpose built for the purpose of manufacturing
22 and assembling vehicles. We are now doing it in a maintenance facility which has been
23 configured for assembly. It is obviously not to the same level of maturity as a factory
24 built for the purpose of a manufacturing assembly.

25 We've got -- you know, despite the fact that Alstom did a lot to bring
26 in personnel to support the training process, you've still got a learning curve to go
27 through. So, all of those things were true. And I think as we progressed through the
28 process, we found that there were more problems starting to emerge with the vehicles

1 in terms of some component failure, some component non-performance. It forced
2 redesign through the process. I think I mentioned earlier that, you know, we were
3 unable to give a really stable vehicle to Thales, which forced some amount of -- well, an
4 amount of rework, which was challenging, because they have to kind of basically tune
5 the computer system to the braking and propulsion characteristics of the vehicle, so
6 they need to all be of a type. Those were challenges. I mean, Alstom kept knocking the
7 problems over, but we kept finding new ones and it caused a delay. And we did
8 definitely struggle on a number of areas in terms of getting consistent stable supply of
9 vehicles for testing.

10 **MS. JESSE WRIGHT:** Right. Okay. Thank you. So, in the
11 context of achieving revenue service, what are minor defects?

12 **MR. RUPERT HOLLOWAY:** So, I mean, again, to a certain degree
13 there is, I think, a component of interpretation involved here. But for us we were looking
14 at sort of, you know, the more -- you know, the non -- things that didn't derive a
15 functional -- a critical functional operation. So, you know, if there was finishings, some
16 painting touch ups, maybe some drainage to be fixed or some minor things like that, we
17 would say, well, they could be dealt with later. You know, we can actually do some of
18 those things in parallel with the later phases of the project. Base functionality was, you
19 know, we felt there to support the operational intent. Obviously, we didn't quite have the
20 same -- we didn't have alignment with the City about that when we first approached
21 them for substantial completion.

22 **MS. JESSE WRIGHT:** Right. And so, just to be clear, who is
23 responsible for addressing those minor defects that you just described after revenue
24 service?

25 **MR. RUPERT HOLLOWAY:** Oh, OLRTC, yes. Yeah, there would
26 be no -- there is no attempt to try and escape the obligation; it is really just a matter of
27 timing.

28 **MS. JESSE WRIGHT:** Right. And so, when you discussed with

1 Mr. Harland, you discussed transferring things to the maintainer, what kind of defects
2 would those have been?

3 **MR. RUPERT HOLLOWAY:** Well, I honestly can't remember, but
4 sometimes, it would make sense, if you've got a minor defect, rather than mobilize a
5 construction crew back to deal with that defect, you might go and speak to your brothers
6 who are the maintainer and say, "Hey, when you are out doing your next maintenance
7 cycle, would you mind fixing this defect at the same time?" It's just more efficient. And,
8 also, in some ways, it actually provides the maintenance contractor an opportunity to
9 get some practice in correcting defects.

10 So, you know, it depends on the nature of the defect. If the centre
11 of gravity of, like, what the kind of issue was, was closer to the construction team,
12 obviously, the construction team would do it, especially if it was a specialist area. But if
13 it was something we felt could reasonably be an extension of a maintenance exercise,
14 well, it just makes good value management sense to try and fold that into the
15 maintenance cycle.

16 **MS. JESSE WRIGHT:** Right. Okay. Thank you. My last question
17 is, you haven't been on this project since 2019 and you are joining us from Australia, so
18 looking back on the project, what is your view of the project?

19 **MR. RUPERT HOLLOWAY:** I mean, there is a lot of really good
20 things that have been achieved on that project. Like I say, you know, the civil
21 engineering's a feat in itself. The fact that the, you know, the railway, you know, is a
22 very digitally-advanced product -- they're probably one of the most sophisticated
23 railways in operation in North America -- you know, that's something to be -- that's really
24 exceptional.

25 We definitely obviously had our issues in opening our end stand,
26 since I've left, that there's been some issues in operation as well, but generally, if I, you
27 know, give a quick Google in terms of levels of reliability, it seems to be performing in a
28 stable and effective way.

1 And you know, I think it's something for the City to be proud of, to
2 be honest with you.

3 **MS. JESSE WRIGHT:** Thanks, Mr. Holloway, and thank you, Mr.
4 Commissioner. Those are my questions.

5 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
6 Re-examination?

7 **MR. FRASER HARLAND:** Just one quick question, if I may, Mr.
8 Commissioner.

9 **--- RE-EXAMINATION BY MR. FRASER HARLAND:**

10 **MR. FRASER HARLAND:** Mr. Holloway, you'll remember in your
11 responses to Mr. Valo, you were discussing a daily score card process or a visual
12 management process. Do you recall that?

13 **MR. RUPERT HOLLOWAY:** Yes, yes.

14 **MR. FRASER HARLAND:** Yes. I just wanted to be clear. Is this
15 something that you introduced on the project or was it there throughout the project, as
16 you understand it?

17 **MR. RUPERT HOLLOWAY:** No, it was something I introduced.

18 **MR. FRASER HARLAND:** Okay. And would this be something
19 that you would consider could benefit a project if it's there from Day 1?

20 **MR. RUPERT HOLLOWAY:** I do think it is a tool that has merits,
21 because it kind of takes or draws on the -- you know, the sort of lean construction
22 principles developed by Toyota in you know, the process associated with the Cadman
23 (phonetic) techniques, and how do you get the team together to cooperate?

24 I mean, personally, I use it on all my projects, so you know, I'm an
25 advocate of it, but I guess other people have different approaches.

26 **MR. FRASER HARLAND:** Okay. Thank you, Mr. Holloway.

27 And again, we appreciate you joining us at such an early hour for
28 you.

1 Those are my questions, Mr. Commissioner.

2 **COMMISSIONER HOURIGAN:** Thank you, Counsel.

3 Thank you again, Mr. Holloway, for making yourself available at a
4 very inconvenient time. We appreciate you doing that. It's that kind of help that helps
5 us get some answers for the people of Ottawa, so thanks so much.

6 You're excused, and we're down until Monday at 9:00 a.m. All
7 right.

8 **THE REGISTRAR:** Order. All rise. The hearing is now closed for
9 the day and will resume Monday, June 20th at 9:00 a.m.

10 --- Upon adjourning at 5:33 p.m.

11 **C E R T I F I C A T I O N**

12

13 I, Wendy Clements, a certified court reporter, hereby certify the foregoing pages to be
14 an accurate transcription of my notes/records to the best of my skill and ability, and I so
15 swear.

16

17 Je, Wendy Clements, une sténographe officiel, certifie que les pages ci-hautes sont une
18 transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et
19 je le jure.

20

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22 Wendy Clements

23