



**Public Hearing**

**Audience publique**

**Commissioner / Commissaire**

The Honourable / L'honorable  
C. William Hourigan

**VOLUME 3**

**Held at :**

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

Wednesday, June 15, 2022

**Tenue à:**

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

Mercredi, le 15 juin 2022

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Catherine Gleason-Mercier	
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Lena Wang	
Jacob McClelland	
Sarit Batner	Ontario Infrastructure and Lands Corporation (IO)
Julie Parla	
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Heather MacKay  
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Michael Varantsidis  
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David Jeanes

Transport Action Canada

Linda Rothstein  
Gordon Capern  
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Jesse Wright  
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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 Wednesday, June 15, 2022 at 8:59 a.m.

**THE REGISTRAR:** The hearing is now resumed. The Honourable Justice Hourigan presiding.

**COMMISSIONER HOURIGAN:** Good morning. The first witness is Mr. John Traianopoulos from Infrastructure Ontario. Is that Mr. Traianopoulos?

**MR. JOHN TRAIANOPOULOS:** Yes, hello.

**COMMISSIONER HOURIGAN:** All right. Just give us one second here.

All right. Sir, you'll be given an option to provide your testimony under oath, or you can swear an affirmation to tell the truth. Which would you prefer?

**MR. JOHN TRAIANOPOULOS:** A sworn affirmation, please.

**COMMISSIONER HOURIGAN:** All right. Go ahead.

**--- JOHN TRAIANOPOULOS, Affirmed**

**THE REGISTRAR:** The witness has been sworn in.

**COMMISSIONER HOURIGAN:** All right. Thank you. You will have some questions from Ms. McGrann, Commission counsel. Go ahead.

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

**MS. KATE McGRANN:** Good morning, Mr. Traianopoulos. How are you today?

**MR. JOHN TRAIANOPOULOS:** I'm good, thank you.

**MS. KATE McGRANN:** Good. To begin with, would you just provide us with a brief overview of your education and your experience at Infrastructure Ontario?

**MR. JOHN TRAIANOPOULOS:** Sure. I'll work backwards from experience down to education. So, I've been with IO for about 15 and a half years. My current title is a Senior Vice-President in the Transaction Finance Group. I've been in the same group for the entirety of that 15 and a half years, except for a brief stint in a

1 different group, at different levels. So, I started as an analyst and worked my way up  
2 from manager to vice-president to senior vice-president.

3 Prior to that, I was at CIBC in two roles, one being an internal  
4 consulting group within the bank, and the second being a corporate development group  
5 which was looking at internal M&A activities and transactions for the bank.

6 And prior to that, I was in school. I did two degrees, one in stats  
7 and actuarial science at the University of Western Ontario, and a business degree from  
8 the Richard Ivy School of Business also at Western.

9 **MS. KATE McGRANN:** And in terms of your experience with rail  
10 projects when you began working on the Ottawa LRT Project, could you just give us a  
11 bit of an overview of that?

12 **MR. JOHN TRAIANOPOULOS:** I had worked on one rail project  
13 which had two components. It was called the UP Express spur line, which was the line  
14 from the airport to Union Station in Toronto, that was a design billed finance project.  
15 Prior to it being a design billed finance project, it was -- we were trying to negotiate a  
16 revenue deal with SNC Lavalin, which was called the old Blue 22 Line. I was involved  
17 with the project team in trying to negotiate that deal, which didn't end up being a deal, it  
18 ended up transferring to a design billed finance. I also worked on, and I can't recall if  
19 it's the exact timeline, but the Sheppard Maintenance and Storage Facility, which was a  
20 DBFM project to -- for the MSF for the planned Sheppard LRT system in Toronto.

21 **MS. KATE McGRANN:** Okay. And for people who don't know  
22 what a maintenance and storage facility is, could you just explain what that is, please?

23 **MR. JOHN TRAIANOPOULOS:** It's a very large facility that  
24 houses vehicles for maintenance. It has tracks into it that acts as the drop off point and  
25 starting point for the service. So, it's a large storage shed, for the lack of a better word,  
26 to maintain vehicles.

27 **MS. KATE McGRANN:** Okay. And I understand that your first  
28 involvement with the Ottawa project was in 2009; is that right?

1                   **MR. JOHN TRAIANOPOULOS:** That was my first exposure to the  
2 project, yes.

3                   **MS. KATE McGRANN:** Okay. And what was your role at IO at  
4 that time?

5                   **MR. JOHN TRAIANOPOULOS:** I believe I was a manager or a  
6 managing associate, was my title. So, I was acting as a day-to-day project  
7 representative in the project finance team to support various divisions of IO.

8                   **MS. KATE McGRANN:** Okay. And I'm just going to show you a  
9 document. It's IFO1175.

10                  **MR. JOHN TRAIANOPOULOS:** Okay.

11                  **MS. KATE McGRANN:** So, were looking at a letter dated April  
12 20<sup>th</sup>, 2009. It's from Infrastructure Ontario to Mr. Kent Kirkpatrick, City Manager, and if  
13 you scroll down a little bit, you'll see the re line says, "Terms of Reference detailing  
14 Ontario Infrastructure Project Corporation's engagement by the City of Ottawa in  
15 relation to the Ottawa LRT Project." I'm happy to show you more of this letter, but have  
16 you seen this document before?

17                  **MR. JOHN TRAIANOPOULOS:** I have and -- with my -- my bigger  
18 screen isn't working right now, so I'm having to look over at it.

19                  **MS. KATE McGRANN:** I don't intend to ask you any particularly  
20 detailed questions about this letter. I just -- to help situate our conversation, I wanted to  
21 take you to the first sentence of the first paragraph in which the author writes: "Further  
22 to our meetings, I would like to take this opportunity to formally confirm the terms of the  
23 relationship between the City of Ottawa and Infrastructure Ontario."

24                                 And then if we could scroll down to the second page, we'll see a  
25 description of what services Infrastructure Ontario was to offer. And I won't take you  
26 through all of these, but I'll just bring your attention to 2(b)(ii) which talks about a review  
27 of the project's projected construction, operating and life cycle costs; 2(b)(i), we'll just go  
28 in an odd order here, review of baseline assumptions related to the project including



1 scopes, schedule and budget prepared by the City of Ottawa; and then 2(b)(viii), so  
2 we'll have to scroll down a little bit, a confidential report indicating IO's analysis and  
3 recommendations regarding the financing and procurement approach for the project.

4 With that background, could you just give us an overview of the  
5 work that you did in 2009 for the City of Ottawa?

6 **MR. JOHN TRAIANOPOULOS:** Sure. The work I did was to  
7 support what was called at the time the Project Assessment and Initiation Division of IO,  
8 so "PAID." They were tasked with doing this exact scope of services that you're  
9 referencing here. My specific role was to focus on two things, I would say. One is  
10 helping the City navigate and educate them a little bit about how P3s work and the AFP  
11 model at the time; and secondly, to the extent that there was to be a value for money  
12 analysis or a model built, to opine on that model, review it, give my input based on my  
13 experience having conducted value for money assessments. So, it was a very -- I  
14 would say a very, for me, a very niche focus supporting that division.

15 **MS. KATE McGRANN:** And now I'm going to take you to the copy  
16 of the report that's been provided to the Commission. It's at IFO1174.

17 **--- EXHIBIT No. 031**

18 IFO0001173 – Ottawa LRT Final Preliminary VFM Report,  
19 May 4, 2011

20 **MS. KATE McGRANN:** So, if we can scroll down a little bit, we can  
21 see that this is an alternative financing and procurement preliminary assessment for the  
22 downtown Ottawa Transit Tunnel. Scroll down a little bit more, take us to the next page.  
23 This is dated December 4<sup>th</sup>, 2009, and it's a letter, again, to City Manager Kent  
24 Kirkpatrick explaining that this is a -- delivering a final report in accordance with the  
25 terms of reference with that earlier. If we could go to page 5 of this document, I just  
26 want to provide some context for what is being shown here. If you could scroll down a  
27 little bit -- oh, no, this is perfect. I'd like to take your attention to the second paragraph  
28 where it says, "To perform its preliminary VFM..." And that's value for money, is that

1 right?

2 **MR. JOHN TRAIANOPOULOS:** That's right.

3 **MS. KATE McGRANN:** So:

4 "To perform its preliminary value-for-money  
5 assessment, IO relied on estimates and projections of  
6 the scope, schedule, and budget for the project that  
7 were supplied by Ottawa. IO did not conduct due  
8 diligence on any data obtained from Ottawa beyond  
9 the effort to ensure that data and assumptions were  
10 understood and conformed to the input template that  
11 was supplied for this purpose." (As read).

12 And is that consistent with what you remember about the work that  
13 was done on this project?

14 **MR. JOHN TRAIANOPOULOS:** It is.

15 **MS. KATE McGRANN:** And to your knowledge, at any point  
16 before the project agreement was signed for the Ottawa LRT, did IO do any due  
17 diligence on the data that obtained from the City of Ottawa as far as scope, schedule,  
18 and budget?

19 **MR. JOHN TRAIANOPOULOS:** I would say I did diligence on the  
20 project financing estimates that went into the value-for-money estimate and the ultimate  
21 estimated budget just having experience with project financing rates and assumptions. I  
22 don't believe that any other department or division of IO did any further diligence on the  
23 actual construction, maintenance, or lifecycle costs that would feed into the same  
24 budget.

25 **MS. KATE McGRANN:** Okay. And when you say that you did  
26 diligence on the project financing, what components were you doing diligence on?  
27 Could you be more specific?

28 **MR. JOHN TRAIANOPOULOS:** For sure. So the project financing

1 cost is made up of a number of assumptions, the biggest one being the interest rates to  
2 assume on the both the cost of equity and the cost of debt should it be a DBFM. So I  
3 would -- I usually, and often do, and did, weigh in on my views around those cost  
4 assumptions that I believe Deloitte was using in their BFM methodology.

5 I'd also opine on the structure of the financing, so there are other  
6 assumptions like how much debt versus equity in terms of quantum. We call that a  
7 debt-to-equity ratio. So I would -- I would -- I would be surprised if I didn't opine on  
8 matters like that. And I likely -- and I -- I'm -- I likely opined on the overall payment  
9 structure at some point. I can't remember if it was in respect of the ultimate BFM or if it  
10 was just generally, but the payment structure also drives -- the timing of payments and  
11 the payment structure also drives the cost of financing. So those would be the major  
12 inputs I would have a view on.

13 **MS. KATE McGRANN:** Now I'm going to take you to the results of  
14 the work that was done in 2009, so if you can go to page 17 of that document -- 1174,  
15 please -- one-seven -- perfect. And if you could scroll down a little bit, the results, as I  
16 understand it, are set out in this table under heading "8.3". Is that right?

17 **MR. JOHN TRAIANOPOULOS:** It looks that way, yes.

18 **MS. KATE McGRANN:** Okay. And so what I'm seeing here is that  
19 the value for money for a build finance model as compared to traditional is eight percent  
20 to 11 percent. Do you see that?

21 **MR. JOHN TRAIANOPOULOS:** Yes.

22 **MS. KATE McGRANN:** And what -- what is the traditional that  
23 were being compared to here.

24 **MR. JOHN TRAIANOPOULOS:** The traditional, we call it the  
25 "public sector comparator" in our methodology. The traditional in, I think, every BFM  
26 I've ever done has always been a design-bid-build model.

27 **MS. KATE McGRANN:** Okay. And what does that entail, just  
28 briefly?

1                   **MR. JOHN TRAIANOPOULOS:** Design-bid-build is exactly what it  
2 says. There's an owner who would go and procure a design solution and a designer to  
3 design its facility, or its transit system, or whatever the asset is. It would then accept  
4 that design, review it, accept that design as is. It would then tender that design that  
5 design to the construction market to say, "Here's what I want to build. Here's the design  
6 parameters, what you must build, and I will tender it now and get construction pricing."  
7 So the bid-build is the bid on the construction price and then go and build it.

8                   **MS. KATE McGRANN:** And so when this chart says that a design-  
9 build finance is going to have preliminary value for money results of eight percent to 11  
10 percent as compare to a design-bid-build, what does that mean?

11                   **MR. JOHN TRAIANOPOULOS:** It means that on a risk-adjusted  
12 basis -- so when we look at the total potential costs of the two delivery models on a risk-  
13 adjusted basis -- and risk-adjusted means -- factors in the risk that the City would retain  
14 under either model -- the City in this case, or an owner, generally. It's saying that there  
15 are cost savings on a risk-adjusted basis of using the design-build finance versus a  
16 design-bid-build.

17                   **MS. KATE McGRANN:** Okay. And so moving onto the row in this  
18 chart, you're now comparing a design-build-finance-maintain to the traditional model.  
19 And design-build-finance-maintain is the model that the City ultimately chooses to  
20 proceed with, correct?

21                   **MR. JOHN TRAIANOPOULOS:** It is.

22                   **MS. KATE McGRANN:** And the preliminary value for money  
23 results for that as compared to traditional is four percent to 13 percent?

24                   **MR. JOHN TRAIANOPOULOS:** Yes.

25                   **MS. KATE McGRANN:** Okay. And that's quite a spread as  
26 compared to the results for design-build-finance?

27                   **MR. JOHN TRAIANOPOULOS:** It's quite a spread and it's typical -  
28 - and I would say it's typical in a preliminary value-for-money assessment to quote a

1 large range because the value-for-money assessment is very sensitive to certain inputs,  
2 being the financing rates, mostly, and the input assumptions into what we call “the risk  
3 matrix” which quantifies the quantum of risk retained by, in this case, the City.  
4 Changing one, or two, or three of those major inputs could swing the value-for-money  
5 output in a material so, when we’re early, we want to protect for those changes that  
6 might come later, and not be overly precise and give a sense of false precision on this  
7 number.

8 **MS. KATE McGRANN:** Okay. And then the last row is a design-  
9 build-finance-operate-maintain as compared to the design-bid-build. You’re seeing a  
10 preliminary value-for-money result of five percent to 14 percent, again quite the spread.  
11 And is the reason for that similar to what you just described to us?

12 **MR. JOHN TRAIANOPOULOS:** Exactly right.

13 **MS. KATE McGRANN:** Okay. Are you aware of Infrastructure  
14 Ontario doing any work for the City between the delivery of this report and the spring of  
15 2011?

16 **MR. JOHN TRAIANOPOULOS:** I don’t recall anything, no.

17 **MS. KATE McGRANN:** And this report, I take it, was delivered to  
18 the City of Ottawa?

19 **MR. JOHN TRAIANOPOULOS:** That’s my understanding, yes.

20 **MS. KATE McGRANN:** Do you know if it was delivered to the  
21 province?

22 **MR. JOHN TRAIANOPOULOS:** I don’t know for this report,  
23 specifically. I don’t recall MTO, Ministry of Transportation, being a stakeholder with  
24 interest in understanding what IO might -- may or may not do, as well as our parent  
25 Ministry of Infrastructure. I don’t recall if this report, specifically, was sent to the  
26 province.

27 **MS. KATE McGRANN:** Okay. Do you know how Infrastructure  
28 Ontario came to be involved in the Ottawa project again in 2011?

1                   **MR. JOHN TRAIANOPOULOS:** I don't know exactly how. I recall  
2 being asked to be part of the project team. I don't recall exactly what the formal channel  
3 of engagement was.

4                   **MS. KATE McGRANN:** Can you tell me anything about how  
5 Infrastructure Ontario came to be involved in the project again in 2011?

6                   **MR. JOHN TRAIANOPOULOS:** Well, my impression is that IO  
7 was doing a large number of projects in the province, most, if not all of them, at least in  
8 my group, being P3s. So my sense was that there was some appetite to have, you  
9 know, the experience and the expertise of a central procurement agency to assist the  
10 municipal project in the City of Ottawa. I recall an interest from our executive in  
11 expanding our presence, you know, beyond just provincial projects, so there was a bit of  
12 a business development angle to insert ourselves into other projects that are  
13 necessarily provincial. There was also a provincial funding component, I think of  
14 \$600M, so I recall some interest in making sure that the province's interests are also  
15 maintained.

16                   **MS. KATE McGRANN:** And is protecting the province's interest  
17 part of IO's mandate when it works with municipalities?

18                   **MR. JOHN TRAIANOPOULOS:** We protect the public interest. So  
19 the province, the City, they're all -- it's all one taxpayer, so I would say we are always  
20 thinking about how to get the best value for the public and, whether it's the province --  
21 provincial taxpayers or city taxpayers, to me, at least, it doesn't really matter. We're  
22 there to get the best deal for the public.

23                   **MS. KATE McGRANN:** Okay. So fair to say that when IO is  
24 assessing a project, it's not looking at how to get itself involved in the project. It's  
25 looking at what would be in the best interest of the taxpayers as far as recommending a  
26 delivery model?

27                   **MR. JOHN TRAIANOPOULOS:** I think so. And I -- and just to  
28 reiterate the point, I think there was an acknowledgement of some benefit of having a

1 central procurement agency who's working on many projects, seeing many issues at the  
2 same time, learning a lot as we go to work on this one as well.

3 **MS. KATE McGRANN:** And who do you think saw that benefit?

4 **MR. JOHN TRAIANOPOULOS:** I believe our executive, our board,  
5 our management team.

6 **MS. KATE McGRANN:** And that benefit would really only be  
7 derived if the City chose to proceed with the model that used a private financing  
8 component; is that right?

9 **MR. JOHN TRAIANOPOULOS:** Not necessarily. I could still make  
10 an argument for using essential procurement agency even if the PF -- the financing  
11 wasn't in there. But in fairness, at the time, we were linked more to P3s with project  
12 financing.

13 So I think it would be a decision point if they didn't go with an app,  
14 they could still -- if they wanted to choose user services, and if not, that's an option as  
15 well.

16 **MS. KATE McGRANN:** So as part of your work in 2011, IO was  
17 trying to convince the City to bring it on and have it work as an advisor on the project?

18 **MR. JOHN TRAIANOPOULOS:** I think we were trying to  
19 demonstrate that we could add value, and ---

20 **MS. KATE McGRANN:** In order to have the City retain you to work  
21 on the project?

22 **MR. JOHN TRAIANOPOULOS:** I think that's fair, yeah.

23 **MS. KATE McGRANN:** I'm going to show you an email now. It's  
24 IFO1173.

25 **--- EXHIBIT No. 032:**

26 IFO0001173 – Ottawa LRT Final Preliminary VFM Report,  
27 May 4, 2011

28 **MS. KATE McGRANN:** Okay. So this is a -- I believe it's a May

1 4<sup>th</sup>, 2011 email from Mary -- oh, sorry, from George Davies to Mary Lowe, yourself,  
2 Robert Pattison, and Jim Cahill.

3 Who is George Davies?

4 **MR. JOHN TRAIANOPOULOS:** George Davies was a -- either a  
5 vice-president or senior vice-president -- I can't remember -- in the Project Assessment  
6 Initiation Division, so he was, at the time, I believe, responsible for some business  
7 development and getting projects originated into IO.

8 **MS. KATE McGRANN:** And who is Mary Lowe?

9 **MR. JOHN TRAIANOPOULOS:** I believe Mary Lowe was his boss  
10 at the time who headed that division.

11 **MS. KATE McGRANN:** And who is Jim Cahill?

12 **MR. JOHN TRAIANOPOULOS:** Jim Cahill was the Vice-President  
13 of Project Finance, later made Senior Vice-President of Project Finance and Legal, and  
14 he ran my department.

15 **MS. KATE McGRANN:** Okay. And just looking at the contents of  
16 the email, Mr. Davies writes:

17 "Here is the material that IO provided to Ottawa in  
18 December 2009 on preliminary value for money. Our  
19 analysis shows a better result for DBF than DBFOM."

20 (As read)

21 And we just looked at that, right?

22 **MR. JOHN TRAIANOPOULOS:** Yes, the percentage ---

23 **MS. KATE McGRANN:** And he goes on to write:

24

25 "Which may account for some of Ottawa's  
26 reluctance." (As read)

27 What did you understand Mr. Davies to be describing when he  
28 referred to Ottawa's reluctance there?



1                   **MR. JOHN TRAIANOPOULOS:** I'm inferring that he's reacting to  
2 maybe some resistance to add the O&M to the project scope.

3                   **MS. KATE McGRANN:** And do you remember whether the City  
4 was reluctant to add the M to the project scope?

5                   **MR. JOHN TRAIANOPOULOS:** I remember reservations about  
6 the O for sure, because they already had an operator that was -- that they were happy  
7 with. I can't specifically recall a lot of controversy over the M.

8                   **MS. KATE McGRANN:** Good. Mr. Davies goes on to write:  
9    >Note that it uses a 400 BPS spread compared to 210  
10   today of long-term as well as very high inflation  
11   assumptions in the old risk matrix." (As read)  
12                   Do you know what he's referring to when he says "the old risk  
13 matrix"?

14                   **MR. JOHN TRAIANOPOULOS:** I suspect what he's referring to is,  
15 we have, at IO, a series of risk matrices that have evolved over time. So I believe the  
16 first one was published in 2007 or so, and as we've learned more about projects, and as  
17 we've gotten into other aspects of processes, we've been evolving those risk matrices,  
18 so he's likely referring to an old version of a risk matrix that's been superseded by a new  
19 version of a risk matrix.

20                   **MS. KATE McGRANN:** He goes on to write:  
21    >We should get much better results with the current  
22   cost of equipment and financing that may tilt in favour  
23   of DBFOM." (As read)  
24                   Do you know why Mr. Davies would be hoping for results that tilt in  
25 favour of a DBFOM at this point in time?

26                   **MR. JOHN TRAIANOPOULOS:** Again, I can't speak for Mr.  
27 Davies. My suspicion or my sense is that he saw commercial benefit in having the long-  
28 term operating and/or maintenance as part of the project agreement and term, so it

1 sounds like his belief is that the optimal method or model would be a DBFOM because it  
2 wraps the most amount of risk. So he's indicating his commercial preference or his  
3 opinion that that may be the ideal model.

4 **MS. KATE McGRANN:** Well, let's dig into that a little bit. The  
5 modelling that you do, I take it, it's IO's belief that that modelling will produce a  
6 recommendation that is the best model for the project; is that fair?

7 **MR. JOHN TRAIANOPOULOS:** The value for money modelling?  
8 Is that what you mean?

9 **MS. KATE McGRANN:** Yes, yes.

10 **MR. JOHN TRAIANOPOULOS:** So I would characterize it as -- I  
11 would characterize value for money as a helpful tool to help inform the decision on  
12 which model to choose or not choose. I -- my honest opinion of having done value for  
13 money for many years is it is exactly that; it's a helpful tool to validate the use of project  
14 financing, which is more expensive.

15 But I don't think it should be the be all and end all tool to determine  
16 what delivery model you choose. There's other factors besides a single number in the  
17 value for money to consider.

18 **MS. KATE McGRANN:** Okay. So when Mr. Davies writes, "We  
19 should get much better results," is he talking about results from the value for money  
20 analysis?

21 **MR. JOHN TRAIANOPOULOS:** I think he's referring to an uplift in  
22 the DFM percentage because if you lower, for example, the 400 basis points credit  
23 spread, if you lower that number down and you reduce the private financing cost, you  
24 get just a mathematical increase in the value for money. I think that's what he's getting  
25 at.

26 **MS. KATE McGRANN:** Okay. So when he says, "We should get  
27 much better results," he's talking about results from the value for money analysis that IO  
28 is going to perform?

1                   **MR. JOHN TRAIANOPOULOS:** Yes. I think he's saying if we true  
2 up these assumptions to lower the credit spread using the risk matrix, those two input  
3 changes are likely to increase the overall value for money in percentage terms.

4                   **MS. KATE McGRANN:** Okay. And I believe he said that you're  
5 inferring, from this sentence, that Mr. Davies believes already that a DBFOM is going to  
6 be the most beneficial or the best model for this project; is that right?

7                   **MR. JOHN TRAIANOPOULOS:** That seems to be his opinion in  
8 his email.

9                   **MS. KATE McGRANN:** And then -- so when he says, "Financing  
10 may tilt in favour of DBFOM," he's expressing a hope that the value for money analysis  
11 will support his belief in the best model for the project?

12                   **MR. JOHN TRAIANOPOULOS:** That's how I interpret his email. I  
13 didn't write the email. That's how I would interpret it.

14                   **MS. KATE McGRANN:** Well, and you received the email, so what  
15 I'm really trying to get at is what you understood when you received it at the time, sir.

16                   So he finishes off with, "Let's hope," and your understanding of that  
17 is that he's hoping that the analysis will support his opinion?

18                   **MR. JOHN TRAIANOPOULOS:** I'm interpreting it as let's hope the  
19 City is also in favour with his vision of a DBFOM, yes.

20                   **MS. KATE McGRANN:** Well, that's not what the email says,  
21 though, is it, sir? It says, "We should get much better results," right?

22                   **MR. JOHN TRAIANOPOULOS:** We should get a much -- so I  
23 would interpret "much better results" as we should be getting -- with these three input  
24 changes -- we should be deriving a higher value for money than before because we're  
25 changing some assumptions, and it's going to make DBFOM look better. Let's hope  
26 that's the case. Yeah.

27                   **MS. KATE McGRANN:** Did IO rely on any of the work that it did in  
28 2009 from this point onwards?

1                   **MR. JOHN TRAIANOPOULOS:** I can't remember reliance on any  
2 work from 2009. I -- what I will say is the value for money model was updated several  
3 times by different people, namely, Deloitte being the author of the ultimate value for  
4 money model, so we may have compared 2009 to 2011 to 2012 versions. It's -- there  
5 are so many models I was trying to actually prepare for today, it's a bit hard for me to  
6 remember all the modelling that was done, but I can't recall exactly if there was a 2009  
7 leveraging of any 2009 work.

8                   **MS. KATE McGRANN:** And we can take this document down. I'm  
9 going to take you to another document now, and that's at IFO6453.

10 **--- EXHIBIT No. 033:**

11   IFO0006453 – Ottawa LRT Update – May 19, 2011

12                   So just to position us with this email, what we've got here is an  
13 email from Mary Lowe on Friday, May 13<sup>th</sup>, to Matthew Cataprum, Mr. Cahill, and some  
14 others. And then we see that Ms. Lowe forwards that email to you on Monday, May  
15 16<sup>th</sup>, and then on Thursday, May 19<sup>th</sup>, you forward the email chain on to Mr. Pattison.  
16 Do you see that?

17                   **MR. JOHN TRAIANOPOULOS:** I do.

18                   **MS. KATE McGRANN:** Okay. And then if we could scroll down to  
19 the bottom to see what Ms. Lowe is writing to you about, if we could just scroll up just to  
20 catch the first bit of that?

21   So the subject line of the email is "Ottawa LRT Update."

22                   And she goes on to write:

23   "My flight was cancelled so I didn't make it to Ottawa  
24 today, but I did dial in to the meeting. I don't have  
25 great news." (As read)

26                   Do you see that?

27                   **MR. JOHN TRAIANOPOULOS:** Yes.

28                   **MS. KATE McGRANN:** And I should have asked you, did you

1 review this email as part of your preparation for today?

2 **MR. JOHN TRAIANOPOULOS:** I think so. There's a lot of emails  
3 to review. I -- this looks vaguely familiar, I guess.

4 **MS. KATE McGRANN:** Do you know what meeting she's referring  
5 to?

6 **MR. JOHN TRAIANOPOULOS:** I believe she's referring to the  
7 meeting with City officials.

8 **MS. KATE McGRANN:** Okay. And so if you go down to the next  
9 paragraph, I'm going to skip over to the middle of it a little bit, but she describes it.

10 "They are still proposing a DBM with the quote  
11 'potential for private financing during construction if  
12 the feds and province are willing to pick up the  
13 incremental financing costs'; the answer to that from  
14 MTO and Transport Canada was a resounding no."  
15 (As read)

16 That suggests to me that this was a meeting between City officials,  
17 MTO, and Transport Canada. Is that fair?

18 **MR. JOHN TRAIANOPOULOS:** That sounds reasonable. I don't  
19 think I was at the meeting but it sounds that way.

20 **MS. KATE McGRANN:** Okay. Do you have an understanding of  
21 why Ms. Lowe would be describing the City's view, a DBM with the potential for private  
22 financing during construction, as "not great news"?

23 **MR. JOHN TRAIANOPOULOS:** I believe it's consistent with Mr.  
24 Davies' view that at the time IO believed in the P3 model. We were having great  
25 success with it, the P3 model including financing. We had a good track record being  
26 built up over the first five years of the program -- sorry, the first three years in this case  
27 with the program. So she is likely expressing a view that doesn't sound like they're  
28 buying that right now. And she's expressing some disappointment with that.

1                   **MS. KATE McGRANN:** Okay. And if we can look at the second  
2 last paragraph, she writes:

3                                   “On Monday, we will be receiving updated project  
4 scope, timeline schedule and budget. I have provided  
5 a detailed list to them of what we need. We’re being  
6 asked to turn around an initial analysis by next  
7 Friday.” (As read)

8                   Do you know who was making that request of IO at this time?

9                   **MR. JOHN TRAIANOPOULOS:** I don’t recall, sorry, no.

10                   **MS. KATE McGRANN:** And she goes on to write:

11                                   “They go to their full council on the 25<sup>th</sup> with this  
12 delivery recommendation. It was passed by Council  
13 committee yesterday.”

14                   And then she writes:

15                                   “MTO would like to signal prior to the 25<sup>th</sup> if the  
16 Province has concerns with the delivery model and  
17 will be relying on us for that analysis.” (As read)

18                   What can you tell me about IO’s work for the Province on this  
19 project at this point in time?

20                   **MR. JOHN TRAIANOPOULOS:** I believe the Province was asking  
21 us for our views on what we think is the best delivery model and what we view as ideal.  
22 So sorry, it’s such a long time ago but that’s what I’m recalling that we were trying to the  
23 Province, our shareholder, about how -- what’s ideal in our perspective.

24                   **MS. KATE McGRANN:** And you’ll agree with me, sir, that at least  
25 from this email correspondence it certainly looks like IO has formed the opinion that a  
26 P3 model with private financing and at least the maintenance involved would be the  
27 best project model for the City; is that right?

28                   **MR. JOHN TRAIANOPOULOS:** Correct.

1                   **MS. KATE McGRANN:** And IO has not done any analysis of the  
2 project in 2011 at that point in time, correct?

3                   **MR. JOHN TRAIANOPOULOS:** We had done the analysis and  
4 some analysis in 2009 that we were just referencing. I would characterize this as --  
5 again, we had tremendous success with the DBFM model. We believed in the contract  
6 and the model. So I think we're suggesting that proper application of that methodology  
7 and model could work as well on a project like this.

8                   **MS. KATE McGRANN:** And then if we can scroll down to the last  
9 -- I'm just -- just to finish things off. She talks about setting up a meeting with John T.;  
10 I'm guessing that's you.

11                   **MR. JOHN TRAIANOPOULOS:** Sounds like me.

12                   **MS. KATE McGRANN:** And Rob and that's Mr. Pattison.

13                   **MR. JOHN TRAIANOPOULOS:** It is.

14                   **MS. KATE McGRANN:** So we can action it, who is doing what in  
15 the analysis. And she asks if there is anybody else who should be included. And then  
16 she goes on to say:

17    "I'll make it clear to MTO..."

18                   And that's the Ministry of Transportation?

19                   **MR. JOHN TRAIANOPOULOS:** Yes.

20                   **MS. KATE McGRANN:** And, MOI --- is that the Ministry of  
21 Infrastructure?

22                   **MR. JOHN TRAIANOPOULOS:** Yes.

23                   **MS. KATE McGRANN:** So she is going to make it clear to those  
24 two ministries that:

25    "...we won't be able to validate the City's cost  
26 estimate in such a short time but will try to test their  
27 value for money risk analysis." (As read)

28                   And is that in fact what you did?

1                   **MR. JOHN TRAIANOPOULOS:** I believe so, yes.

2                   **MS. KATE McGRANN:** Before we turn to the work that you did in  
3 2011, I just want to ask you a question about the basis for the budget that the City set  
4 for this project. We've heard evidence and the Commissioner's heard evidence that the  
5 basis for the City's budget on this project was a Class D budget, and that it was  
6 accurate when it was initially set to plus or minus 25 percent. And what that meant in  
7 the context of a project of this size in complexity was that the budget could go up or down  
8 by approximately \$500 million.

9                   So are you with me so far?

10                  **MR. JOHN TRAIANOPOULOS:** Yes. Yes, I'm following. Yes.

11                  **MS. KATE McGRANN:** And then the City staff and consultants  
12 were then directed to design to that budget and they went through a series of steps and  
13 exercises in order to maintain that \$2.1 billion envelope. That's what the Commission  
14 has heard. And my question for you is, when IO prepares a budget for a project of this  
15 size and complexity does it set a budget target using a Class D estimate, an estimate  
16 with that much of a potential swing?

17                  **MR. JOHN TRAIANOPOULOS:** I'm not -- just to qualify this a little  
18 bit, I'm not part of the budgeting process by IO; I'm in a different group entirely. But my  
19 understanding is that there is an initial estimate. I believe it is a Class D that gets  
20 prepared. I can't recall exactly what we go to a funding approval for. So when we set a  
21 budget we can have it approved by the ministry and our Treasury Board, and that  
22 becomes the basis of our -- every project has a budget that becomes the basis of our  
23 budget. I'm not entirely sure if it's a Class D or something else.

24                  **MS. KATE McGRANN:** In terms of the work that IO does for the  
25 City in the spring of 2011 I understand that IO is looking at analyzing the best  
26 procurement model for the City and that Deloitte had already been engaged in doing  
27 exactly that work. Is that fair?

28                  **MR. JOHN TRAIANOPOULOS:** That's fair.



1                   **MS. KATE McGRANN:** And in terms of the results that IO came  
2 up with, I just want to take you to a document that your colleague was taken to  
3 yesterday. And that's at IFO43843.

4                   So this is a draft memo from Infrastructure Ontario and if we look at  
5 the Background and Context, just to position ourselves, it describes that:

6                                   "IO, on behalf of the Ministry of Transportation has  
7                                   been engaged to review and advise on the proposed  
8                                   procurement strategy and commercial structure of the  
9                                   anticipated Ottawa Light Rail Transit Project."

10                   So if we scroll down a little bit more:

11                                   "Specifically IO has undertaken a review of the  
12                                   summary of deal parameters as presented to  
13                                   interested stakeholders on May 13<sup>th</sup>, 2011."

14                   Do you recall if that was the basis of the value for money analysis  
15 that IO did to support any recommendations it made to the City in the spring of 2011?

16                   **MR. JOHN TRAIANOPOULOS:** That's my recollection, yes.

17                   **MS. KATE McGRANN:** Okay. And then if you can look at the  
18 bolded paragraph at the bottom of the Background and Context, there it says:

19                                   "Through discussion with the City of Ottawa it has  
20                                   become clear that many of the deal parameters that  
21                                   will inform the RFP and Project Agreement will not be  
22                                   settled until July 2011. Therefore, our comparison of  
23                                   a DBM and DBFM model is somewhat theoretical and  
24                                   not as deal-specific as we would have liked. Without  
25                                   major commercial terms and deal structure  
26                                   established it is impossible to opine on the gaps that  
27                                   we see with this procurement." (As read)

28                   Can you tell me what's being described there?

1                   **MR. JOHN TRAIANOPOULOS:** What's being described is the  
2 state of our analysis at the time so when we're looking at either it was a value for money  
3 or other considerations we have the information we have at the time and we're trying to  
4 do our best to come up with, you know, a recommendation or a suggestion of what the  
5 deal could be. But absent all the inputs, absent of the full understanding, we're just  
6 noting or qualifying whether it's a recommendation or analysis that it's qualified because  
7 we're still trying to understand all the terms, the parameters, the ability to transfer risk,  
8 for example.

9                   For example, the value for money is a reflection of the ultimate risk  
10 transfer in the Project Agreement. We didn't have an agreement soon settled in July,  
11 2011, so we're just qualifying our analysis there.

12                   **MS. KATE McGRANN:** And do you recall whether the information  
13 that you were missing at the time that this memo was written was supplied to the City  
14 before IO gave its recommendation on the procurement model to be used?

15                   **MR. JOHN TRAIANOPOULOS:** I don't recall. I don't recall.  
16 Specifically, to answer your question, I don't recall, but I do recall a more  
17 comprehensive procurement options analysis that was done by Deloitte that we  
18 reviewed as well at some time.

19                   **MS. KATE McGRANN:** Okay. And when we looked at the work  
20 done in 2009 and the significant spreads in value for money percentages that were  
21 presented there, I think the explanation you gave at a high level for the reason that  
22 there were those significant spreads was because of the preliminary nature of the  
23 information that was given to IO at that time; is that right?

24                   **MR. JOHN TRAIANOPOULOS:** Exactly right. Yeah. There's  
25 many inputs in the value for money model, and the output is as good as the inputs. So,  
26 we're just saying that subject to those inputs changing, the VFM could be a different  
27 number.

28                   **MS. KATE McGRANN:** Okay. And so, would you expect, or do

1 you remember, was there a similar sort of spread or range of possible outcomes for this  
2 project? Like, is that what IO saw when it did its analysis in 2011?

3 **MR. JOHN TRAIANOPOULOS:** I recall reviewing specifically a  
4 Deloitte model that had 11 or 12 permutations of value for money, depending on the  
5 model choices and comparisons. It was a very comprehensive piece of work. So, yes,  
6 there were numerous numbers, and ranges, and permutations, and value for money  
7 floating around at the time.

8 **MS. KATE McGRANN:** And to be more specific, and I can pull the  
9 document back up if you need, but in 2009, and I'm going from memory, I think the  
10 spread for a DBFM was between, I want to say, 4 per cent and 13 per cent. So, that's  
11 the significant spread that I'm referring to.

12 Do you recall if, when IO ultimately made its recommendation in  
13 2011, its analysis resulted in that same kind of significant spread in potential value for  
14 money as a result of the preliminary nature of the information that was available to it for  
15 its analysis?

16 **MR. JOHN TRAIANOPOULOS:** I don't recall if we quoted a range  
17 or a number specifically. I don't remember.

18 **MS. KATE McGRANN:** Would you have had sufficient information  
19 to quote a single number in a value for money analysis when IO gave its  
20 recommendation in 2011?

21 **MR. JOHN TRAIANOPOULOS:** So, we can quote a number either  
22 with or without significant information. I would characterize a -- and I've always  
23 characterized a specific value for money percentage as a bit of a false precision. So,  
24 my recommendation would be, if I had hindsight, if we didn't quote a range, my  
25 recommendation would be to quote a range, because the value for money can move  
26 based on input changes. So, I don't -- to answer your question, I don't recall if we gave  
27 a range or a number, but I just want to emphasize that the VFM percentage in -- 4.2 or  
28 8.5 per cent, whatever the number is, is a bit of false precision all the time, and I think

1 we're okay to say that.

2 **MS. KATE McGRANN:** Okay. And do you remember if that was  
3 explained to the City in 2011?

4 **MR. JOHN TRAIANOPOULOS:** I don't remember.

5 **MS. KATE McGRANN:** And we can take this document down. I'm  
6 going to turn now -- I'm going to jump around a little bit in our discussion today. So, I  
7 just apologize in advance, but I have some questions about the affordability cap that  
8 was used on the procurement for this project. And first of all, do you know what I'm  
9 talking about when I refer to the affordability cap?

10 **MR. JOHN TRAIANOPOULOS:** I do.

11 **MS. KATE McGRANN:** And other people have given evidence  
12 about this, so I won't waste your time today, sir, trying to do a detailed description of it,  
13 but just to make sure that we're on the same page, my understanding of how the  
14 affordability cap functioned was that it prioritized bids that came in under the  
15 affordability cap, and it did it in this way. If any technically compliant bid came in under  
16 the affordability cap, it would be looked at and only if the other bids did not come in.  
17 And to put it another way, if the bids are technically compliant, all of them, only the bids  
18 that come in under the affordability cap are going to be evaluated and available for the  
19 City's selection; is that fair?

20 **MR. JOHN TRAIANOPOULOS:** I believe we reserved, "we" the  
21 City and the procurement team, reserved rights to look at a scenario where if all were  
22 unaffordable, we could still proceed with the valuation and figure out what to do next.

23 **MS. KATE McGRANN:** Okay. So, that's not inconsistent with  
24 what I described about it's an additional piece of information that explains what happens  
25 if none of the bids come in under the affordability cap.

26 **MR. JOHN TRAIANOPOULOS:** Correct. Correct.

27 **MS. KATE McGRANN:** Had IO used an affordability cap that  
28 functioned in this way on any projects before?

1                   **MR. JOHN TRAIANOPOULOS:** We have before. I can't recall if it  
2 was before the Ottawa procurement, but we have before.

3                   **MS. KATE McGRANN:** Okay. And ---

4                   **MR. JOHN TRAIANOPOULOS:** We have in our history. Sorry, I  
5 apologize. We have in our history. I do not recall if it happened prior to Ottawa or not.

6                   **MS. KATE McGRANN:** And is it -- does IO regularly use  
7 affordability caps like this?

8                   **MR. JOHN TRAIANOPOULOS:** I wouldn't say it's regular, no.

9                   **MS. KATE McGRANN:** And is that because the IO model is  
10 already calibrated to achieve the best price from the proponents that bid on the project?

11                   **MR. JOHN TRAIANOPOULOS:** The IO model is calibrated to look  
12 at the whole life costing of a project and reward bidders through the evaluation  
13 mechanics that take whole life costing into effect. Historically, we've had budgets. Our  
14 budget experience has been adequate where we've had a sufficient budget. I would  
15 say -- I'm happy to say more recently with inflationary pressures in the economy, we're  
16 having a few more challenges, but historically, yes, we tended to come in materially  
17 under budget in our program.

18                   **MS. KATE McGRANN:** Okay. And when you say that you tended  
19 to come in materially under budget, the bids would come in materially under the budget  
20 that had been set in the RFP?

21                   **MR. JOHN TRAIANOPOULOS:** At the time, yes.

22                   **MS. KATE McGRANN:** Okay. And I take it that responses that  
23 came in materially under the budget set in the RFP were seen by IO as an indication  
24 that its budgetary work that it put into the RFP was sufficient for the project and things  
25 like that?

26                   **MR. JOHN TRAIANOPOULOS:** Yeah.

27                   **MS. KATE McGRANN:** You got it right, basically?

28                   **MR. JOHN TRAIANOPOULOS:** It gives me confidence that we put

1 enough in the budget to make sure that we got bids at or under the budget.

2 **MS. KATE McGRANN:** Is it fair to say that the affordability cap  
3 used in this project would provide a pretty strong incentive for bidders to meet the cap?

4 **MR. JOHN TRAIANOPOULOS:** Fair, yeah, given the evaluation  
5 preference, if you will. I think it was definitely something they would consider in their  
6 overall bid.

7 **MS. KATE McGRANN:** To your knowledge, was there any  
8 discussion, either internally at IO or with the City, about whether the affordability cap  
9 may increase the risk that bidders would over promise what they could deliver in their  
10 bids in order to meet the affordability cap and be considered as a potential successful  
11 proponent?

12 **MR. JOHN TRAIANOPOULOS:** Not in that context, no.

13 **MS. KATE McGRANN:** In any context?

14 **MR. JOHN TRAIANOPOULOS:** There were concerns raised about  
15 whether or not the affordability cap was enough, given the complexity and size of the  
16 project, given the absence of -- if I recall, it was priced in 2009 dollars, I think, so they  
17 didn't include inflation. So, there were definitely concerns around did we get the  
18 number too low? Are bidders going to be able to meet it?

19 **MS. KATE McGRANN:** And who were those conversations with?

20 **MR. JOHN TRAIANOPOULOS:** Those would have been  
21 conversations between the City, its cost estimation team, and I believe IO. I believe Mr.  
22 Pattison spoke about this a little bit, that he may have had some conversations as well  
23 with the City about this.

24 **MS. KATE McGRANN:** And do you know who at the City would  
25 have been involved in those conversations?

26 **MR. JOHN TRAIANOPOULOS:** Again, I would assume the cost  
27 estimation team the City hired and the senior officials running the project. So, perhaps  
28 Mr. Jensen, and City Finance, and anyone who has an interest in making sure the

1 project comes under budget.

2 **MS. KATE McGRANN:** And kind of along the same lines, to your  
3 knowledge, was there any discussion, either internally at IO or with the City, about  
4 whether the affordability cap may ultimately work against the best interests of the  
5 project? And what I mean by that is, for example, a technically superior bid that came in  
6 just over the affordability cap would be unavailable for the City's consideration if another  
7 technically compliant bid came in under the cap, so you're sort of cutting yourself off  
8 from being able to select a better option at a slightly higher price.

9 **MR. JOHN TRAIANOPOULOS:** That's true. What I said earlier  
10 under the premise of whole life costing, if you have a sub cap for a certain element of  
11 the project, you may not necessarily get the overall best technical solution and/or overall  
12 whole life cost. But what was clear to me, and us as the project team, was that that was  
13 a requirement of the City to keep to an affordability cap, so -- based on their own budget  
14 constraints and et cetera. So, we understood it, but your statement is, I think, fair that it  
15 could have other consequences in putting in a sub cap to the bid price.

16 **MS. KATE McGRANN:** And was that -- was that risk discussed  
17 with the City?

18 **MR. JOHN TRAIANOPOULOS:** I can't recall in this moment if that  
19 was discussed in that way. It may have been.

20 **MS. KATE McGRANN:** And your answer that you gave a minute  
21 ago, I think, focused on the importance of looking at the whole life cost of the project; is  
22 that fair?

23 **MR. JOHN TRAIANOPOULOS:** That's fair, and that's why we do  
24 what's called a net present value assessment of the bid price, which includes the  
25 entirety of the bid cost, including the maintenance and that type of cost.

26 **MS. KATE McGRANN:** I will flag for you here that I may be wrong,  
27 but my understanding is that the affordability cap was not based on a whole life cost  
28 analysis; it focused only on the capital construction costs, is that right?

1                   **MR. JOHN TRAIANOPOULOS:** Correct. It was a -- it was linked  
2 to a defined term in the RFP of capital costs, and then we told the bidders exactly what  
3 we mean by "capital costs".

4                   **MS. KATE McGRANN:** Okay. So, it was not prioritizing the sort of  
5 best value for whole life cost; it's looking at the lowest capital cost as defined in the  
6 RFP?

7                   **MR. JOHN TRAIANOPOULOS:** The affordability cap was doing  
8 that. The NPV analysis, where all the points are, was prioritizing the whole life costing.

9                   **MS. KATE McGRANN:** Okay, but in order to get to the NPV  
10 analysis, you've got to pass the affordability cap gate first, right?

11                   **MR. JOHN TRAIANOPOULOS:** You do unless all three are over,  
12 yes.

13                   **MS. KATE McGRANN:** I'd like to ask you about the approach  
14 taken to the evaluation of the responses to the bid so that you can help the commission  
15 understand what steps were taken to try to ensure that the process was conducted  
16 fairly.

17                   Before we get there, though, I do want to ask you a quick question  
18 about decisions made about the evaluation for financial responses. So, my  
19 understanding is that, in terms of scoring the financial responses, there were scored out  
20 of a total of 1000 points?

21                   **MR. JOHN TRAIANOPOULOS:** For the RFP, we had 500 points  
22 for financial, and 500 for technical, yeah.

23                   **MS. KATE McGRANN:** Thank you. And that's -- I misspoke. So,  
24 500 for financial, 500 for technical?

25                   **MR. JOHN TRAIANOPOULOS:** Correct.

26                   **MS. KATE McGRANN:** So, they're weighted equally in the  
27 evaluation. Is that IO's normal approach to evaluating submissions for a project like  
28 this?



1                   **MR. JOHN TRAIANOPOULOS:** It is. So, it's 500 technical, 50 for  
2 quality of financial proposal, which is the quality of the financial -- the financing  
3 submission, and 450 what we call "net present value cost."

4                   **MS. KATE McGRANN:** And does IO ever depart from that, even in  
5 the weighting of technical and financial responses?

6                   **MR. JOHN TRAIANOPOULOS:** You're testing my memory of all  
7 the projects. Not typically. What we have departed on is how we look at -- how we look  
8 at net present value costs. There is a formula that assigns points from the lowest bid to  
9 all the other bids. We have played with what we call -- it's called the "gearing factor".  
10 We have moved that around on other projects, not typically, but the 450, from my  
11 recollection, sounds pretty -- pretty standard.

12                   **MS. KATE McGRANN:** Okay. Now, turning to what I promised  
13 you we would talk about before, and that's the approach taken to the evaluation and the  
14 steps that were taken to try to ensure that the process was fair. And now, IO is  
15 managing the procurement process for the City, right?

16                   **MR. JOHN TRAIANOPOULOS:** We were the commercial  
17 procurement lead, was the title I believe, yes.

18                   **MS. KATE McGRANN:** Okay. And you described in your  
19 Commission interview the approach taken in some detail, and there are documents that  
20 also describe this, but for the benefit of everybody sitting here today, could you just give  
21 us a brief overview of the structure that was put in place and the steps that were taken  
22 to try to ensure the fairness of the evaluation of the RFPs?

23                   **MR. JOHN TRAIANOPOULOS:** There were a few features of  
24 evaluation. The most notable one for fairness is to completely silo off the technical  
25 evaluators from the financial evaluators. So, we can't speak about what we're seeing  
26 on either side of the bid. That gives some independence to those two evaluation teams.

27                   There was a governance structure put in place with an evaluation  
28 steering committee where we would take recommendations and issues to. They had

1 the rights to approve our results or not approve our results, ask questions, send us back  
2 to reconsider our points and our evaluation, so there was a second set of eyes.

3 There was also a senior committee to the evaluation steering  
4 committee, which was the -- a next step in approvals, who could also direct us to go  
5 back and look at the evaluation if they didn't feel comfortable proceeding.

6 There was a fairness commissioner that was appointed by the City  
7 to monitor all interactions with bidders, including requests for qualifications the  
8 evaluators wanted to send. The fairness commissioner attended our consensus  
9 meeting where we scored the bids.

10 It was a very well -- in my experience, having done this for a long  
11 time, it was a very well-run procurement evaluation with a lot of emphasis on fairness.

12 **MS. KATE McGRANN:** And, to your knowledge, did anybody at  
13 any time raise any complaints about the fairness of the process?

14 **MR. JOHN TRAIANOPOULOS:** Not that I'm aware of.

15 **MS. KATE McGRANN:** And, I will be testing your memory a little  
16 bit here, sir, so I apologize for that in advance, but as far as coming in under the  
17 affordability cap, my understanding is that two of the three proponents came in under  
18 the affordability cap, and my understanding is also that as far as meeting the budget,  
19 they -- I would describe them as just meeting the budget, is that fair? They came in  
20 under but they didn't come in much under?

21 **MR. JOHN TRAIANOPOULOS:** That's my recollection. The  
22 results are in our evaluation presentation. The two were both close to the 2.1, yes.

23 **MS. KATE McGRANN:** And when you think about what you said  
24 earlier about IO's experience being that proponents generally came in materially under  
25 budget, and that being a good indicator to you that you got the numbers right, did you  
26 see the results in this particular process as raising any concerns that the budget may  
27 not be sufficient for the project that the City was hoping to accomplish?

28 **MR. JOHN TRAIANOPOULOS:** Not really, no. We took a lot of

1 confidence that, you know, these sophisticated bidders, three of them multiple design  
2 build partners, multiple lenders, advisors, lender's technical advisors were all looking at  
3 the numbers and scrutinizing them. So, I would say, even if it was a dollar under, we  
4 would still take comfort that those bidders took the time and effort to price their bid with  
5 proper governance, and submitted to us that they can do the project for that cost.

6 **MS. KATE McGRANN:** And we'll just see if you'll agree with me,  
7 sir, that you'd take more comfort when the results come in materially under budget than  
8 when they come in just a dollar under budget, is that fair?

9 **MR. JOHN TRAIANOPOULOS:** Well, if it's too under budget, you  
10 may question if they under bid it and they may not be able to actually deliver for that  
11 price. So, there's probably a sweet spot somewhere in between those two points.

12 **MS. KATE McGRANN:** Right, but the sweet spot is not a dollar  
13 under budget, is it?

14 **MR. JOHN TRAIANOPOULOS:** Again, I'll say what I said earlier, if  
15 it's a dollar under budget and it passes through all that diligence, it's -- I would say that's  
16 it's a fair bid, and we can still be comfortable proceeding on that basis.

17 **MS. KATE McGRANN:** Okay. And I had told you before that we  
18 would be hopping around in terms of topics, and so, we're going to hop now over to the  
19 payment mechanism for the maintenance term. Now, I understand that you worked with  
20 Deloitte on devising the payment mechanism that applies to the maintenance period, is  
21 that right?

22 **MR. JOHN TRAIANOPOULOS:** That's correct. Deloitte "had the  
23 pen" on drafting the payment mechanism, and I was part of the project finance team  
24 working group that was inputting into it. That's right.

25 **MS. KATE McGRANN:** Okay. And with respect to the purpose of  
26 the payment mechanism, in your Commission interview, you explained that the purpose  
27 of the payment mechanism is to shape and enforce the behaviour of the maintenance  
28 provider, right?

1                   **MR. JOHN TRAIANOPOULOS:** Yes.

2                   **MS. KATE McGRANN:** Okay. And, at a high level, the  
3 maintenance payment mechanism has two components, there's failure points and  
4 there's payment deductions, is that correct?

5                   **MR. JOHN TRAIANOPOULOS:** The payment mechanism outlines  
6 exactly how Project Co. will be paid its monthly service payment, including adjustments  
7 for inflation and all that. It also gets into a lengthy deduction regime that's applied for  
8 failure to meet the performance targets that we wanted. The failure points come out of  
9 the payment mechanism calibration work and are mapped into the project agreement.

10                  **MS. KATE McGRANN:** Okay. So, as far as the payment  
11 mechanism being a tool available to the City to enforce compliance by the maintainer  
12 with the project agreement, my understanding is that it kind of works in two ways,  
13 there's failure points, and then there's payment deductions, is that right?

14                  **MR. JOHN TRAIANOPOULOS:** That's right.

15                  **MS. KATE McGRANN:** And can you just help me understand, first  
16 of all, the difference between failure points and payment deductions?

17                  **MR. JOHN TRAIANOPOULOS:** Payment deductions -- I'll start  
18 with payment deductions, if that's okay. Payment deductions are dollar deductions that  
19 are attributed or enforced against Project Co. for failure to meet or comply with a certain  
20 output. So, for example, we have different levels of output requirements. We have  
21 availability failures. That relates to the -- Project Co.'s under performance in terms of  
22 vehicle kilometres run that were desired by the City.

23                         There's service failures, which are linked to key performance  
24 indicators in the FM, the maintenance specifications, that typically have response  
25 rectification times. So, it's failing to comply with those specs and/or the rectification time  
26 afforded to those specs.

27                         And there's quality failures, which are a bit more administrative in  
28 nature. They tend to be lack of reporting on time, things like that, that are assessed

1 deductions for not complying with those requirements. And then there's a -- there's a  
2 deduction that's calibrated in dollar terms or in percentage of monthly service payment  
3 terms that's deducted from that monthly service payment for reaching or failing to  
4 comply with those outputs.

5                   The failure points is a system to -- it's not dollar-based. It looks at  
6 the same failures, so the same underperformance, the same inability to comply with  
7 certain output specifications or certain key performance indicators, and it assigns  
8 penalty points, or points, for failure to do so. And if those -- if enough failures happen,  
9 and enough underperformance happens, those points roll forward in the crew and  
10 ultimately give the City remedies to deal with that underperformance, including going as  
11 far as termination.

12                   **MS. KATE McGRANN:** Okay. Would it be fair to say that the  
13 payment deductions more immediate in their effect in that they apply in the month in  
14 which the behaviour that sparked them took place and so they're intended to deal with  
15 the sort of -- a short-term -- have a sort of short-term effect on the maintainer?

16                   **MR. JOHN TRAIANOPOULOS:** Both apply in the same month.  
17 So you can have points accruing in one month as well and, if it's bad enough, you can  
18 get to those remedies, I believe, within a month if it's -- for example, if the entire  
19 system's not available for a month, I wouldn't be surprised if that would trigger certain  
20 remedies in the agreement. So I would say both; both can happen immediately.

21                   **MS. KATE McGRANN:** Okay. And then the quality points, as you  
22 described, accrue over time, and so they also have an impact when you see sort of  
23 repeat failures. They account for that.

24                   **MR. JOHN TRAIANOPOULOS:** Yes, the -- the remedies in the  
25 project agreement are assessed on a rolling basis. So you look backwards to the  
26 months that are applied and -- so they roll forward, yes.

27                   **MS. KATE McGRANN:** Okay. And in your Commission interview,  
28 you talked about the fact that when you set -- or calibrate the payment mechanism, it's a

1 bit of a balancing act, so it's got to be not overly punitive but, also, it needs to be  
2 punitive enough to enforce the behaviour. Do you remember talking about that?

3 **MR. JOHN TRAIANOPOULOS:** I do.

4 **MS. KATE McGRANN:** Okay. And in terms of the downsides of  
5 having a payment mechanism that's overly punitive, I take it that that becomes  
6 counterproductive and sort of antithetical to the best interests of the system of the  
7 functioning of the system. Is that fair?

8 **MR. JOHN TRAIANOPOULOS:** I would agree. It becomes  
9 counterproductive in two ways. One, if it's too punitive, you may simply not get a bid  
10 because the maintenance providers and Project Co. may say, "I can't sign up for that,"  
11 you know, "It's not biddable." And two, even if it is biddable, it may be so punitive that  
12 Project Co. and its maintenance contractor may be pricing in significant contingencies  
13 that the City would just pay for because it would be buried in their price, and that may  
14 not be the best value for money.

15 **MS. KATE McGRANN:** Okay, so if -- if an owner is explicit that the  
16 payment mechanism is going to be applied punitively up front, you would expect the  
17 bidder to price that in and that would have a real impact on the bids that the owner  
18 received?

19 **MR. JOHN TRAIANOPOULOS:** That's our expectation, yes.

20 **MS. KATE McGRANN:** And then -- and then, in practice, if the  
21 payment mechanism is punitive -- too punitive, that may not ultimately actually enforce  
22 the best maintenance behaviour and drive the best performance of the system. Is that  
23 fair?

24 **MR. JOHN TRAIANOPOULOS:** Overly punitive -- let me put it this  
25 way, if I may. If it's overly -- it doesn't need to be over punitive to shape behaviour.  
26 There's a certain point where the dollar deduction are enough to get all the attention of  
27 all the right people to fix an issue. And so there's no sense in overshooting the  
28 deductions, because it wouldn't change anything on the ground. So we try to come up

1 with a number that we think, "Well, they won't ignore the problem, so they'll get on it,  
2 and put their best people on it because they care about losing that deduction." But  
3 going over -- going beyond -- like, I'm not a behavioural economic specialist, but there's  
4 that sense of like, "What's the point of going beyond what you need to get the  
5 rectification?"

6 **MS. KATE McGRANN:** Okay. And the payment deductions were  
7 designed to be capped at the monthly service payment. Is that right?

8 **MR. JOHN TRAIANOPOULOS:** The payment deductions apply to  
9 the contract month -- to each contract month. So I've been reading this definition a few  
10 times. My interpretation is that the monthly service payment is what's at risk in that  
11 month.

12 **MS. KATE McGRANN:** Okay, so ---

13 **MR. JOHN TRAIANOPOULOS:** So they are ---

14 **MS. KATE McGRANN:** --- you can't end up owing more in  
15 payment deductions than you are owed in that month if you're the maintainer?

16 **MR. JOHN TRAIANOPOULOS:** That's my interpretation of the  
17 drafting.

18 **MS. KATE McGRANN:** Okay. And it's my understanding that I --  
19 each IO project takes the same approach to capping deductions. Is that right?

20 **MR. JOHN TRAIANOPOULOS:** In practice, and by design intent,  
21 that's my understanding as well.

22 **MS. KATE McGRANN:** Is it fair to say that -- you know, Mr.  
23 Pattison talked yesterday about -- a little bit about this, but, you know, IO is a known  
24 entity in the marketplace and bidders rely on the predictability that comes with IO's  
25 involvement, the use of their templates. They can see how the projects work because  
26 they've worked in the past. Is that fair?

27 **MR. JOHN TRAIANOPOULOS:** I think so.

28 **MS. KATE McGRANN:** And so somebody bidding on an IO project

1 that involves a payment mechanism is going to expect that the payment mechanism on  
2 this project's going to work like the ones that they've seen before.

3 **MR. JOHN TRAIANOPOULOS:** They do.

4 **MS. KATE McGRANN:** And that's important because bidder  
5 confidence can lead to better bids on projects where IO's involved, right?

6 **MR. JOHN TRAIANOPOULOS:** Absolutely. They -- I believe  
7 when they go for their approvals, and when they do their diligence on the project, they  
8 take comfort in some precedent and some familiarity with documents, so I think that  
9 helps them.

10 **MS. KATE McGRANN:** I understand that the payment mechanism  
11 was the subject of conversation between the City and the proponents during the in-  
12 market period the RFP was open.

13 **MR. JOHN TRAIANOPOULOS:** Yes, we have what's called  
14 "commercially confidential meetings" with all proponents. And if I recall, the payment  
15 mechanism was a subject matter of at least two, maybe more meetings with bidders.

16 **MS. KATE McGRANN:** Okay. And am I right that one of the  
17 things that the bidders was looking for was an approach to the payment mechanism that  
18 would allow for a bedding-in of the system? And what I mean by that is payment  
19 mechanisms that were calibrated to be -- to recognize that there's going to be a bit  
20 learning curve on the system so they're going to start off at a lower amount and then  
21 ultimately ratchet up to where they will remain for the rest of the time, but a bit of a  
22 curve in the application of the payment mechanism. Is that fair?

23 **MR. JOHN TRAIANOPOULOS:** I recall at least one, if not more,  
24 bidders asking for a bedding-in period.

25 **MS. KATE McGRANN:** And have -- basically, what I just tried to  
26 describe there, is that what people were looking for?

27 **MR. JOHN TRAIANOPOULOS:** So, just to maybe level set a bit, a  
28 bedding-in period in our previous "IO template" lessens or lowers deductions in respect



1 of quality and service failures, so it doesn't necessarily lower all deductions, but it's  
2 meant to recognize a bit of -- you know, a few months of a learning curve on some of  
3 the elements. But I would still -- I just want to be clear, most of the deductions within  
4 our social template still apply in the bedding-in period, the vast majority of deductions.

5 **MS. KATE McGRANN:** All right. But it does -- the bedding-in  
6 period that IO has used in the past does account for a learning curve, as you explained?

7 **MR. JOHN TRAIANOPOULOS:** On some -- on some of the key  
8 performance indicators, yes.

9 **MS. KATE McGRANN:** And, in this case, that would allow the  
10 maintainer to get used to the system as it heads into operation and things like that  
11 without experiencing the full weight of the payment mechanism and its expectations?

12 **MR. JOHN TRAIANOPOULOS:** It could. It could lower deductions  
13 in some scenarios as they're ---

14 **MS. KATE McGRANN:** And that's ---

15 **MR. JOHN TRAIANOPOULOS:** --- picking up, yeah.

16 **MS. KATE McGRANN:** That's the purpose of the bedding-in  
17 period, is to allow for that to happen, right?

18 **MR. JOHN TRAIANOPOULOS:** It is, yeah.

19 **MS. KATE McGRANN:** And could you understand why it might be  
20 even more important in this case where, you know, you've got a complex transit where  
21 the operator is the City and the maintainer is Project Co., and so not only does Project  
22 Co. need to understand and learn how to maintain the system but it's got to learn how to  
23 work with the operator as well, so more of a learning curve, if you will, than if they  
24 operated -- than if they had control of the entire system, maintenance and operations?

25 **MR. JOHN TRAIANOPOULOS:** Perhaps. There was intended to  
26 be a lot of work and interface between the operator and Project Co., its maintenance  
27 contractor, prior to ramping of service, so the hope was that some of those issues could  
28 be ironed out. We also, in the payment mechanism, carve out deductions, or do not

1 apply deductions, to the extent if the operator is causing an issue in respect of Project  
2 Co.'s performance. We call those "non-Project Co. causes". And the acts of the  
3 operator are one of those provisions that would relieve Project Co. from deductions for  
4 acts of the operator.

5 **MS. KATE McGRANN:** Sure. And setting the hope that everything  
6 is going well aside -- and we'll come back to the non-Project Co. causes in a minute --  
7 but you could understand why when the maintainer is working with another party in  
8 order to run system, that bedding-in period may become even more important to them in  
9 terms of having time to learn the system before the full weight of the payment  
10 mechanism comes into effect?

11 **MR. JOHN TRAIANOPOULOS:** I understand that perspective,  
12 yes.

13 **MS. KATE McGRANN:** And this -- we already talked about the fact  
14 that this had been done on other projects. This was considered here, but my  
15 understanding is that the decision was made not to implement a bedding-in period for  
16 the payment mechanism. Is that right.

17 **MR. JOHN TRAIANOPOULOS:** That's what I recall.

18 **MS. KATE McGRANN:** And in your Commission interview, you  
19 said that this is an issue that went up the chain. Could you just explain to me what you  
20 mean by that?

21 **MR. JOHN TRAIANOPOULOS:** Absolutely. So, the Paymech  
22 working group, if we have a title, would have gone to those commercially confidential  
23 meetings. We review all the submissions from all the bidders. We try to categorize  
24 what's important or not important to bring up, up the chain, or to elevate to the  
25 Executive Steering Committee, I think they were called. So, my recollection is that  
26 many Paymech comments would have gone to that committee. One of those  
27 comments, if I recall, this is memory, was the bedding in period where we tabled the  
28 bidders' comments, our thoughts on the bidders' comments, and talked about if we

1 should make a change to the project agreement or not, and the ultimate decision  
2 coming out of that meeting or those meetings was to not make that change.

3 In fairness, we had a lot of requests from the bidders, so we --  
4 again, we tried to pick -- we tried to listen and we tried to adapt the PA to be biddable,  
5 bankable, affordable, all those things, and we gave on some things and we didn't give  
6 on others. Bedding in was one of the things we did not give on.

7 **MS. KATE McGRANN:** And in your Commission interview, you  
8 said that the bedding in period was not implemented here because the City took a view  
9 that the system should be operating fully at Day One.

10 **MR. JOHN TRAIANOPOULOS:** Let me -- there was discussions  
11 around how important it is for the system to be fully operational. It's a new system. It's  
12 a big project for the City. There's ridership that they're depending on from fare box. So,  
13 there was a perspective in that conversation that, yes, we would like to have it working  
14 fully for what we're paying for. That was one perspective.

15 But I do want to say it was a bit more of a consensus conversation  
16 between the Paymech working group and all the representatives in the steering  
17 committee. But, yes, that was one perspective, that we're paying a full payment.  
18 There's a lot of commissioning and activities to get -- ensure it's working well, and we  
19 don't want to lower the public confidence by having -- by not having the Paymech in full  
20 effect.

21 **MS. KATE McGRANN:** And was IO consulted on the notion that  
22 having a bedding in period would somehow have a negative impact on the public  
23 confidence in the system?

24 **MR. JOHN TRAIANOPOULOS:** It wasn't a consultation. There  
25 were discussions around the advantages and disadvantages of giving a bedding in  
26 period. In one of the statements I remember was that it would be ideal to have a fully  
27 functioning system from Day One. So, it wasn't a -- it was just a discussion about what  
28 to do.

1                   **MS. KATE McGRANN:** And in looking at the decision not to  
2 include a bedding in period for the payment mechanism, do you know if advice was  
3 sought from experienced rail professionals about how realistic it would be to have a fully  
4 functional system on Day One?

5                   **MR. JOHN TRAIANOPOULOS:** I don't recall. The advisory team,  
6 which included Deloitte, had some rail experience for sure. There was a -- within the  
7 Paymech working group, we did have contacts with -- I think they were called CTP, the  
8 technical advisor. I can't recall specifically if we tabled with the technical team. I'd like  
9 to think we did, but I cannot recall right here if we did that consultation with the technical  
10 team on that specific item.

11                   **MS. KATE McGRANN:** And do you know if IO ultimately formed a  
12 recommendation to the City on whether there should be a bedding in period for the  
13 payment mechanism?

14                   **MR. JOHN TRAIANOPOULOS:** Speaking for myself, I was  
15 supportive, at the time, of not proceeding with the PA change to include a bedding in  
16 period.

17                   **MS. KATE McGRANN:** And then the other aspect of the payment  
18 mechanism that you identified as coming up in conversations with the proponents  
19 during your Commission interview was the concept of non-Project Co. causes, and I  
20 take that to mean that that's things that could impact the reliability of the system and its  
21 performance that Project Co. has no control over?

22                   **MR. JOHN TRAIANOPOULOS:** Yes. It was a mechanism to  
23 alleviate performance deductions in respect of those causes.

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

25                   **MR. JOHN TRAIANOPOULOS:** (Indiscernible).

26                   **MS. KATE McGRANN:** Sorry, I didn't mean to ---

27                   **MR. JOHN TRAIANOPOULOS:** I'm sorry. No, it -- yes, that was  
28 the intent. We already had a provision called excusing causes in the project agreement

1 we could have used, but excusing causes give rise to compensation as well. So, not  
2 just relief under the Paymech, they also give rise to claims. So, we invented a new  
3 concept that fell short of excusing cause, but still gave relief from deductions under the  
4 Paymech.

5 **MS. KATE McGRANN:** Okay. And is it fair to say that the  
6 maintainers were worried about being saddled with costs arising from causes outside of  
7 their control?

8 **MR. JOHN TRAIANOPOULOS:** Absolutely.

9 **MS. KATE McGRANN:** And when you look at the structure in the  
10 context of this project, so the City has got a payment mechanism as a tool to enforce  
11 maintenance obligations, right?

12 **MR. JOHN TRAIANOPOULOS:** Project Co. also has the same  
13 tool to enforce maintenance obligations, but, yes, the City has -- it's the City's tool to  
14 enforce performance of the system and the specific maintenance obligations in the  
15 contract.

16 **MS. KATE McGRANN:** Okay. And I'm going to be speaking at a  
17 high level here. We're not going to delve into particular clauses, just so you know.

18 **MR. JOHN TRAIANOPOULOS:** Okay.

19 **MS. KATE McGRANN:** But the maintainer is obligated, I  
20 understand it, to keep the system operating at specific performance levels, and those  
21 are defined in the project agreement; is that right?

22 **MR. JOHN TRAIANOPOULOS:** That's right.

23 **MS. KATE McGRANN:** And generally speaking, if something  
24 breaks or goes wrong on the system, that's the maintainer's problem and they have to  
25 deal with it?

26 **MR. JOHN TRAIANOPOULOS:** Generally, most P3 projects, you  
27 have a Project Co., in this case, RTG, and generally what happens is the Project Co.  
28 will find a maintenance contractor and pass down as much of that risk as they can.

1 That's been my experience and the practice of the model.

2 **MS. KATE McGRANN:** Okay. And here, specifically, you've got  
3 RTG, then you've got RTM, and RTM has maintenance subcontractors. If something  
4 breaks on the system, that is for the maintenance side to deal with, and it's at their cost  
5 as well, right?

6 **MR. JOHN TRAIANOPOULOS:** That's my understanding of RTG's  
7 drop down arrangements.

8 **MS. KATE McGRANN:** Okay. So, the City has got the payment  
9 mechanism as an enforcement tool, but what is a maintainer to do if the operator  
10 chooses to operate the system in a manner that causes damage to the system?

11 **MR. JOHN TRAIANOPOULOS:** If the operator causes damage to  
12 the system, then in a DBFM, I think it's -- this is exactly why we introduced a non-  
13 Project Co. cause, which is very broad to say I think it's something like any act of the  
14 operator who is not operating in accordance with his operating procedures. So, if  
15 they're not in accordance with the operating procedures, then Project Co. is rightfully  
16 not being deducted.

17 **MS. KATE McGRANN:** Okay. So, it's the non-Project Co. cause  
18 component of the payment mechanism that is available to the maintainer if there are  
19 issues in that way?

20 **MR. JOHN TRAIANOPOULOS:** And the excusing cause, which I  
21 believe also has breaches by the City and its operator if they're doing something -- it's a  
22 general -- I'm not a lawyer, but there's a breach excusing cause as well. So, they can  
23 argue under breach.

24 **MS. KATE McGRANN:** Okay. And so, the payment mechanism,  
25 is it fair to say it was shaped by feedback the bidders provided during the in-market  
26 period?

27 **MR. JOHN TRAIANOPOULOS:** Yes. We issued a first version  
28 with the project agreement and the RFP, and then we entertained feedback through the

1 CCM meetings and requests for information they can send in.

2 **MS. KATE McGRANN:** Okay. Was there anything built into the  
3 project agreement to account for the possibility that the payment mechanism may have  
4 a more severe impact on the maintainer than anticipated when the project agreement  
5 was entered into?

6 **MR. JOHN TRAIANOPOULOS:** There may be. We sometimes  
7 have a review. I think it's usually every five years where the parties get together and  
8 talk about the payment mechanism. I honestly can't recall today if we had a five-year  
9 review provision in the mechanism.

10 **MS. KATE McGRANN:** That's fair enough. Okay, switching focus  
11 a little bit, but still thinking about the payment mechanism, I understand that the City  
12 asked IO to come in and provide them with some education on how the payment  
13 mechanism would work during the 30-year maintenance contract; is that right?

14 **MR. JOHN TRAIANOPOULOS:** Yes. There was an information  
15 session we were asked to present to some City staff. Yes.

16 **MS. KATE McGRANN:** And you were involved in delivering that  
17 education session?

18 **MR. JOHN TRAIANOPOULOS:** It was a big deck. I had part of it,  
19 yes.

20 **MS. KATE McGRANN:** Okay. We're going to pull that big deck up  
21 right now, I think. It's at IFO 64265.

22 **--- EXHIBIT No. 034:**

23 IFO0064265 – OLRT Workshop – July 29, 2015

24 **MS. KATE McGRANN:** So, we're looking at a slide deck from  
25 Infrastructure Ontario. It's titled, "City of Ottawa Lessons Learned Workshop," and if  
26 you scroll down a little bit, "Revenue Service and the Maintenance Team." Is this the  
27 presentation that you were referring to?

28 **MR. JOHN TRAIANOPOULOS:** Yes, it is.

1                   **MS. KATE McGRANN:** Okay. And I would like to jump right  
2 ahead to slide 35, and this is the section of the presentation that discusses the  
3 maintenance and rehabilitation phases, right?

4                   **MR. JOHN TRAIANOPOULOS:** Yes.

5                   **MS. KATE McGRANN:** Okay. And if we scroll over to the next  
6 slide, we'll see that it provides an overview of the maintenance and rehabilitation work.  
7 And then if we keep going down to the next slide, you've got "Key Project Agreement  
8 Requirements", so an overview of that is provided to the City. And then if we go down  
9 to Slide 38 -- up one, if you don't mind -- perfect -- the heading for this slide is "City  
10 Responsibilities".

11                   And if you look at this slide, you see that the first bullet point says  
12 that the maintenance term is a partnership between the City (Operations) and Project  
13 Co. (Maintenance).

14                   Do you see that?

15                   **MR. JOHN TRAIANOPOULOS:** Yes.

16                   **MS. KATE McGRANN:** This is the first piece of information that IO  
17 is providing to the City about its responsibilities in the maintenance term, right?

18                   **MR. JOHN TRAIANOPOULOS:** It is an introductory presentation  
19 to some of the people in the City that would be looking after maintenance, yes, I believe  
20 so.

21                   **MS. KATE McGRANN:** Okay. And the first bullet point on the side  
22 about the City's responsibilities speaks to the importance of the partnership between the  
23 City and Project Co., right?

24                   **MR. JOHN TRAIANOPOULOS:** It does.

25                   **MS. KATE McGRANN:** And is it fair to say that this was -- this  
26 relationship is highlighted in the presentation IO made to the City because the  
27 partnership between the City and Project Co. is fundamental to the successful operation  
28 of the system?



1                   **MR. JOHN TRAIANOPOULOS:** Yes, it's a 35-year contract with  
2 30 years of maintenance.

3                   **MS. KATE McGRANN:** And it's fair to say that if one or both of the  
4 parties adopts an adversarial approach to the relationship, there's a real risk to the  
5 reliability of the system?

6                   **MR. JOHN TRAIANOPOULOS:** If it's constantly adversarial, it  
7 doesn't sound pleasant, no. So I would agree with that.

8                   **MS. KATE McGRANN:** And then if we could go to Slide 50 in this  
9 presentation deck, so this is the section of the presentation that speaks to the payment  
10 mechanism and failure points. And we've already talked about some of this, but we'll  
11 just drop down to Slide 51. And this is a general overview of the payment mechanism  
12 and this kind of reinforces what we've already talked about earlier today and during your  
13 Commission interview.

14                   If you look at the second bullet point, the payment mechanism  
15 enforces performance measurements. And if you look at the third bullet point, it  
16 ensures the desired level of service. And then if you look down under the heading  
17 "What the Payment Mechanism is Not", you'll see that IO's presenting that the payment  
18 mechanism is not a tool that entirely recovers any economic loss suffered by the  
19 sponsors for a particular event. Do you see that?

20                   **MR. JOHN TRAIANOPOULOS:** That's right.

21                   **MS. KATE McGRANN:** And it also says that the payment  
22 mechanism is not a way to overly penalize Project Co. behaviour.

23                   Why was it important for IO to point those two bullet points out to  
24 the City when it provided this lessons learned presentation?

25                   **MR. JOHN TRAIANOPOULOS:** I was reminding the audience  
26 there that the calibration of the payment mechanism may not necessarily completely  
27 indemnify the City for any losses. So when we set the dollar reductions, there may be  
28 other costs beyond those dollar reductions that the City may claim or want to claim, but

1 the intent of the Paymech wasn't to try to make everyone whole. There may be other  
2 provisions that do that; I don't know. And they were just trying to message there that it  
3 is a 30-year partnership. It's not meant to -- yet it's meant to shape behaviour, it's  
4 meant to create incentives. It's absolutely meant to be enforced, so if you do have real  
5 performance issues, don't ignore it.

6 But I'm just -- I'm trying to message there that, you know, things  
7 happen and there's often interpretation issues, perhaps even around exactly what every  
8 KPI might have meant -- Key Performance Indicator, sorry.

9 So I think we're just trying to give some perspective there on those  
10 sorts of things.

11 **MS. KATE McGRANN:** Okay. And I think -- would you agree with  
12 me that IO is providing advice to the City not to use the payment mechanism to overly  
13 penalize Project Co. behaviour?

14 **MR. JOHN TRAIANOPOULOS:** I think I'm referring more to the  
15 initial calibration of it, when we were talking about -- when we came up with the  
16 numbers, it wasn't meant to necessarily -- what I said earlier, it's not necessarily shaped  
17 or calibrated to overly penalize.

18 I would stand behind a statement to say we'd still encourage  
19 owners to enforce the payment mechanism -- it's what it's there for. I'm suggesting that  
20 perhaps in some instances there may be interpretation issues and to just keep that in  
21 mind and be reasonable interpreting the payment in some of the specific KPIs.

22 **MS. KATE McGRANN:** Okay. And in the -- in your advice that the  
23 owners should be reasonable, I take it that overly penalizing Project Co. or using the  
24 payment mechanism to overly penalize Project Co. would not be a reasonable approach  
25 that an owner would take?

26 **MR. JOHN TRAIANOPOULOS:** I would say an owner's entitled to  
27 enforce its contract. I'm struggling a bit with the question. Like, there's enforcing the  
28 contract which is totally legitimate, but using it as a tool to abuse, I don't think is the

1 intent of it, if that's what you're getting at.

2 **MS. KATE McGRANN:** Okay. And then let's go over to slide 64.  
3 And I just have a question for you about the last main bullet point here where under --  
4 so we're looking at "Maintenance and Rehabilitation Lessons Learned", and the last  
5 bullet point says:

6 "Consider hiring an external maintenance temp ramp  
7 up consultant." (As read)

8 What's an external maintenance temp ramp up consultant?

9 **MR. JOHN TRAIANOPOULOS:** Maintenance term.

10 **MS. KATE McGRANN:** Oh, sorry.

11 **MR. JOHN TRAIANOPOULOS:** No, it's okay. I don't -- so this  
12 would have been written by our P-3 asset management group. I don't know exactly  
13 what a maintenance term ramp up consultant is either. I -- I'm -- I will suspect that it's  
14 an independent consultant who can come in and help figure out handover issues,  
15 transition from construction to maintenance, but I did not write this bullet.

16 **MS. KATE McGRANN:** And if you don't know the answer to this  
17 question, you'll just let me know, but the sub-bullet point there says that IO typically  
18 hires these types of consultants to assist with the transition.

19 So I take it that IO, in its experience, finds the use of these  
20 consultants quite helpful?

21 **MR. JOHN TRAIANOPOULOS:** That's news to me. I don't know.

22 **MS. KATE McGRANN:** Okay.

23 Hopping again, so we can take this slide down now.

24 Over to a different topic. I want to talk to you about the debt swap  
25 that the City did on this project, and there's been some evidence about this already, but  
26 just to situate ourselves here, to make sure we're on the same page, it's my  
27 understanding that the City wanted to make some changes to the Stage 1 project  
28 agreement. Those changes required the consent of RTG's long-term lenders.

1 Ultimately, instead of obtaining the lenders' consent to the amendments, the City  
2 effectively stepped into the shoes of the lenders.

3 So far, is that consistent with your understanding?

4 **MR. JOHN TRAIANOPOULOS:** That's my understanding.

5 **MS. KATE McGRANN:** Okay. And then once the City steps into the  
6 shoes of the lenders, it effectively gets all of the rights that the lenders had under the  
7 credit agreement, the project agreement, things like that?

8 **MR. JOHN TRAIANOPOULOS:** That's my understanding in  
9 reviewing some materials that are now before this Commission.

10 **MS. KATE McGRANN:** Okay. And so RTG, instead of paying its  
11 long-term lenders, now has to pay the City?

12 **MR. JOHN TRAIANOPOULOS:** City -- sorry, RTG has to pay the  
13 City?

14 **MS. KATE McGRANN:** Yeah. Like the City is now receiving  
15 RTG's long-term debt payments.

16 **MR. JOHN TRAIANOPOULOS:** Yeah. Yes. Yeah, sorry. Yes.

17 **MS. KATE McGRANN:** And then similarly, or kind of following  
18 along on that, the City is now obligated to make payments to RTG's long-term lenders?

19 **MR. JOHN TRAIANOPOULOS:** That's my understanding.

20 **MS. KATE McGRANN:** Okay. Now, I understand that you were  
21 involved in brainstorming some potential ways in which to obtain lender consent to the  
22 changes to the Stage 1 PA; is that right?

23 **MR. JOHN TRAIANOPOULOS:** Yes. It was in respect of helping  
24 shape the MOU with RTG, and my specific niche role was to look at -- I'll call it a path to  
25 get to lender consent.

26 **MS. KATE McGRANN:** Okay. Was your advice sought on  
27 whether the City should do the debt swap?

28 **MR. JOHN TRAIANOPOULOS:** I don't believe so. I believe

1 Infrastructure Ontario was, at that point in time, removed from the project or off the  
2 project, sorry.

3 **MS. KATE McGRANN:** Okay. And in your Commission interview,  
4 you said you'd never seen a debt swap in a P-3 in Ontario before this?

5 **MR. JOHN TRAIANOPOULOS:** I have not.

6 **MS. KATE McGRANN:** And do you recall if you'd seen a debt  
7 swap in a P-3 at all before this one was done?

8 **MR. JOHN TRAIANOPOULOS:** Personally, no. It may have  
9 happened, but not -- I have not.

10 **MS. KATE McGRANN:** And have you seen one done in a P-3  
11 since the City of Ottawa did a debt swap on this project?

12 **MR. JOHN TRAIANOPOULOS:** I have not.

13 **MS. KATE McGRANN:** Now, is it fair to say that the debt swap  
14 effectively removed any risk for the original long-term lenders in terms of the loan that  
15 they made?

16 **MR. JOHN TRAIANOPOULOS:** My understanding is those  
17 payments made to long-term lenders are no longer linked to performance of the system,  
18 so by that logic, I would say yes.

19 Again, I have not read the full details of the debt swap, but logically,  
20 that's my understanding.

21 **MS. KATE McGRANN:** So can you help me understand then what  
22 impacts the debt swap had on the risk transfer that the City originally achieved to the  
23 long-term lenders through the use of the DBFM model on this project?

24 **MR. JOHN TRAIANOPOULOS:** So the long-term lenders, if I  
25 recall, put in \$225 million of long-term debt through a bond structure. That \$225 million  
26 is cash security from the City's perspective in the event of RTG's default.

27 So what happens is if, for example, if there is a default the City has  
28 access to that pool of funds -- the 225 million in this case plus the equity, but just the

1 debt -- to deal with any cost overruns that it has to pay for in the replacement contractor  
2 scenario.

3                   So for example, if Project Co. defaults, walks off the project, the  
4 City still has to maintain the system so it needs to find either its own forces or another  
5 maintainer to do that. And the theory is that it will likely cost more because you're  
6 bringing in somebody cold. So the 225 million in this case acts as a cushion to absorb  
7 those costs overruns in the default scenario if the lenders choose to not do anything  
8 about it, as in stepped out of the project.

9                   **MS. KATE McGRANN:** Okay. And when the City does the debt  
10 swap what impact does that have on the \$225 million cushion that was created by the  
11 use of the private financing?

12                   **MR. JOHN TRAIANOPOULOS:** My understanding is the 225 is no  
13 longer at risk in this scenario. But I also understand that the City was able to obtain  
14 some of the security packages directly that the lenders did have in their favour. So it's  
15 not like they have nothing; they do still have the equity and the forms of security that  
16 were given in favour of the lenders. That's not transitioned as I believe, as I  
17 understand, to the City. But they've lost the cash, the cash cushion, the 225 liquid cash  
18 that's at risk.

19                   **MS. KATE McGRANN:** Okay. And in terms of the protections that  
20 you just described, the equity and things like that, those were also available to the long-  
21 term lenders, right?

22                   **MR. JOHN TRAIANOPOULOS:** Yes.

23                   **MS. KATE McGRANN:** So the City has basically accepted the  
24 same amount of risk that the long-term lenders had originally accepted.

25                   **MR. JOHN TRAIANOPOULOS:** Exactly. They put themselves in  
26 the shoes of long-term lenders.

27                   **MS. KATE McGRANN:** Yeah. So they're taking risk back that  
28 they had transferred through the use of the private financing?

1                   **MR. JOHN TRAIANOPOULOS:** They're taking the risk that would  
2 have been transferred to the long-term lenders. They're taking that back and in  
3 exchange they're getting all the rights and remedies that those lenders were also  
4 getting. That's my understanding of how it works.

5                   **MS. KATE McGRANN:** And the City also loses the loss of the  
6 long-term lender oversight of the project?

7                   **MR. JOHN TRAIANOPOULOS:** They do. They lose the  
8 independent oversight of the long-term lenders. I think that's a fair way to say it. That's  
9 again my understanding. I will say, just to add if I may -- my understanding is that they  
10 are able to refinance that debt if they want to down the road, so they may at one point  
11 choose to bring in long-term lenders again. So I should have mentioned that's  
12 something they could do to get it back. But currently my understanding is that they've  
13 lost that 225 at risk and that independent long-term oversight.

14                   **MS. KATE McGRANN:** And then during your Commission  
15 interview you also agreed that the loss of -- regards this debt swap, meant that there's a  
16 loss of the lenders as a potential moderating influence that may operate to the benefit of  
17 the project.

18                   **MR. JOHN TRAIANOPOULOS:** Yes. I mean, they're a third party  
19 who has a financial interest in the project and its success so yes, that's what I was  
20 talking about.

21                   **MS. KATE McGRANN:** Is it fair to say that the debt swap  
22 changed the relationships that were established by the Design Build Finance Maintain  
23 model that the parties agreed to when they entered into the Project Agreement?

24                   **MR. JOHN TRAIANOPOULOS:** It removed the significant  
25 stakeholder from the relationship so by that, by removing the stakeholder I think it does  
26 change some of the dynamics.

27                   **MS. KATE McGRANN:** And I mean, but I may be more specific  
28 and give you an example. Is it fair to say that when RTG entered into the Project

1 Agreement, it was not agreeing that the City could have the rights and remedies that are  
2 available to the long-term lenders?

3 **MR. JOHN TRAIANOPOULOS:** It was not aware of that solution  
4 at the time, no.

5 **MS. KATE McGRANN:** Is it fair to say that the debt swap  
6 provided the City with leverage over RTG that it didn't have before?

7 **MR. JOHN TRAIANOPOULOS:** I would say to the extent that the  
8 lenders, the lending agreements afforded rights for the lenders to have leverage, as you  
9 say. Then those rights would transfer to the City. So from that perspective I think that's  
10 fair.

11 **MS. KATE McGRANN:** And I wonder what you'd say to this. I'm  
12 going to suggest to you that if this option had been explicitly set out and all the  
13 proponents were aware that a debt swap was possible down the road, that may have  
14 affected the bids that the City received in response to the RFP.

15 **MR. JOHN TRAIANOPOULOS:** It may have. We never tested it.

16 **MS. KATE McGRANN:** Do you think it would raise any concerns  
17 about whether the bidders would actual bid on the project?

18 **MR. JOHN TRAIANOPOULOS:** I don't know. There's -- I don't  
19 know. There's still a lucrative construction, maintenance, and equity contract so it may  
20 be an influence but there still might be enough appetite from vendors to still chase the  
21 project even with the debt swap in. I don't have a firm opinion about that. It may be.

22 **MS. KATE McGRANN:** It would raise concerns about the cost or  
23 the contents of the bids that would be submitted in response to an RFP like that?

24 **MR. JOHN TRAIANOPOULOS:** Not necessarily.

25 **MS. KATE McGRANN:** Do you think it's fair to say that it  
26 decreases the amount of predictability in terms of how the relationship will run from the  
27 perspective of the private company, Project Co.?

28 **MR. JOHN TRAIANOPOULOS:** I agree with that statement.



1                   **MS. KATE McGRANN:** In your view was the debt swap consistent  
2 with the partnership approach that IO advocated for in the Lessons Learned  
3 presentation that we just reviewed?

4                   **MR. JOHN TRAIANOPOULOS:** I don't think it's a major factor in  
5 the partnership. There's still a partnership between RTG and the City. So when it  
6 comes to the day-to-day practical management of the system, it doesn't necessarily  
7 change that. There's still a system to deliver. There's still the same people on the  
8 ground because the maintenance co. and the Project Co. and the City. So I don't know  
9 if it has that practical of an impact on the day to day.

10                  **MS. KATE McGRANN:** Well, they're still the same people on the  
11 ground but you've agreed with me that the relationship dynamic has changed and that  
12 the City now has more leverage over RTG than it had before, right?

13                  **MR. JOHN TRAIANOPOULOS:** The contractual relationship has  
14 changed and the remedies have changed, yes, agreed.

15                  **MS. KATE McGRANN:** And in your Commission interview you  
16 said:

17    "It's fair to say that some of the Ottawa experience  
18    and what we know about it and have heard about it  
19    prompted us..."

20    And that's IO.

21    "...to do more and get more clear on system  
22    extensions especially in respect of financing." (As  
23    read)

24    Do you remember saying that?

25                  **MR. JOHN TRAIANOPOULOS:** I do.

26                  **MS. KATE McGRANN:** When you said in that answer that some  
27 of the Ottawa experience and what we know about it and have heard about it -- what  
28 have you heard about the Ottawa experience that prompted IO to get more clear on

1 systems expansion with respect to financing?

2 **MR. JOHN TRAIANOPOULOS:** I've heard that getting system  
3 expansion done was tough. I've heard that some negotiations with the lenders, in the  
4 early days of it at least were challenging. And I've heard and I recall that there wasn't  
5 very clear articulation in the Project Agreement about exactly what would happen in the  
6 system extensions. So I was reflecting on, as a lesson learned, that we could adopt to  
7 clarify exactly how a system extension would work in respect of lending which we've  
8 done now in other projects. That's what I was -- I think that's what I was referring to.

9 **MS. KATE McGRANN:** And to your knowledge has IO received  
10 any feedback from the market concerned about the debt swap and the potential for that  
11 happening on future projects?

12 **MR. JOHN TRAIANOPOULOS:** Some. There's been some  
13 commentary made to IO that it's sort of not in the spirit of the model and why did that  
14 happen. There's been some questions about that, I would say, as through the industry  
15 conversations .

16 **MS. KATE McGRANN:** And in your Commission interview, talking  
17 about the changes that Ottawa experienced prompted IO to make, you gave an  
18 example of the Hurontario LRT. And I understand that there IO outlined conditions and  
19 principles around the negotiated extension of lenders; is that right?

20 **MR. JOHN TRAIANOPOULOS:** That's right.

21 **MS. KATE McGRANN:** And you said that that's referred to as  
22 "hardwire consent"?

23 **MR. JOHN TRAIANOPOULOS:** Yes, sort of. There's a list of  
24 parameters and cost increases that we're now aware of that are just wired into the  
25 consent. So for example, we are writing in there that to the extent that lenders have a  
26 certain equity requirement in an extension, based on a number of their tests, we would  
27 honour that commitment or that requirement. So that's actually one of the major drivers  
28 of all of this is to get consent on the bigger system with more maintenance dollars

1 added you need more equity. But the key to that is just put more equity in because the  
2 equity is absorbing some of that default risk. Without more equity in, then you're left  
3 with other options like the debt swap or others to work towards. So we are hardwiring in  
4 an acknowledgement to say, "We hear you on the need for more equity. We're  
5 prepared to put that in so it's not confusing as to what happens."

6 **MS. KATE McGRANN:** And I take it that the hard-wired consent  
7 approach decreases the likelihood that a debt swap will take place on the project?

8 **MR. JOHN TRAIANOPOULOS:** I would say as long as some of  
9 those key parameters are satisfied, the true of the equity, no material adverse impacts  
10 to the lender, the confirmation of a debt service coverage ratio, all of the mechanical  
11 things that are in there, I would say that that makes it more predictable of exactly what  
12 we intend to happen. And so, just to add, the lending -- then the lenders and their legal  
13 team, from my experience, will make sure that their lending documents accommodate  
14 this.

15 **MS. KATE McGRANN:** Okay, those are my questions.

16 **COMMISSIONER HOURIGAN:** All right. We'll take the morning  
17 break. Fifteen minutes.

18 **THE REGISTRAR:** Order. All rise. The Commission will recess  
19 for 15 minutes.

20 --- Upon breaking at 10:39 a.m.

21 --- Upon resuming at 10:56 a.m.

22 **THE REGISTRAR:** Order. All rise. The Commission has  
23 resumed.

24 **(TECHNICAL ISSUES)**

25 **COMMISSIONER HOURIGAN:** All right. Let's proceed. The next  
26 party up is the City of Ottawa.

27 **MS. JULIE PARLA:** Sir, we need the host to start the witness'  
28 camera for us, please. It's Julie Parla for Infrastructure Ontario. It's Mr. Traianopoulos'

1 camera that we need permission for.

2 **COMMISSIONER HOURIGAN:** All right. Standby. Okay, we see  
3 you now. Can you hear us, sir?

4 **MR. JOHN TRAIANOPOULOS:** I can.

5 **COMMISSIONER HOURIGAN:** Okay, go ahead, counsel.

6 **MR. PETER WARDLE:** Thank you very much, Mr. Commissioner.

7 **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

8 **MR. PETER WARDLE:** Mr. Traianopoulos, I want to start, if I can,  
9 backing up a little bit to ask some questions of you regarding the DBFM model that was  
10 recommended by IO to the City of Ottawa, and as I understand it, there are a number of  
11 benefits, and I'm going to ask that we just go through them one-by-one, starting first,  
12 can we agree that risk transfer is one of the benefits of the DBFM model?

13 **MR. JOHN TRAIANOPOULOS:** I agree.

14 **MR. PETER WARDLE:** And is it fair to say that in this case, the  
15 risk transfer was important to the City because of the tunnelling activity that was going  
16 to be required?

17 **MR. JOHN TRAIANOPOULOS:** I agree with that, yes.

18 **MR. PETER WARDLE:** And the model provides that the risk  
19 should be allocated to the party best able to bear the risk, correct?

20 **MR. JOHN TRAIANOPOULOS:** That's the principle, yes.

21 **MR. PETER WARDLE:** And in this case, that was clearly the  
22 successful proponent, assuming they had sufficient tunnelling expertise, would you  
23 agree?

24 **MR. JOHN TRAIANOPOULOS:** I agree.

25 **MR. PETER WARDLE:** And just very briefly talking about the  
26 geotechnical risk ladder, this was an innovation which, as I understand it, was finalized  
27 in the in-market period during the procurement?

28 **MR. JOHN TRAIANOPOULOS:** Yes, that's right.

1                   **MR. PETER WARDLE:** And that means for Mr. Commissioner that  
2 there were communications with the bidders throughout as this requirement was being  
3 finalized, correct?

4                   **MR. JOHN TRAIANOPOULOS:** Yes.

5                   **MR. PETER WARDLE:** And the bidders had an opportunity to  
6 raise any concerns they had about the geotechnical risk ladder, and communicate that  
7 to the procurement team?

8                   **MR. JOHN TRAIANOPOULOS:** Yes, through RFIs or CCMs.

9                   **MR. PETER WARDLE:** And as I understand it, there was a net  
10 present value credit if the bidder took on maximum geotechnical risk, correct?

11                   **MR. JOHN TRAIANOPOULOS:** Correct. \$80 million, I believe.

12                   **MR. PETER WARDLE:** But the bidder could also choose to leave  
13 that risk with the City.

14                   **MR. JOHN TRAIANOPOULOS:** It could.

15                   **MR. PETER WARDLE:** That's the whole reason why it was called  
16 the risk ladder, right?

17                   **MR. JOHN TRAIANOPOULOS:** Exactly.

18                   **MR. PETER WARDLE:** And there's no doubt, is there, that  
19 everybody was treated the same?

20                   **MR. JOHN TRAIANOPOULOS:** Yes.

21                   **MR. PETER WARDLE:** And clearly, the bidders would have  
22 understood that the City had a preference to transfer as much geotechnical risk as  
23 possible?

24                   **MR. JOHN TRAIANOPOULOS:** That was clear.

25                   **MR. PETER WARDLE:** And I'm just going to suggest to you that  
26 from the City's perspective, its approach was, we don't know what every bidder's risk  
27 appetite is. Let's put out an option to see what they do and reward those who take  
28 more of a risk; is that fair?

1                   **MR. JOHN TRAIANOPOULOS:** Fair, with the addition that we  
2 were also wondering if the lenders would be okay with the geotech risks. So, it provided  
3 for protection against the lenders being part of the bid as well.

4                   **MR. PETER WARDLE:** Right. And ultimately, the lenders in this  
5 case were comfortable that the proponents took on that level of geotechnical risk, right?

6                   **MR. JOHN TRAIANOPOULOS:** They were with fully committed  
7 financing.

8                   **MR. PETER WARDLE:** And as I understand it, all three  
9 proponents took the highest level of risk in the risk ladder; is that correct?

10                  **MR. JOHN TRAIANOPOULOS:** They did.

11                  **MR. PETER WARDLE:** So, now I want to deal with the second --  
12 what I'm going to suggest to you is the second benefit of the DBFM model, and that is  
13 price certainty, correct?

14                  **MR. JOHN TRAIANOPOULOS:** Correct.

15                  **MR. PETER WARDLE:** And we've already heard from you that  
16 price certainty was very important to the City of Ottawa?

17                  **MR. JOHN TRAIANOPOULOS:** It was.

18                  **MR. PETER WARDLE:** And there were various reasons for that.  
19 I'm going to suggest one of the reasons was the fact that contributions from the federal  
20 government and the province had been capped at a specific amount, so the City and  
21 taxpayers were at risk for any overruns?

22                  **MR. JOHN TRAIANOPOULOS:** That's my understanding of those  
23 agreements.

24                  **MR. PETER WARDLE:** And the City, from your perspective, from  
25 what you heard at the time, the City did not have an unlimited budget for this project?

26                  **MR. JOHN TRAIANOPOULOS:** I don't think they did, no.

27                  **MR. PETER WARDLE:** And that's not unusual in the municipal  
28 sphere, I'm going to suggest.

1                   **MR. JOHN TRAIANOPOULOS:** Not unusual at all.

2                   **MR. PETER WARDLE:** And they had taken a number of steps to  
3 keep the costs of the project within certain parameters, for example, the shallowing of  
4 the tunnel, right?

5                   **MR. JOHN TRAIANOPOULOS:** I recall some specific technical  
6 work that was done for sure, yes.

7                   **MR. PETER WARDLE:** And again, it's not surprising that a  
8 municipality would have financial constraints, and would you agree that it would only be  
9 responsible for the City to be concerned about costs?

10                  **MR. JOHN TRAIANOPOULOS:** Yes.

11                  **MR. PETER WARDLE:** And in the end, the City's concerns were  
12 translated into the affordability cap, is that not fair?

13                  **MR. JOHN TRAIANOPOULOS:** Yes, they were.

14                  **MR. PETER WARDLE:** And I think you told my friend, Ms.  
15 McGrann that the RFP gave the City some ability to reconsider its budget if it turned out  
16 that bidders did not meet the affordability cap. Is that correct?

17                  **MR. JOHN TRAIANOPOULOS:** Yes, there were reserve rights in  
18 the RFP to still allow for evaluation to continue and have a score and a rank, and then  
19 afforded the City some rights to decide to do about an overage later.

20                  **MR. PETER WARDLE:** So if, for example, all of the bidders came  
21 in above the affordability, the City still had the ability to choose the lowest-ranked  
22 proponent, correct?

23                  **MR. JOHN TRAIANOPOULOS:** They did.

24                  **MR. PETER WARDLE:** And they also had the right to go back to  
25 the drawing board, as I understand of the RFP.

26                  **MR. JOHN TRAIANOPOULOS:** I agree with that, very broad  
27 reserved rights, I believe.

28                  **MR. PETER WARDLE:** And I think you've said that two of the

1 proponents came in under the affordability cap, correct?

2 **MR. JOHN TRAIANOPOULOS:** That's what I recall.

3 **MR. PETER WARDLE:** Now, it was suggested to you that there  
4 could be a technical bid that came in above the cap but would not be chosen if there  
5 were proponents who came in below the affordability cap. Do you recall that.

6 **MR. JOHN TRAIANOPOULOS:** Yes.

7 **MR. PETER WARDLE:** But can we agree, Mr. Traianopoulos,  
8 that's not what happened?

9 **MR. JOHN TRAIANOPOULOS:** That's not what happened. In  
10 fact, I believe RTG scored first on technical and financial.

11 **MR. PETER WARDLE:** Okay. So -- so the concern my friend, Ms.  
12 McGrann, is highly hypothetical, isn't it, given what took place on this project?

13 **MR. JOHN TRAIANOPOULOS:** Given what took place, and the fact  
14 that RTG scored first on all measures, yes.

15 **MR. PETER WARDLE:** And would you agree that the fact the two  
16 proponents came in under the affordability cap demonstrated that the budget for this  
17 project was realistic? Is that fair statement?

18 **MR. JOHN TRAIANOPOULOS:** It demonstrates to me that many  
19 people -- many experienced people in the industry, through contractors, lenders,  
20 advisors, all the people looking at the numbers, had enough confidence to submit them  
21 forward to the city.

22 **MR. PETER WARDLE:** And I'm just going to come to that now  
23 because I wanted to take you to the third benefit of the DBFM model. And that's third-  
24 party lender financing, correct?

25 **MR. JOHN TRAIANOPOULOS:** Yes.

26 **MR. PETER WARDLE:** And, in this case, that ended up being a  
27 construction -- a consortium of lenders who paid -- who put up long-term debt of  
28 approximately \$225M, correct?



1                   **MR. JOHN TRAIANOPOULOS:** There were also short-term  
2 lenders, but long-term lenders as well, yes.

3                   **MR. PETER WARDLE:** And that brought another party to the table  
4 to provide some independence and some due diligence during the procurement period  
5 to make sure the project was viable and the budget was adequate. Is that not fair?

6                   **MR. JOHN TRAIANOPOULOS:** That's fair.

7                   **MR. PETER WARDLE:** Okay. And -- and so at contract award,  
8 the owner had the comfort of knowing that a third party, or third parties in this case, the  
9 long-term lenders, had reviewed the construction and design proposal of the  
10 consortium, correct?

11                  **MR. JOHN TRAIANOPOULOS:** They do, as well as their advisors.

12                  **MR. PETER WARDLE:** Okay, and satisfy themselves that that --  
13 that their plans were realistic?

14                  **MR. JOHN TRAIANOPOULOS:** Their plans, their price, their  
15 solution was realistic.

16                  **MR. PETER WARDLE:** Okay. And would agree with me, sir, that  
17 there were a lot of eyes on the proposal at this stage during the procurement process?

18                  **MR. JOHN TRAIANOPOULOS:** There are a lot of eyes on the  
19 proposal.

20                  **MR. PETER WARDLE:** So there's the City's eyes, the City and its  
21 financial advisors, and it's technical advisors, correct?

22                  **MR. JOHN TRAIANOPOULOS:** Correct.

23                  **MR. PETER WARDLE:** Then there's the proponent itself, in this  
24 case, RTG?

25                  **MR. JOHN TRAIANOPOULOS:** Correct.

26                  **MR. PETER WARDLE:** And we've heard that he participants in the  
27 RTG were -- RTG itself was a special-purpose vehicle, obviously, correct?

28                  **MR. JOHN TRAIANOPOULOS:** Correct.

1                   **MR. PETER WARDLE:** But at the dropdown level of OLRTC, we  
2 have three very large construction and engineering companies, correct?

3                   **MR. JOHN TRAIANOPOULOS:** We do.

4                   **MR. PETER WARDLE:** And we also have the maintainer who's a  
5 separate legal entity from the construction -- from the constructor, correct?

6                   **MR. JOHN TRAIANOPOULOS:** Yes, they are separate.

7                   **MR. PETER WARDLE:** And then we have the long-term lenders  
8 that you've talked about, correct?

9                   **MR. JOHN TRAIANOPOULOS:** Correct.

10                  **MR. PETER WARDLE:** And then we have short-term lenders.

11                  **MR. JOHN TRAIANOPOULOS:** Correct.

12                  **MR. PETER WARDLE:** And all of those people have technical and  
13 financial advisors, correct?

14                  **MR. JOHN TRAIANOPOULOS:** Correct.

15                  **MR. PETER WARDLE:** And many of those people have  
16 participated in other P3 projects, maybe not exactly like Ottawa but many P3 projects of  
17 this magnitude. Is that not fair?

18                  **MR. JOHN TRAIANOPOULOS:** The lenders put forward were  
19 very familiar to us in the program, yes.

20                  **MR. PETER WARDLE:** Okay. And doesn't that oversight my all  
21 these eyes, Mr. Traianopoulos, guard against any kind of optimism bias by the  
22 contractor in its bid proposal?

23                  **MR. JOHN TRAIANOPOULOS:** I think it largely does. There's  
24 many people involved -- governance, boards, management oversight -- so I would think  
25 a responsible company in its governance would put forward a submission it could stand  
26 behind.

27                  **MR. PETER WARDLE:** Okay. And then, if we go to the fourth  
28 benefit, which you talked a little bit about, of DBFM, it's the fact that you integrate the

1 design and the maintenance, right?

2 **MR. JOHN TRAIANOPOULOS:** Yes.

3 **MR. PETER WARDLE:** And the design team works with the build  
4 team and the maintenance team to optimize the design for the 30-year period, right?

5 **MR. JOHN TRAIANOPOULOS:** Yes, I talked about it in terms of  
6 whole-life costing and optimization. Yes, that's fair.

7 **MR. PETER WARDLE:** And so you -- just from the proponent's  
8 point of you, I'm going to suggest that you invest more money up front and you get  
9 years of -- sorry, from the City's point of view, you invest more up front and you get  
10 years of maintenance and energy savings, correct?

11 **MR. JOHN TRAIANOPOULOS:** You could, yes.

12 **MR. PETER WARDLE:** Okay. And my friend, Ms. McGrann,  
13 suggested to you that the affordability cap wasn't based on a whole life analysis, but  
14 you indicated that the MPV value used for evaluating the bids was based on a whole life  
15 analysis, correct?

16 **MR. JOHN TRAIANOPOULOS:** It was. It pulled from all payments  
17 the City made for all the costs in the project.

18 **MR. PETER WARDLE:** Lastly, could I suggest another benefit for  
19 the City, as compared to the traditional design-bid-build model, was the fact that it could  
20 look to single point of responsibility. Is that fair?

21 **MR. JOHN TRAIANOPOULOS:** That's fair.

22 **MR. PETER WARDLE:** And I'm -- I'm just going to just quote very  
23 briefly. I won't pull it up in the interests of time. This is from a report from Ms. Schepers  
24 to Council in May of 2011. And I'll just read this one sentence to you, Mr.  
25 Traianopoulos:

26 "There can be no blame by a contractor on  
27 inadequate design. They are responsible for  
28 completing the project design as well as the

1 construction start-up and commissioning the system.”

2 (As read).

3 And do you agree with that statement in relation to the DBFM  
4 model?

5 **MR. JOHN TRAIANOPOULOS:** I agree with it.

6 **MR. PETER WARDLE:** And there's no question, is there, that  
7 Infrastructure Ontario recommended the DBFM model to the City of Ottawa?

8 **MR. JOHN TRAIANOPOULOS:** We did.

9 **MR. PETER WARDLE:** Okay. And you saw your role as providing  
10 the very best commercial procurement structuring advice you could give to the City of  
11 Ottawa? Is that fair?

12 **MR. JOHN TRAIANOPOULOS:** That's fair.

13 **MR. PETER WARDLE:** And you have a -- I'm going to suggest  
14 your organization had a professional obligation to get the very best project agreement,  
15 and the very best terms you could get, and to get financed properly.

16 **MR. JOHN TRAIANOPOULOS:** Yes.

17 **MR. PETER WARDLE:** And your role, in some respects, was  
18 parallel to a similar advisory role played by Deloitte since providing financial advice to  
19 the City?

20 **MR. JOHN TRAIANOPOULOS:** Yes, we worked very closely with  
21 Deloitte.

22 **MR. PETER WARDLE:** And you reviewed -- you did your own  
23 value-for-money analysis, correct?

24 **MR. JOHN TRAIANOPOULOS:** We did.

25 **MR. PETER WARDLE:** And you also reviewed Deloitte's value-for-  
26 money analysis?

27 **MR. JOHN TRAIANOPOULOS:** I recall reviewing it, yes, at one  
28 point.

1                   **MR. PETER WARDLE:** And you satisfied yourselves that the  
2 model would have financial benefits to the City largely because of the risk transfer?

3                   **MR. JOHN TRAIANOPOULOS:** We did. I did, yes.

4                   **MR. PETER WARDLE:** Is it also the case, sir, that you found the  
5 City staff you dealt with on the financial side to be very competent and commercially  
6 reasonable people?

7                   **MR. JOHN TRAIANOPOULOS:** Yes, for sure.

8                   **MR. PETER WARDLE:** And that included Mona Monkman, the  
9 Deputy City Treasurer who you dealt with directly during this process?

10                  **MR. JOHN TRAIANOPOULOS:** Yes, I really enjoyed working with  
11 and -- with Mona, for sure.

12                  **MR. PETER WARDLE:** And there -- during the financial evaluation  
13 of the bids, there was a compliance check, correct?

14                  **MR. JOHN TRAIANOPOULOS:** There were compliance checks  
15 for both the technical and financial submissions, yes.

16                  **MR. PETER WARDLE:** And was -- you know, that compliance  
17 check was, does the financial model put forward by the proponents have any issues or  
18 errors we need to flag?

19                  **MR. JOHN TRAIANOPOULOS:** It was a broad compliance check  
20 against certain RFP submission requirements and parameters we outlined, and we  
21 were just checking to make sure they complied with those parameters, including the  
22 inputs that feed into the financial model.

23                  **MR. PETER WARDLE:** And your -- the procurement team's  
24 analysis of the RTG bid, there were no red flags, correct?

25                  **MR. JOHN TRAIANOPOULOS:** There were no material non-  
26 compliances. There were a couple of questions we asked of RTG through the RFC  
27 process, and the responses were satisfactory.

28                  **MR. PETER WARDLE:** I'm going to turn to ask some questions

1 about the payment mechanism, and I just want to start with the concept of a bedding in  
2 period. So, first of all, maybe you can just help me with this, you've been in other --  
3 there are other projects that IO has been involved in where there is some contemplation  
4 of a bedding in period in connection with the payment mechanism.

5 **MR. JOHN TRAIANOPOULOS:** There are some.

6 **MR. PETER WARDLE:** And as I understand it, your evidence was  
7 that it lessens some deductions, but not all deductions, correct?

8 **MR. JOHN TRAIANOPOULOS:** Correct.

9 **MR. PETER WARDLE:** And I think what you said was the vast  
10 majority of the deductions apply?

11 **MR. JOHN TRAIANOPOULOS:** Correct.

12 **MR. PETER WARDLE:** Is that fair?

13 **MR. JOHN TRAIANOPOULOS:** That's fair.

14 **MR. PETER WARDLE:** And here, in this case, there were  
15 discussions about a bedding in period during the procurement period internally with the  
16 City, but I suspect also with the bidders, correct?

17 **MR. JOHN TRAIANOPOULOS:** Correct.

18 **MR. PETER WARDLE:** And on the City's side, I think what I  
19 understand your evidence to be was that there were discussions that you participated  
20 in?

21 **MR. JOHN TRAIANOPOULOS:** There were as an output of some  
22 of the bidder feedback. As I said earlier, we take that feedback seriously and we raised  
23 it up to the various governance committees within the City's -- within the project  
24 structure.

25 **MR. PETER WARDLE:** And the City had a view that the system  
26 should be operating fully on Day One, and that it was important that it be fully opened,  
27 correct?

28 **MR. JOHN TRAIANOPOULOS:** That's my recollection of a

1 meeting several years ago, yes.

2 **MR. PETER WARDLE:** Okay. And this ultimately was solved not  
3 by the City imposing some requirement on Infrastructure Ontario as procurement lead, it  
4 was solved by consensus; is that fair?

5 **MR. JOHN TRAIANOPOULOS:** That's fair. It was more of a  
6 working group recommendation, discussion, collaborative discussion, yes.

7 **MR. PETER WARDLE:** And the part of this discussion that my  
8 friend did not take you to is the interactions with the proponents, and I'm going to  
9 suggest to you that the proponents had the ability to raise any concerns they had about  
10 the payment mechanism period, not including a bedding in period, correct?

11 **MR. JOHN TRAIANOPOULOS:** They had opportunities through  
12 CCMs and RFIs, absolutely.

13 **MR. PETER WARDLE:** Okay. And at the end of the day, the  
14 proponents went into the bidding process eyes wide open knowing that there was no  
15 bedding in period provided in the payment mechanism.

16 **MR. JOHN TRAIANOPOULOS:** They knew that. Yeah.

17 **MR. PETER WARDLE:** And we shouldn't feel very sorry for them,  
18 should we, Mr. Traianopoulos?

19 **MR. JOHN TRAIANOPOULOS:** They -- they ---

20 **COMMISSIONER HOURIGAN:** Can you repeat that question,  
21 please?

22 **MR. PETER WARDLE:** I said, Mr. Commissioner, we shouldn't  
23 feel very sorry for those proponents.

24 **COMMISSIONER HOURIGAN:** All right. You can answer that if  
25 you'd like. Go ahead.

26 **MR. JOHN TRAIANOPOULOS:** They knew what they were  
27 bidding to.

28 **MR. PETER WARDLE:** And they were very, very sophisticated

1 parties, all of them, correct?

2 **MR. JOHN TRAIANOPOULOS:** That's my sense.

3 **MR. PETER WARDLE:** Okay. Let me just talk briefly about -- with  
4 you about the enforcement of the payment mechanism. So, first of all, at the end of the  
5 day, the payment mechanism is a provision of the project agreement that is subject to  
6 interpretation, correct?

7 **MR. JOHN TRAIANOPOULOS:** I would say the underlying  
8 performance standards that underpin the payment mechanism could be subject to  
9 interpretation.

10 **MR. PETER WARDLE:** And the -- you said at one point that IO  
11 encourages owners to enforce the payment mechanism, and I take it what you meant  
12 by that, Mr. Traianopoulos, is that when there is an issue in the maintenance period, so  
13 for example, the trains are not running and the problems with the trains not running are  
14 clearly the responsibility of the maintainer and their subcontractors, the City's primary  
15 remedy in that situation is to look to the payment mechanism; is that not fair?

16 **MR. JOHN TRAIANOPOULOS:** That's fair.

17 **MR. PETER WARDLE:** And apply those deductions?

18 **MR. JOHN TRAIANOPOULOS:** Yes. Right.

19 **MR. PETER WARDLE:** And, in fact, the City's -- the whole  
20 arrangement is designed from the outset to ensure that the owner has access to that  
21 mechanism if problems develop that are clearly the responsibility of the maintainer.

22 **MR. JOHN TRAIANOPOULOS:** I think you summarized it well.  
23 Yes, agreed.

24 **MR. PETER WARDLE:** All right. And, obviously, the owner has to  
25 be reasonable in enforcing the payment mechanism, and you've said that, correct?

26 **MR. JOHN TRAIANOPOULOS:** Correct.

27 **MR. PETER WARDLE:** But at the end of the day, if there are  
28 problems that develop of a serious nature, the owner has to go back and look at its



1 obligations -- sorry, and look at its remedies under the project agreement, including the  
2 payment mechanism, fair?

3 **MR. JOHN TRAIANOPOULOS:** Fair.

4 **MR. PETER WARDLE:** Okay. Now, could we speak briefly about  
5 the debt swap? So, first of all, I'm going to suggest that any discussions you may have  
6 been involved in, in relation to the debt swap, would have taken place likely in 2016 or  
7 2017; does that seem fair?

8 **MR. JOHN TRAIANOPOULOS:** There was early brainstorming  
9 about potential options to deal with consent. I was part of those early brainstorming  
10 sessions in 2016, yeah.

11 **MR. PETER WARDLE:** And the brainstorming sessions involved a  
12 number of advisors to the City?

13 **MR. JOHN TRAIANOPOULOS:** Correct.

14 **MR. PETER WARDLE:** And this was in relation to Stage 2, and the  
15 need to include RTM as a maintainer, and to have the vehicles for Stage 2 provided by  
16 RTG, correct?

17 **MR. JOHN TRAIANOPOULOS:** Correct.

18 **MR. PETER WARDLE:** And the issue was that this created more  
19 risk to the existing long-term lenders, and so, some kind of accommodation was needed  
20 with that?

21 **MR. JOHN TRAIANOPOULOS:** Yes. They have consent rights on  
22 any material change to the project, including this one.

23 **MR. PETER WARDLE:** And you've been very fair to point out that  
24 this hadn't been contemplated in the project agreement at the outset. And so, you  
25 know, IO has learned from that experience and on projects like Hurontario, those kinds  
26 of provisions have been built in, correct?

27 **MR. JOHN TRAIANOPOULOS:** They have.

28 **MR. PETER WARDLE:** But in the experience in Ottawa, which

1 was the first -- you know, one of the first LRT projects in the province procured through  
2 a P3, that just wasn't contemplated in the project agreement expressly, correct?

3 **MR. JOHN TRAIANOPOULOS:** It was not.

4 **MR. PETER WARDLE:** Okay. And the first thing I want to just  
5 make sure the Commissioner understands about the debt swap is that it has nothing to  
6 do with the short-term lenders, correct?

7 **MR. JOHN TRAIANOPOULOS:** That's what I understand.

8 **MR. PETER WARDLE:** So, the short-term lenders continue to be  
9 involved and be at the table until revenue service availability when they get paid out.

10 **MR. JOHN TRAIANOPOULOS:** That's right.

11 **MR. PETER WARDLE:** So, to the extent there is independent  
12 oversight provided by outside lenders, the short-term lenders are there at the table until  
13 RSA is achieved, correct?

14 **MR. JOHN TRAIANOPOULOS:** That's my understanding.

15 **MR. PETER WARDLE:** And then just thinking a little bit about the  
16 City's dilemma at the time, and I'm going to put it to you that there was a dilemma, and  
17 the dilemma was that the City needed to proceed with Stage 2, correct?

18 **MR. JOHN TRAIANOPOULOS:** Correct.

19 **MR. PETER WARDLE:** So, they needed to get the -- some  
20 accommodation from the long-term lenders in order to do so, right?

21 **MR. JOHN TRAIANOPOULOS:** Yes, they did.

22 **MR. PETER WARDLE:** And there was no explicit mechanism in  
23 the project agreement that allowed that to be the case, correct?

24 **MR. JOHN TRAIANOPOULOS:** Correct.

25 **MR. PETER WARDLE:** And as a result, the City and its advisors  
26 had to engage in some brainstorming to come up with innovative solutions to this  
27 problem?

28 **MR. JOHN TRAIANOPOULOS:** Yes.

1                   **MR. PETER WARDLE:** And I'm going to suggest to you that there  
2 were a number of options that were considered, and you may not know about all of  
3 them but you can tell me about the ones that you do know about.

4                   So one of the options was put up more equity to get lender  
5 consent?

6                   **MR. JOHN TRAIANOPOULOS:** It was one of the options, yes.

7                   **MR. PETER WARDLE:** Creating some kind of a reserve fund was  
8 one of the options considered?

9                   **MR. JOHN TRAIANOPOULOS:** Yes, I think we called it an owner  
10 reserve.

11                  **MR. PETER WARDLE:** Ring fencing the existing lenders' consent -  
12 - sorry, risk?

13                  **MR. JOHN TRAIANOPOULOS:** Yes, ring fencing the two  
14 maintenance scopes somehow, m'hm. Yeah.

15                  **MR. PETER WARDLE:** And do you recall that that turned out to be  
16 not a very feasible solution?

17                  **MR. JOHN TRAIANOPOULOS:** It didn't seem practically and  
18 technically feasible to have one system in two -- the contractual breaking point between  
19 two maintainers and all the finger pointing that would happen with it.

20                  **MR. PETER WARDLE:** All right. And then the other possible  
21 mechanism was to just pay out the long-term lenders?

22                  **MR. JOHN TRAIANOPOULOS:** Yes, the -- you could retire the  
23 debt and pay the make whole and move on, yes.

24                  **MR. PETER WARDLE:** And so I really -- you're anticipating the  
25 make whole payment required the City to pay now all the interest it would have had to  
26 pay over that 30-year maintenance term, with some adjustments, correct?

27                  **MR. JOHN TRAIANOPOULOS:** Yeah. It's very technical, but  
28 there's a calculation of present value of debt payments that taken into account, so yes.

1                   **MR. PETER WARDLE:** But it would be -- how shall I put it -- it  
2 would be not a particularly attractive financial option for the City of Ottawa, correct?

3                   **MR. JOHN TRAIANOPOULOS:** It would cost the City of Ottawa  
4 some money upfront to pay for that. Similar to how you break a mortgage, you have to  
5 pay a breakage, so to speak. We call it make whole, but it's similar in concept to  
6 breaking your fixed mortgage.

7                   **MR. PETER WARDLE:** So could I call it a kind of a premium that  
8 the City would want to pay in order to break that long-term lending arrangement?

9                   **MR. JOHN TRAIANOPOULOS:** Yes.

10                  **MR. PETER WARDLE:** Okay. And -- but that is an option that's  
11 contemplated by the project agreement and the credit agreement; is that not right?

12                  **MR. JOHN TRAIANOPOULOS:** I believe debt is callable in that  
13 sense, where you can retire debt.

14                  **MR. PETER WARDLE:** So the project agreement itself  
15 contemplated that the City of Ottawa could remove the long-term lenders at any time as  
16 long as they paid that premium?

17                  **MR. JOHN TRAIANOPOULOS:** I -- apologies. I don't recall if it's  
18 explicit in the project agreement like that or if it's in the credit terms.

19                         The project agreement for sure allows the City to retire, to take out,  
20 or terminate the project agreement and pay the consequences of termination. '

21                         I can't recall if there was explicit language around just taking out the  
22 debt or maybe ---

23                  **MR. PETER WARDLE:** All right. So there was a nuclear option  
24 that would involve terminating the project agreement and then paying out the long-term  
25 lenders?

26                  **MR. JOHN TRAIANOPOULOS:** Yes.

27                  **MR. PETER WARDLE:** Okay. But for the reasons we've  
28 discussed, none of these options were really palatable to the City of Ottawa for

1 essentially commercial reasons, correct?

2 **MR. JOHN TRAIANOPOULOS:** Commercial and financial  
3 reasons, I think is the fair summary.

4 **MR. PETER WARDLE:** And that led to the decision. And I know  
5 you weren't directly involved in the decision to make the debt swap, correct?

6 **MR. JOHN TRAIANOPOULOS:** That's what I understand, yes.

7 **MR. PETER WARDLE:** And your concern that you've articulated  
8 today about the debt swap, as I understand it, is really twofold.

9 And first, the fact that the City loses the cash that is at risk in the  
10 event of a default by Project Co., correct?

11 **MR. JOHN TRAIANOPOULOS:** Yes.

12 **MR. PETER WARDLE:** Okay. And you would agree that that was  
13 a financial decision for the City to evaluate ---

14 **MR. JOHN TRAIANOPOULOS:** It was for sure.

15 **MR. PETER WARDLE:** --- in the context of the planned expansion  
16 of Stage 2 and all the costs and benefits that we've looked at over the last 10 minutes  
17 with respect to what to do about this problem, the long-term lenders, correct?

18 **MR. JOHN TRAIANOPOULOS:** Yes, correct.

19 **MR. PETER WARDLE:** Okay. And the second issue you referred  
20 to is that once the long-term lenders are gone, you don't have that third-party oversight,  
21 correct?

22 **MR. JOHN TRAIANOPOULOS:** From lenders, correct.

23 **MR. PETER WARDLE:** Okay. But in fact, much of the theoretical  
24 benefits of long-term lender oversight, as we've already discussed, take place at the  
25 end of the procurement period when the owner is satisfied that there are independent  
26 lenders who have looked at the project and at all the risks and benefits, and are  
27 prepared to put their money up, right?

28 **MR. JOHN TRAIANOPOULOS:** I would say there's still some

1 oversight in the maintenance term, for example, looking at the life cycle budget and its  
2 adequacy, looking at hand back requirements in year 30 to make sure that that Project  
3 Co.'s asset -- sorry, the City's asset is working well and there won't be, you know, a bad  
4 handover on a failing asset.

5 So there's still some, but I'd say the -- I think it's fair to say the  
6 majority of benefits are realized through the procurement and construction.

7 **MR. PETER WARDLE:** And five years into this project since the  
8 debt swap took place in 2017, you know, it -- the City could assess whether it still  
9 required third-party long-term lender oversight, correct?

10 **MR. JOHN TRAIANOPOULOS:** Of course.

11 **MR. PETER WARDLE:** And at the end of the day, this was a  
12 commercial decision, I'm going to suggest, Mr. Traianopoulos, for the City to make in  
13 connection with Stage 2.

14 **MR. JOHN TRAIANOPOULOS:** It was absolutely their commercial  
15 decision, yes.

16 **MR. PETER WARDLE:** And you weren't concerned at any time at  
17 the time -- and I know you weren't involved directly in the decision making about this  
18 creating some kind of power imbalance between the City of Ottawa and the consortium?

19 **MR. JOHN TRAIANOPOULOS:** That didn't cross my mind, no.

20 **MR. PETER WARDLE:** In fact, it's kind of nonsensical, isn't it, to  
21 think of a power imbalance between the municipality and three of the largest contractors  
22 in the country, one of which was one of the largest contracting company in the world?  
23 Do you agree with that statement?

24 **MR. JOHN TRAIANOPOULOS:** What I said earlier was, the City  
25 was afforded certain rights that it didn't have, so I guess from that perspective, there is  
26 some extra rights they didn't have before, being now a lender.

27 I can't -- I don't know if it's -- what your words were around it, it  
28 being ---

1                   **MR. PETER WARDLE:** But -- and you -- you haven't -- obviously,  
2 you don't know about the evidence, but we heard evidence yesterday that the City has  
3 never exercised any of these rights.

4                   **MR. JOHN TRAIANOPOULOS:** Okay. I'll take your word for it.  
5 Yeah.

6                   **MR. PETER WARDLE:** And so if the City hasn't exercised these  
7 rights from 2017 to 2022, it's hard to imagine that there's been some kind of power  
8 imbalance during that period; isn't that right?

9                   **MR. JOHN TRAIANOPOULOS:** That sounds logical, yeah.

10                  **MR. PETER WARDLE:** Thank you very much, Mr. Traianopoulos.  
11 Those are all my questions.

12                  **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel, for  
13 that.

14                   We'll have RTG up next.

15                  **MS. KARTIGA THAVARAJ:** Thank you, Mr. Commissioner.

16                   My name is Kartiga Thavaraj. For the record, that's Kartiga, K-a-r-t-  
17 i-g-a, last name, Thavaraj, T-h-a-v-a-r-a-j.

18 **--- CROSS-EXAMINATION BY MS. KARTIGA THAVARAJ:**

19                  **MS. KARTIGA THAVARAJ:** Good morning, Mr. Traianopoulos.  
20 I'm counsel for RTG, RTM, and OLRTC.

21                  **MR. JOHN TRAIANOPOULOS:** Morning.

22                  **MS. KARTIGA THAVARAJ:** You've given evidence today about  
23 the deductions provided for in the payment mechanism.

24                  **MR. JOHN TRAIANOPOULOS:** Yes.

25                  **MS. KARTIGA THAVARAJ:** And I'll just ---

26                  **COMMISSIONER HOURIGAN:** Sorry, go ahead. There was some  
27 kind of overlap.

28                  **MS. KARTIGA THAVARAJ:** Thank you, Commissioner.

1 **COMMISSIONER HOURIGAN:** You can hear counsel?

2 **MR. JOHN TRAIANOPOULOS:** Yes.

3 **COMMISSIONER HOURIGAN:** Yeah? Okay. Go ahead.

4 **MS. KARTIGA THAVARAJ:** Thank you. In your words, sir, you  
5 said that the deductions provide for issues relating to performance targets by the  
6 maintainer?

7 **MR. JOHN TRAIANOPOULOS:** Yes.

8 **MS. KARTIGA THAVARAJ:** It's just to fail to comply with a -- to  
9 meet with a certain output?

10 **MR. JOHN TRAIANOPOULOS:** Yes.

11 **MS. KARTIGA THAVARAJ:** And you may be aware, sir, but for  
12 the public, these failures outlined in the project agreement, they encompass various  
13 items; is that correct?

14 **MR. JOHN TRAIANOPOULOS:** Yes. There's different categories  
15 of failures.

16 **MS. KARTIGA THAVARAJ:** And you noted trains being out of  
17 service under performance of the vehicles, but there's also elevators being out of  
18 service, correct?

19 Sorry, you just have to say yes or no for the record.

20 **MR. JOHN TRAIANOPOULOS:** Yes, there's vehicle failures,  
21 station failures, quality failures, service failures.

22 **MS. KARTIGA THAVARAJ:** And the types of quality and service  
23 failures, I'm just trying to help others that aren't you understand.

24 Elevators can be out of service, is one example?

25 **MR. JOHN TRAIANOPOULOS:** Elevators can be out of service,  
26 yes.

27 **MS. KARTIGA THAVARAJ:** The door to a supply closet can be  
28 ajar or unlocked?



1 **MR. JOHN TRAIANOPOULOS:** It can be.

2 **MS. KARTIGA THAVARAJ:** Cameras being slightly moved or  
3 being blurry, those might cause deductions in the City's eyes?

4 **MR. JOHN TRAIANOPOULOS:** It depends if it triggers a breach of  
5 a specific performance indicator, and the definition of its use and function.

6 **MS. KARTIGA THAVARAJ:** And if it does, then it would incur  
7 deductions?

8 **MR. JOHN TRAIANOPOULOS:** It could, yes.

9 **MS. KARTIGA THAVARAJ:** Okay. And you stated that  
10 deductions are levied each month, per month?

11 **MR. JOHN TRAIANOPOULOS:** Per month, yeah.

12 **MS. KARTIGA THAVARAJ:** And are permitted to be made in  
13 respect of that particular month only?

14 **MR. JOHN TRAIANOPOULOS:** The language talks about  
15 deductions that are assessed or -- I forget the words, but in that contract month, yes.

16 **MS. KARTIGA THAVARAJ:** They are made against the monthly  
17 service payment, that's what it is?

18 **MR. JOHN TRAIANOPOULOS:** Against the month -- so it's ASP,  
19 annual source payment, divided by 12 minus deductions in that month.

20 **MS. KARTIGA THAVARAJ:** Yes, there's a long formula, but it's  
21 against a particular month relating to the monthly service payment?

22 **MR. JOHN TRAIANOPOULOS:** Correct.

23 **MS. KARTIGA THAVARAJ:** And you said the deductions can't  
24 make the monthly service payment negative?

25 **MR. JOHN TRAIANOPOULOS:** The monthly service payment can  
26 go to zero.

27 **MS. KARTIGA THAVARAJ:** Can go to zero only ---

28 **MR. JOHN TRAIANOPOULOS:** Yes.

1 **MS. KARTIGA THAVARAJ:** --- and so you ---

2 **MR. JOHN TRAIANOPOULOS:** Yes, so that's my ---

3 **MS. KARTIGA THAVARAJ:** Sorry.

4 **MR. JOHN TRAIANOPOULOS:** Yeah. Yeah.

5 **MS. KARTIGA THAVARAJ:** And in your words, therefore, the  
6 payments sort of start fresh every month, I think is the -- are the words you used?

7 **MR. JOHN TRAIANOPOULOS:** The -- then the next monthly  
8 service payment becomes at risk as the pot of money you can deduct from, yes.

9 **MS. KARTIGA THAVARAJ:** And this is what leads to your  
10 evidence that you provided to the Commission, that the words of the contract provide for  
11 deductions to be capped at the payment, the monthly service payment?

12 **MR. JOHN TRAIANOPOULOS:** That's my understanding, yes.

13 **MS. KARTIGA THAVARAJ:** And if the project agreement  
14 language is clear, then amounts in excess of that payment don't get deducted from the  
15 next month?

16 **MR. JOHN TRAIANOPOULOS:** It doesn't say that, but my  
17 interpretation, and at least in my experience, that was the intent.

18 **MS. KARTIGA THAVARAJ:** And that's the intention for all the IO  
19 contracts and projects that have this language that exist in Ontario?

20 **MR. JOHN TRAIANOPOULOS:** That is my perspective, yes.

21 **MS. KARTIGA THAVARAJ:** Now, I'll just ask you for the moment,  
22 sir, Commission counsel asked you earlier about questions relating to a remedy if the  
23 payment mechanism isn't operated in accordance with the belief when bidding, and you  
24 said a payment mechanism -- a Paymech review was the -- was a mechanism, is that  
25 correct?

26 **MR. JOHN TRAIANOPOULOS:** It is often a mechanism, and I  
27 think I said I can't recall if we adopted that mechanism in this contract. I'd have to go  
28 back and check.

1                   **MS. KARTIGA THAVARAJ:** If we had, it would require the City to  
2 engage with and respond to a request for a Paymech review?

3                   **MR. JOHN TRAIANOPOULOS:** It's wired in, in the sense where  
4 it's -- it's noted as something to talk about X number of years into the operational term.

5                   **MS. KARTIGA THAVARAJ:** Right, and requires a response from  
6 the City?

7                   **MR. JOHN TRAIANOPOULOS:** I would think so, yes.

8                   **MS. KARTIGA THAVARAJ:** Now, to turn back to the deductions,  
9 the reasoning for your interpretation is that, to use your words again, the monthly  
10 service payment is a lot of money?

11                   **MR. JOHN TRAIANOPOULOS:** It is.

12                   **MS. KARTIGA THAVARAJ:** And the monthly service payment is  
13 required for maintenance, in addition to other things?

14                   **MR. JOHN TRAIANOPOULOS:** It repays capital and it pays for  
15 maintenance.

16                   **MS. KARTIGA THAVARAJ:** Exactly, life-cycle costs, financing  
17 obligations and maintenance?

18                   **MR. JOHN TRAIANOPOULOS:** Yes.

19                   **MS. KARTIGA THAVARAJ:** And the project company and the  
20 maintenance contractor has to provide a number maintenance services, of course, track  
21 maintenance, vehicle maintenance; is that correct?

22                   **MR. JOHN TRAIANOPOULOS:** They do, yes.

23                   **MS. KARTIGA THAVARAJ:** And so, if deductions could be carried  
24 forward, from one month to the next, it could wipe months of payments after a single  
25 bad event or incident?

26                   **MR. JOHN TRAIANOPOULOS:** In theory, it could, if the event was  
27 bad enough.

28                   **MS. KARTIGA THAVARAJ:** And this would mean that the project

1 company would be required to perform the maintenance services and, as you said, the  
2 debt service insurance in exchange for no payment from the City for months?

3 **MR. JOHN TRAIANOPOULOS:** That's how it's written, yes.

4 **MS. KARTIGA THAVARAJ:** And you said earlier that it would be  
5 counter-productive for the payment mechanism to be used in a certain way, is this what  
6 you mean?

7 **MR. JOHN TRAIANOPOULOS:** No, what -- on this example, the  
8 monthly service payment is at risk, so that's the total amount of money that can be  
9 deducted, so -- maybe I'm misunderstanding the question, sorry.

10 **MS. KARTIGA THAVARAJ:** No problem, I'll put it to you in more  
11 simple terms. I'm going to put it to you, sir, that the intention of the deductions, I think  
12 as you said in your transcript, is to "shape behaviour"?

13 **MR. JOHN TRAIANOPOULOS:** Mm-hmm, yes.

14 **MS. KARTIGA THAVARAJ:** To ensure the performance  
15 requirements are met?

16 **MR. JOHN TRAIANOPOULOS:** Yes.

17 **MS. KARTIGA THAVARAJ:** The intention is not to punish RTG?

18 **MR. JOHN TRAIANOPOULOS:** The intent, when calibrating the  
19 payment mechanism, is not to try to punish RTG, but when we -- after we calibrate it, it  
20 then gets reflected in the ultimate execution version of the project agreement. So, what  
21 I would say is we calibrated it to a level that we thought was reasonable and that could  
22 then be enforced in the maintenance term.

23 **MS. KARTIGA THAVARAJ:** So, I'm only speaking about the  
24 execution version of the project agreement. The intent is not to strip the project  
25 company of months and months worth of payments?

26 **MR. JOHN TRAIANOPOULOS:** In any given month, no, that's not  
27 the intent.

28 **MS. KARTIGA THAVARAJ:** Thank you. And the intent also, I

1 think is as you referred to in the slide deck that Commission counsel took you to earlier,  
2 the intent is not to make RTG pay for the system?

3 **MR. JOHN TRAIANOPOULOS:** Correct. The Paymech  
4 deductions are very clearly calibrated and in a table in the payment mechanism. That's  
5 the amount of money to deduct. It's very formulaic.

6 **MS. KARTIGA THAVARAJ:** Okay. And the language from the  
7 deck earlier was not to be used as a tool that entirely recovers economic loss suffered  
8 by the sponsors, is that correct?

9 **MR. JOHN TRAIANOPOULOS:** As a principle of intent, that's  
10 correct.

11 **MS. KARTIGA THAVARAJ:** Okay. And you said, sir, that this is  
12 what the contract says, this is what IO does on its other projects?

13 **MR. JOHN TRAIANOPOULOS:** Yes.

14 **MS. KARTIGA THAVARAJ:** And I will say that in your transcript,  
15 you said it -- I mean, to you -- let me put it to you. To you, this is clear?

16 **MR. JOHN TRAIANOPOULOS:** The capping of deductions, is that  
17 what you're referring to?

18 **MS. KARTIGA THAVARAJ:** Yes.

19 **MR. JOHN TRAIANOPOULOS:** To me, it's clear.

20 **MS. KARTIGA THAVARAJ:** To you, this is clear. It would surprise  
21 you to interpret it differently is, I believe, what you said in the transcript?

22 **MR. JOHN TRAIANOPOULOS:** It would surprise me, having done  
23 this a number of times, having been with IO for a long time. I've always understood it to  
24 be the MSP is at risk, no more, no less.

25 **MS. KARTIGA THAVARAJ:** Thank you. And you've told others  
26 this, I believe, prior to us being in this public inquiry proceeding?

27 **MR. JOHN TRAIANOPOULOS:** Others? Colleagues, I suspect,  
28 perhaps.

1                   **MS. KARTIGA THAVARAJ:** Sure. I'll put it to you, sir, this  
2 Commission has heard from Mr. Mario Guerra of Rideau Transit Maintenance ---

3                   **MR. JOHN TRAIANOPOULOS:** Mm-hmm.

4                   **MS. KARTIGA THAVARAJ:** --- and in his formal interview in this  
5 matter, he said that he had heard that this was the proper interpretation directly from IO,  
6 and that was you, correct?

7                   **MR. JOHN TRAIANOPOULOS:** Yes. I think you're referring to  
8 some ongoing discussion from another project where I likely said that.

9                   **MS. KARTIGA THAVARAJ:** And that's because ---

10                  **MR. JOHN TRAIANOPOULOS:** That's my ---

11                  **MS. KARTIGA THAVARAJ:** Sorry.

12                  **MR. JOHN TRAIANOPOULOS:** This is my interpretation, yes.

13                  **MS. KARTIGA THAVARAJ:** And this is because the same  
14 language exists on the other project, and you wanted to be clear that it would not be  
15 interpreted that way, on that project?

16                  **MR. JOHN TRAIANOPOULOS:** Correct.

17                  **MS. KARTIGA THAVARAJ:** Thank you. And I feel that I should  
18 ask, Mr. Traianopoulos, are you aware that the City has taken the position, *vis-à-vis*  
19 RTG on this project that it is entitled to carry forward deductions?

20                  **MR. JOHN TRAIANOPOULOS:** I've been made aware of that,  
21 yes. I'm just testifying under oath with what I believe.

22                  **MS. KARTIGA THAVARAJ:** Absolutely. And this is contrary to  
23 your interpretation of the agreement?

24                  **MR. JOHN TRAIANOPOULOS:** It is.

25                  **MS. KARTIGA THAVARAJ:** And your experience, having worked  
26 with IO with similar agreements?

27                  **MR. JOHN TRAIANOPOULOS:** It is.

28                  **MS. KARTIGA THAVARAJ:** Thank you very much, Mr.

1 Commissioner, those are my questions.

2 **COMMISSIONER HOURIGAN:** All right. Thanks for that, counsel.

3 We'll move on to STV -- or sorry, I apologise, RTG. I'm sorry, we've just done RTG.

4 STV, go ahead.

5 Counsel, we don't have volume. Try again.

6 **MR. THEO MILOSEVIC:** Can you hear me now, Mr.

7 Commissioner?

8 **COMMISSIONER HOURIGAN:** We can, barely. Just speak up.

9 **MR. THEO MILOSEVIC:** I apologize for that. We're still working  
10 through some technical issues. In any event, STV has no questions for the witness, so  
11 it will be short for me.

12 **COMMISSIONER HOURIGAN:** Very good, thank you. Province of  
13 Ontario?

14 **MS. HEATHER MCKAY:** Good morning, Mr. Commissioner,  
15 Heather Mackay for the Province. The Province has no questions for this witness.

16 **COMMISSIONER HOURIGAN:** All right. Thank you. So, then, we  
17 move on to the witness' counsel, Infrastructure Ontario.

18 **MS. JULIE PARLA:** Good morning, Mr. Traianopoulos.

19 **MR. JOHN TRAIANOPOULOS:** Good morning.

20 **MS. JULIE PARLA:** We were just talking about ---

21 **COMMISSIONER HOURIGAN:** Counsel, you need to state your  
22 name for the record, please.

23 **MS. JULIE PARLA:** Apologies. It's Julie Parla for Infrastructure  
24 Ontario. Last name P-A-R-L-A.

25 **---CROSS-EXAMINATION BY MS JULIE PARLA:**

26 **MS. JULIE PARLA:** We were just talking about the Paymech, and  
27 I have a couple of additional questions for you on that schedule to the project  
28 agreement. You've mentioned a number of times that it was calibrated. Can you

1 explain what that process involves?

2 **MR. JOHN TRAIANOPOULOS:** For sure. So calibration refers to  
3 the sizing and severity, if you will, of the dollar reductions attributable to certain failure  
4 events. So for example, we calibrate if a certain number of vehicle kilometres, or a  
5 percentage of vehicle kilometres as intended is not met, we would then develop a  
6 deduction curve and a formula that sizes deductions for that lack of performance. We  
7 would calibrate the quantum of service and quality failures based on what we view as a  
8 reasonable amount of money to drive that behaviour I was talking about earlier. And so  
9 that's on the dollar side.

10 On the failure point side we also can calibrate what number of  
11 failure points based on what scenarios and what level of core performance or  
12 inadequate performance would then trigger various remedies in approach of being  
13 warning, monitoring, notices, termination of the maintenance contract or termination of  
14 Project Co. So calibration refers to a model that was developed, in this case by  
15 Deloitte, to test scenarios, test performance, and see what comes out in the wash in  
16 terms of populating various schedules to the Project Agreement.

17 **MS. JULIE PARLA:** And you've mentioned Deloitte in particular.  
18 Who else is involved in that calibration process?

19 **MR. JOHN TRAIANOPOULOS:** Deloitte has the primary  
20 responsibility for building a calibration model and output scenario. What we do is we  
21 test those scenarios with the technical advisor to just make sure that we're being  
22 reasonable.

23 So for example, if we say, you know, you'll lose X percent of your  
24 monthly service payment if you're at 95 percent of availability, we would then talk to the  
25 technical team with their experience to say that sounds too punitive, not punitive  
26 enough, doable, not doable. So there's a lot of back and forth in collaboration with the  
27 technical advisor -- who are more operational experts than I am, for example -- to make  
28 sure that we get it right and we get it balanced.



1                   And then of course, the bidders. When we calibrate they see that  
2 and they have their own modeling and simulation runs and scenario runs to make sure  
3 that they can live with the Paymech as sent to them.

4                   **MS. JULIE PARLA:** And is consideration given to the feedback  
5 that you get from the bidders?

6                   **MR. JOHN TRAIANOPOULOS:** Yes, we take it very seriously  
7 because we're -- again, we're trying to make the project biddable, bankable, and  
8 provide value for money so we definitely want to make sure we get it right. And we  
9 have a pretty good sense of when bidders are asking for critical things and when they're  
10 more of a nice-to-have.

11                  **MS. JULIE PARLA:** For this project in particular were changes  
12 made to the calibration of the Paymech based on the feedback from the bidders?

13                  **MR. JOHN TRAIANOPOULOS:** I believe they were. And just to  
14 add a point to it, we also added in other provisions that would relieve bidders from  
15 deductions, Project Co. from deductions. So yes, we through the CCM debriefs and all  
16 the meetings that happened after, we took some, not all comments but we definitely  
17 accepted some of their suggestions and comments.

18                  **MS. JULIE PARLA:** Okay. I want to move just very briefly to the  
19 vetting-in period suggestion.

20                         You have talked about in that period what would happen in the  
21 ordinary course is some but not all deductions would be lower for that period of time.  
22 What happens to failure points during that period?

23                  **MR. JOHN TRAIANOPOULOS:** I believe failure points continue to  
24 accrue.

25                  **MS. JULIE PARLA:** And when we talk about a vetting-in period,  
26 what is the level of service that Project Co. is operating the system to during the vetting-  
27 in period?

28                  **MR. JOHN TRAIANOPOULOS:** In this case they would be at

1 service level one, I believe, which was a fully functioning LRT system.

2 **MS. JULIE PARLA:** In other words, this is not a soft launch, the  
3 vetting-in period?

4 **MR. JOHN TRAIANOPOULOS:** No. This is after. This is into the  
5 maintenance and concession term. This is a full service at service level one.

6 **MS. JULIE PARLA:** So the only difference in terms of what would  
7 have happened if there was a vetting-in period is that there would be some relief on  
8 some deductions. And otherwise it would be the same?

9 **MR. JOHN TRAIANOPOULOS:** That's correct.

10 **MS. JULIE PARLA:** Now, you were asked about the evaluation  
11 and the results of the evaluation. And I just want to orient the Commission by bringing  
12 them to a document. It is Doc. Number IFO0063652.

13 And this is PowerPoint presentation, just to describe it while we're  
14 getting it up on the screen for you, which is a summary of scores for this project.

15 And I note that's not the document.

16 **COMMISSIONER HOURIGAN:** I had IFO0063652; is that what  
17 you're looking for?

18 **MS. JULIE PARLA:** Yes.

19 **COMMISSIONER HOURIGAN:** All right. Hold on.

20 **MS. JULIE PARLA:** We have it here, Mr. Commissioner, if it helps

21 ---

22 **COMMISSIONER HOURIGAN:** Just hang on. We just had a bit of  
23 an issue but I think we've got it.

24 **MS. JULIE PARLA:** So I'm sorry. That's actually not the right  
25 document.

26 **COMMISSIONER HOURIGAN:** So we have it? The document up  
27 is IFO0063652. I thought that was what you'd asked for but is there a different  
28 number?

1                   **MS. JULIE PARLA:** Yeah, there seems to be an issue. We're just  
2 double checking.

3                   **COMMISSIONER HOURIGAN:** Okay.

4                   **MS. JULIE PARLA:** Or we have it available if you would allow us o  
5 screen share. We can just ---

6                   **COMMISSIONER HOURIGAN:** That's fine, whatever works for  
7 you is fine by me. That's okay.

8                   **MS. JULIE PARLA:** My apologies, Mr. Commissioner. It's  
9 IFO00030870. I apologize.

10                  **COMMISSIONER HOURIGAN:** Okay. We'll try that number.  
11 Hang on -- 30870?

12                  **MS. JULIE PARLA:** 30870, yes.

13 **--- EXHIBIT No. 035:**

14                                   IFO0030870 – Summary of Scores – October 22, 2012

15                  **COMMISSIONER HOURIGAN:** All right. Okay. Just stand by.  
16 Okay, we've found the document. It's just being sent over. Just  
17 stand by.

18                                   **(SHORT PAUSE)**

19                  **MS. JULIE PARLA:** I don't know if you have it at your end.

20                  **COMMISSIONER HOURIGAN:** We have it here.

21                  **MS. JULIE PARLA:** Okay, great. We weren't seeing it. I just  
22 wanted to make sure. Great.

23                                   Mr. Traianopoulos, this is a PowerPoint presentation from the City  
24 of Ottawa summarizing these scores from the procurement. Are you familiar with this  
25 document?

26                  **MR. JOHN TRAIANOPOULOS:** Yes.

27                  **MS. JULIE PARLA:** And if we can go to slide 2 of the document,  
28 as I understand it, this sets out each of the scores, both for technical and for financial for

1 this procurement?

2 **MR. JOHN TRAIANOPOULOS:** Yes, it does.

3 **MS. JULIE PARLA:** And we can see from this score that RTG,  
4 who is Rideau Transit Group, the first row of the table, had the best technical score,  
5 399.15 out of 500?

6 **MR. JOHN TRAIANOPOULOS:** Yes.

7 **MS. JULIE PARLA:** And they also had the best financial weighted  
8 score of 492.50 out of 500?

9 **MR. JOHN TRAIANOPOULOS:** Correct.

10 **MS. JULIE PARLA:** And so, we can conclude from that, Mr.  
11 Traianopoulos, that the City, in accepting RTG's bid, got the best technical solution for  
12 the best possible price?

13 **MR. JOHN TRAIANOPOULOS:** Under the parameters of the  
14 evaluation, yes, that's absolutely right.

15 **MS. JULIE PARLA:** Would you consider that a successful  
16 procurement?

17 **MR. JOHN TRAIANOPOULOS:** It's a great result to get the best  
18 technical -- best quality of finance score and best price is -- getting all three is a great  
19 result.

20 **MS. JULIE PARLA:** Right. You can take that document down.  
21 Thank you.

22 I want to speak about milestones, which is something that the  
23 Commission has heard about, but we didn't have an opportunity yet to talk about today.  
24 Just to make sure that we are all understanding each other with the terminology, and  
25 appreciating this is more of a technical question than a financial question, but just in the  
26 high-level terms, what are milestones as compared to progress payments?

27 **MR. JOHN TRAIANOPOULOS:** So, milestone payments are  
28 payments made during construction, just like progress payments. The key

1 characteristics of a milestone payment is that they're linked to certain events that  
2 happen along -- you know, during construction, and those events are very clearly  
3 explained and articulated in a schedule to the project agreement. So, there's a trigger  
4 for payment that happens throughout construction with very clear, defined criteria that  
5 can be certified objectively to then release the payment.

6 A progress payment is more of a -- typically more of a monthly  
7 payment approach, a monthly payment regime, where milestones are less frequent, and  
8 it relies heavily on earned value mechanics. So, looking at the cost of the work done  
9 today, the progress against that work. And again, I'm not an engineering expert, but my  
10 understanding is that there are certain credit rules that look to progress payments and  
11 earn value that authorize one to send an invoice and to pay for it.

12 So, they both have elements of completion of work. One is more  
13 less frequent, more event based; one is more earned value, monthly based.

14 **MS. JULIE PARLA:** Thank you for that. I understand that IO and  
15 Deloitte did some analysis in looking at various options for payments to be made during  
16 construction; is that right?

17 **MR. JOHN TRAIANOPOULOS:** Yes, there was an options paper  
18 put forward, yes.

19 **MS. JULIE PARLA:** And I'd actually like to take you to that options  
20 paper. It's IFO 0007524. And is this the paper that you were referring to, Mr.  
21 Traianopoulos?

22 **--- EXHIBIT No. 036**

23 IFO0007524 – OLRT Options for Payment during  
24 Construction – August 10, 2011

25 **MR. JOHN TRAIANOPOULOS:** Yes, it is.

26 **MS. JULIE PARLA:** And if we can turn to slide 1? It sets out that  
27 Deloitte and Infrastructure Ontario were presenting the City with a set of options for  
28 payment during construction, and is that the evaluation analysis that you were working

1 on with Deloitte?

2 **MR. JOHN TRAIANOPOULOS:** Yes.

3 **MS. JULIE PARLA:** And if we go forward to slide 3, the slide refers  
4 to criteria that was -- seems to have been set to evaluate the payment options that you  
5 are reviewing, is that correct?

6 **MR. JOHN TRAIANOPOULOS:** Yes. This is the lens we wanted  
7 to frame the discussion in with a list of criteria, what might be important to the City to  
8 consider in structuring milestone -- structuring payments.

9 **MS. JULIE PARLA:** And how did you land on these being the  
10 criteria by which to evaluate the options?

11 **MR. JOHN TRAIANOPOULOS:** These are fairly typical criteria you  
12 would look at when you're trying to figure out exactly how and when to pay during  
13 construction. Obviously, the City, for example, had an affordability cap we talked about,  
14 so that it would be cost effective. We also were mindful of administration. So, while  
15 there's some benefit potentially in progress payments or monthly payments, there is an  
16 administrative aspect as well, which is also a cost, as you need to have certifiers, now,  
17 monthly, there's an invoicing process, and it's not always so cut and dry, so we looked  
18 at that. We looked at risk transfer, so that's around do we care about why we're paying  
19 or, like, does it have to be linked to something substantial or not? So, we just thought  
20 this was a good lens to frame the conversation.

21 **MS. JULIE PARLA:** Thank you for that. I'm going to fast forward,  
22 and then we'll work backwards, but if we can go to page 19 of the presentation? Sorry,  
23 19 of the -- yeah, there you go. Thank you very much.

24 This shows that there were five options that are being reviewed, is  
25 that right?

26 **MR. JOHN TRAIANOPOULOS:** At the time, yes.

27 **MS. JULIE PARLA:** And they were being assessed as to whether  
28 they might be a preferred option or not, and it looks like two appear to be the best

1 options for the City, private in first and milestone project code defined.

2 **MR. JOHN TRAIANOPOULOS:** Yes.

3 **MS. JULIE PARLA:** And if we can then go backwards just to have  
4 a look at private in first, that would be on slide 5 of the presentation. And this just  
5 describes what we mean by that, private capital in first. Can you just very briefly explain  
6 to the Commission what that means?

7 **MR. JOHN TRAIANOPOULOS:** So, this is getting at the notion  
8 that it's advantageous to put private capital in first, in the early parts of the project. That  
9 would then establish a level of risk transfer and skin in the game, we call it, within  
10 Project Co. to have some actual money in the project before we or the City does  
11 anything. It then gets into, as you can see -- I think they actually did it quarterly here. It  
12 could be quarterly or monthly, but some payments that happen after the private money  
13 goes in first. This is one of the options.

14 **MS. JULIE PARLA:** So, then, if we turn to the next page of the  
15 presentation, the actual assessment, here, it appears that you and Deloitte considered  
16 pros and cons as against that evaluation and criteria. That's the methodology that you  
17 were using?

18 **MR. JOHN TRAIANOPOULOS:** Yes.

19 **MS. JULIE PARLA:** And under the -- one of the cons for this  
20 option under risk transfer, the last two bullets, it talks about this option doesn't leave an  
21 ability to track full remedies against specific milestones or project security as linked to  
22 specific milestones, and that could actually be mitigated by milestone payments  
23 because, as I understand it, private capital in first, you could use either progress  
24 payments or milestones?

25 **MR. JOHN TRAIANOPOULOS:** Exactly. This is talking about the  
26 fact that -- there are ways to mitigate this risk as well, but this is talking about a bit of a -  
27 - it's leaning into a bit of a preference for pay for performance. So, if you go back  
28 historically, whenever IO made interim payments, you can call them interim or milestone

1 payments, they were for something. They were for an asset completion, for a handover.  
2 So, we were trying to get into the fact that if you just pay monthly based on a progress  
3 measure, you're giving up that event-based pay for an asset, pay for something tangible  
4 perspective.

5 **MS. JULIE PARLA:** And then if we turn to the option that was  
6 actually selected, the milestone payments defined by Project Co., and I want to look at  
7 the assessment slide, which is slide 15, and here, likewise, there's both pros and cons  
8 with respect to this option as well?

9 **MR. JOHN TRAIANOPOULOS:** Yes. And just to be very clear,  
10 defined by Project Co., we actually ended up in a bit of a hybrid between (a) and (b)  
11 where we took a first shot at the milestone criteria, and then Project Co. got to amend  
12 them. So, we're actually in between (a) and (b), but the notion here is that the Project  
13 Co. milestones that they pick out of -- ended up being a menu, is what we went with.  
14 So, I just wanted to clarify that, and sorry, your question?

15 **MS. JULIE PARLA:** And -- no, that's very helpful. Thank you. The  
16 second bullet under the cons on risk transfer actually talks about if the bidders choose  
17 the milestones just themselves, it might not be true reasonable project milestones or  
18 risk transfers have been achieved, then that could be mitigated by giving bidders the  
19 laundry list of eligible milestones, and is that what you're describing there?

20 **MR. JOHN TRAIANOPOULOS:** Exactly. So you said it right  
21 there. We ended up doing that mitigation on 3B and that's exactly where we landed.

22 **MS. JULIE PARLA:** Okay. So there's two options at the end of  
23 the day that are the preferred options that you and Deloitte land on. How does the  
24 decision actually be made that you end up with option 3B as the preferred option at the  
25 end of the day?

26 **MR. JOHN TRAIANOPOULOS:** I believe this was tabled at --  
27 represented earlier. There was a procurement or executive steering committee. I  
28 believe this -- this deck, or a version of this deck, went to that committee for



1 discussions, and we took a recommendation forward, and we were asked to -- I think  
2 we were asked to go back and do some more modelling. Long story short, it went  
3 through the governance of the project and, ultimately, it was decided jointly between IO  
4 as representatives on that committee, Mr. Pattison, and jointly with the City with Mr.  
5 Jensen.

6 **MS. JULIE PARLA:** Okay. I want to switch gears, Mr.  
7 Traianopoulos, to speak about value for money for a moment. I think in your testimony  
8 today -- and we can take the document down. Thank you very much. In terms of value  
9 for money, I think, and I'll be paraphrasing, that you had said one of the -- value for  
10 money is one of the tools that validates that there is benefit to the cost of financing by  
11 way of a risk transfer. Is VFM the tool used to make the decision as to what project  
12 model to use?

13 **MR. JOHN TRAIANOPOULOS:** I don't think it is the sole tool. I  
14 think it is -- it is a component of decision-making, but my advice is, and always has  
15 been, to not completely rely on one single -- one single piece of analysis. A more  
16 comprehensive procurement options analysis should happen, and did happen, in fact, I  
17 believe. At IO today, we have a comprehensive procurement options analysis approach  
18 and framework. Our treasury board has a comprehensive delivery options analysis  
19 framework. It's not just, "What does the VFM say?" So that's what I was getting at  
20 there.

21 **MS. JULIE PARLA:** And you talked about there was a  
22 comprehensive analysis done in this case for this project. Was that an analysis done by  
23 Deloitte?

24 **MR. JOHN TRAIANOPOULOS:** It was.

25 **MS. JULIE PARLA:** And if I can have the Commission, please, put  
26 up document COW0543596. And that is a report, Mr. Traianopoulos. I actually have a  
27 physical copy of it. It's about 109 pages including the detailed appendices. It's entitled  
28 "Project Delivery and Procurement Options Report". Is this the work that Deloitte -- part

1 -- the culmination of some of the work that Deloitte did in assessing what is the  
2 recommended project delivery model for this project?

3 **--- EXHIBIT No. 037:**

4 COW0543596 – OLRT Project Delivery and Procurement  
5 Options Report – February 28, 2011

6 **MR. JOHN TRAIANOPOULOS:** It is. It's a very comprehensive  
7 assessment of all the delivery options, advantages, disadvantages, value, a very  
8 impressive summary of those options.

9 **MS. JULIE PARLA:** And I won't -- given the limited time, we  
10 obviously won't go through the -- all 109 pages of the report, but if we can just turn to  
11 the executive summary, it's right at the front, starting at what would be page IV of the  
12 report. And we can see there under 1.1, the second paragraph, it starts, saying:

13 "The City has engaged Deloitte to work with the City  
14 to determine the most appropriate procurement and  
15 project delivery model to be used to design, construct,  
16 commission, maintain, and operate the LRT Project  
17 since January 2010." (As read).

18 And that was you understanding that that's when Deloitte first  
19 became engaged?

20 **MR. JOHN TRAIANOPOULOS:** That's my understanding.

21 **MS. JULIE PARLA:** And just to orient us, this final version is dated  
22 February 28<sup>th</sup>, 2011, so over a year of work culminating in this report?

23 **MR. JOHN TRAIANOPOULOS:** That sounds right.

24 **MS. JULIE PARLA:** And then if we turn to then next page, V, we'll  
25 see their chart, and it shows at Figure 1 "Identification and summary of project delivery  
26 options to be evaluated", and there are 11 options. And was it your understanding, Mr.  
27 Traianopoulous, that Deloitte evaluated all of these options?

28 **MR. JOHN TRAIANOPOULOS:** That's my understanding on both

1 qualitative and quantitative grounds.

2 **MS. JULIE PARLA:** And if we turn over to the next page, VI, and if  
3 we could scroll down a little bit more to section 1.3.4., "Weighting factors" -- 1.3.4.,  
4 yeah, you got it there. Can you explain to us what Table 3 is showing what the  
5 weighting factors are?

6 **MR. JOHN TRAIANOPOULOS:** Table 3 is ranking various criteria  
7 in assessing these options. So it's trying to do a prioritization of what matters to the  
8 City. And I assume this would have come through discussions with the City. And you  
9 can see there, based on weighting, cost is the number one criteria, then commercial  
10 and objective, then value. So it's just a way to, again, frame the conversation around,  
11 "How do we pick a model?" And, for example, you can see value from risk transfer,  
12 which looks like a quantitative measures at 20 percent, so the other 80 are other  
13 factors.

14 **MS. JULIE PARLA:** And what were your views on the methodology  
15 that Deloitte's used in doing this assessment?

16 **MR. JOHN TRAIANOPOULOS:** I think it's a very logical and well-  
17 one methodology. Again, so IO, for example, has adopted a similar approach in what  
18 we call "procurement options analysis guide". This predates that. I didn't -- I'm  
19 impressed with the level of detail and thought that goes into it. So, to me, this a very  
20 sensible way to do it and not entirely rely on value for money.

21 **MS. JULIE PARLA:** And Deloitte ultimately recommended a  
22 DBFM of the project model?

23 **MR. JOHN TRAIANOPOULOS:** I believe so.

24 **MS. JULIE PARLA:** And did you agree with that recommendation?

25 **MR. JOHN TRAIANOPOULOS:** I did.

26 **MS. JULIE PARLA:** Were there other financial advisors involved in  
27 reviewing the model as well for the City?

28 **MR. JOHN TRAIANOPOULOS:** I know that you ---

1                   **MS. JULIE PARLA:** And we can take the document down.

2                   **MR. JOHN TRAIANOPOULOS:** Do you mean the value-for-money  
3 model, or do you mean this money, or do you mean any -- maybe I'll speak a bit  
4 generically. So there were -- the City had a -- Price Waterhouse Coopers as well, who  
5 was retained to look at affordability, so my recollection is that a lot of the outputs of what  
6 Deloitte on costing the project, running it through a shadow model, was feeding into  
7 PWC to check for affordability. So I suspect that PWC would have also been involved  
8 in this, but I can't -- I can't say for sure on exactly this work.

9                   **MS. JULIE PARLA:** And BMO was a consultant for the City as  
10 well?

11                   **MR. JOHN TRAIANOPOULOS:** BMO was a consultant. We  
12 actually -- IO actually retained them, just more for convenience. Because we had an  
13 existing vendor of record list, we could issue to capital markets advisors. So we  
14 technically retained them but they worked on the project team with myself, Deloitte,  
15 PWC, City Finance. That was kind of the core project finance team that was formed.

16                   **MS. JULIE PARLA:** And why bring in BMO? What perspective  
17 does BMO add to the information for the City?

18                   **MR. JOHN TRAIANOPOULOS:** BMO was and is an active lender  
19 in the global and Canadian P3 space, so they bring that outside perspective that's -- you  
20 know, we have my group, but I'm not a lender so supplementing some of our knowledge  
21 and skills with an actual capital markets team who actually places debt in the market  
22 was invaluable. So they would weigh in on everything from -- everything we've talked  
23 about, payment structures, even geotech risk, they have perspective on in terms of  
24 lenders. So we want to get into the head of a lender, and what better way than to hire a  
25 lender?

26                   **MS. JULIE PARLA:** And was there consensus among these  
27 consultants?

28                   **MR. JOHN TRAIANOPOULOS:** On every issue or on -- for the

1 most?

2 **MS. JULIE PARLA:** For the most part, generally speaking, on this  
3 model that was selected for this project?

4 **MR. JOHN TRAIANOPOULOS:** Yes, very much so.

5 **MS. JULIE PARLA:** And you have said that IO recommended the  
6 DBFM model at the time?

7 **MR. JOHN TRAIANOPOULOS:** Yes.

8 **MS. JULIE PARLA:** And sitting here today, would you still  
9 recommend the DBF model -- DBFM model?

10 **MR. JOHN TRAIANOPOULOS:** Yes.

11 **MS. JULIE PARLA:** And what model is IO currently using for the  
12 provincial LRT projects that you're working on?

13 **MR. JOHN TRAIANOPOULOS:** So Finch LRT is DBFM. Eglinton  
14 Crosstown is DBFM. East Rail Maintenance is DBFM. Hurontario LRT is DBFOM.  
15 Ontario Line, which is not an LRT, per se, but Ontario Line, the rolling stock signals and  
16 operating contract is DBFOM, so most DBFMs, some DBFOMs.

17 **MS. JULIE PARLA:** Thank you. Those are my questions for you,  
18 Mr. Traianopoulous.

19 **MR. JOHN TRAIANOPOULOS:** Thank you.

20 **COMMISSIONER HOURIGAN:** All right, thank you for that.

21 Counsel, just stand by -- counsel for Infrastructure Ontario.

22 Okay. Hopefully you can hear me. Yeah.

23 There has been a request from Alstom to ask a single question. All  
24 right? I'm going to allow that but I'm also going to allow counsel for Infrastructure  
25 Ontario to ask anything flowing from that question because I want to be fair to you. All  
26 right?

27 **MS. JULIE PARLA:** Thank you very much.

28 **COMMISSIONER HOURIGAN:** So just stand by.

1 **--- CROSS-EXAMINATION BY MR. MICHAEL VALO:**

2 **MR. MICHAEL VALO:** I appreciate that, Mr. Commissioner. It's  
3 Michael Valo here for Alstom.

4 Mr. Traianopoulos, I was not initially allocated time to ask you any  
5 questions but in hearing some of your testimony today and in particular one line of  
6 questioning by counsel for RTG, I wanted to just follow up with that. And it's in respect  
7 of the calibration you described for the Payment Mechanism and the deduction  
8 mechanism in particular.

9 And if I understood your evidence correctly, quite a bit of work was  
10 done to calibrate the deductions to ensure it was properly incentivizing your  
11 maintenance parties to perform properly. Is that right?

12 **MR. JOHN TRAIANOPOULOS:** Yes.

13 **MR. MICHAEL VALO:** And that calibration presumably takes into  
14 account any number of factors, primary of which perhaps is the actual size of the UASP,  
15 or the monthly service payment, USAP divided by 12. Is that right?

16 **MR. JOHN TRAIANOPOULOS:** Yes, and then put to the  
17 calibration model, yes.

18 **MR. MICHAEL VALO:** Right, because you want your deduction to  
19 be relative to the service payment you're earning, right?

20 **MR. JOHN TRAIANOPOULOS:** Yeah.

21 **MR. MICHAEL VALO:** And so my question is, in a circumstance  
22 where the deductions are flowed down to, say, a sub contractor whose service payment  
23 is not the same as the upstream maintainer, and could be quite a bit less, that  
24 calibration could become skewed or would become skewed, wouldn't it?

25 **MR. JOHN TRAIANOPOULOS:** I don't understand.

26 **MR. MICHAEL VALO:** So let me try again. If the deductions are  
27 the same and are made relative to the UASP of the maintainer, but the service payment  
28 that the sub contract maintainer is able to earn is much less than the maintainer's

1 UASP, then that calibration work you've done for the deduction scheme would break  
2 down as far as the sub contractor was concerned, wouldn't it?

3 **MR. JOHN TRAIANOPOULOS:** I would frame it as the sub  
4 contractor is through being liable, if you will -- probably is the wrong word -- for the  
5 entire losses of the unadjusted service payment, then they are indirectly or directly liable  
6 for the capital portion of that payment as well, yes.

7 **MR. MICHAEL VALO:** Right, Disproportionately to the size of the  
8 payment they could earn.

9 **MR. JOHN TRAIANOPOULOS:** We factored -- we factored that in  
10 though in the calibration. We think about that. So when we're devising the deduction  
11 curve we are aware that it's based off the unadjusted service payment so we would then  
12 size the deduction curve being aware of that.

13 **MR. MICHAEL VALO:** Right. So that's how you calibrate the  
14 deduction curve in the Project Agreement. But if the unadjusted service payment of the  
15 sub contractor is significantly less, that curve would skew. The proportions would be no  
16 longer the same.

17 **MR. JOHN TRAIANOPOULOS:** From the perspective of that  
18 service provider, I think that's fair.

19 **MR. MICHAEL VALO:** Right. And so the risk, of course, is if the  
20 penalty or the deduction scheme is being abused or used improperly, those issues for  
21 the sub contractor, that risk is amplified.

22 **MR. JOHN TRAIANOPOULOS:** It's amplified in the sense that I  
23 assume their contingency and their profit at risk and all that is just a subset of that  
24 service payment. So I think that's where you're going with this and I would agree with  
25 that.

26 **MR. MICHAEL VALO:** Those are all my questions, sir.  
27 And thank you again to the Commissioner for allowing me to  
28 interject.

1                   **COMMISSIONER HOURIGAN:** All right. Are there any questions  
2 coming from IO's counsel based on that?

3                   **MS. JULIE PARLA:** There are not, thank you.

4                   **COMMISSIONER HOURIGAN:** All right. Thank you.  
5 Is there a re-examination?

6                   **MS. KATE McGRANN:** No, thank you.

7                   **COMMISSIONER HOURIGAN:** All right. You're excused, sir.  
8 We're down til two o'clock.

9                   Thank you.

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

11                  The Commission is adjourned until 2:00 p.m.

12 --- Upon recessing at 12:16 p.m.

13 --- Upon resuming at 2:02 p.m.

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

15                  The Commission has resumed.

16                  **COMMISSIONER HOURIGAN:** All right. Good afternoon.

17                  The next witness is Nancy Schepers from the City of Ottawa.

18                  Ms. Schepers, are you there?

19   **(OFF THE RECORD)**

20                  **COMMISSIONER HOURIGAN:** Okay, so what we'll do is we'll just  
21 stand down for five minutes until we can get the connection secured.

22                  Thank you.

23 --- Upon recessing at 2:04 p.m.

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

25                  **COMMISSIONER HOURIGAN:** Good afternoon, Ms. Schepers.  
26 Can you hear us okay?

27                  **MS. NANCY SCHEPERS:** I can, thank you.

28                  **COMMISSIONER HOURIGAN:** Okay. Very good.



1                   So you have a choice to swear to tell the truth or to affirm to tell the  
2 truth. What would you prefer?

3                   **MS. NANCY SCHEPERS:** I swear to tell the truth.

4                   **COMMISSIONER HOURIGAN:** Okay. Hold on, then.

5 **--- NANCY SCHEPERS, Sworn:**

6                   **THE REGISTRAR:** The witness has been sworn in.

7                   **COMMISSIONER HOURIGAN:** Thank you, Madam Registrar.  
8 You'll have some questions first from Commission counsel, Mr.  
9 John Adair.

10                   Mr. Adair?

11 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR:**

12                   **MR. JOHN ADAIR:** Good afternoon, Ms. Schepers. Thanks for  
13 attending today and assisting us with this. We appreciate it.

14                   Let me just start, Ms. Schepers, with a couple of questions about  
15 your background. You are, as I understand it, a professional engineer?

16                   **MS. NANCY SCHEPERS:** I am.

17                   **MR. JOHN ADAIR:** And in terms of your professional experience,  
18 at least as it relates to this project, you were the Deputy City Manager and your portfolio  
19 included infrastructure from 2006 through 2014; is that right?

20                   **MS. NANCY SCHEPERS:** That is correct.

21                   **MR. JOHN ADAIR:** And then, I understand you stayed on for an  
22 additional year in 2015 as an advisor on a part-time basis focused on the LRT Project?

23                   **MS. NANCY SCHEPERS:** That is correct.

24                   **MR. JOHN ADAIR:** Okay. And Ms. Schepers, were you also on  
25 the executive steering committee for this project from its inception through to the end of  
26 your time in 2015?

27                   **MS. NANCY SCHEPERS:** I was.

28                   **MR. JOHN ADAIR:** Okay. In terms of the substance, Ms.

1 Schepers, I want to start with just a couple of questions about the vehicle itself. I do not  
2 intend to get into any detail.

3 There's been lots of debate already in the course of this  
4 Commission with respect to whether the vehicle was service proven or not, and I'm sure  
5 there will still be more.

6 And I gather, Ms. Schepers, from the formal interview that you  
7 participated in previously with Commission counsel that in your view, the question of  
8 whether the vehicle was service proven was somewhat academic because to the extent  
9 the vehicle had to be modified and adapted, the testing process is what would prove  
10 that the vehicle worked as intended, correct?

11 **MS. NANCY SCHEPERS:** Yes. And I would not say that I said it  
12 was academic. I mean, there is a definition for service proven in the project agreement.  
13 My comment is, it doesn't get into the detailed specifics, and so you know, there may be  
14 a vehicle operating somewhere and there is minor modifications made, but that would  
15 still fit within service proven vehicle.

16 **MR. JOHN ADAIR:** Right. And just want to clarify a couple of  
17 things, ma'am. I was not suggesting that you used the word "academic". I was trying to  
18 summarize and I -- two more things. One, I don't think that there is a definition of  
19 service proven in the contract. I don't think it matters, and I'm not intending to lead j  
20 down that road, but I just want to be clear.

21 But bottom line ---

22 **MR. PETER WARDLE:** Just -- I just want to be careful, Mr. Adair.  
23 There is a definition of service proven in one of the schedules to the project agreement,  
24 so I ---

25 **UNKNOWN SPEAKER:** Mr. Commissioner?

26 **MR. JOHN ADAIR:** Sorry.

27 **MR. PETER WARDLE:** I don't want to ---

28 **MR. JOHN ADAIR:** I'm sorry, Mr. Wardle. I didn't mean to speak

1 over you. That's the burden of Zoom sometimes.

2 For what it's worth, Mr. Commissioner, I'm not intending to give  
3 evidence in any way. I want to try to be clear. I'm sure if there is a specific definition,  
4 we'll see it at some point. It's not relevant to my questioning of Ms. Schepers and I'm  
5 happy to move on from that specific issue.

6 **MR. PETER WARDLE:** Thank you very much.

7 **COMMISSIONER HOURIGAN:** Thank you.

8 So Counsel, if you're going to object, you need to put yourself on  
9 the record so we know who's speaking, all right, before you start speaking, asking the  
10 questions, just for the record, just so it's clear. Thanks.

11 **MR. JOHN ADAIR:** And Ms. Schepers, my point was simply that  
12 whatever position one wants to take with respect to the degree of which the vehicle was  
13 service proven, you understood from the outset that the plan was to have a robust  
14 testing period?

15 **MS. NANCY SCHEPERS:** That is correct.

16 **MR. JOHN ADAIR:** And your view, as someone involved in the  
17 procurement with the vehicle, your view was that the robust testing period would help  
18 assure the City that in fact, the vehicle worked as intended in the Ottawa environment?

19 **MS. NANCY SCHEPERS:** That is correct.

20 **MR. JOHN ADAIR:** And I take it you therefore took some comfort  
21 from the fact that there would be this robust testing period and Ottawa would actually  
22 get to see the vehicle performing as intended?

23 **MS. NANCY SCHEPERS:** It was fundamental to the process to  
24 ensure that there was adequate testing so the vehicle was proven before it went into  
25 service.

26 **MR. JOHN ADAIR:** Right. And as a fundamental aspect of a  
27 process, not something that could be compromised on?

28 **MS. NANCY SCHEPERS:** Correct.

1                   **MR. JOHN ADAIR:** And I gather, Ms. Schepers, that you are not  
2 able to say whether it was or was not, in fact, compromised on, because all of that  
3 occurred after you left?

4                   **MS. NANCY SCHEPERS:** That would be correct.

5                   **MR. JOHN ADAIR:** All right.

6                   Just switching gears for a moment, Ms. Schepers, I understand this  
7 was the first time that the City had undertaken a light rail project?

8                   **MS. NANCY SCHEPERS:** The City had done the North-South Rail  
9 Project, and I mean, to call it light rail or -- it's a diesel vehicle and so we're splitting  
10 hairs, but it certainly was a rail project.

11                  **MR. JOHN ADAIR:** Fair enough, but in terms of an electrified light  
12 rail project, this was the first one?

13                  **MS. NANCY SCHEPERS:** Yes, that is correct.

14                  **MR. JOHN ADAIR:** And also, I'm sure we can agree with one  
15 another, among the most complex, if not the most complex projects the City had ever  
16 undertaken?

17                  **MS. NANCY SCHEPERS:** I would agree with you.

18                  **MR. JOHN ADAIR:** And also, in terms of by dollar size and budget,  
19 the largest infrastructure project of any kind that the City had ever undertaken?

20                  **MS. NANCY SCHEPERS:** That is my understanding, yes.

21                  **MR. JOHN ADAIR:** And I'm going to suggest -- and I expect we'll  
22 be able to get agreement on this -- that the City had experience and expertise that was  
23 necessary for some aspects of the project, but for other aspects, needed to rely on  
24 outside advisors?

25                  **MS. NANCY SCHEPERS:** That is correct.

26                  **MR. JOHN ADAIR:** Among the outside advisors that the City relied  
27 upon would be Industry Ontario, who advised on matters of procurement and contract  
28 and contract management?

1 **MS. NANCY SCHEPERS:** Infrastructure Ontario? Yes.

2 **MR. JOHN ADAIR:** I'm sorry, if I said Industry Ontario, I misspoke.  
3 I apologize. I, for some reason, can't get over making that mistake in my head. Thank  
4 you for correcting me.

5 And then in terms of technical experts, at least during the time that  
6 you were there on the procurement and planning and RFP process, you had the  
7 assistance of Capital Transit Partners?

8 **MS. NANCY SCHEPERS:** That's correct.

9 **MR. JOHN ADAIR:** Okay. Let's just talk a little bit about transit,  
10 Ms. Schepers, and the role that transit plays for the people of Ottawa.

11 Despite having left the City, I'm sure you are aware that there has  
12 been a great deal of public frustration about this project?

13 **MS. NANCY SCHEPERS:** Yes.

14 **MR. JOHN ADAIR:** And no doubt, we will agree with one another -  
15 - or you will agree with me, rather -- that transit affects the daily life of the people who  
16 live and work in this city?

17 **MS. NANCY SCHEPERS:** That is true.

18 **MR. JOHN ADAIR:** And are you aware, Ms. Schepers, that there  
19 were public meetings held in advance of this Commission Inquiry -- of Inquiry in late  
20 May?

21 **MS. NANCY SCHEPERS:** Sorry, can you re-ask that? I'm not sure  
22 I understand your question?

23 **MR. JOHN ADAIR:** Sure. Are you aware that the Commissioner  
24 and some Commission counsel attended in Ottawa in late May to hold public meetings?

25 **MS. NANCY SCHEPERS:** Yes, I am, thank you.

26 **MR. JOHN ADAIR:** And that at those public meetings, the  
27 Commissioner heard from people who were, for example, unable to get to work as a  
28 result of the LRT problems?

1                   **MS. NANCY SCHEPERS:** I'm not aware of all the discussion at  
2 those meetings, but I certainly can imagine that would come out, yes.

3                   **MR. JOHN ADAIR:** And for example, you're aware that there are  
4 people who experienced difficulty getting to school and to other places that they need to  
5 get as a result of the LRT problems?

6                   **MS. NANCY SCHEPERS:** Absolutely.

7                   **MR. JOHN ADAIR:** And, Ms. Schepers, we can agree with one  
8 another, no doubt, that transit is a fundamental aspect of the daily lives of the residents  
9 of Ottawa?

10                  **MS. NANCY SCHEPERS:** I would certainly agree with that  
11 statement.

12                  **MR. JOHN ADAIR:** And in 2010, and 2011, and '12, as this project  
13 was being planned and procurement was being undertaken, you, as an experienced  
14 professional within the field of municipal affairs, obviously were quite aware that transit  
15 is fundamental to the people of Ottawa?

16                  **MS. NANCY SCHEPERS:** Absolutely.

17                  **MR. JOHN ADAIR:** And the City knew that, of course, as well?

18                  **MS. NANCY SCHEPERS:** Yes, absolutely.

19                  **MR. JOHN ADAIR:** Okay, let me talk to you a little bit about the  
20 decision to use a P3 model.

21                  **MS. NANCY SCHEPERS:** Okay.

22                  **MR. JOHN ADAIR:** And I want to start with just the making of the  
23 decision and then talk about some of the intended benefits that went along with the  
24 decision to use a P3 model.

25                  **MS. NANCY SCHEPERS:** Okay.

26                  **MR. JOHN ADAIR:** First of all, Ms. Schepers, in terms of the  
27 decision to use a P3 model, I understand that the City was advised by both  
28 Infrastructure Ontario and Deloitte.

1                   **MS. NANCY SCHEPERS:** And when you say “advised”, like, they  
2 provided advice and support to us on selecting the model? If that’s what you’re saying,  
3 I agree, yes.

4                   **MR. JOHN ADAIR:** Yeah, they provided advice generally with  
5 respect to procurement, and one of the pieces of advice they provided was that a P3  
6 model would be favourable.

7                   **MS. NANCY SCHEPERS:** I would agree with that, yes.

8                   **MR. JOHN ADAIR:** And a concept that’s a little bit elusive but I just  
9 want to touch on for a minute -- there are different options within what might be  
10 considered a P3 model, as I understand it, and that get us into the acronyms that we’ve  
11 been hearing a little bit about over the course of the Commission, being DBM, or DBFM,  
12 et cetera. You’re familiar with that?

13                   **MS. NANCY SCHEPERS:** I am.

14                   **MR. JOHN ADAIR:** And the acronyms refer to -- the different  
15 acronyms refer to the bundle of services that will be part of the contract, correct?

16                   **MS. NANCY SCHEPERS:** Correct.

17                   **MR. JOHN ADAIR:** And so, in this case, we know that the City  
18 ultimately chose what’s known as a DBFM model, being design, build, finance,  
19 maintain.

20                   **MS. NANCY SCHEPERS:** Correct.

21                   **MR. JOHN ADAIR:** Meaning those were the services that were  
22 being contracted out to the private sector partner?

23                   **MS. NANCY SCHEPERS:** Correct.

24                   **MR. JOHN ADAIR:** Okay. And you’ve mentioned a few minutes  
25 ago that IO -- I’ll just use the acronym -- and Deloitte were advising you to -- “you”,  
26 being the City -- to utilize a P3 model. And I understand that IO and Deloitte were also  
27 advising with respect to sort of exactly what services should be part of the bundle, the  
28 DBFM model.

1                   **MS. NANCY SCHEPERS:** Yes, and we had Deloitte providing us  
2 with an assessment the various types of P3 models and where the value and the  
3 benefits lay with them. And IO certainly was -- was also there to be able to provide  
4 advice to us on that.

5                   **MR. JOHN ADAIR:** Right. And the reason, of course, that the City  
6 had engaged both Deloitte and IO to advise on these issues is that, without putting it too  
7 highly, these were just matters in respect of which you didn't have a great deal of  
8 experience.

9                   **MS. NANCY SCHEPERS:** I would suggest that the P3 model and  
10 the P3 delivery, you know, has -- at the time, was really evolving quite a bit. And for a  
11 size of project of this magnitude, no, the City did not have the level of expertise that we  
12 felt confident making the full decisions on that, as with a number of other things where  
13 we got advisors brought in.

14                   **MR. JOHN ADAIR:** Right. So let's just talk a little bit about some  
15 of the benefits you understood you could expect to receive as a result of choosing those  
16 models. And for the most part, I assume that these -- your understanding of these  
17 benefits comes from the professional advisors. It doesn't much matter. Well, let's talk  
18 about the some of the benefits you understood were likely to accrue. One of the  
19 benefits -- I'm sorry. Did you want to say something?

20                   **MS. NANCY SCHEPERS:** No, go ahead.

21                   **MR. JOHN ADAIR:** Okay. Thank you. One of the benefits that  
22 you anticipated receiving was that you would have the benefit of the innovation that the  
23 private sector was able to offer.

24                   **MS. NANCY SCHEPERS:** Correct.

25                   **MR. JOHN ADAIR:** And that means innovation that would facilitate  
26 beneficial outcomes for both the schedule and the budget.

27                   **MS. NANCY SCHEPERS:** Correct.

28                   **MR. JOHN ADAIR:** Another benefit, as I understand it, is that



1 there was a belief or an impression that -- as having a single entity responsible for the  
2 project, being RTG, would result in better integration of the different parts of the project.

3 **MS. NANCY SCHEPERS:** I would characterize that -- you're right.  
4 I would characterize it as, you know, part of the discussion in terms of the risks and  
5 making the management of risk, particularly where parts the project are interdependent,  
6 that they are managed by the party best able to manage them. And so that is how I  
7 would describe that.

8 **MR. JOHN ADAIR:** Right. And I think we're saying the same  
9 thing, which is integration is a very difficult thing to accomplish on a project of this  
10 complexity and having a single entity that is a private sector that exists for this purpose  
11 is beneficial.

12 **MS. NANCY SCHEPERS:** That's correct.

13 **MR. JOHN ADAIR:** Right. And then, related to that, having RTG  
14 at the -- as that single entity responsible for the entire project also carries another  
15 benefit, I think, in terms of what the City understood at the time, which is that when  
16 things start to go wrong, you don't get held up by finger pointing as between the City  
17 and RTG. You have one entity responsible for everything. Correct?

18 **MS. NANCY SCHEPERS:** That's correct.

19 **MR. JOHN ADAIR:** And that was an anticipation that the City had,  
20 or an expectation that the City had as of 2011 and '12 when these models were being  
21 selected.

22 **MS. NANCY SCHEPERS:** Correct.

23 **MR. JOHN ADAIR:** And I believe you said, when you were  
24 interviewed by Commission counsel, that you've seen other projects where something  
25 goes wrong and the various participants all start pointing fingers and things can grind to  
26 a halt as a result of that.

27 **MS. NANCY SCHEPERS:** Yes, I have certainly seen that.

28 **MR. JOHN ADAIR:** And, of course, that would be something that

1 you would want to avoid and thought you were avoiding by choosing this model?

2 **MS. NANCY SCHEPERS:** It is something -- a significant benefit,  
3 particularly with the complexity of this project and all of the missing parts. To have that  
4 ability to managed by a single entity, i.e., RTG, was a huge benefit, in my mind, so that  
5 if something was going wrong, they would be correcting on the other side and they were  
6 balancing and making sure that things continued to move forward in line with the  
7 schedule instead of, as you said, you know, things stopping and, before you proceed,  
8 decide, "Well, whose fault is this?", and we can't go anywhere until we know whose fault  
9 it is, who's paying, who's -- you know, all the rest of that.

10 **MR. JOHN ADAIR:** Right. And then a couple of the other benefits  
11 that accrue, at least with the DBFM model that you selected, or at least benefits that  
12 were anticipated to accrue, one of them is -- let me just ask this in chunks in order to be  
13 fair -- maintenance was included in the DBFM model that you selected, meaning that  
14 the RTG's contract included a 30-year maintenance term?

15 **MS. NANCY SCHEPERS:** That's correct.

16 **MR. JOHN ADAIR:** And one of the benefits that you anticipated as  
17 a result of maintenance being included is that the same company that does the design  
18 and the construction also has the maintenance obligation, which means they have a  
19 financial incentive to ensure that the design and the construction are done in a way that  
20 is favourable from a maintenance perspective in terms of minimizing the amount of  
21 effort and cost that goes into maintenance?

22 **MS. NANCY SCHEPERS:** Correct.

23 **MR. JOHN ADAIR:** They're not going to just design and construct  
24 the thing in a way that sort of solves their immediate problem and then transfers a whole  
25 bunch of work onto the maintenance side because they're just transferring it to  
26 themselves?

27 **MS. NANCY SCHEPERS:** Well, that's right. And they do that by  
28 having the maintainer at the table and able to be part of those discussions whether it be

1 innovation or final design. And that's where you truly get the value out of that because  
2 sometimes when you're designing, you're -- that's not really front of -- front of mind, and  
3 I've seen it many times on many contracts.

4 **MR. JOHN ADAIR:** Now, with respect to including the financing,  
5 which is a fairly complicated aspect of all this, the reason that financing is included, as I  
6 understand it, or reason the decision was made, at least in part, is because including  
7 the financing created additional incentives for RTG to perform its obligations under the  
8 contract?

9 **MS. NANCY SCHEPERS:** Correct.

10 **MR. JOHN ADAIR:** And the way -- we've heard a lot about this so  
11 I don't want to drag you too far into the details, but the way financing incentivizes RTG  
12 to perform its obligations is, because they've borrowed a bunch of money and they need  
13 to pay that back with interest, and the interest continues to accrue, they have a  
14 substantial incentive to hit the schedule on time?

15 **MS. NANCY SCHEPERS:** Well, that's right. They've gone to the  
16 market for money. Those lenders have -- you know, they have an oversight role, and  
17 that is a powerful incentive.

18 **MR. JOHN ADAIR:** Right. And in addition to the lender's oversight  
19 rule, there's just the simple fact that interest continues to accrue and that creates an  
20 incentive for RTG to meet the schedule?

21 **MS. NANCY SCHEPERS:** Correct.

22 **MR. JOHN ADAIR:** And this is all part and parcel of the P3 DBFM  
23 theory?

24 **MS. NANCY SCHEPERS:** Correct.

25 **MR. JOHN ADAIR:** Now, another key aspect of a P3 theory, that I  
26 understand was discussed at length with IO and their counsel and internally, is the idea  
27 of risk allocation?

28 **MS. NANCY SCHEPERS:** Correct.

1                   **MR. JOHN ADAIR:** And the thinking was that risk should be  
2 allocated as much as possible to the party best able to bear it?

3                   **MS. NANCY SCHEPERS:** Correct.

4                   **MR. JOHN ADAIR:** Now, when we talk about the party best able to  
5 bear it, I just want to be a little bit more specific than that. If you focus, just for a minute,  
6 on schedule and budget risks, those risks are allocated through the contract to RTG,  
7 correct?

8                   **MS. NANCY SCHEPERS:** Sorry, can you say that again?

9                   **MR. JOHN ADAIR:** Sure.

10                  **MS. NANCY SCHEPERS:** Schedule ---

11                  **MR. JOHN ADAIR:** Yeah, if we think about schedule and budget  
12 risks, specifically, those are risks ---

13                  **MS. NANCY SCHEPERS:** Yes.

14                  **MR. JOHN ADAIR:** --- that the -- the belief was RTG is the best  
15 position to bear them, and, therefore, the contract should make RTG bear those risks?

16                  **MS. NANCY SCHEPERS:** Correct.

17                  **MR. JOHN ADAIR:** And, in fact, this task of allocating risk, the  
18 idea is that that's actually accomplished through the contract, correct?

19                  **MS. NANCY SCHEPERS:** Correct.

20                  **MR. JOHN ADAIR:** And the way it's accomplished, at least with  
21 respect to schedule and budget, is that there are a series of financial incentives and  
22 penalties that exist in the contract that incentivize RTG to hit schedule and hit budget,  
23 right?

24                  **MS. NANCY SCHEPERS:** Correct.

25                  **MR. JOHN ADAIR:** And just to be very clear about one thing, Ms.  
26 Schepers, when I say "penalties," I'm just using that in the ordinary use of the word,  
27 okay? There's been some debate about whether a particular clause constitutes a  
28 penalty or liquidated damages, that I don't think we need to have. All I mean is there's a

1 -- a negative financial consequence if you don't do what you're obligated to do, right?

2 **MS. NANCY SCHEPERS:** Correct. And that negative -- you know,  
3 can come from you're not getting paid, in terms of the schedule. So, it's a financial  
4 impact for you, even though you may not, as you rightly say, you may not call that a  
5 penalty, it is penalty.

6 **MR. JOHN ADAIR:** Right. And the idea is the existence of those  
7 terms puts pressure on RTG to perform?

8 **MS. NANCY SCHEPERS:** Correct.

9 **MR. JOHN ADAIR:** And what that means, Ms. Schepers -- well, let  
10 me start over. I'm sorry. It's really -- the contract, it was really seen to be the  
11 mechanism through which the City assured itself that it would get the project it needed?

12 **MS. NANCY SCHEPERS:** Correct. As it should be.

13 **MR. JOHN ADAIR:** Right. And if I can just call up a document  
14 now, I just want to look back at the perspective that existed at the time. I'm going to  
15 start with document COM14, please. If we can just blow that up a little bit, Mitchell.  
16 Thank you very much. And then just scroll to the -- so that you have the top of the first  
17 page there. Thank you very much.

18 Ms. Schepers, you'll recognize this -- I'm sure you're not  
19 necessarily familiar with the details, but you'll recognize this as a report that you  
20 submitted to FEDCO in May of 2011?

21 **MS. NANCY SCHEPERS:** Correct.

22 **MR. JOHN ADAIR:** And if we can just go to page 11 of 17, please.

23 Ms. Schepers, I give you that just for the heading, "Recommended  
24 Procurement Approach," and this is some analysis you provided about many of the  
25 issues we've just been discussing, correct?

26 **MS. NANCY SCHEPERS:** Sorry, and what am I -- I'm looking at  
27 that and are you asking if the bullets reflect ---

28 **MR. JOHN ADAIR:** What -- I'm just -- for this part, in particular, I'm

1 just pointing you to the heading, "Recommended Procurement Approach," and then just  
2 at a very high level, the analysis that follows is the analysis of these sorts of issues  
3 we've just been discussing. I don't care about the contents for now.

4 **MS. NANCY SCHEPERS:** Okay. Yes, then I agree.

5 **MR. JOHN ADAIR:** Okay. And then if we can just go to the top of  
6 page 12, please. And I'm just going to direct your attention, Ms. Schepers, to the first  
7 paragraph on page 12 there, beginning "By their very nature..." Perhaps you can just  
8 take a minute, read that to yourself, please.

9 **MS. NANCY SCHEPERS:** Okay.

10 **MR. JOHN ADAIR:** And in terms of the City's role in this P3 DBFM  
11 model that we've just been talking about, I just want to focus your attention on the last  
12 two sentences of that paragraph. So, the second-last sentence is:

13 "With clear responsibility for delivering the integrated  
14 system resting on the private sector, the City can focus  
15 on holding contractors to deliver as promised. Upon  
16 contract award, the City's role is to hold contractors to  
17 performance by conducting engineering reviews of  
18 contractor supplied documents, field inspection and  
19 compliance reviews during construction."

20 Do you see that?

21 **MS. NANCY SCHEPERS:** I do.

22 **MR. JOHN ADAIR:** And that was your description of what the  
23 City's role and focus would be going forward after entering into a P3 DBFM type model  
24 like this?

25 **MS. NANCY SCHEPERS:** Correct.

26 **MR. JOHN ADAIR:** So, if we can just talk for a minute -- we can  
27 take that down. Thank you, Mitchell. If we can just talk for a minute about the City's  
28 role once these risks have been allocated to the private sector, and these various

1 responsibilities have been allocated to the private sector partners through the contract.  
2 I'm going to suggest, based on that document and some of the discussion we've had,  
3 that City staff and counsel understood that the underlying theory behind the P3 was that  
4 you allocate risk through the contract, and then the City enforces the contract.

5 **MS. NANCY SCHEPERS:** Correct. And a big -- a huge part of that  
6 is that upfront work required by City staff to very much define those risks that are being  
7 transferred, define the output, so that we have a very clear definition to be able to  
8 monitor and fulfill our responsibilities post contract award.

9 **MR. JOHN ADAIR:** Right. Because clear terms and definitions --  
10 clear definitions and clear terms within the contract are what allows everyone to know,  
11 with confidence, what they do have to do and what they don't have to do.

12 **MS. NANCY SCHEPERS:** Correct.

13 **MR. JOHN ADAIR:** And how.

14 **MS. NANCY SCHEPERS:** Correct. Well ---

15 **MR. JOHN ADAIR:** And when you talk about the City's role post  
16 contract, I assume you mean post contract signing?

17 **MS. NANCY SCHEPERS:** Correct.

18 **MR. JOHN ADAIR:** And, really, what the City's role is -- post  
19 contract is the City's role is to monitor performance and enforce where necessary.

20 **MS. NANCY SCHEPERS:** Correct.

21 **MR. JOHN ADAIR:** And Marian Simulik testified yesterday, and  
22 I'm going to just give you a bit of a paraphrase of what she said. Ms. Simulik was asked  
23 if the City was trying to follow the contract as closely as possible, and she said  
24 something to the effect of that's correct because the contract decides how you should  
25 have acted. I take it that's a statement with which you would agree whether you'd  
26 choose those exact words or not?

27 **MS. NANCY SCHEPERS:** I -- generally, yes, I would agree with  
28 that.

1                   **MR. JOHN ADAIR:** And not just generally, but specifically in terms  
2 of the City's perspective on how it should behave in this relationship?

3                   **MS. NANCY SCHEPERS:** How we should behave? We are  
4 monitoring and enforcing the terms of the contract, yes.

5                   **MR. JOHN ADAIR:** Okay. And that philosophy, Ms. Schepers, is  
6 about sort of what's the right approach and how does the City operate inside this  
7 public/private partnership. That was something that was substantially informed by IO,  
8 by the advice they gave you?

9                   **MS. NANCY SCHEPERS:** So, in terms of the standard agreement,  
10 they came to the table with that, so, a standard agreement, terms and conditions, the  
11 enforcement, and we worked with them on that. So, it was adjusted to suit our contract  
12 and our conditions and our specific project.

13                   **MR. JOHN ADAIR:** Sure. And I think, Ms. Schepers, we may be  
14 speaking a little bit at cross-purposes. My question was not so much focused on sort of  
15 how you got the contract ---

16                   **MS. NANCY SCHEPERS:** Yeah.

17                   **MR. JOHN ADAIR:** --- but this philosophy of -- that the right  
18 approach is allocate risk and then enforce the contract. That's something that IO  
19 contributed to that belief on the City's part.

20                   **MS. NANCY SCHEPERS:** Correct.

21                   **MR. JOHN ADAIR:** They were telling you, in effect, this is the  
22 theory that underlines P3 projects.

23                   **MS. NANCY SCHEPERS:** I was -- they were telling us. I knew  
24 that. I mean, it wasn't that the City didn't know that already. We were not naïve to that,  
25 and agreed that that's -- that's what you should expect from a P3, and wanted to work  
26 within that.

27                   **MR. JOHN ADAIR:** Okay. I'm going to move past sort of the  
28 theory behind a P3 and what the expected benefits are. I will come back to that, but I



1 want to just take a bit of a detour and deal with something else here, and that involves  
2 going back to the early days of the project and talk about the communications and flow  
3 of information with respect to certain issues, okay?

4 **MS. NANCY SCHEPERS:** Okay.

5 **MR. JOHN ADAIR:** Mitchell, if I can just ask you to call up a  
6 document, please? It's COW28. Thank you.

7 So, Ms. Schepers, you should have there a January -- on your  
8 screen, a January 2010 report to the Transit Committee -- sorry, of the Transit  
9 Committee, and if we can just scroll down to page 5, please? What is included within it,  
10 Ms. Schepers, is a report that you submitted to the Transit Committee on December 9,  
11 2009, do you see that?

12 **MS. NANCY SCHEPERS:** Yes, I do.

13 **MR. JOHN ADAIR:** And if we can just go to the top of page 8,  
14 please? Let's go one more page, sorry. Yeah. No, bear with me one second, Ms.  
15 Schepers. Hold on. I'm sorry.

16 Okay, Ms. Schepers. Thanks for bearing with me there just while  
17 we had some formatting issues, but this is part of the report you submitted on  
18 December 9<sup>th</sup>, 2009, and I'm just looking at the heading, "Financial Implications", and  
19 you'll see there, there's reference to the cost estimate being \$2.1 billion in 2009 dollars?

20 **MS. NANCY SCHEPERS:** Yes.

21 **MR. JOHN ADAIR:** And that was described as a cost estimate, not  
22 a budget, correct?

23 **MS. NANCY SCHEPERS:** Correct.

24 **MR. JOHN ADAIR:** And I take it the reason for that is if you look at  
25 just the next two sentences, there's reference to items that are allowed for and then  
26 items that are not included in the estimate, correct?

27 **MS. NANCY SCHEPERS:** Correct.

28 **MR. JOHN ADAIR:** So, for example, it doesn't include any amount

1 for inflation?

2 **MS. NANCY SCHEPERS:** Correct.

3 **MR. JOHN ADAIR:** It was obviously, as you say here, subject to  
4 refinement as the project progressed through the design phase?

5 **MS. NANCY SCHEPERS:** Correct.

6 **MR. JOHN ADAIR:** And what you were telling the Transit  
7 Commission, and then, ultimately, counsel at the time is that this is a number that is  
8 subject to change?

9 **MS. NANCY SCHEPERS:** Yes, and that is very consistent with  
10 any environmental assessment we bring before any committee and Council, but it is  
11 well understood that, you know, the next step in the project, if it becomes a project that's  
12 got to be delivered in a given year, those estimates would be adjusted, and they would  
13 be in front of the committee and Council at the appropriate time.

14 **MR. JOHN ADAIR:** Right. And if we can just -- Mitchell, if I can  
15 just ask you to call up a different document now? It's COW27, please.

16 And Ms. Schepers, I'm happy to show you as much or as little of  
17 this as you'd like, but the pages I'm interested in, which I will ask to go to now, is page  
18 55, and if you think you need to see more of it, just let me know. But there's a cost  
19 estimate there, again, referred to as an estimate rather than a budget, of 2-point -- the  
20 same \$2.1 billion in 2009 dollars just in the far-left column in the top paragraph. Do you  
21 see that?

22 **MS. NANCY SCHEPERS:** Yes.

23 **MR. JOHN ADAIR:** And then -- and again, Ms. Schepers, I just  
24 really want to make sure I'm not being unfair to you, but I'm going to direct your  
25 attention somewhere specific, and if you want more time to answer my question, then  
26 by all means, let me know.

27 In the middle column under cost estimating process, the second  
28 paragraph says that, "The level of design completed to support this functional design

1 report, the accuracy of the cost estimate can be considered Class D, that is, the  
2 estimate will be accurate to plus or minus 25 per cent.” Do you see that?

3 **MS. NANCY SCHEPERS:** I see that, yes.

4 **MR. JOHN ADAIR:** And the estimate that appears here of the \$2.1  
5 billion, and the same one that appears in your report of around the same time, that  
6 estimate was done before the preliminary engineering?

7 **MS. NANCY SCHEPERS:** That’s correct.

8 **MR. JOHN ADAIR:** And the purpose of the preliminary engineering  
9 is actually to advance the design to a point that you can have a meaningful RFP?

10 **MS. NANCY SCHEPERS:** To advance the design so that you’re  
11 past the Class D, and I can’t remember the right class of estimate, but yes, it gives you  
12 a much more level of granularity and ability to cost.

13 **MR. JOHN ADAIR:** Right, because plus or minus 25 per cent is a  
14 fairly substantial swing.

15 **MS. NANCY SCHEPERS:** Correct.

16 **MR. JOHN ADAIR:** And not something on which you would just  
17 proceed ahead, assuming that that number is right. You need more information before  
18 you can get to a budget?

19 **MS. NANCY SCHEPERS:** Correct.

20 **MR. JOHN ADAIR:** And, in fact, it’s not even a budget, the \$2.1  
21 billion that’s described here; it’s an estimate?

22 **MS. NANCY SCHEPERS:** Correct. Yes.

23 **MR. JOHN ADAIR:** And it’s also done before there’s any value  
24 engineering that’s been looked at?

25 **MS. NANCY SCHEPERS:** That’s correct. Yes.

26 **MR. JOHN ADAIR:** And before the RFP process and the back and  
27 forth with the bidders about different ways of doing things and different options that  
28 might be available?

1                   **MS. NANCY SCHEPERS:** That's right. It is to support the report  
2 that was in front of committee and Council on the environmental assessment ---

3                   **MR. JOHN ADAIR:** (Indiscernible).

4                   **MS. NANCY SCHEPERS:** --- and filed.

5                   **MR. JOHN ADAIR:** I'm sorry, Ms. Schepers, I did not mean to  
6 speak over you. I apologize for that.

7                   **MS. NANCY SCHEPERS:** Okay.

8                   **MR. JOHN ADAIR:** And that -- everything we've just talked about,  
9 about all the work that wasn't done at the time that the cost estimate of \$2.1 billion in  
10 2009 dollars was created, the reason you were telling Council this is just an estimate  
11 and it's subject to change is because, in fact, as you said a moment ago, it was obvious  
12 that it was an estimate and subject to change?

13                   **MS. NANCY SCHEPERS:** Correct, and it is plus or minus 25 per  
14 cent. So, keep in mind that when you're at that level, you're very generous, you know,  
15 in terms of your estimates, but yes, you could have missed something, and that is  
16 typically where you get into the plus or minus 25 per cent, and it needs to advance  
17 further to be refined and become a budget number.

18                   **MR. JOHN ADAIR:** Right, and not just you could have missed  
19 something, Ms. Schepers, and I don't say this to be at all confrontational or critical, but  
20 just to make sure we have clarity on it, that plus or minus 25 per cent represents a total  
21 of a potential billion-dollar swing, right? Twenty-five per cent downwards would be \$500  
22 million, 25 per cent upwards would be \$500, the swing is a billion dollars.

23                   **MS. NANCY SCHEPERS:** Yes, and I'm -- I'm just clarifying that in  
24 terms of the contingency and the project office, and I wouldn't necessarily include those  
25 in the plus or minus 25 per cent, but, you know, it is a big number. No question.

26                   **MR. JOHN ADAIR:** Right. So, it's not -- I just don't want to get,  
27 sort of, hung up on the idea that maybe some little thing got missed. It's just very  
28 preliminary?

1                   **MS. NANCY SCHEPERS:** Correct.

2                   **MR. JOHN ADAIR:** Okay. And the reason that when you report to  
3 Council that the \$2.1 billion is an estimate, and you tell them what isn't included, and  
4 you tell them that it's subject to change, the reason you do all that is because you're not  
5 yet ready to commit to a budget at that stage?

6                   **MS. NANCY SCHEPERS:** That's correct.

7                   **MR. JOHN ADAIR:** And certain ---

8                   **MS. NANCY SCHEPERS:** And ---

9                   **MR. JOHN ADAIR:** I'm sorry, go ahead.

10                  **MS. NANCY SCHEPERS:** I was going to say, that being said, you  
11 know, we try to do our best at the EA stage because as you well know, a number takes  
12 on a life of its own. So, we do our homework. This is not, you know, just grabbed out of  
13 the sky. You know, there was background and there was a lot of work done to get us to  
14 these numbers.

15                  **MR. JOHN ADAIR:** Right. And no doubt that there was, but you  
16 also were quite fairly recognizing all the work that still had to be done in order to even  
17 just get to a budget.

18                  **MS. NANCY SCHEPERS:** That is correct.

19                  **MR. JOHN ADAIR:** And you certainly would not have promised  
20 Council back in 2009, December of 2009, that you can bring this project in at 2.1?

21                  **MS. NANCY SCHEPERS:** Correct.

22                  **MR. JOHN ADAIR:** Because that would be, frankly, irresponsible  
23 to make that promise at that time?

24                  **MS. NANCY SCHEPERS:** Correct.

25                  **MR. JOHN ADAIR:** And this is December of 2009, right?

26                  **MS. NANCY SCHEPERS:** Yes.

27                  **MR. JOHN ADAIR:** And as you said a moment ago in terms of  
28 numbers taking on a life of their own, when I talk about it being irresponsible to make a

1 promise, and I'm not suggesting you did. I know you didn't. The reason it's  
2 irresponsible is you can start to create expectations -- if you start to promise Council,  
3 "this is what I'm going to bring it in at", you create expectations at a time when you really  
4 would have no idea if you could meet them or not.

5 **MS. NANCY SCHEPERS:** Well, you just would not have done  
6 enough work to stand up and comfortably say, "Yes, I can guarantee this".

7 **MR. JOHN ADAIR:** Or even commit to it.

8 **MS. NANCY SCHEPERS:** Yes. Okay, yes.

9 **MR. JOHN ADAIR:** And this is December 2009, and then it goes --  
10 your report goes to Transit Commission in January of 2010, right?

11 **MS. NANCY SCHEPERS:** Correct.

12 **MR. JOHN ADAIR:** And Ms. Schepers, I'm just curious now for a  
13 moment about communication to the public. My understanding, Ms. Schepers, is that  
14 there was a municipal election in 2010?

15 **MS. NANCY SCHEPERS:** I believe you're correct there, yes.

16 **MR. JOHN ADAIR:** And my understanding is the Mayor Watson  
17 and some of the councillors ran on a platform that included a commitment to a \$2.1  
18 billion number for this project?

19 **MS. NANCY SCHEPERS:** I don't recall the specifics but yes, that  
20 is very very possible, yes.

21 **MR. JOHN ADAIR:** And what they were doing is publicly  
22 committing to the \$2.1 billion number, correct?

23 **MS. NANCY SCHEPERS:** If that's in their platform, then yes.

24 **MR. JOHN ADAIR:** And I believe the mantra was "On time, on  
25 budget." You've heard that before, I'm sure?

26 **MS. NANCY SCHEPERS:** Yes, many times.

27 **MR. JOHN ADAIR:** Right. Not only during the 2010 municipal  
28 election but in the years that followed?

1                   **MS. NANCY SCHEPERS:** Yes, and for every project that I've been  
2 responsible for.

3                   **MR. JOHN ADAIR:** And Ms. Schepers, in terms of communicating  
4 with the public and starting to create expectation and starting to tell the public what they  
5 can reasonably anticipate, what was happening, with the greatest of respect, is that Mr.  
6 Watson as he then was and the other members of Council who ran on that platform  
7 were making the very promise that you said would be irresponsible to make. Right?

8                   **MS. NANCY SCHEPERS:** They were taking this number and it's  
9 not unreasonable for them to do it. It's not the first time that has happened. And you  
10 know, as staff, we report to Council. And if that was unrealistic and we at any point  
11 said, "You know, this is not possible," then we would have to do our homework and we  
12 would have to justify that in front of committee and Council.

13                   **MR. JOHN ADAIR:** Let's just go back to a couple of the things I  
14 think we've already established, Ms. Schepers.

15                   I think you agreed with me a moment ago that as of December of  
16 2009, January of 2010 you couldn't even call the 2.1 a budget; it was so preliminary you  
17 could only call it an estimate subject to change, right?

18                   **MS. NANCY SCHEPERS:** That's correct, although I had a level of  
19 comfort with it as I would with any EA estimate.

20                   **MR. JOHN ADAIR:** Right. You had a plus or minus \$1 billion level  
21 of comfort.

22                   **MS. NANCY SCHEPERS:** I had a level of comfort with it, yes.

23                   **MR. JOHN ADAIR:** Right, that was plus or minus 25 percent.

24                   **MS. NANCY SCHEPERS:** That's a Class D estimate, yes.

25                   **MR. JOHN ADAIR:** Right. And I think we agreed a moment ago  
26 that you would never promise Council that you could bring it in at that number at that  
27 time because that would be irresponsible because the number takes on a life of its own.  
28 Did we agree about that a moment ago?

1                   **MS. NANCY SCHEPERS:** Yes, we did.

2                   **MR. JOHN ADAIR:** And all I'm suggesting to you, whether -- I  
3 understood from your answer that there were issues about who reports to whom and  
4 how and what Council does with it. My simple point is that Mr. Watson, as he then was,  
5 and the other members of Council who ran on that platform of 2.1 billion on time on  
6 budget were making the very promise to the public that you, as an experienced  
7 professional were not prepared to make to Council. Right?

8                   **MS. NANCY SCHEPERS:** In the absence of true estimates, I  
9 agree, yes.

10                  **MR. JOHN ADAIR:** And that was a mistake. Like, without trying to  
11 cast a huge amount of blame on anyone here, it was just a mistake to do that.

12                  **MS. NANCY SCHEPERS:** Is that a question?

13                  **MR. JOHN ADAIR:** It is, Ms. Schepers. And let me just help you  
14 with one thing here because I don't want this to be hugely adversarial.

15                  **MS. NANCY SCHEPERS:** Yes.

16                  **MR. JOHN ADAIR:** The mandate of this inquiry is not to say, "This  
17 person was at fault and that person didn't measure up," and all kinds of things like that.  
18 We're just here to try to learn from what has happened in the past and do it better in the  
19 future.

20                         So when I talk about a mistake I'm not trying to be disrespectful to  
21 the people who made the mistake. And I'm not trying to be disrespectful to Council. But  
22 it was a mistake and it's a mistake we can learn from; would you agree with that?

23                  **MS. NANCY SCHEPERS:** I wouldn't characterize, you know,  
24 having gone through this process and gone to contract award, I would argue that it  
25 wasn't a mistake. And yes, it was an early commitment that was made. That is not a  
26 surprise. That happens a lot with political campaigns as you well know. At the end of  
27 the day, if you see the evolution and want to look back, it wasn't a mistake.

28                  **MR. JOHN ADAIR:** Okay. So then look, I have to ask this. If you



1 don't want to acknowledge it was a mistake, it was something that was irresponsible for  
2 you who had actually studied the issue to do to Council to make a promise. But not  
3 irresponsible, I guess, then for Council or for the people running for Council to do for the  
4 public. I mean, that's the necessary implication of what you've just said.

5 **MS. NANCY SCHEPERS:** Yes, I was not prepared to stand behind  
6 it at this point as a budget number; you're absolutely right. I agree with you.

7 **MR. JOHN ADAIR:** All right.

8 Now, Ms. Schepers, independent of any budget uncertainty, there  
9 was some -- there was a level of inexperience on this project and again by that I don't  
10 mean any criticism. I'm just trying to point out some facts. I think we talked earlier  
11 about this being the City's first electric light rail project.

12 **MS. NANCY SCHEPERS:** Correct, yeah.

13 **MR. JOHN ADAIR:** And forgive me if I asked this. I'm not trying to  
14 belabour anything. But was it also the City's first P3?

15 **MS. NANCY SCHEPERS:** I believe so, yes.

16 **MR. JOHN ADAIR:** And you're aware that it was also IO's first -- or  
17 among their first light rail projects?

18 **MS. NANCY SCHEPERS:** Yes, that's correct.

19 **MR. JOHN ADAIR:** And their first project working directly with the  
20 municipal government?

21 **MS. NANCY SCHEPERS:** That is what I understand.

22 **MR. JOHN ADAIR:** And you know, we can -- lots of people  
23 including experts will debate the extent to which this vehicle was service proven but it  
24 was the first time, as understand it, that Alstom had brought low floor technology to  
25 North America?

26 **MS. NANCY SCHEPERS:** Yes, I believe that's correct.

27 **MR. JOHN ADAIR:** And Ms. Schepers, when you have an  
28 infrastructure project like this that's enormously complex, one can reasonably expect

1 there to be unanticipated events that come up during the course of construction?

2 **MS. NANCY SCHEPERS:** Correct. That will happen with any and  
3 every project.

4 **MR. JOHN ADAIR:** Right. And the bigger and more complex the  
5 project, the more likely that is to happen?

6 **MS. NANCY SCHEPERS:** Yeah. And the scope of them can be  
7 much bigger. Correct.

8 **MR. JOHN ADAIR:** Right. And those unanticipated events, when  
9 they come up, can really affect the schedule?

10 **MS. NANCY SCHEPERS:** Absolutely.

11 **MR. JOHN ADAIR:** I'm going to suggest that when you have a  
12 project like this that has some first involved and some inexperience involved, the ability  
13 to manage those events when they come up is a little bit compromised by that lack of  
14 experience.

15 **MS. NANCY SCHEPERS:** I would say that what you're suggesting  
16 is why we, at the City, retained the expert advisors that we did to make sure that in fact  
17 we did have the expertise around the table during the development of the RFP and the  
18 evaluation and the market period. So that inexperience is exactly why we took the  
19 steps to make sure we surrounded ourselves by the experience we needed.

20 I was also confident that IO, in terms of yes, this was their first  
21 municipal, their first linear transit system that their experience in the marketplace was  
22 well regarded and they brought a lot to the table in terms of the standard agreements  
23 and their reputation with the large players in the marketplace.

24 **MR. JOHN ADAIR:** Right. And even having the benefit of all of the  
25 professional advice that one can retain and that the City did retain, it was still  
26 reasonable to expect issues to arise that were unanticipated and that might affect the  
27 schedule or otherwise affect the project.

28 **MS. NANCY SCHEPERS:** On all projects that's -- that is true.

1                   **MR. JOHN ADAIR:** Right. And that's something that would be  
2 known to everyone involved, even before the contract was signed.

3                   **MS. NANCY SCHEPERS:** Correct. And it's reflected in the  
4 agreement and the evaluations and the whole nine yards in terms of what we asked the  
5 proponents to provide to us to prove that they knew what they were doing. You know,  
6 they had a good assessment of the risks. They had a risk management plan. They had  
7 safety plans. There's a lot of information that they had to provide to prove to us that  
8 they could.

9                   So you know, we were certainly anticipating and then trying to be  
10 ahead of -- okay, what could happen here and how do we make sure that we've got the  
11 right players to work with us?

12                   **MR. JOHN ADAIR:** Right. And through no fault of anyone's truly,  
13 the reality is on Day 1, even with professional advisors who have been paid millions and  
14 millions of dollars, even with major international construction companies at the table to  
15 do the work, you know that there are things that are going to come up that you didn't  
16 anticipate and that they're going to affect the schedule and managing of it is going to be  
17 difficult. Right?

18                   **MS. NANCY SCHEPERS:** It's a possibility, yes. I mean, to say  
19 that it is definitely going to, I mean, we have to -- you would be irresponsible not to  
20 anticipate that there's going to be things that -- yes.

21                   **MR. JOHN ADAIR:** And I didn't necessarily mean to suggest that  
22 it's inevitable. It's just sort of what one would expect as you've just said. That's fine.

23                   So in terms of, you know, going back to where I was a minute ago  
24 about the Commission's mandate and in terms of what we can learn from all this, one of  
25 the things I'm going to suggest is that the public entity in a project like this should, if  
26 things are being done right, set a policy right from the start of open and transparent  
27 communication with the public, and then follow that policy. Do you agree?

28                   **MS. NANCY SCHEPERS:** Yes.

1                   **MR. JOHN ADAIR:** And that meant in practice in respect of this  
2 project is, it meant telling the public the following, I'm suggesting to you -- you tell me if  
3 you disagree.

4                   It meant telling the public that although the estimate was 2.1 billion,  
5 that that was still subject to change, correct?

6                   **MS. NANCY SCHEPERS:** If I can get some clarity from you,  
7 because you know, this report on the PA says that, and is certainly in the public's mind.

8                   Future reports where we actually talk about the budget, that is  
9 where we are not saying -- where we're saying this is the number. We have this  
10 number, 2.1. We're comfortable with it, and it's not -- you know, it's not subject to  
11 change.

12                   So I just want to clarify at what point you're asking that question  
13 about?

14                   **MR. JOHN ADAIR:** No, that's fair, and I don't do this to deprive  
15 you of the document, but I'm just going to ask Mitchell to take it down. I realize I've left  
16 it up. If you need to it again, please let me know, okay?

17                   **MS. NANCY SCHEPERS:** Yeah.

18                   **MR. JOHN ADAIR:** Let me cut right to the chase here. I'm going  
19 to suggest to you that what should have been communicated to the public in 2010 and  
20 '11 and '12, as this project was in the preliminary engineering and then going through  
21 signing of the contract, is that rather than saying "on time, on budget, on time, on  
22 budget," what should have been communicated to the public is that this is going to be a  
23 world-class system once it's done, but it is going to be very difficult to pull off, and we  
24 need your patience. That would have been a better message to give the public. Do you  
25 agree with that?

26                   **MS. NANCY SCHEPERS:** I've never worked on a project where  
27 you didn't give an estimated date and an idea, because as we moved through 2011, we  
28 were certainly doing a lot more work. We had other experts in, and in terms of the

1 comfort with the numbers and looking at the schedule and the critical path, we were  
2 getting very comfortable with that.

3 So I would say that yes, you know, in terms of communicating that  
4 and conveying it, you know, we all -- it is going to be a world-class system and I believe  
5 -- you know, after I left, I certainly heard that commitment from staff saying, "And it will  
6 be open when it is ready and safe to do so."

7 So yes, you do have to manage expectations, absolutely. And you  
8 have to communicate clearly when things aren't going exactly as planned.

9 **MR. JOHN ADAIR:** And you said your answer there that you've  
10 never worked on a project that didn't have an anticipated date and an anticipated  
11 budget, and I accept that, of course. There's always -- you know, you're going to put  
12 dates in there.

13 All I'm suggesting is that what would have been the right message  
14 for the public from the outset so that they understood what they were getting into was,  
15 "This is really complex. We've never done anything this large before. It's going to be  
16 amazing for you citizens of Ottawa, but it is going to take time. We are going to take  
17 time. We are going to need patience, and that's our commitment to you, is to act in your  
18 best interests and give you that world-class system."

19 That would have been the right message to send.

20 **MS. NANCY SCHEPERS:** I'm sorry, I would disagree with you. I  
21 mean, there was a lot of issues around that project, like the length of the detours and  
22 the community that had to accept having buses run in front of their homes for a period  
23 of time.

24 So for me as an engineer, and dealing with the public, I understand  
25 where you're coming from, but to not give a date at all and just say, you know, "Hang  
26 on. You're going to get a great system. We're going to run those buses in front of your  
27 house until we're done, but we can't tell you when," I would not be fine -- I would not be  
28 able to do that.

1                   **MR. JOHN ADAIR:** Okay. Let me just clarify one thing. I don't --  
2 did not mean to suggest with my question -- I apologize if it came across that way -- that  
3 no date would be given and no estimates about budget or timing. I'm just simply saying  
4 once you give the date and the budget, you have to tell people, "These are just  
5 estimates. You have to anticipate difficulties along the way. We are doing our best, but  
6 would can't make a promise."

7                   That would have been better than "on time, on budget".

8                   **MS. NANCY SCHEPERS:** Yeah. Certainly, saying, "Here's our  
9 time and budget, subject to unforeseen circumstances," absolutely.

10                  **MR. JOHN ADAIR:** Right. And the problem is, when you make  
11 promises to people like, on time, on budget, one of the problems that creates is it  
12 creates a political imperative for council, right?

13                  **MS. NANCY SCHEPERS:** It certainly creates expectations in the  
14 public, around the council table for sure.

15                  **MR. JOHN ADAIR:** And it kind of boxes you in because it makes it  
16 that much harder to move away from it later?

17                  **MS. NANCY SCHEPERS:** It certainly is a commitment and I will  
18 say again that as items come up, typically, that's when you have to get in front of the  
19 public and say, "Hey, this happened. There's a potential that this is going to cause  
20 delays or this is going to happen. We don't know yet what, and we'll keep you  
21 informed."

22                  So yes, you do have to make sure there's an open communication  
23 for sure. But staff, you know, we work for council and yeah, you know what? I'm a  
24 professional engineer and if it's -- if I can't stand behind any of those reports going to  
25 council, my name's not going on it. And so when I say in a report that, "Here's the  
26 date," it's based on solid grounding and I'm comfortable with those -- that report and the  
27 recommendations.

28                  **MR. JOHN ADAIR:** Right. But let me just be clear about one more

1 thing, Ms. Schepers. In terms of your -- you standing behind your reports and you being  
2 a professional in terms of how you deal with council, your reports, I'm going to suggest  
3 to you, were exactly right because they say, "subject to change". They recognize the  
4 potential for unanticipated consequences. They have contingencies built in.

5 I'm not here to quibble with how you reported to council, okay?

6 **MS. NANCY SCHEPERS:** Yeah.

7 **MR. JOHN ADAIR:** And just lastly on this, Ms. Schepers, I assume  
8 you've lived in Ottawa for a very long time, if not your whole life, yes?

9 **MS. NANCY SCHEPERS:** I've been here since '93, yes.

10 **MR. JOHN ADAIR:** The people of Ottawa, in your experience, are  
11 reasonable and fair minded?

12 **MS. NANCY SCHEPERS:** Yes.

13 **MR. JOHN ADAIR:** And if you tell them you're going to get a world-  
14 class system but there's going to be some pain along the way, and we're going to need  
15 your patience, they will understand that?

16 **MS. NANCY SCHEPERS:** Yes, generally.

17 **MR. JOHN ADAIR:** And they will respect the candour, right?

18 **MS. NANCY SCHEPERS:** Yes.

19 **MR. JOHN ADAIR:** Okay. Let me circle back to the perceived  
20 benefits of the P-3 model, and I have some questions for you, Ms. Schepers, with  
21 respect to whether those benefits really play out in practice. And I realize that you  
22 weren't there for a lot of this period of time, but I want to see how the theory underlying  
23 the P-3 lines up with how it actually works in practice.

24 And I want to start by telling you again, hopefully, that this is not  
25 about criticism of you or the City for choosing a P-3 model. This is about attempting to  
26 see whether, in practice, these things shake out the way we expect them to.

27 Let me start with the first benefit we talked about, which is  
28 innovation, right, getting the benefit of the private sector's innovation.

1                   Before this project went to RFP, you had Capital -- sorry, even  
2 during RFP, I should say, but before and during -- the City had the benefit of advice  
3 from Capital Transit Partners?

4                   **MS. NANCY SCHEPERS:** Correct.

5                   **MR. JOHN ADAIR:** And that was a consortium of engineering  
6 companies, correct?

7                   **MS. NANCY SCHEPERS:** Yes.

8                   **MR. JOHN ADAIR:** Who were selected through a competitive  
9 process?

10                  **MS. NANCY SCHEPERS:** Correct.

11                  **MR. JOHN ADAIR:** And although maybe we don't have a specific  
12 list in front of us, from among the best engineering companies in the world?

13                  **MS. NANCY SCHEPERS:** I would agree with that, yes.

14                  **MR. JOHN ADAIR:** And then they were paid something like tens of  
15 millions of dollars to give the City expert advice on a project that's as large and complex  
16 as this?

17                  **MS. NANCY SCHEPERS:** I don't have the number in my head. It's  
18 been a while, but yes, it was real money.

19                  **MR. JOHN ADAIR:** Right. And their work involved and included  
20 value engineering ---

21                  **MS. NANCY SCHEPERS:** Correct.

22                  **MR. JOHN ADAIR:** --- which means taking a hard look at the  
23 project assumptions and the engineering and figuring out ways to deliver the same  
24 quality project for less money or faster or otherwise better?

25                  **MS. NANCY SCHEPERS:** Correct.

26                  **MR. JOHN ADAIR:** And that includes, for example, the decision to  
27 change the depth of the tunnel, which was a means by which the City shaved a good  
28 deal of money off the budget?



1                   **MS. NANCY SCHEPERS:** Correct.

2                   **MR. JOHN ADAIR:** And ultimately, Ms. Schepers, if you recall, the  
3 preliminary engineering helped save about six months off the construction schedule?

4                   **MS. NANCY SCHEPERS:** Correct.

5                   **MR. JOHN ADAIR:** Meaning that Capital Transit Partners and the  
6 City, in conjunction, took a very hard look at the schedule, broke down every aspect,  
7 built it back up, and figured out whatever they could about how to be more efficient with  
8 it?

9                   **MS. NANCY SCHEPERS:** Correct.

10                  **MR. JOHN ADAIR:** And all of that is innovation?

11                  **MS. NANCY SCHEPERS:** Correct.

12                  **MR. JOHN ADAIR:** And it's taking advantage of the private sector  
13 because that's what Capital Transit Partner is?

14                  **MS. NANCY SCHEPERS:** Correct.

15                  **MR. JOHN ADAIR:** So that when you go to engage with RTG in  
16 the RFP process, and then, after that, in contract, you've already the benefit of an  
17 enormous amount of innovation from the private sector?

18                  **MS. NANCY SCHEPERS:** You have. And, as I've said before,  
19 once you get into that next phase, you're adding to the mix in terms of who's at the  
20 table. And so why I would expect more innovation through that next phase is because  
21 you have contractors there, and they know they're business, they know how to do  
22 things, and they will bring -- bring things to the table.

23                         You also have folks who are much more aware of, perhaps, the  
24 maintenance and will bring other ideas to the table as well. So yes, we had an excellent  
25 team, but part of the benefit with going P3 is you're getting a larger team that has  
26 additional expertise as well.

27                  **MR. JOHN ADAIR:** Right. And you're going to get that -- I mean  
28 any model, the city is going to contract out the building and the construction, and any

1 model, the City's going to contract out the design. And those private sector partners are  
2 always going bring whatever innovation they can to the table. And I'm not suggesting  
3 there's no room for any innovation. I just think we've got to be a little careful on how  
4 much weight we put on innovation as a benefit of a P3. Is that fair?

5 **MS. NANCY SCHEPERS:** I definitely expect innovation as part of  
6 a P3. And certainly -- I'm not understanding your question.

7 **MR. JOHN ADAIR:** I'm just suggesting that in terms of the  
8 motivations that cause the City to pick a P3 and a DBFM ---

9 **MS. NANCY SCHEPERS:** M'hm.

10 **MR. JOHN ADAIR:** And again, this is all with the benefit of  
11 hindsight, but in terms of those perceived benefits, to the extent that innovation in one of  
12 them, innovation is available in a lot of different places in a lot of different ways in a lot  
13 of different models, right?

14 **MS. NANCY SCHEPERS:** It is. Once you're in the P3 and you're  
15 in the market, you're -- you -- you're getting innovation that's coming forward in a very  
16 competitive environment, and that is different. So yes, we work with CTP, and we are  
17 bringing innovation to the table, and they did a great job, but once you get a larger  
18 group of expertise around the table -- and, in this case, you have three of those groups,  
19 and they have skin in the game. They are competing. You're going to get innovation  
20 without a doubt.

21 **MR. JOHN ADAIR:** Okay. And then in terms of the sort of a  
22 having a single entity as the contracting party and the benefits that come along with  
23 that, let's just start with the integration aspect of that whereby you have that one entity  
24 who can coordinate all of the different moving parts in a project of this complexity. We  
25 agreed earlier, I think, that it's better for the private sector to do that because the City  
26 doesn't have the expertise?

27 **MS. NANCY SCHEPERS:** And it's -- so I -- can I answer that with  
28 an example?

1                   **MR. JOHN ADAIR:** Absolutely. You can the questions however  
2 you like, Ms. Schepers.

3                   **MS. NANCY SCHEPERS:** Okay, thank you. So in terms of the  
4 integration, it is -- you know, once the contractor is in the contract, then they have a  
5 critical path. And so, for instance, by bundling the 417 with this contract, that put  
6 responsibility squarely with RTG to have that work done so that they could open those  
7 lanes which would then allow them to begin to close down parts of the Transitway and  
8 begin some of the key construction aspects.

9                   If those two had remained separate from each other -- and in  
10 discussions with previous colleagues at MTO, you know, they were not prepared to take  
11 that risk if they were doing the contract in a conventional way and the contract was  
12 delayed. It's -- you know, it allowed RTG their power in the marketplace to make sure  
13 the focus was on the right things at the right time to ensure the overall critical path. Had  
14 MTO done that work, they -- you know, we would have been -- the City of Ottawa would  
15 have been stuck in the middle.

16                   **MR. JOHN ADAIR:** Right. And that, I think, is not necessarily an  
17 example of, but it's the kind of scenario that can lead to the finger pointing that we  
18 talked about earlier where different -- where you have all these different players at the  
19 table, you have the possibility that people start fighting about who's responsible for  
20 what, and that stalls progress.

21                   **MS. NANCY SCHEPERS:** Correct.

22                   **MR. JOHN ADAIR:** And are you aware that in 2018 and 2019,  
23 when things really started to break on this project, that there was a huge amount of  
24 finger pointing going on?

25                   **MS. NANCY SCHEPERS:** I was not there at that point so I cannot  
26 speak to that.

27                   **MR. JOHN ADAIR:** All right. And if the Commission hears  
28 evidence over the course of the weeks that we're undertaking this exercise that there

1 was in fact a huge amount of finger pointing going, then I gather that that perceived  
2 benefit did not -- would not have come to fruition?

3 **MS. NANCY SCHEPERS:** I can't -- you know, not knowing what  
4 they were, and not knowing that, I can't answer that question, sorry.

5 **MR. JOHN ADAIR:** No, fair enough. In terms of the maintenance,  
6 Ms. Schepers, including the maintenance and having the benefit of this sort of, what I'll  
7 call, integration -- it's a different use of the word, but I can't think of a better one -- this  
8 integration between the design and the maintenance company being aligned in interest,  
9 part of the reason that that works is because it's the same entity and they have the  
10 same economic interest, right?

11 **MS. NANCY SCHEPERS:** Correct.

12 **MR. JOHN ADAIR:** And that's why including the maintenance  
13 piece in the overall gives you that kind of continuity and causes the design builder to  
14 have to pay more attention to maintenance than they may otherwise do.

15 **MS. NANCY SCHEPERS:** For sure, yes. I agree.

16 **MR. JOHN ADAIR:** And are you aware, in this case -- forgive me,  
17 I'm going to ask a couple of questions that are sort of trite and obvious but, just to set  
18 the table, the contracting on the other side from the City was RTG?

19 **MS. NANCY SCHEPERS:** The consortium, yes.

20 **MR. JOHN ADAIR:** Yeah, and that was a consortium -- that's  
21 where I was going go -- of three different major construction companies, right?

22 **MS. NANCY SCHEPERS:** Correct.

23 **MR. JOHN ADAIR:** And then what RTG did -- you may recall this -  
24 - is they subcontracted the design-build to another consortium called OLRTC?

25 **MS. NANCY SCHEPERS:** I believe that's correct. I don't have that  
26 information in front of me, but yet, that sounds correct.

27 **MR. JOHN ADAIR:** Right. And do you recall that OLRTC has  
28 slightly different sort of, what I'll call, members than did RTG?

1                   **MS. NANCY SCHEPERS:** I do recall that, yes.

2                   **MR. JOHN ADAIR:** And are you aware as well that RTG  
3 subcontracted the maintenance side to RTM?

4                   **MS. NANCY SCHEPERS:** I understand they are the entity who --  
5 RTM is the entity responsible for the maintenance, yes.

6                   **MR. JOHN ADAIR:** And that that that was a slightly different  
7 consortium than RTG in terms of the members?

8                   **MS. NANCY SCHEPERS:** Yes, and I would expect that it would  
9 because you wouldn't have -- the tunnel contractor and some of the other players are  
10 no longer there when you move to the maintenance period.

11                   **MR. JOHN ADAIR:** Right, and RTM, you may recall, also  
12 subcontracted a good portion of the maintenance to Alstom?

13                   **MS. NANCY SCHEPERS:** Correct.

14                   **MR. JOHN ADAIR:** And so if OLRTC, which is -- OLRTC, excuse  
15 me, which is the company that's doing the design-build, if it did end up cutting corners  
16 on construction, and thereby creating a problem on the maintenance side, it was not  
17 creating -- it was creating the partner -- the problem, rather, for a different entity, being  
18 RTM or possible Alstom, correct?

19                   **MS. NANCY SCHEPERS:** Well, yes, but it still is within RTG so,  
20 you know, they need to be working within RTG to make sure that all those pieces are  
21 working together.

22                   **MR. JOHN ADAIR:** Right. My point is simply that including the  
23 maintenance and having this continuity of financial interest actually breaks down when  
24 you start to have all these subcontracts.

25                   **MS. NANCY SCHEPERS:** I don't under -- I don't know the details  
26 of the contractual relationship between RTG and the various players so I can't comment  
27 on that.

28                   **MR. JOHN ADAIR:** Okay. If -- just thinking about the theory and

1 the idea of including maintenance, if the design-build company is different from the  
2 company responsible for the maintenance, then that continuity of financial interest  
3 doesn't exist, does it?

4 **MS. NANCY SCHEPERS:** Well, I can only speak to one example.  
5 And I -- I'm -- that's a long time ago, but where the tunnel coming out of the  
6 maintenance and going out onto the line initially was not covered and it went under the  
7 Via tracks and then goes out to the main line -- and my understanding -- and again, in  
8 my -- I might not remember all the details, but that there was an internal discussion  
9 within the RTG players and an agreement made that a roof would be included in the  
10 design, and that was based on input from the maintainer saying, "We're going to have  
11 trouble keeping the snow off that run." So I can't speak to how RTG managed those  
12 interactions but that was, you know, part of their responsibility to make sure that they  
13 were doing that properly. And saw evidence that things were being changed to ensure  
14 that the design that was happening was in line with what could be maintained.

15 **MR. JOHN ADAIR:** All right. Let's just talk a little bit about the  
16 financing, if we can. Now, including the financing in this contract and in the model, it  
17 actually cost the City more money, correct?

18 **MS. NANCY SCHEPERS:** Correct.

19 **MR. JOHN ADAIR:** Because, effectively, you're requiring the  
20 private sector partner to borrow money and they charge you for that.

21 **MS. NANCY SCHEPERS:** Correct.

22 **MR. JOHN ADAIR:** And so, the benefit of including the financing  
23 has to be something that the City sought at the time as being worth the cost.

24 **MS. NANCY SCHEPERS:** Correct.

25 **MR. JOHN ADAIR:** Otherwise, you wouldn't have done it.

26 **MS. NANCY SCHEPERS:** Correct.

27 **MR. JOHN ADAIR:** And the biggest benefit of the financing -- of  
28 including the financing, as you understood it, based on the advice you had, the biggest

1 benefit of including the financing is that it created significant pressure on the project  
2 company to perform on schedule.

3 **MS. NANCY SCHEPERS:** It provided oversight related to the  
4 financial commitments that were made. Correct.

5 **MR. JOHN ADAIR:** Okay. And I just want to separate out two  
6 concepts, Ms. Schepers, just to be sure about sort of how we're dealing with this.

7 **MS. NANCY SCHEPERS:** Mm-hmm.

8 **MR. JOHN ADAIR:** So, when you have private sector financing,  
9 the lenders in that equation appoint advisors who are going to exercise oversight over  
10 the project, correct?

11 **MS. NANCY SCHEPERS:** Correct. And they will have done their  
12 due diligence to -- on the project and on the team members to -- before they get into  
13 that, for sure.

14 **MR. JOHN ADAIR:** Right. And that's a good thing, because those  
15 lenders' advisors are just another set of eyes on the whole project, make sure  
16 everything is proceeding according to plan, make sure people are doing what they're  
17 supposed to be doing, all that stuff, right?

18 **MS. NANCY SCHEPERS:** That's -- yes, I agree.

19 **MR. JOHN ADAIR:** So, that's the -- I'm just going to call that the  
20 oversight side of the financing, okay? And I'm going to park it over here. We know it's  
21 there; we know it exists as a benefit. But there's a slightly different thing I'm talking  
22 about, and I just want to make sure we're not talking at cross-purposes. The other  
23 benefit that I'm talking about is the existence of the private financing puts pressure on  
24 the project company to meet the schedule, because if they don't meet the schedule,  
25 they don't get paid, and they have to keep paying interest on the money they've  
26 borrowed, right?

27 **MS. NANCY SCHEPERS:** That's correct. Yeah.

28 **MR. JOHN ADAIR:** That was the theory?

1                   **MS. NANCY SCHEPERS:** Yeah.

2                   **MR. JOHN ADAIR:** And I think you mentioned earlier, and forgive  
3 me if I've just misheard you or misunderstood, but I think you said earlier something to  
4 the effect of the periodic payments that are available to the private sector partner are  
5 substantial?

6                   **MS. NANCY SCHEPERS:** Sorry, say that again?

7                   **MR. JOHN ADAIR:** I'm sorry, Ms. Schepers. We've just lost your  
8 video. I don't know if that was on our end or yours or...

9                   **MS. NANCY SCHEPERS:** I see that, sorry.

10                  **MR. JOHN ADAIR:** No, no, not at all. We're -- I'm very happy with  
11 myself that I haven't been told I'm on mute yet.

12                  So, let me start over, Ms. Schepers. The periodic payments that  
13 the Project Co. gets, the ones that come right at the end, the ones it gets for completing  
14 the project are substantial, correct?

15                  **MS. NANCY SCHEPERS:** Correct.

16                  **MR. JOHN ADAIR:** And I think, and I'm just going to ask you to  
17 take my word for it if you don't recall, but I think that substantial completion came with a  
18 payment of roughly \$53 million, and hitting revenue service availability, meaning open  
19 for the public, came with a payment of around \$202 million. Do those numbers sort of  
20 broadly ring a bell?

21                  **MS. NANCY SCHEPERS:** The specifics, no, but, generally, yes.

22                  **MR. JOHN ADAIR:** Okay. The order of magnitude seems  
23 reasonable to you?

24                  **MS. NANCY SCHEPERS:** Yes.

25                  **MR. JOHN ADAIR:** Okay. So that for completing the project, the  
26 Project Co. gets 250-odd-million dollars in a relatively short period of time.

27                  **MS. NANCY SCHEPERS:** Okay.

28                  **MR. JOHN ADAIR:** And that's a huge financial incentive to get the



1 project done, right?

2 **MS. NANCY SCHEPERS:** Correct.

3 **MR. JOHN ADAIR:** And in particular, because you've got this  
4 private financing you've taken that you have to continue to pay interest on, the idea is  
5 they're going to really need that \$250 million, and it's going to be an incentive to hit the  
6 schedule.

7 **MS. NANCY SCHEPERS:** Correct.

8 **MR. JOHN ADAIR:** And that's all part of the P3 theory?

9 **MS. NANCY SCHEPERS:** Correct.

10 **MR. JOHN ADAIR:** Right? The theory is create -- allocate risk,  
11 create financial incentives in the contract, and then enforce the contract.

12 **MS. NANCY SCHEPERS:** Correct. And recognizing that, you  
13 know, you're not setting unrealistic targets because, through the process, you have  
14 commercially confidential meetings, you have opportunities to work with the private  
15 sector partner so that at the end of the day, there's a contract that they're comfortable to  
16 commit to.

17 So, yes, that revenue service availability has a date, and they're  
18 working towards it and working hard towards it, but they were comfortable signing onto  
19 that date because of the due diligence they had done and through the process that, you  
20 know, got us to contract award.

21 **MR. JOHN ADAIR:** Right. All of that is, that you've just described,  
22 is occurring essentially in 2012?

23 **MS. NANCY SCHEPERS:** Correct.

24 **MR. JOHN ADAIR:** Now, I'm going to suggest to you, Ms.  
25 Schepers, that when things start to go wrong on a project -- because, again, we're just  
26 talking about the P3 theory here, when things start to go wrong on a project, that  
27 financial pressure that exists and that is actually part of the model can be harmful to the  
28 ultimate goal of producing a safe and reliable world-class system for the people of

1 Ottawa. Do you agree with that?

2 **MS. NANCY SCHEPERS:** Can you elaborate on that?

3 **MR. JOHN ADAIR:** Sure. Let me do it in a way that's actually very  
4 specific, okay? Listen, I know that you weren't involved. I don't want to be unfair to you  
5 here. I know you weren't involved after '15. I want to talk a little bit about what  
6 happened, just as a way of understanding my question, okay? And so, I'm going to ask  
7 you to assume certain things that I think are probably relatively fair, I hope.

8 So, you're going to have to bear with me while we build this up a  
9 little bit, Ms. Schepers, but I am going to circle back to where I just was.

10 **MS. NANCY SCHEPERS:** Okay.

11 **MR. JOHN ADAIR:** So, do you recall that RTG was supposed to  
12 hit revenue service on May 24<sup>th</sup> of 2018?

13 **MS. NANCY SCHEPERS:** Mm-hmm.

14 **MR. JOHN ADAIR:** And know that you're aware that that date was  
15 missed?

16 **MS. NANCY SCHEPERS:** Yes.

17 **MR. JOHN ADAIR:** And then did you know that it was extended to  
18 November of 2018?

19 **MS. NANCY SCHEPERS:** I don't know the specifics, but I will  
20 accept that from you.

21 **MR. JOHN ADAIR:** Okay. And then we know, of course, that that  
22 date was missed, because revenue service availability didn't come until the sort of late  
23 summer/early fall of 2019?

24 **MS. NANCY SCHEPERS:** Yes, correct.

25 **MR. JOHN ADAIR:** And what that means is when RTG missed  
26 revenue service in May of '18 and again in November of '18, it means they didn't get the  
27 \$250 million of payments that they were expecting on substantial completion and  
28 revenue service, correct?

1                   **MS. NANCY SCHEPERS:** Correct.

2                   **MR. JOHN ADAIR:** And now I want to take you to the summer of  
3 2019 and just lay a little bit of groundwork. So, by the summer of '19, we had those two  
4 RSA dates that were already missed in May and November of '18.

5                   **MS. NANCY SCHEPERS:** Okay.

6                   **MR. JOHN ADAIR:** And we know that as a result that RTG is  
7 under financial pressure because they are now a year late on getting the \$250 million of  
8 payments they were entitled to upon substantial completion and RSA, okay?

9                   **MS. NANCY SCHEPERS:** Mm-hmm.

10                  **MR. JOHN ADAIR:** And that, of course, is exactly, in a sense, how  
11 the system is supposed to work. There's supposed to be that financial pressure, right?

12                  **MS. NANCY SCHEPERS:** Correct.

13                  **MR. JOHN ADAIR:** And let me just be clear about one thing,  
14 because I understand this morning that there were some questions about -- and I know  
15 you weren't necessarily here, or certainly not testifying, but there were some questions  
16 about whether we should feel any sympathy for RTG as this conglomerate of  
17 multinationals, or consortium of multinationals, rather.

18                         When I talk about the financial pressure they were under and the  
19 difficulties they faced, I'm actually not suggesting that there is or should be any  
20 sympathy, I'm just telling you that's where things stood, okay?

21                  **MS. NANCY SCHEPERS:** Mm-hmm.

22                  **MR. JOHN ADAIR:** So, when you talk about -- in your answer a  
23 few moments ago, you were saying that, well, look, they committed to these dates, I'm  
24 just talking about where things stood by the summer of '19, and what incentives this  
25 model created, okay?

26                  **MS. NANCY SCHEPERS:** Okay.

27                  **MR. JOHN ADAIR:** So, when we're into the summer of '19, the  
28 system itself was not working, okay? I can tell you that. I'm going to ask you to take

1 that from me, that the system was not working, and RTG was under enormous financial  
2 pressure because of the model. I'm going to suggest to you that they had three options,  
3 okay? One, they could continue to delay RSA and get killed financially. The second is  
4 they could ask the City not to enforce the contract. And the third is they could turn over  
5 a system that's not ready. Would that be sort of reasonably fair in terms of an  
6 assessment of what their options were?

7 **MS. NANCY SCHEPERS:** It sounds fair.

8 **MR. JOHN ADAIR:** Okay. And under the P3 theory, if the model is  
9 working right, then the first option I identified, which is to continue to delay RSA and get  
10 killed financially, isn't really an option because of the financial pressure this model was  
11 intended to create, right?

12 **MS. NANCY SCHEPERS:** I don't know their financial situation, so I  
13 can't comment on it, but the way you're saying that, yes, I agree with what you're  
14 suggesting.

15 **MR. JOHN ADAIR:** Right. The theory was just continuing to delay  
16 and getting killed financially wouldn't be available because of the very pressure the  
17 model was intended to create.

18 **MS. NANCY SCHEPERS:** Okay. But it's your wording I guess I'm  
19 objecting to; getting killed financially is pretty strong language. These were big players.  
20 This is not -- you know, in terms of their ability to manage, I expect more from that, not  
21 the way you're characterizing it, if I could be -- if I could be honest with you.

22 **MR. JOHN ADAIR:** No, no. First of all, I appreciate that. And  
23 you're right. That is strong language. Let me say it differently.

24 **MS. NANCY SCHEPERS:** Yeah.

25 **MR. JOHN ADAIR:** The idea is that there will be enough financial  
26 pressure on them that just continuing to delay RSA will not be an option. That was the  
27 theory.

28 **MS. NANCY SCHEPERS:** Okay.

1                   **MR. JOHN ADAIR:** Is that fair?

2                   **MS. NANCY SCHEPERS:** Yeah. Right.

3                   **MR. JOHN ADAIR:** And the second option of asking the City not to  
4 enforce the contract is also not an option under the P3 theory because the City's role is  
5 to enforce the contract.

6                   **MS. NANCY SCHEPERS:** That's correct.

7                   **MR. JOHN ADAIR:** And that was the City's approach to the  
8 situation; it was, "We are here to enforce the contract." Right?

9                   **MS. NANCY SCHEPERS:** Correct.

10                  **MR. JOHN ADAIR:** Okay. So if continuing to withstand the  
11 financial pressure isn't an option because the theory says there should be so much  
12 financial pressure you just can't do that, and if asking the City not to enforce the  
13 contract is not an option because the theory says that's not the way it works, then  
14 there's a very real possibility that they're going to choose Door Number 3 which is to  
15 turn over a system that's not ready, right?

16                  **MS. NANCY SCHEPERS:** And when you say --- yes, well ---

17                  **MR. JOHN ADAIR:** I just say it creates that incentive.

18                  **MS. NANCY SCHEPERS:** I really don't want to answer because I  
19 wasn't there and so I -- I mean, you're jumping to conclusions and you know, I think that  
20 in terms of the contract there is flexibility for discussions and, you know, the City I'm  
21 sure had -- you know, was working with them on a daily basis, was trying to understand,  
22 you know, where -- if there was things the Cit could do differently, et cetera, et cetera.  
23 So you know, to go black and white, where's these options and the conclusion is their  
24 only option is to open it when it's not ready as -- I hear you but, you know, having not  
25 been there, I'm reluctant to simply agree with you.

26                  **MR. JOHN ADAIR:** Okay. In terms of the City's role and its  
27 approach to the situation, one thing I think we've all learned from what happened in the  
28 study of what happened with this LRT project is that the public entity's guiding principle

1 cannot be enforcement of the contract. That can't be the guiding principle with respect  
2 to how it approaches the relationship; do you agree with that?

3 **MS. NANCY SCHEPERS:** Yes. And I think that the contract is  
4 there so that the City can enforce but I also believe that there's opportunities as with any  
5 contract to work with your private partner. And you know, there should always be  
6 opportunities for win-wins.

7 **MR. JOHN ADAIR:** Right. And even when things are going really  
8 wrong as they were in the summer of 2019 ---

9 **MS. NANCY SCHEPERS:** M'hm.

10 **MR. JOHN ADAIR:** --- it can't be the case that the City's guiding  
11 principle is that it will conduct itself based on enforcing the contract, correct?

12 **MS. NANCY SCHEPERS:** I can't comment on that. I don't know  
13 where the situation was at and I'm reluctant to agree with a generalized statement.

14 **MR. JOHN ADAIR:** Okay. Let me try one other. It's still  
15 generalized but let me see if I can put it to you and see what the -- whether you can  
16 answer it.

17 I'm going to suggest to you that the guiding principle actually has to  
18 be at all times looking at what's in the best interests of the people of Ottawa regardless  
19 of what the contract says. Do you agree with that at least?

20 **MS. NANCY SCHEPERS:** I would agree that you use the contract  
21 to ensure that you get the best system for the citizens of the City of Ottawa. And there  
22 is flexibility in there. There is opportunities to do things differently. So yes, generally  
23 that's what I would agree with, for sure.

24 **MR. JOHN ADAIR:** Right. And if achieving the best outcome for  
25 the people of Ottawa means not enforcing the contract then you don't enforce the  
26 contract.

27 **MS. NANCY SCHEPERS:** No, you're still enforcing, and I'm just  
28 saying that you have abilities within that contract. So you're still within the terms of the

1 contract but I believe any contract there is opportunities to negotiate or work differently.  
2 So I would not call it -- no, we're not going to enforce the contract because that again is  
3 very -- it's a very strong statement. You still continue to enforce because the  
4 enforcement is what gets you the quality at the end to make sure that you have the  
5 quality system that is going to deliver what you need to in a safe and reliable way for the  
6 citizens of the City.

7 **MR. JOHN ADAIR:** Okay. let me just -- a couple of last questions  
8 by way of wrap-up, Ms. Schepers.

9 **MS. NANCY SCHEPERS:** Okay.

10 **MR. JOHN ADAIR:** Starting with clarifying one thing. When I say  
11 "Not enforce the contract," just to be clear I'm not suggesting cast the contract aside.  
12 I'm saying not enforce every term to its fullest. That's all I mean. I take it we're agreed  
13 on that, that there may be times when that's not the right decision.

14 **MS. NANCY SCHEPERS:** I would agree. And so yes, I appreciate  
15 that you've changed your language.

16 **MR. JOHN ADAIR:** Okay. And I expect, Ms. Schepers, when  
17 some of the other participants' counsel are asking you questions, we're probably going  
18 to see examples of times where the City did not in fact strictly enforce the contract. Are  
19 you aware that that happened on occasion, that the City didn't enforce its full rights  
20 under the contract?

21 **MS. NANCY SCHEPERS:** I'm not aware of specifics. But I would  
22 not be surprised or shocked by that.

23 **MR. JOHN ADAIR:** Okay. And just let me do this. Let me just  
24 acknowledge that there were times where perhaps the City chose not to enforce its full  
25 rights under the contract as strictly as it possibly could. But generally speaking, I think  
26 you and I are agreed that the right overarching principle is you do what's in the best  
27 interests of the people of Ottawa and sometimes that means enforcing the contract and  
28 sometimes not. Is that fair?

1 **MS. NANCY SCHEPERS:** Sometimes it means negotiating.

2 **MR. JOHN ADAIR:** Right. Okay. Thank you, Ms. Schepers. I  
3 appreciate your time.

4 **MS. NANCY SCHEPERS:** Okay, thank you.

5 **COMMISSIONER HOURIGAN:** All right. Thank you.

6 Next is RTG.

7 **MR. MANU CHOWDHURY:** Good afternoon, Mr. Commissioner.

8 And good afternoon, Ms. Schepers.

9 My name is Manu Chowdhury. I'm counsel for RTG.

10 Are you able to hear me well, by the way?

11 **MS. NANCY SCHEPERS:** Yes, I can hear you.

12 **MR. MANU CHOWDHURY:** Perfect. Thank you, Ms. Schepers.

13 **--- CROSS-EXAMINATION BY MR. MANU CHOWDHURY:**

14 **MR. MANU CHOWDHURY:** So Ms. Schepers, Mr. Adair already  
15 asked you a few questions about your role with the City. I just want to follow up with a  
16 few points and probe a bit what exactly your functions were.

17 So if understand correctly, Ms. Schepers, you were involved with  
18 reports that went to the Ottawa Light Rail Steering Committee and Fedco?

19 **MS. NANCY SCHEPERS:** That is correct.

20 **MR. MANU CHOWDHURY:** And you were involved with decisions  
21 made in respect of procurement models to follow?

22 **MS. NANCY SCHEPERS:** Yes.

23 **MR. MANU CHOWDHURY:** And you were involve with  
24 determining the role of Infrastructure Ontario in the Confederation Line project?

25 **MS. NANCY SCHEPERS:** Yes.

26 **MR. MANU CHOWDHURY:** And you had discussions with the  
27 National Capital Commission with respect to federal lands that would be required to be  
28 used for the project; is that fair to say?



1 **MS. NANCY SCHEPERS:** Yes.

2 **MR. MANU CHOWDHURY:** So Ms. Schepers, would you agree  
3 with me then, as a general proposition, that you were playing an important role on the  
4 City side on the Confederation Line Project?

5 **MS. NANCY SCHEPERS:** Yes, up until my departure in 2015.

6 **MR. MANU CHOWDHURY:** Certainly. And it would be fair to say  
7 then up until your departure in 2015 that you had a good sense of how the  
8 Confederation Line Project was progressing?

9 **MS. NANCY SCHEPERS:** Yes.

10 **MR. MANU CHOWDHURY:** And as part of that assessment of  
11 progress and indeed writing these reports and update, you developed views on the  
12 particular partners that were involved in the project; is that fair to say?

13 **MS. NANCY SCHEPERS:** Yes.

14 **MR. MANU CHOWDHURY:** Now Ms. Schepers, do you recall your  
15 interview with Commission counsel in April, I believe. It was with Ms. McGrann.

16 **MS. NANCY SCHEPERS:** Yes.

17 **MR. MANU CHOWDHURY:** And in that interview I believe that you  
18 told Ms. McGrann that you were satisfied during your tenure with RTG as a partner; do  
19 you recall that?

20 **MS. NANCY SCHEPERS:** I do recall that, yes.

21 **MR. MANU CHOWDHURY:** Okay. And as part of that view that  
22 you held during your tenure, you did so because you thought RTG understood what  
23 their role is; is that fair to say?

24 **MS. NANCY SCHEPERS:** Yes.

25 **MR. MANU CHOWDHURY:** And you found that the City had a  
26 working relationship with RTG?

27 **MS. NANCY SCHEPERS:** Yes.

28 **MR. MANU CHOWDHURY:** And the issues that came up, you

1 were of the view that RTG and the Rail Implementation Office at the City, they would be  
2 able to resolve them?

3 **MS. NANCY SCHEPERS:** That was my opinion, yes, absolutely.

4 **MR. MANU CHOWDHURY:** Certainly. And then this is your  
5 opinion during your tenure until your formal departure in 2015, if I have that correct.  
6 Right, Ms. Schepers?

7 **MS. NANCY SCHEPERS:** Yes.

8 **MR. MANU CHOWDHURY:** And you came to this view, Ms.  
9 Schepers, in part because of certain events that took place, would that be fair to say?

10 **MS. NANCY SCHEPERS:** Well, it -- I came to that view because  
11 of the work that had been done to date, before I left, and ---

12 **MR. MANU CHOWDHURY:** Certainly, it's not, to use Mr. Adair's  
13 word, it's not an academic or a conjecture that you came up with. This is something  
14 that you came to the view of because of your interactions and what you were seeing on  
15 the project, is that fair?

16 **MS. NANCY SCHEPERS:** That's right.

17 **MR. MANU CHOWDHURY:** And in that line, Ms. Schepers, do you  
18 remember telling commission counsel, Ms. McGrann, in your April interview about an  
19 early sinkhole that affected the project?

20 **MS. NANCY SCHEPERS:** I do, yes.

21 **MR. MANU CHOWDHURY:** And if I have it right, Ms. Schepers,  
22 this would be the sinkhole that appeared in 2014?

23 **MS. NANCY SCHEPERS:** That's right, on -- next to Nicholas.

24 **MR. MANU CHOWDHURY:** That's right. So, this is not the  
25 sinkhole that would appear in 2016, at which point you were not part of the project?

26 **MS. NANCY SCHEPERS:** That's correct.

27 **MR. MANU CHOWDHURY:** Right. So, in relation to this 2014  
28 sinkhole, you said, and tell me if I have this right, that RTG was immediately on the

1 scene, is that right?

2 **MS. NANCY SCHEPERS:** That's correct.

3 **MR. MANU CHOWDHURY:** And you saw -- your view was that  
4 RTG was working actively to mitigate the sinkhole?

5 **MS. NANCY SCHEPERS:** That's correct.

6 **MR. MANU CHOWDHURY:** And RTG was working and trying to  
7 find a way to get back to work as quickly as they can in relation to this sinkhole?

8 **MS. NANCY SCHEPERS:** That's correct.

9 **MR. MANU CHOWDHURY:** And you mentioned this a little bit,  
10 with Mr. Adair, when you talked about finger-pointing, but I just want to ask you a few  
11 more questions about this; RTG's approach in relation to this 2014 sinkhole was a  
12 contrast from other projects you worked on, would that be fair to say?

13 **MS. NANCY SCHEPERS:** It was a contrast to if the project had  
14 been designed bid-billed, yes.

15 **MR. MANU CHOWDHURY:** Right, and just so I'm more clear to  
16 you and perhaps even more fair to you, what I mean by "contracts" is you had been  
17 involved in other projects where something significant or unforeseeable happens, and  
18 everything would stop, isn't that fair?

19 **MS. NANCY SCHEPERS:** Correct.

20 **MR. MANU CHOWDHURY:** And there would be a fair bit of finger-  
21 pointing to figure out who's at fault here, and if there's claims to be made, and so forth,  
22 correct?

23 **MS. NANCY SCHEPERS:** Correct. Correct.

24 **MR. MANU CHOWDHURY:** But you saw none of that in 2014  
25 when that sinkhole appeared?

26 **MS. NANCY SCHEPERS:** That's right, and I did -- I believe my  
27 comment to you was that, for me, that was evidence of why the P3 model worked, and  
28 worked well.

1                   **MR. MANU CHOWDHURY:** Certainly. And not only just the P3  
2 model worked, but this also convinced you that RTG was ready for this project, isn't that  
3 right?

4                   **MS. NANCY SCHEPERS:** Their behaviour and their approach with  
5 that certainly confirmed for me that they knew their role, they knew their responsibilities,  
6 and they had what it took to get it done.

7                   **MR. MANU CHOWDHURY:** And so, this led you to conclude,  
8 during your tenure, until 2015, that the City had selected a good partner in RTG, is that  
9 an accurate statement, Ms. Schepers?

10                  **MS. NANCY SCHEPERS:** Yes.

11                  **MR. MANU CHOWDHURY:** Okay. Ms. Schepers, you mentioned  
12 this briefly to Mr. Adair, but you also said this to Ms. McGrann in your interview, do I  
13 have it right that the Confederation Line project was "The single biggest or one of the  
14 biggest infrastructure project the City has undertaken"? Would that be a fair  
15 characterization of your evidence?

16                  **MS. NANCY SCHEPERS:** Yes.

17                  **MR. MANU CHOWDHURY:** Okay. And do you recall discussing  
18 with Ms. McGrann, in your April interview, that OC Transpo would be in charge of the  
19 operation of the system when it was open for public service?

20                  **MS. NANCY SCHEPERS:** Yes.

21                  **MR. MANU CHOWDHURY:** Okay. Now, the City made this  
22 decision to have OC Transpo operating the system when it opened for public service  
23 prior to going to the market with the RFP, correct?

24                  **MS. NANCY SCHEPERS:** That's correct. The model we selected  
25 was DBFM; it did not have operations included.

26                  **MR. MANU CHOWDHURY:** Right, and I'll come to that in a  
27 second, Ms. Schepers, but in this decision to have OC Transpo as the operator, it's fair  
28 to say that this decision was made fairly early on in the project?

1 **MS. NANCY SCHEPERS:** Correct.

2 **MR. MANU CHOWDHURY:** And as part of this decision, OC  
3 Transpo would supply and supervise the drivers of the light rail vehicles?

4 **MS. NANCY SCHEPERS:** Correct.

5 **MR. MANU CHOWDHURY:** Now, you mentioned this already,  
6 you've obviously picked the DBFM model, but attached -- it was an option for the City,  
7 potentially, to consider the private sector for operations as well, isn't that right?

8 **MS. NANCY SCHEPERS:** That's true.

9 **MR. MANU CHOWDHURY:** Okay. And so, the City could have  
10 had a DBFM O-model, or I'm not sure where the "O" would go, but there could have  
11 been an "O" somewhere, is that fair?

12 **MS. NANCY SCHEPERS:** That's fair, yes.

13 **MR. MANU CHOWDHURY:** Okay. And you don't recall -- sorry,  
14 let me just back up. So -- but the City decided that adding the "O" to the delivery model  
15 did not make sense on this project, correct?

16 **MS. NANCY SCHEPERS:** Yes. And I want to clarify, because  
17 there is certain elements of "O" that is included in the DBFM in terms of the  
18 maintenance, and operation of the stations, and some of the supporting infrastructure,  
19 and the lines and so on, and sometimes that's considered operations. But, yes, we had  
20 made a decision early on to have the operators on the train City of Ottawa and OC  
21 Transpo employees.

22 **MR. MANU CHOWDHURY:** Correct. Thank you, Ms. Schepers.  
23 Now, you don't recall revisiting this question of OC Transpo as the operator after the  
24 City had decided on the DBFM model as the delivery model? You didn't revisit that  
25 issue, is that fair?

26 **MS. NANCY SCHEPERS:** That's fair, yeah.

27 **MR. MANU CHOWDHURY:** Okay. Now, with respect to OC  
28 Transpo, Ms. Schepers, OC Transpo operated -- or operates also the bus system in

1 Ottawa?

2 **MS. NANCY SCHEPERS:** Correct.

3 **MR. MANU CHOWDHURY:** And I believe you told Ms. McGrann in  
4 your April interview that operation of the bus system is their, I quote, "bread and butter,"  
5 do I have that right?

6 **MS. NANCY SCHEPERS:** Well, given that, you know, at the time,  
7 there was a ---

8 **MR. MANU CHOWDHURY:** That's right.

9 **MS. NANCY SCHEPERS:** --- (indiscernible) yes.

10 **MR. MANU CHOWDHURY:** That's right. At the time you are  
11 deciding whether or not to pick OC Transpo as the operator, their "bread and butter" is a  
12 bus transit system, fair?

13 **MS. NANCY SCHEPERS:** Correct.

14 **MR. MANU CHOWDHURY:** And OC Transpo, at that time, when  
15 you're deciding on the operator, had not operated a Citadis light rail train, correct?

16 **MS. NANCY SCHEPERS:** Had not operated Citadis, that's  
17 correct ---

18 **MR. MANU CHOWDHURY:** Okay.

19 **MS. NANCY SCHEPERS:** They worked the north/south line, but,  
20 yes.

21 **MR. MANU CHOWDHURY:** Yes. And I won't get into the minutia  
22 of it, but you certainly already to Mr. Adair that there were differences. In particular, you  
23 said there was a diesel train, correct, on the north/south -- or the Trillium Line, is that  
24 right, Ms. Schepers?

25 **MS. NANCY SCHEPERS:** Correct.

26 **MR. MANU CHOWDHURY:** And, in addition, on the Trillium line or  
27 the north/south line, you're not dealing with an electrified low-floor vehicle that  
28 eventually were to be -- come to be in the Confederation Line, isn't that fair?

1                   **MS. NANCY SCHEPERS:** Correct.

2                   **MR. MANU CHOWDHURY:** So, you are dealing with different  
3 types of vehicles. I don't purport to be an engineering expert, but you tell me if that  
4 concurs with your assessment.

5                   **MS. NANCY SCHEPERS:** Yes, it does.

6                   **MR. MANU CHOWDHURY:** Okay. So, you'll agree with me, Ms.  
7 Schepers, that just as a general proposition, operating a rapid bus service is very  
8 different from a light rail service, is that fair?

9                   **MS. NANCY SCHEPERS:** I would say that yes, there's a required  
10 -- different expectations when you're operating a train versus when you're driving a bus,  
11 yes.

12                   **MR. MANU CHOWDHURY:** Yes, and particularly a light rail  
13 system that the City anticipated would be technologically sophisticated, correct?

14                   **MS. NANCY SCHEPERS:** That's correct.

15                   **MR. MANU CHOWDHURY:** And you said in your evidence to Mr.  
16 Adair, if I have it right, that the City was expecting a world-class system, correct?

17                   **MS. NANCY SCHEPERS:** Correct.

18                   **MR. MANU CHOWDHURY:** Now, you'll agree with me that it  
19 matters who the operator of the vehicle is, especially on the City's biggest infrastructure  
20 project, is that fair to say?

21                   **MS. NANCY SCHEPERS:** It matters who the operator is on the  
22 system, and particularly, part of our decision and rationale was this is phase one of a  
23 project that's going to extend. And so, having the City as the operators from Day One  
24 makes it easier for the extensions. They aren't taking operators off and on in terms of  
25 having two sets of operators associated with different -- a different consortium.

26                   **MR. MANU CHOWDHURY:** Certainly, and I take that point, but I  
27 think we agree that it's a vital point of -- in deciding who the entity will be that are  
28 actually operating these light-rail vehicles that people will be relying for their daily

1 needs. I take we have agreement on that?

2 **MS. NANCY SCHEPERS:** Yes.

3 **MR. MANU CHOWDHURY:** Okay. And so the City made this  
4 decision, this rather vital decision, early on in this project. Isn't that fair to say? I think  
5 you agreed with me on this point?

6 **MS. NANCY SCHEPERS:** Yes, correct.

7 **MR. MANU CHOWDHURY:** And then you didn't revisit this point --  
8 at least you don't recall revisiting this point at any point, correct?

9 **MS. NANCY SCHEPERS:** Correct.

10 **MR. MANU CHOWDHURY:** And the entity chosen, OC Transpo,  
11 had no experience operating Citadis light-rail vehicle, right?

12 **MS. NANCY SCHEPERS:** That's correct.

13 **MR. MANU CHOWDHURY:** So it ---

14 **MS. NANCY SCHEPERS:** And they recognized that, you know, in  
15 order to do that, there would have to be training. There was -- you know, there's a lot to  
16 go with it because the system operates as a system. So how the operator behaves --  
17 like, we understood all of that and knew that that was going to be a challenge and  
18 something that needed to be addressed.

19 **MR. MANU CHOWDHURY:** Certainly. So it was a factor you  
20 considered, if I have this evidence right, but certainly it was determinative for the City  
21 that the City was picking an entity that had no light rail experience to be operating these  
22 light-rail vehicles. Is that fair to say?

23 **MS. NANCY SCHEPERS:** So say that again?

24 **MR. MANU CHOWDHURY:** Certainly, certainly. So I understand  
25 your evidence that it was one of the factors that you considered, but the proposition I  
26 put to you is this. The fact that OC Transpo did not have any light rail experience in  
27 driving vehicles like the Citadis was not the determinative, or the deciding, factor in  
28 coming to a conclusion about who the operator should be. Is that fair to say?



1                   **MS. NANCY SCHEPERS:** It wasn't the deciding factor. That's  
2 correct.

3                   **MR. MANU CHOWDHURY:** Okay. And so the City was content to  
4 go with an experienced operator on its biggest infrastructure project?

5                   **MS. NANCY SCHEPERS:** I would disagree with you because, as  
6 I've said, we understood that -- you know, to suggest that it's an inexperienced operator,  
7 I think is very categorical that those operators would require appropriate training, and --  
8 and within a -- you know, they needed to be trained to be able to drive those.

9                   **MR. MANU CHOWDHURY:** Certainly, certainly. And -- oh, sorry,  
10 Ms. Schepers.

11                   **MS. NANCY SCHEPERS:** They were inexperienced, but when  
12 they got on the train, they would be experienced because of the training that they would  
13 have to get.

14                   **MR. MANU CHOWDHURY:** Certainly. But at the time the decision  
15 was made ---

16                   **MS. NANCY SCHEPERS:** M'hm.

17                   **MR. MANU CHOWDHURY:** --- experience, or the lack thereof,  
18 was not the determinative factor in City's decision making, correct?

19                   **MS. NANCY SCHEPERS:** Correct.

20                   **MR. MANU CHOWDHURY:** Ms. Schepers, I think Mr. Adair asked  
21 you a fair number of questions on the particular P3 theories and the implications that  
22 follow, and he provided you a hypothetical about sort of the three options that RTG was  
23 facing. Do you remember this, a discussion with Mr. Adair?

24                   **MS. NANCY SCHEPERS:** Yes, I do.

25                   **MR. MANU CHOWDHURY:** I just want to sort of follow up on just a  
26 few tiny points just for clarity. You left the project in 2015, correct?

27                   **MS. NANCY SCHEPERS:** That's correct.

28                   **MR. MANU CHOWDHURY:** You have no personal knowledge of

1 testing and commissioning?

2 **MS. NANCY SCHEPERS:** That's correct.

3 **MR. MANU CHOWDHURY:** The criterias (sic) applied?

4 **MS. NANCY SCHEPERS:** No, I don't.

5 **MR. MANU CHOWDHURY:** No. And the results that came out of  
6 it, correct?

7 **MS. NANCY SCHEPERS:** No.

8 **MR. MANU CHOWDHURY:** And any evidence you can provide  
9 about RSA delay and so forth, that's evidence based on sort of anecdotal information  
10 that you know, correct?

11 **MS. NANCY SCHEPERS:** I have as much information as anyone  
12 who reads the paper.

13 **MR. MANU CHOWDHURY:** Thank you, Ms. Schepers, yes. I just  
14 have one last topic I want to cover with you relatively quickly. The City had a number of  
15 consultants, you mentioned to Mr. Adair during your examination. I understand Boxfish  
16 was one of those consultants. Do I have that right?

17 **MS. NANCY SCHEPERS:** Yes.

18 **MR. MANU CHOWDHURY:** And obviously -- I think you mentioned  
19 this -- Capital Transit Partners were another set of consultants, correct?

20 **MS. NANCY SCHEPERS:** Correct.

21 **MR. MANU CHOWDHURY:** And the Capital Transit Partners were  
22 selected through a competitive procurement process. Is that fair to say?

23 **MS. NANCY SCHEPERS:** Yes.

24 **MR. MANU CHOWDHURY:** And Boxfish initially was not selected  
25 through a competitive procurement process, correct?

26 **MS. NANCY SCHEPERS:** They were taken from the standing offer  
27 list at the City of Ottawa which is not a very specific competitive process, but it is a  
28 process whereby consultants have the ability to do work for the city to prove that they

1 are able to do that work.

2 **MR. MANU CHOWDHURY:** Okay. And, Ms. Schepers, you leave  
3 the project in 2015 and, once you leave, do I have it right that you took a contract  
4 position with Boxfish?

5 **MS. NANCY SCHEPERS:** I did.

6 **MR. MANU CHOWDHURY:** And you were paid for the role you  
7 played at Boxfish, correct?

8 **MS. NANCY SCHEPERS:** I believe I was paid a total of \$1,700  
9 and I worked for a very short period of time at Boxfish.

10 **MR. MANU CHOWDHURY:** Thank you, Ms. Schepers. Those are  
11 all the questions I have.

12 Thank you, Mr. Commissioner.

13 **COMMISSIONER HOURIGAN:** All right, thanks for that.

14 Alstom's next.

15 **MR. CHARLES POWELL:** Thank you, Mr. Commissioner.

16 Charles Powell, p-o-w-e-l-l, counsel for Alstom. We have no questions for this witness.

17 **COMMISSIONER HOURIGAN:** All right, thank you.

18 IO?

19 **MS. SARIT BATNER:** Yes, thank you. Sarit Batner on behalf of  
20 Infrastructure Ontario.

21 **--- CROSS-EXAMINATION BY MS. SARIT BATNER:**

22 **MS. SARIT BATNER:** I apologize, Ms. Schepers, I'm just getting  
23 over laryngitis, so bear with my voice and let me know if you can't hear me, okay?

24 **MS. NANCY SCHEPERS:** Will do.

25 **MS. SARIT BATNER:** Mr. Adair asked you some questions about  
26 what he called the "P3 theory". Do you remember that?

27 **MS. NANCY SCHEPERS:** Yes.

28 **MS. SARIT BATNER:** We can agree that by 2011, the P3 was not

1 a theory, but it was proven successful project delivery model. Fair?

2 **MS. NANCY SCHEPERS:** I agree.

3 **MS. SARIT BATNER:** And by the summer of 2018, Mr. Adair  
4 suggested to you that RTG had become late and was experiencing financial pressures.  
5 Do you recall that? I may have the date wrong but that the premise of some questions  
6 he asked you about. You recall that?

7 **MS. NANCY SCHEPERS:** Yes.

8 **MS. SARIT BATNER:** And he said -- there were three options, he  
9 said, for RTG at the time. One, get killed financially. Two, ask the City not to enforce  
10 the contract. Or three, turn over a system that was not ready. Do you recall that?

11 **MS. NANCY SCHEPERS:** I do.

12 **MS. SARIT BATNER:** And I'm going to suggest to you, Mr.  
13 Schepers, that that misunderstands the model. So let's just talk about the model for a  
14 minute. Let's talk about number one, the concept that RTG's first option was getting  
15 killed financially. Leaving aside the profit that RTG may or may not have made after it  
16 failed to deliver and meet the commitments that it made under the project agreement,  
17 and looking instead at the project from the point of view of the light rail, and the City,  
18 and the citizens of Ottawa, the projected agreement provided for the lender to have  
19 second rights. Do you understand that?

20 **MS. NANCY SCHEPERS:** Yes.

21 **MS. SARIT BATNER:** And so, in the event that Mr. Adair  
22 described where RTG was late and so they were offside their repayment of financing  
23 options, the lenders had rights that were triggered for an event under the lender's  
24 agreement, and enforcement event under the lender's agreement, or a default under the  
25 project agreement. Do you understand that?

26 **MS. NANCY SCHEPERS:** I understand that, yes.

27 **MS. SARIT BATNER:** And those events allowed them to step in to  
28 cure the defaults and deliver what Project Co. was required to deliver under the project

1 agreement, right?

2 **MS. NANCY SCHEPERS:** Yes.

3 **MS. SARIT BATNER:** And so the lenders also have skin in the  
4 game, right? They've lent -- this in the whole idea of the model. They've lent; they want  
5 to get their money back, right?

6 **MS. NANCY SCHEPERS:** Correct.

7 **MS. SARIT BATNER:** And they only get their money back when  
8 Project Co. meets milestones and gets paid and then the financial pressure's relieved  
9 and they get paid, right?

10 **MS. NANCY SCHEPERS:** Correct.

11 **MS. SARIT BATNER:** And so the model works that if the RTG, in  
12 this case, Project Co., falls down on their rights, the lenders, then, have rights under the  
13 lender's agreement. And I'm going to ask that we put up the lender's agreement. It's  
14 the "Lender's Direct Agreement". It's Schedule 4 of the Project Agreement, and it is  
15 IFO000907, I believe.

16 **COMMISSIONER HOURIGAN:** Sorry, can you give us the number  
17 again. We have -- IFO000907 is the number we have written down.

18 **MS. SARIT BATNER:** Four zeros, 907, Schedule 4 to the Project  
19 Agreement, entitled "Lender's direct agreement".

20 **--- EXHIBIT No. 038:**

21 IFO000907 – Schedule 4 Lenders' Direct Agreement –  
22 June 24, 2013

23 **COMMISSIONER HOURIGAN:** Sorry, is that the number? Okay.  
24 We've located it; we're just going to send it off. So what we're going to do then is we're  
25 going to take the afternoon break for 15 minutes. Thank you.

26 **THE REGISTRAR:** Order, all rise. The Commission will recess for  
27 15 minutes.

28 --- Upon recessing at 3:55 p.m.

1 --- Upon resuming at 4:09 p.m.

2 **THE REGISTRAR:** Order, all rise. The Commission has  
3 resumed.

4 **COMMISSIONER HOURIGAN:** All right, counsel, Please  
5 proceed.

6 **--- NANCY SCHEPERS, RESUMED**

7 **--- CROSS-EXAMINATION BY MS. SARIT BATNER(Cont'd)**

8 **MS. SARIT BATNER:** Thank you. I was waiting for a document.  
9 Thank you.

10 So just before we took the break, let me reframe the issue. In the  
11 event that RTG falls behind and has financial pressure from the lenders because they're  
12 payments are due, the lenders have options. The lenders can waive them, they can  
13 forebear, they can give RTG permission to carry on notwithstanding those defaults;  
14 right; that's one of the lenders' options; right?

15 **MS. NANCY SCHEPERS:** That's correct.

16 **MS. SARIT BATNER:** Or the lenders can take action to protect  
17 their own skin in the game; right?

18 **MS. NANCY SCHEPERS:** Correct.

19 **MS. SARIT BATNER:** And there's a Lenders' Direct Agreement,  
20 which is Schedule 4 of the Project Agreement; right; and in fact this agreement is  
21 between the City of Ottawa, the lenders' agent, so calamity lenders and are RTG; so it's  
22 a tri-partite agreement; it works three ways; right?

23 **MS. NANCY SCHEPERS:** Correct.

24 **MS. SARIT BATNER:** And if you go forward to Section 8 where we  
25 have step-in rights which is at page 11. So the step-in rights say:

26 "Subject to 8(b) and without prejudice to the rights of  
27 the lenders' agent to enforce the security, the lenders  
28 may give the City step-in notice at any time: 1)

1                                   During which a Project Co event of default is  
2                                   subsisting; 2) During the notice period; or 3) during  
3                                   which an enforcement event is subsisting.”

4                                   And I'll come back to those definitions in a minute, but if you scroll  
5                                   down a little bit in the same section, section (c):

6                                   “Upon issuance of a step-in notice the appointed  
7                                   representative shall assume jointly with Project Co all  
8                                   of Project Co's rights under the project documents”;

9                                   Right?

10                                  **MS. NANCY SCHEPERS:** Yes.

11                                  **MS. SARIT BATNER:** And so the lenders, either if there has been  
12                                  a capital “D” Default under the project agreement or if there has been a small “d” default  
13                                  under the lender's agreement, either way, the lenders have a right to step into the shoes  
14                                  of Project Co; right?

15                                  **MS. NANCY SCHEPERS:** Correct.

16                                  **MS. SARIT BATNER:** And in that – and let's just go back to the  
17                                  definition for a moment; so if you go back in this document to page 3, “Enforcement  
18                                  Event”, it means an event of default as defined in the Lending Agreement that is  
19                                  continuing or any other event which permits an enforcement action. So the lender is  
20                                  right; the lender can step in when you're offside the lending because you're late,  
21                                  whether or not the City has given a notice of default under the project agreement, they  
22                                  can get ahead of it, in a sense; right?

23                                  **MS. NANCY SCHEPERS:** That's true.

24                                  **MS. SARIT BATNER:** So the lenders can either get ahead of it  
25                                  under the lending agreement or they can not get ahead of it or bear in not enforce  
26                                  relieve the pressure in their own way and wait for a default. But the lenders have step-  
27                                  in rights in either scenario; right?

28                                  **MS. NANCY SCHEPERS:** Correct.

1                   **MS. SARIT BATNER:** And the lenders' step-in rights put them in  
2 in the shoes of Project Co which means they remedy the default at their own risk and  
3 expense to achieve the milestone; correct?

4                   **MS. NANCY SCHEPERS:** Correct.

5                   **MS. SARIT BATNER:** And when they achieve the milestone the  
6 money then flows from the City to Project Co to satisfy now the debts it has to the  
7 lender; right?

8                   **MS. NANCY SCHEPERS:** Correct.

9                   **MS. SARIT BATNER:** And so the answer to one, that Project Co  
10 is getting financially killed, from the point of view of the project and how the model  
11 addresses RTG falling down on its rights, the model covers this from the point of view of  
12 the City, from the point of view of the light rail transit and from the point of view of the  
13 citizens of Ottawa; correct?

14                   **MS. NANCY SCHEPERS:** Correct.

15                   **MS. SARIT BATNER:** And is RTG making more or less or no  
16 money if they don't deliver their promises under the contract is really not the point from  
17 the point of view of the City delivering their light rail transit system to the citizens of  
18 Ottawa; right?

19                   **MS. NANCY SCHEPERS:** That is correct.

20                   **MS. SARIT BATNER:** And also, RTG says, as it said in their  
21 opening statement, "Mass transit projects are complex and challenges and delays are  
22 common." You agree with that statement, right?

23                   **MS. NANCY SCHEPERS:** Yes.

24                   **MS. SARIT BATNER:** And so you would expect that RTG, for all  
25 the reasons we talked about, or what you talked about, with all the checks and  
26 balances, would have priced these challenges and delays which are common, into its  
27 bid; correct?

28                   **MS. NANCY SCHEPERS:** That is correct.



1                   **MS. SARIT BATNER:** And so you would expect that if they hit  
2 delays and didn't meet timetables they would have had a buffer in their bid for just those  
3 common challenges and delays; right?

4                   **MS. NANCY SCHEPERS:** That's right; they would have had a  
5 buffer and they would have anticipated it and planned for those kinds of events.

6                   **MS. SARIT BATNER:** Right. And so that was sort of point No. 1  
7 under Mr. Adair's free option.

8                   Let me skip to point No. 3, the possibility of turning over the system  
9 before it is ready. And I'm going to suggest, again, that this completely misunderstood  
10 the model and is wrong, because – and now if you'll turn to Schedule 1 of the Project  
11 Agreement, which is at document COM0000641. This is the "Definitions and  
12 Interpretation" section. If you turn to page – I don't know what page, but page 51, which  
13 is section 1.559, which is the definition of "Revenue Service Availability" or "RSA" that  
14 we've been talking about; right?

15 **--- EXHIBIT No. 039:**

16                   COM000641 – Schedule 1 Definitions and Interpretations –  
17                   June 24, 2013

18                   **MS. NANCY SCHEPERS:** M'hm. Yes.

19                   **MS. SARIT BATNER:** And so RSA means the following  
20 conditions in respect of the system are achieved. This definition tells us what has to be  
21 achieved in order for that money that Mr. Adair was talking about, that big payment, to  
22 be released; right?

23                   **MS. NANCY SCHEPERS:** Correct.

24                   **MS. SARIT BATNER:** And so what does this say? Substantial  
25 completion in accordance with section 5.2, output specifications design and construction  
26 requirements" and schedule 15.3, output specifications, maintenance and rehab  
27 requirements. Those all have to be met; correct?

28                   **MS. NANCY SCHEPERS:** Correct.

1                   **MS. SARIT BATNER:** The project agreement works, is those  
2 have to be certified by the independent certifier; right?

3                   **MS. NANCY SCHEPERS:** Correct.

4                   **MS. SARIT BATNER:** And the second thing says, “The  
5 commissioning and preliminary operation of the system to ensure integration and ability  
6 for the operation of the system as contemplated in the output specification”; and that  
7 has to be met; right?

8                   **MS. NANCY SCHEPERS:** Correct.

9                   **MS. SARIT BATNER:** And compliance with the test and  
10 commissioning requirements as provided for in Part 4 of Schedule 15.2 output  
11 specifications, design and construction requirements in Schedule 14, commissioning,  
12 that has to be met; right?

13                   **MS. NANCY SCHEPERS:** Correct.

14                   **MS. SARIT BATNER:** And compliance at that time, with the safety  
15 requirements as approved by the safety auditor, that has to be met; correct?

16                   **MS. NANCY SCHEPERS:** Correct.

17                   **MS. SARIT BATNER:** And so the concept that Mr. Adair floated,  
18 that somehow Project Co can turn over a subpar system, a system that is not ready,  
19 you’ll agree with me, that too is covered in the P-3 model because you cannot turn over  
20 a system and achieve that milestone unless the system is in fact ready in accordance  
21 with the terms agreed to in advance; right?

22                   **MS. NANCY SCHEPERS:** Well, that’s correct.

23                   **MS. SARIT BATNER:** And so one and three work together. If  
24 RTG is falling down and has financial pressure, the lenders are put to a choice; they can  
25 relieve the pressure or step-in; right?

26                   **MS. NANCY SCHEPERS:** Correct.

27                   **MS. SARIT BATNER:** And if they step-in, they do so at their costs  
28 and their risks, not the cost and risk to the taxpayers, not the cost and risk to the City;

1 correct?

2 **MS. NANCY SCHEPERS:** That is correct.

3 **MS. SARIT BATNER:** And then they can remedy the default and  
4 step out or complete the project, but in order to get the money released so that their  
5 risk, their money is paid back to them, this milestone has to be achieved in accordance  
6 with the project agreement; right?

7 **MS. NANCY SCHEPERS:** That is correct.

8 **MS. SARIT BATNER:** And so if we look at Mr. Adair's second  
9 option, guiding principles to enforce the contract, he suggested they could ask the City  
10 not to enforce.

11 And I suggest to you, Ms. Schepers, that it would be irresponsible  
12 for the City not to enforce a contract paid for with public money. Would you agree?

13 **MS. NANCY SCHEPERS:** Absolutely.

14 **MS. SARIT BATNER:** And so it's one thing to say that when you  
15 are approaching contract enforcement, you should do so in good faith and reasonably,  
16 and in a spirit that achieves the purpose and the goals of the contract, but it is another  
17 thing entirely to say, "We are not going to enforce the very terms everyone agreed to at  
18 the outset with all of the same information," fair?

19 **MS. NANCY SCHEPERS:** That is correct.

20 **MS. SARIT BATNER:** And it would, I suggest, be quite something  
21 indeed if this Commission found that Mr. Adair is suggesting that there should be a  
22 guiding principle not to enforce a contract paid for with public money; would you agree  
23 with that?

24 **MS. NANCY SCHEPERS:** Correct.

25 **MS. SARIT BATNER:** And the City paid for risk transfer, and in  
26 particular, the risk of untimely delivery in the contract, right?

27 **MS. NANCY SCHEPERS:** Correct.

28 **MS. SARIT BATNER:** And so if the risk that the City paid for of

1 untimely delivery have now come to fruition, the City and taxpayers should get what  
2 they paid for, fair?

3 **MS. NANCY SCHEPERS:** That's correct.

4 **MS. SARIT BATNER:** And the model has a way, already  
5 contemplated by all the parties, including RTG when they were pricing in and including  
6 the lenders when they were lending, as to how to achieve the safe delivery of the  
7 system in the most timely fashion without putting more financial pressure or risk on the  
8 City or the taxpayers, right?

9 **MS. NANCY SCHEPERS:** That's correct.

10 **MS. SARIT BATNER:** Those are all my questions.

11 **COMMISSIONER HOURIGAN:** Okay.

12 Next is STV?

13 **MR. MICHAEL O'BRIEN:** Commissioner, Michael O'Brien for STV.

14 We don't have any questions for this witness.

15 **COMMISSIONER HOURIGAN:** All right. Thank you.

16 Next is the Province.

17 **MS. HEATHER MACKAY:** Heather Mackay for the Province.

18 Commissioner, we have no questions for this witness.

19 **COMMISSIONER HOURIGAN:** All right.

20 Thales?

21 **MS. MARIA BAKER:** So Maria Baker for Thales. We have no  
22 questions for this witness.

23 **COMMISSIONER HOURIGAN:** All right. Thank you.

24 Amalgamated Transit Union 279?

25 **MR. JOHN McLUCKIE:** Good morning, Mr. --- good afternoon, Mr.  
26 Commissioner.

27 John McLuckie, M-c-L-u-c-k-i-e, for the record sir, for the  
28 Amalgamated Transit Union.

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

2 **MR. JOHN McLUCKIE:** So Ms. Schepers, I represent the  
3 Amalgamated Transit Unit, so we are the staff of OC Transpo and the staff of Alstom,  
4 and I assume you ran into them over your career at the City?

5 **MS. NANCY SCHEPERS:** M'hm. Yes.

6 **MR. JOHN McLUCKIE:** I just want to tackle a couple of questions  
7 brought up by friend from RTG.

8 You're aware that in 2001, the City opened the original what's now  
9 called the Trillium Line Rail System?

10 **MS. NANCY SCHEPERS:** That -- yes.

11 **MR. JOHN McLUCKIE:** And that's the one you were talking about  
12 that uses diesel trains to operate instead of electric?

13 **MS. NANCY SCHEPERS:** Correct.

14 **MR. JOHN McLUCKIE:** And OC Transpo staff operate that train,  
15 they drive it back and forth, correct?

16 **MS. NANCY SCHEPERS:** That is correct.

17 **MR. JOHN McLUCKIE:** And OC Transpo had no difficulty training  
18 its staff to operate that train?

19 **MS. NANCY SCHEPERS:** That is correct.

20 **MR. JOHN McLUCKIE:** And when you were advising the City in  
21 terms of the model to us for the Confederation Line, did you have any concerns that OC  
22 Transpo would not be able to train its staff to operate the trains?

23 **MS. NANCY SCHEPERS:** Absolutely not.

24 **MR. JOHN McLUCKIE:** So you were quite confident that OC  
25 Transpo staff could safely and effectively drive the Citalis trains?

26 **MS. NANCY SCHEPERS:** I was, and certainly, they would need  
27 training and needed to be certified, but I was very confident that they would absolutely  
28 be able to do that.

1                   **MR. JOHN McLUCKIE:** And OC Transpo could provide that  
2 training and grant those certifications?

3                   **MS. NANCY SCHEPERS:** Well, that was part of the revenue  
4 service availability that that is required, that they would be trained and be available for  
5 service, yes.

6                   **MR. JOHN McLUCKIE:** So just to move on to a few questions of  
7 my own as distinct from responding to issues from others, the model that was chosen  
8 by the City, the public private partnership, otherwise a P-3 -- we've talked about it at  
9 some length, but I -- you're familiar with this idea?

10                  **MS. NANCY SCHEPERS:** Yes.

11                  **MR. JOHN McLUCKIE:** And you were part of the executive team  
12 of City bureaucrats that advised council on various aspects of this procurement,  
13 correct?

14                  **MS. NANCY SCHEPERS:** Correct.

15                  **MR. JOHN McLUCKIE:** And one of the aspects that you advised  
16 them on was the decision to move with a P-3 model as distinct with some other type of  
17 model for financing or building, correct?

18                  **MS. NANCY SCHEPERS:** Correct.

19                  **MR. JOHN McLUCKIE:** And as I understood, your interview earlier  
20 in April with Commission counsel, you had spoken about something called a P-3  
21 screen. Do you remember talking about that with counsel back in April?

22                  **MS. NANCY SCHEPERS:** Yes.

23                  **MR. JOHN McLUCKIE:** And you had suggested at the time that  
24 the funding partners the City had, the province and the feds and I think in particular, you  
25 said the province, required the City to at least look at a P-3 model for this project. Do  
26 you remember saying that?

27                  **MS. NANCY SCHEPERS:** I do.

28                  **MR. JOHN McLUCKIE:** And you indicated at the time -- and I just

1 want to confirm for the record -- the province didn't mandate that P-3 model, they said  
2 they required you to look at it, and you indicated at the time that with a good reason, the  
3 City could have gone in a different direction? Do you still stand by that?

4 **MS. NANCY SCHEPERS:** I believe that's exactly what I said, and I  
5 don't recall the specifics about what the screen was, and that is my general impression.  
6 And because we decided to go with that model, I don't know, you know, in terms of I'm  
7 saying we could have not, and that might have had no consequence in terms of our  
8 relationship in funding with the provincial and federal partners.

9 I don't know the answer to that, is my short comment.

10 **MR. JOHN McLUCKIE:** So just to build on that answer if I could  
11 then ---

12 **MS. NANCY SCHEPERS:** M'hm.

13 **MR. JOHN McLUCKIE:** --- so the decision to go with a P-3, that  
14 was ultimately the recommendation that you, as staff, made to council?

15 **MS. NANCY SCHEPERS:** Correct.

16 **MR. JOHN McLUCKIE:** And it was ultimately the decision of  
17 political element of the City council and Transit Commission, they elected to accept that  
18 recommendation and go with the P-3 model?

19 **MS. NANCY SCHEPERS:** They -- staff recommended and council  
20 supported, which means that that is a council direction at that point.

21 **MR. JOHN McLUCKIE:** But it potentially was open to council to  
22 choose a different path and perhaps go with a fully public model or some different  
23 model of P-3, correct?

24 **MS. NANCY SCHEPERS:** They -- certainly, when the  
25 recommendations were in front of council, they certainly had the ability to debate and  
26 you know, if it was a significant change, they could have directed staff to go back and  
27 revisit things and then come back with an update for them, if they felt they did not have  
28 enough information to make a decision.

1                   **MR. JOHN McLUCKIE:** And in terms of the P-3 models -- this one  
2 is a design, build, finance, and maintain, correct?

3                   **MS. NANCY SCHEPERS:** Correct.

4                   **MR. JOHN McLUCKIE:** And different parts of that -- and my friend  
5 had suggested from RTG, you could have, for example, added "operate" to that -- but  
6 just as easily, you could have subtracted maintenance; is that also true?

7                   **MS. NANCY SCHEPERS:** Well, we looked at the whole suite of  
8 options and yes, design, build was one of the options we looked at, which would not  
9 have included maintenance.

10                  **MR. JOHN McLUCKIE:** And that was open to the City, had they  
11 chose to do so?

12                  **MS. NANCY SCHEPERS:** That was one of the options that we  
13 considered, and yes, staff could have supported that and gone forward with it.

14                  **MR. JOHN McLUCKIE:** Okay. I'd just ask you a couple of  
15 questions about that, if I can then, Ms. Schepers.

16                         You indicated that the City made use of a group called Capital  
17 Transit Partners, and those were your outside engineering consortium?

18                  **MS. NANCY SCHEPERS:** Correct.

19                  **MR. JOHN McLUCKIE:** And you indicated that they provided  
20 significant assistance in terms of the engineering work to bring the project sort of down  
21 to the budget that the City was contemplating. Is that how you characterized it this  
22 morning?

23                  **MS. NANCY SCHEPERS:** You're -- I mean, significant engineering  
24 work all through the procurement, including development of output specs, the advice  
25 and support throughout that procurement process, yes.

26                  **MR. JOHN McLUCKIE:** And you indicated that they were part of  
27 that innovation piece that you were hoping to obtain?

28                  **MS. NANCY SCHEPERS:** Well, they certainly, in the early stages,



1 as we started that preliminary engineering, had a strong role in the early innovation  
2 when that happened, particularly with the shallowing of the tunnel.

3 **MR. JOHN McLUCKIE:** And that was a contract between them  
4 and the City, correct? That was not part of the public private partnership you had with  
5 the Rideau Transit Group later, correct?

6 **MS. NANCY SCHEPERS:** Correct.

7 **MR. JOHN McLUCKIE:** So you could have engaged that  
8 consortium to provide that engineering expertise and obtained that innovation  
9 independently of any P-3 project?

10 **MS. NANCY SCHEPERS:** Correct.

11 **MR. JOHN McLUCKIE:** So you could have gone with a public bill,  
12 the public managed, and a public operated system and still obtain all of that  
13 infrastructure expertise that they provided to you later on?

14 **MS. NANCY SCHEPERS:** We would have benefitted from the  
15 expertise that they had. We would not have benefitted from the expertise that the  
16 consortiums, the three of them brought to the table.

17 **MR. JOHN McLUCKIE:** Just to move on, because I've been  
18 allocated a fairly short amount of time for this -- I'm trying my best to stick to it, Mr.  
19 Commissioner -- you had indicated with my friend and also in your interview in April that  
20 moving passengers by bus was OC Transpo's bread and butter. Do you remember  
21 saying that?

22 **MS. NANCY SCHEPERS:** Yes.

23 **MR. JOHN McLUCKIE:** And OC Transpo had a fairly long  
24 expertise at moving people around Ottawa?

25 **MS. NANCY SCHEPERS:** Correct.

26 **MR. JOHN McLUCKIE:** And you'd agree that they were fairly good  
27 at it?

28 **MS. NANCY SCHEPERS:** Yes.

1                   **MR. JOHN McLUCKIE:** And the staff at OC Transpo, they  
2 ultimately reported through you? They were -- you were ultimately at the top of that  
3 chain of command, correct?

4                   **MS. NANCY SCHEPERS:** Yes, I was, at a certain point, yes.

5                   **MR. JOHN McLUCKIE:** And that meant that all the maintenance  
6 teams that supervised the buses, all of the cleaning teams that cleaned the buses, all of  
7 the scheduling staff -- all of those people were ultimately City employees?

8                   **MS. NANCY SCHEPERS:** Correct.

9                   **MR. JOHN McLUCKIE:** And if there was -- sorry. I didn't mean to  
10 interrupt, Ms. Schepers.

11                   **MS. NANCY SCHEPERS:** Yeah, so yes. There's a lot of internal  
12 staff for bus maintenance and cleaning and all the rest of it. There is also contract staff  
13 in terms of some of the Trillium Line signalling responsibilities and so on. There are  
14 different models that are used by OC Transpo.

15                   **MR. JOHN McLUCKIE:** And is public staff managed by you  
16 ultimately? They're accountable to you and through you to City Council, correct?

17                   **MS. NANCY SCHEPERS:** Absolutely correct.

18                   **MR. JOHN McLUCKIE:** So if there was a problem with the bus  
19 system -- maintenance for example, not being done well, buses are breaking down,  
20 people aren't being moved -- you as the manager of that system or the general  
21 manager of that area, you would have the ability to step in and sort of give direction,  
22 correct?

23                   **MS. NANCY SCHEPERS:** Right. I certainly would work with the  
24 general manager of OC Transpo and yes, and their management team and you well  
25 know how things are done at OC Transpo.

26                   **MR. JOHN McLUCKIE:** For sure. And you know as well as I do  
27 that if you're unhappy with the management team, and you feel the directions aren't  
28 going the way you would like, you have the opportunity at your level of management to

1 replace that manager, find someone new.

2 **MS. NANCY SCHEPERS:** Yeah.

3 **MR. JOHN McLUCKIE:** Yeah. And if things still aren't working you  
4 can keep replacing people until you find someone that does work, correct?

5 **MS. NANCY SCHEPERS:** In theory, yes.

6 **MR. JOHN McLUCKIE:** So then let's talk about how that works  
7 with the train. So you contracted as the City with a consortium, Rideau Transit Group,  
8 correct?

9 **MS. NANCY SCHEPERS:** Correct.

10 **MR. JOHN McLUCKIE:** And then I think as we've discussed  
11 earlier today, that consortium then partnered with another consortium, the Rideau  
12 Transit Maintenance Group. Do you recall saying that earlier today?

13 **MS. NANCY SCHEPERS:** That's correct, yes.

14 **MR. JOHN McLUCKIE:** So your contract is with RTG. RTG has a  
15 contract with RTM.

16 **MS. NANCY SCHEPERS:** Yeah, and just to be clear, when you  
17 say "You have a contract", it is the City of Ottawa.

18 **MR. JOHN McLUCKIE:** Yes. And I wasn't intending to imply you  
19 personally. I was ---

20 **MS. NANCY SCHEPERS:** Okay.

21 **MR. JOHN McLUCKIE:** --- in your role as a senior manager with  
22 the City. The City has a contract with RTG to build this P3 project, correct?

23 **MS. NANCY SCHEPERS:** Correct.

24 **MR. JOHN McLUCKIE:** And then RTG subcontracts with a group  
25 called RTM which is some of but not all of the same players, to maintain the system,  
26 correct?

27 **MS. NANCY SCHEPERS:** Correct.

28 **MR. JOHN McLUCKIE:** So RTM then, in turn subcontracts to

1 Alstom for the actual train and track and electrical and maintenance such as that, do  
2 they not?

3 **MS. NANCY SCHEPERS:** Yeah, and I don't have the final  
4 structure in front of me, but yes, I mean, there is relationships over there that what  
5 you're saying sounds right, yes.

6 **MR. JOHN McLUCKIE:** So in terms of direction and accountability  
7 then -- so if something goes wrong at Alstom, and you were still in your role as one of  
8 the senior management team at the City, you wouldn't have the ability to directly  
9 intervene with any of the management staff at Alstom, would you?

10 **MS. NANCY SCHEPERS:** If the relationship is through RTG and  
11 how that working relationship -- I don't have the details of that. But yes, we -- our  
12 contract is with RTG.

13 **MR. JOHN McLUCKIE:** So again, just to put my question fairly  
14 specifically, you would not have the same ability you have with the City staff -- the OC  
15 Transpo staff -- to intervene and make changes if things were not working, given this  
16 contractual model.

17 **MS. NANCY SCHEPERS:** And just to be clear, in terms of, you  
18 know, key individuals and key players -- and I don't remember the specifics but I do  
19 know that there is the ability for the City to demand that someone be replaced. I don't  
20 have the specifics of that. But there is that ability.

21 **MR. JOHN McLUCKIE:** But you would agree that the  
22 accountability that you have with the managers at OC Transpo is much higher than the  
23 accountability you have with the managers at Alstom.

24 **MS. NANCY SCHEPERS:** The relationship is much more direct.

25 **MR. JOHN McLUCKIE:** Right. And in terms of other elements of  
26 the relationship with Alstom, the City doesn't have the ability, for example, to direct  
27 particular training for staff?

28 **MS. NANCY SCHEPERS:** For?

1                   **MR. JOHN McLUCKIE:** At Alstom. You can't say, "Get this  
2 course. Do this training." Whereas you could do that for OC Transpo mechanics, for  
3 example.

4                   **MS. NANCY SCHEPERS:** That's correct. So you look at outputs  
5 and you have different expectations that, you know, leaves it to Alstom to decide how  
6 they're going to do that, what courses, what training, whatever it is that they have to do  
7 to meet that.

8                   **MR. JOHN McLUCKIE:** So you had talked earlier about risk and  
9 you had talked about the P3 model as sort of exchanging risk from the City to the  
10 contractor. Do you remember saying that with my colleague, Mr. Adair, earlier today?

11                   **MS. NANCY SCHEPERS:** Exchanging risk?

12                   **MR. JOHN McLUCKIE:** Transferring risk, perhaps a better way to  
13 put it, that the City was transferring through the contract the risk onto RTG.

14                   **MS. NANCY SCHEPERS:** And it is -- you know, you assign risk to  
15 the party best able to manage it. So you don't walk away from it. There's a risk and yes,  
16 they have to manage it and oftentimes within the contract is requirements to  
17 demonstrate how they are managing that risk.

18                   **MR. JOHN McLUCKIE:** And would you agree with me that there's  
19 a risk involved in that the City lacks that direct control over Alstom and its staff to  
20 maintain and clean and fix the trains that it has currently over its OC Transpo staff who  
21 clean and maintain your buses? Does that not represent a risk?

22                   **MS. NANCY SCHEPERS:** I'm not that familiar with that part of the  
23 contract in terms of the day-to-day oversight, so I don't want -- I don't want to answer  
24 that. There is terms and conditions and there is the ability to have oversight of those  
25 activities.

26                   **MR. JOHN McLUCKIE:** Well, we're in this process because there  
27 were derailments and various service interruptions. Clearly something is not working in  
28 terms of Alstom maintaining and providing this light rail service. You would agree with

1 that?

2 **MS. NANCY SCHEPERS:** I can't -- I left in 2015 and so for me to  
3 speculate on things like that, I just won't do that.

4 **MR. JOHN McLUCKIE:** Fair enough. So one last round of  
5 questions, and then I'll wrap up, sir, I promise.

6 In terms of the public private partnership -- so it is essentially built  
7 on the idea that the private sector will obtain profit from the system that they are  
8 operating on behalf of the City. That's how the relationship is structured; would you  
9 agree?

10 **MS. NANCY SCHEPERS:** They obviously are bidding it and they  
11 are profitable businesses, yes.

12 **MR. JOHN McLUCKIE:** Right. So Alstom being a private  
13 business, Rideau Transit Group being a consortium of private businesses -- all of them  
14 have a profit motive sort of at the heart of their participation.

15 **MS. NANCY SCHEPERS:** Yes.

16 **MR. JOHN McLUCKIE:** And that creates an incentive for them to  
17 keep the costs of operating and maintaining the train as low as possible, correct?

18 **MS. NANCY SCHEPERS:** I mean, you're jumping to a conclusion.  
19 I mean, first and foremost they have to meet the terms and conditions. They have to  
20 meet availability. They have a whole bunch of things that they have to meet. So yes,  
21 they will apply innovation and reduce costs, yes.

22 **MR. JOHN McLUCKIE:** I agree they have to meet the template of  
23 the contract. They have to provide service. But is it not in their interest to do that as  
24 cheaply as they can? Is that not the idea behind the profit motive?

25 **MS. NANCY SCHEPERS:** As long as they are meeting the service  
26 requirements and the level of service they're going to do it at the price point, the best  
27 price point they can.

28 **MR. JOHN McLUCKIE:** And that has the effect, potentially, of

1 pushing down wages, worsening working conditions, removing benefits. All of those  
2 things are part of that package potentially; correct?

3 **MS. NANCY SCHEPERS:** I can't speak to that.

4 **MR. JOHN McLUCKIE:** You don't see that as being the potential  
5 of keeping costs down that salaries, benefits, working conditions are perhaps worse  
6 than they would be at OC Transpo?

7 **MS. NANCY SCHEPERS:** I cannot speak to that. I left in 2015  
8 and beyond that I wasn't involved in any of the commissioning and I can't speak to the  
9 conditions that exist and whether ---

10 **MR. JOHN McLUCKIE:** I'm not asking you to speak to the  
11 conditions that exist, Ms. Schepers. I do recall that you left the City. My question was  
12 more, with the profit motive being there and the incentive for RTG and its partners to  
13 meet their obligations in as cheap a fashion as possible, would you not agree that  
14 provides the incentive to push down wages, benefits, and working conditions for the  
15 staff of Alstom and RTG?

16 **MS. NANCY SCHEPERS:** Well, they will have contracts with their  
17 employees and they will be different, absolutely, than City contracts. Will they have  
18 different wage structures? I would suggest that they could, yes. And they are --  
19 obviously they're looking at providing the service to the quality standard that they have  
20 to meet at the best price. So yes, it could mean lower wages than are paid by OC  
21 Transpo, for instance.

22 **MR. JOHN McLUCKIE:** And that's ---

23 **COMMISSIONER HOURIGAN:** Counsel, you're well over time. If  
24 you could just wrap up, please.

25 **MR. JOHN McLUCKIE:** Okay. I'm going to leave it at that then,  
26 sir. Thank you.

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

28 Next is RTG EJV.

1                   **MR. MICHAEL VRANTSIDIS:** Thank you, Mr. Commissioner.

2 Michael Vrantsidis for RTG EJV. We have no questions for this witness.

3                   **COMMISSIONER HOURIGAN:** All right. Next is Morrison

4 Hershfield.

5                   **MR. KYLE LAMBERT:** Thank you, Mr. Commissioner. My name  
6 is Kyle Lambert of McMillan LLP for Morrison Hershfield.

7 **---- CROSS-EXAMINATION BY MR. KYLE LAMBERT:**

8                   **MR. KYLE LAMBERT:** Good afternoon, Ms. Schepers.

9 Just a few what I expect are fairly quick questions.

10                   Ms. Schepers, am I correct in understanding that your involvement  
11 with the project ended in 2015?

12                   **MS. NANCY SCHEPERS:** That's correct.

13                   **MS. KYLE LAMBERT:** So that means that you would have been  
14 involved in what I'll call the construction phase after the award of the contract to RTG?

15                   **MS. NANCY SCHEPERS:** The initiation of construction, yes, it was  
16 well underway when I -- when I retired.

17                   **MS. KYLE LAMBERT:** And do you recall that Capital Transit's  
18 work was scaled back after the award to RTG?

19                   **MS. NANCY SCHEPERS:** I don't recall the specifics of that, no.

20                   **MS. KYLE LAMBERT:** Do you recall that once the contract was  
21 awarded, Capital Transit Partners was retained by the City but on an on-demand basis?

22                   **MS. NANCY SCHEPERS:** I don't recall of the specifics, but I do  
23 know, and, you know, you're probably very accurate in your statement, that as you  
24 move from the procurement to the actual construction phase, you're changing the roles  
25 and responsibilities and the type of oversight. So not only would you not necessarily  
26 need all the folks who had been involved in the initial stage, but you might need different  
27 expertise at the table. So that -- that is just part of the transition through a P3.

28                   **MS. KYLE LAMBERT:** A lot of the -- you could say that a lot of the



1 engineering work that goes on during the construction phase is really the -- we'll call the  
2 D of the DBFM model?

3 **MS. NANCY SCHEPERS:** The design?

4 **MS. KYLE LAMBERT:** Yeah, that work becomes part of what the  
5 proponent then takes on once the contract's awarded?

6 **MS. NANCY SCHEPERS:** Correct.

7 **MS. KYLE LAMBERT:** Thank you very much. Those are my  
8 questions.

9 **COMMISSIONER HOURIGAN:** Very good, thank you.  
10 Transportation Action Canada.

11 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

12 **MR. DAVID JEANES:** Hello, Ms. Schepers. I'm David Jeans with  
13 Transport Action Canada. I also only have five minutes, and I'm going to start with the  
14 same area that Mr. Chowdhury and Mr. McCluckie were talking about regarding  
15 experience of OC Transpo in the City. And first, with the Light Rail Project, I think  
16 you're probably aware, and perhaps you could confirm, that Transport Canada, in its  
17 report on that pilot project, actually classified it as a light rail project.

18 I know there's debate about because the vehicles are diesel  
19 powered; they are 70 percent semi-low-floor; they are one-person operation; they have  
20 frequent stops; and although they don't have the current computer-based training  
21 control, they did have onboard computers that were directly influenced by the line-side  
22 signals. So, in many respects, it was a system not so much different from other light rail  
23 systems. Would you agree with that?

24 **MS. NANCY SCHEPERS:** Yes.

25 **MR. DAVID JEANES:** Okay. So OC Transpo, as McLuckie has  
26 said, trained existing bus drivers to operate these trains. And by the time the bid  
27 process for Stage 1 LRT happened, we'd had about 10 years' experience of those bus  
28 drivers trained and operating those trains. I also would -- and you'll agree with that,

1 right?

2 **MS. NANCY SCHEPERS:** I will agree, yes.

3 **MR. DAVID JEANES:** And similarly, in 2006, the decision was  
4 taken at the time of the north-south contract award, North-South Rail Project -- that OC  
5 Transpo drivers would be operating the Siemens electric LRVs on that line had that  
6 contract gone forward?

7 **MS. NANCY SCHEPERS:** I believe that is true, yes.

8 **MR. DAVID JEANES:** Okay. And finally, with respect to the  
9 competence of drivers to handle modern electric LRV -- you did refer to this though it's  
10 beyond time there, but OC Transpo drivers took extensive LRT training courses during  
11 2018 and 2019. OC Transpo actually showed off their training facility to the public at  
12 the door-open, and it's my understanding that the same kind of training, which was  
13 classroom simulator and live training, would have been used by a consortium had it  
14 been -- had that -- had the operation been contracted out, so there wasn't really any  
15 difference in the type of training that was needed for operators.

16 **MS. NANCY SCHEPERS:** As I said earlier, I fully believe that the  
17 staff at OC Transpo could easily be trained to operate those vehicles.

18 **MR. DAVID JEANES:** Yeah. Now, turning to the City's experience  
19 with maintenance -- you did allude to this, but with the Light Rail Pilot Project, is it  
20 correct the vehicle maintenance was contracted out to Bombardier and the track and  
21 signalling maintenance was contract out to RailTerm and were not -- that work was not  
22 done by City employees?

23 **MS. NANCY SCHEPERS:** That is correct.

24 **MR. DAVID JEANES:** And again we'd had about 10 years'  
25 experience of that arrangement. Similarly, with the 2006 North-South Light Rail Pilot  
26 Project, that included a 15-year maintenance contract to the consortium, so was a  
27 design-build-maintain project in every sense, right?

28 **MS. NANCY SCHEPERS:** The North-South that didn't go ahead?

1 **MR. DAVID JEANES:** Yes, the contract ---

2 **MS. NANCY SCHEPERS:** Yeah.

3 **MR. DAVID JEANES:** I'm talking about the 2006 contract, not --  
4 right.

5 **MS. NANCY SCHEPERS:** Yeah. Yeah, yeah.

6 **MR. DAVID JEANES:** Okay. So the City had experience in  
7 preparing that kind of contract?

8 **MS. NANCY SCHEPERS:** Yeah, the City had experience using --  
9 you know, contracting out maintenance and the system on North-South, and yes, that's  
10 my understanding that -- and I came into the City in 2006, but that is my understanding  
11 of that contract, the North-South contract.

12 **MR. DAVID JEANES:** Okay. Now, there's also been a lot of  
13 discussion over the last few days about the City and Infrastructure Ontario's experience,  
14 or lack of experience, in designing -- or in acquiring light-rail vehicles. I just wanted to  
15 confirm with you that the City did acquire three diesel light-rail vehicles in 2000 and at  
16 least contracted for 21 electric light-rail vehicles from Siemens in 2006, and then six  
17 diesel light-rail vehicles from Alstom on 2011. So the City had that experience even  
18 though the Siemens contract was cancelled. The City at least had that experience of  
19 selecting vehicles and contracting for them, and all three of those vehicles were service-  
20 proven with relatively minimal changes needed for the Ottawa conditions. Is that --  
21 would that be your understanding?

22 **MS. NANCY SCHEPERS:** So the last comment that you make  
23 about service-proven, I'm not in a position to comment on that.

24 **MR. DAVID JEANES:** Yeah.

25 **MS. NANCY SCHEPERS:** But I would agree with the rest of what  
26 you have said.

27 **MR. DAVID JEANES:** Yeah, well, I did see the Bombardier  
28 vehicles in operation in Germany in 2000, and the Siemens vehicles in operation in

1 Houston, Texas in 2006, and the Alstom vehicles were definitely proven when Mr.  
2 Mercier recommended to the Transit Committee in 2011. So I'm just making the point  
3 that I think the City had a fair level of experience in evaluating light rail vehicles, and  
4 even contracting for them. In the case of IO, were you aware that, prior to taking on this  
5 project, IO had experience with the planning for the Transit City rather complex light rail  
6 network in Toronto had experience with the UP Express, which again, although diesel  
7 powered, was some dedicated track and some track shared with Go Transit, and was  
8 operating a regional type of transit service to Pearson Airport, and then, finally, for  
9 electric LRT, that they had already been working on the maintenance and storage  
10 facility for the Sheppard LRT Line in Toronto. So IO did come to the table with some  
11 experience. Would you agree with that?

12 **MS. NANCY SCHEPERS:** I would agree, yes.

13 **MR. DAVID JEANES:** Yeah, okay. I had a couple of other  
14 questions. I don't whether I have time, but ---

15 **COMMISSIONER HOURIGAN:** Well, you're out of time, but if you  
16 want to do them quickly, that's fine. Go ahead.

17 **MR. DAVID JEANES:** Okay, yeah. So very quickly, I question that  
18 I had for you, Ms. Schepers, was about the process for selecting a tunnel in -- I think  
19 you'll recall that in 2008, the Transportation Master Plan, there were four choices that  
20 the public were given an opportunity to comment on. They were in -- it did in fact all  
21 involve tunnels under downtown, and I just wanted to confirm with you that the reasons  
22 for going with the tunnel concept in the 2008 Transportation Master Plan -- and this is  
23 after the cancellation of the North-South light rail which would have gone through  
24 downtown on the surface and would only have carried a fraction of the transit traffic  
25 across town -- that these factors were influenced by -- particularly by the downtown  
26 business, which very much wanted to see transit move underground.

27 And I think you had -- you did mention the Downtown Business  
28 Coalition at one point in your testimony. And second, that at that point, the capacity of

1 the bus transitway was really reaching a limit and something had to be done to allow  
2 transit capacity to increase, and maybe there were other factors, but would you agree  
3 that those were factors in deciding in 2008 to go with the tunnel option?

4 **MS. NANCY SCHEPERS:** I would say, yes, in 2008 what we were  
5 faced with was significant capacity concerns and so OC Transpo at the time was limiting  
6 the number of buses it could operate through the downtown because it wasn't able to  
7 operate more with all the signals and everything.

8 And I would say that from the start, and I believe you know that,  
9 that the RT system was always designed with the anticipation that it could be converted  
10 to rail at some point. So it was very innovated and it was well regarded around the  
11 world, but it was certainly – you know, that made part of the decision in terms of  
12 converting to rail and building a rail tunnel, that was factored into those decisions and  
13 recommendations that we made to Council.

14 **MR. DAVID JEANES:** Thank you very much, Ms. Schepers, that's  
15 all my questions.

16 **COMMISSIONER HOURIGAN:** All right. Thank you for that. Next  
17 is the City of Ottawa.

18 **MR. PETER WARDLE:** Thank you, I'm getting the message that  
19 my video can't be started without the host doing something.

20 **COMMISSIONER HOURIGAN:** All right, just stand by.

21 Okay, we see you now; go ahead.

22 **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

23 **MR. PETER WARDLE:** Thank you very much, Mr. Commissioner.  
24 Just to pick up, because you've been asked a lot of questions about the experience of  
25 OC Transpo operators, Ms. Schepers. And first of all, I understand this is not an issue  
26 that you know very much about; is that correct?

27 **MS. NANCY SCHEPERS:** That's correct.

28 **MR. PETER WARDLE:** And, secondly, you recall that there was a

1 provision in the project agreement that provided that RTG had some obligation to train  
2 the trainers who would be used to train, the operators who would be operating the  
3 trains?

4 **MS. NANCY SCHEPERS:** That's correct. There was a  
5 responsibility that they had to be engaged in part of that process.

6 **MR. PETER WARDLE:** So let's just go back, if we can then,  
7 having cleared that up to the beginning, and I want to just go back a little bit and ask  
8 you some questions about your background. So, first of all, you're a civil engineer?

9 **MS. NANCY SCHEPERS:** Correct.

10 **MR. PETER WARDLE:** And not to put too fine a point on it, but  
11 you're one of the first women to reach a senior position as an engineer at the municipal  
12 and provincial level; isn't that right?

13 **MS. NANCY SCHEPERS:** Yes, I would agree with that, yes.

14 **MR. PETER WARDLE:** And your background and experience  
15 includes occupying senior positions with the Ministry of Transportation?

16 **MS. NANCY SCHEPERS:** Correct.

17 **MR. PETER WARDLE:** Deputy Environmental – sorry, Deputy  
18 Environment Commission at the Region of Ottawa-Carleton; correct?

19 **MS. NANCY SCHEPERS:** Correct.

20 **MR. PETER WARDLE:** Director of the Federation of Canadian  
21 Municipalities; correct?

22 **MS. NANCY SCHEPERS:** Correct.

23 **MR. PETER WARDLE:** And then Deputy City Manager obviously  
24 at the City of Ottawa. And you came to the City of Ottawa in 2006; correct?

25 **MS. NANCY SCHEPERS:** Correct.

26 **MR. PETER WARDLE:** So you had experience with – I'm going to  
27 suggest at least three different municipal administrations; correct?

28 **MS. NANCY SCHEPERS:** Correct.

1                   **MR. PETER WARDLE:** And over the course of your career you've  
2 dealt with many municipal and provincial politicians; is that not fair?

3                   **MS. NANCY SCHEPERS:** That is very fair, yes.

4                   **MR. PETER WARDLE:** And so when you were asked questions  
5 about the words "on time" and "on budget", Jim Watson would not be the only politician  
6 to use that phrase; correct?

7                   **MS. NANCY SCHEPERS:** I have not known a politician who  
8 wouldn't use that phrase.

9                   **MR. PETER WARDLE:** And is it fair to say that if you wanted –  
10 you, as a citizen, wanted to get information about the budget for this project, that that  
11 information would be found in the public record at the City of Ottawa in your May and  
12 July 2011 reports.

13                   **MS. NANCY SCHEPERS:** Correct.

14                   **MR. PETER WARDLE:** And I haven't gone through every word of  
15 those two reports, Ms. Schepers, but I don't recall anywhere in those reports you using  
16 the expression "on time", "on budget"?

17                   **MS. NANCY SCHEPERS:** Correct.

18                   **MR. PETER WARDLE:** And is it also fair to say, Ms. Schepers,  
19 and I want you to think about this carefully, that your experience with Mayor Watson and  
20 his administration, if you came to the administration and said "the budget for this project  
21 is no longer realistic; we need to reconsider it"; would they have listened to you?

22                   **MS. NANCY SCHEPERS:** Yes, they would.

23                   **MR. PETER WARDLE:** Thank you. Can we just deal very quickly,  
24 because a number of the parties have asked you questions about the DBFM, but I want  
25 to just come back to risk transfer and the conventional design bid build model. And my  
26 understanding is you had a significant amount of experience over the course of your  
27 career with the traditional design, the build model; is that correct?

28                   **MS. NANCY SCHEPERS:** That's correct.

1                   **MR. PETER WARDLE:** And what was your experience overall with  
2 that model?

3                   **MS. NANCY SCHEPERS:** Well, my experience is, that when you  
4 have a project that is very easy to define and, you know, put into a contract; so you are  
5 widening a road or you are doing something that's very repetitive, standard contract  
6 terms and conditions, you have pre-qualified contractors, a design bid build works very,  
7 very well. It's not to say you're not going to get into claims and issues that arise, but  
8 generally, I would say it works very well. When you get into more challenging  
9 innovative designs and different things that happen, I've seen many times where that  
10 type of approach really doesn't bring it all to the table, because you don't have the  
11 maintenance there during the design process; you really don't have the same type of  
12 thinking that goes into bringing those innovations in, really refining the schedule. Like  
13 there's a lot of things that are done within a P-3 process that are amazing in terms of  
14 how they help to define and control and manage risks, on both sides. It's not just on the  
15 contractor or on the City side.

16                   **MR. PETER WARDLE:** And I'm going to ask you very briefly  
17 about, and I don't want to take up a lot of time with this, but are you familiar with the  
18 airport parkway pedestrian bridge project?

19                   **MS. NANCY SCHEPERS:** Yes. Yes, probably more than I'd like  
20 to be.

21                   **MR. PETER WARDLE:** And I understand that that project is quite  
22 visible because those of us who travel to the Ottawa airport go directly under that  
23 bridge; is that correct?

24                   **MS. NANCY SCHEPERS:** That's correct.

25                   **MR. PETER WARDLE:** And can you just, first of all, describe for  
26 us how this project was procured?

27                   **MS. NANCY SCHEPERS:** So it was conventional; we went with a  
28 design DF build; so City staff undertook to complete the design and then went to the



1 market.

2 **MR. PETER WARDLE:** And were there issues that developed with  
3 respect to this project?

4 **MS. NANCY SCHEPERS:** There were a number of issues that –  
5 and we were into liquidated damages and we had to rebuild the tower and it certainly  
6 did not come in on time or on budget.

7 **MR. PETER WARDLE:** And did you take your experience with the  
8 traditional model, you know, with you, did it inform your view when you came to  
9 consider what kind of a procurement approach should be used for this project?

10 **MS. NANCY SCHEPERS:** My wealth of experience in delivering  
11 projects absolutely informed my thinking in terms of how we should procure this project  
12 for the City of Ottawa. And a P-3 was top of list for me.

13 **MR. PETER WARDLE:** And I know you weren't around at the time,  
14 which you weren't Deputy City Manager at the time of the second sink hole, but do you  
15 have a view on what likely would have happened had the project been procured under a  
16 traditional model, once the sink hole took place, the second sink hole?

17 **MS. NANCY SCHEPERS:** Well, it certainly – I think what would  
18 have happened is the project would have come to a stop; so you've got all your  
19 contractors, everybody there pointing fingers to say, "What's -- who's the cause?" and  
20 try to resolve that before work is done.

21 Sometimes in those situations, the owner will direct that the work  
22 proceed under a cost plus basis so that you can continue to see the work and  
23 understand that this is all going to court, there's going to be claims, and this is all going  
24 to have to be resolved after the fact.

25 So it would have been, in my experience, a significant challenge for  
26 the City of Ottawa to work with that.

27 **MR. PETER WARDLE:** And is it also fair to say, Ms. Schepers,  
28 that when thinking about the P-3 model, the DBFM, and you know, considering its risks

1 and benefits, you have to evaluate it in the context of the other alternatives that were  
2 available at the time; is that not correct?

3 **MS. NANCY SCHEPERS:** That is correct. You have to look at it in  
4 -- along the spectrum and understand what value it brings to the table in comparison to  
5 the others.

6 **MR. PETER WARDLE:** Thank you.

7 I want to just spend a minute, if I can, on the City consultants. So  
8 you've spoken a little bit about Capital Transit Partners and you've been asked  
9 questions about Capital Transit Partners.

10 **MS. NANCY SCHEPERS:** Right.

11 **MR. PETER WARDLE:** And I don't think there's any dispute that  
12 the City received financial advice from Deloitte ---

13 **MS. NANCY SCHEPERS:** M'hm.

14 **MR. PETER WARDLE:** --- and advice with respect to the model  
15 from Deloitte through the period leading up to the procurement, correct?

16 **MS. NANCY SCHEPERS:** Correct.

17 **MR. PETER WARDLE:** And you've also spoken about the advice  
18 that the City received from Infrastructure Ontario, and I'm not going to back over that,  
19 but I want to spend a minute or two with you about Mr. Guest and Boxfish.

20 And let's just start with maybe some basics. When did you first  
21 meet Brian Guest?

22 **MS. NANCY SCHEPERS:** Right. I would have met Brian when he  
23 worked in the mayor's office, for Mayor Chiarelli.

24 **MR. PETER WARDLE:** And when did he first become involved, to  
25 your recollection, in this project, as a consultant?

26 **MS. NANCY SCHEPERS:** So my recollection, it was really  
27 coincidental almost with the initiation and setting up of the rail implementation process  
28 with RIO, and it was something that -- it was someone that both the City manager and I

1 agreed would be a good addition, so whether it happened immediately or shortly  
2 thereafter, perhaps after the procurement of CTP.

3 **MR. PETER WARDLE:** And it was suggested to an earlier witness  
4 that Mr. Guest had no expertise as -- because he wasn't an engineer, and he wasn't a  
5 lawyer, and I suppose he wasn't an accountant. And those things are all true, correct?

6 **MS. NANCY SCHEPERS:** Correct.

7 **MR. PETER WARDLE:** Mr. Guest is none of those things?

8 **MS. NANCY SCHEPERS:** Correct.

9 **MR. PETER WARDLE:** Why did you and the City manager at the  
10 time feel that it was important to have Mr. Guest at the table? What function did he  
11 perform in that early stage?

12 **MS. NANCY SCHEPERS:** So if I could -- you know, it's hard to  
13 describe Mr. Guest; however, in working with him when he worked in the mayor's office,  
14 it was incredible to me how one individual could look at City budgets and study them in  
15 depth and almost understand them more than the staff who prepared them.

16 He had the ability to understand how things worked together, get a  
17 big picture, and was very -- you know, very easy to deal with in one way, because if you  
18 went to him and he had questions, he knew what he was talking about. You could have  
19 a discussion. He listened, and he would see things and bring innovation and ideas to  
20 the table and challenge.

21 I always had a lot of respect for Mr. Guest, and I knew that if he  
22 was part of the RIO team that he was going to bring that to the table and that was  
23 amazing,

24 **MR. PETER WARDLE:** And you weren't the only person who had  
25 that view? That -- your view was shared by the City manager at the time, Mr.  
26 Kirkpatrick; is that not fair?

27 **MS. NANCY SCHEPERS:** Yes, absolutely.

28 **MR. PETER WARDLE:** And is it also fair to describe Mr. Guest's

1 work as a challenge function?

2 **MS. NANCY SCHEPERS:** Yes. As I said, he's the type of  
3 individual who gets right into the nitty gritty, understands the problem, and then has  
4 ideas, which I'm going to say yes, if that's a challenge function. I like to portray it more  
5 on the positive side, that he comes with a very creative thinking that does challenge  
6 your thinking and does bring new ideas to the table.

7 **MR. PETER WARDLE:** And can you just describe to the  
8 Commissioner some of the things that you feel Mr. Guest brought to the table in the  
9 early stages of this project?

10 **MS. NANCY SCHEPERS:** Well, I certainly felt that he was  
11 instrumental in terms of challenging the tunnel depth and being able to get to the point  
12 where we reduced the depth and were able to provide a better-quality system, better  
13 quality service for the citizens at a lower price. So that helped us, both on schedule but  
14 also on the price point.

15 Then there was certainly, in terms of some of the -- you know, the  
16 geotechnical risk transfer and some of the mobility and the energy matters, he was very,  
17 very creative in first, understanding what's the City's role in a P-3, and then how can we  
18 structure that P-3 so that the City's interests and the City's risks are appropriately  
19 managed, and we're incenting the private sector without prescribing what thou shalt do  
20 A, B, and C.

21 And so I credit him with a number of the -- those incentives and the  
22 ladders that were included, ultimately, in the P-3 process. I credit him with a lot of  
23 those.

24 **MR. PETER WARDLE:** And do you have any reason to believe  
25 that Mr. Guest was brought into this project because of his political affiliations?

26 **MS. NANCY SCHEPERS:** None whatsoever.

27 **MR. PETER WARDLE:** All right. Let me just take you quickly to a  
28 couple of other things. My friend, Mr. Adair, suggested to you that there was a better

1 message that should have been given to the public, that this is a really complex system  
2 and I think he put to you that -- I'm just going to find it in my notes -- that this was a  
3 world-class system and a very complex project, and as a result, will open it when it's  
4 ready and safe, right? Do you recall him putting that to you?

5 **MS. NANCY SCHEPERS:** Yes, I do.

6 **MR. PETER WARDLE:** And ---

7 **COMMISSIONER HOURIGAN:** Sorry, that wasn't quite what he  
8 put to her, but it was -- let's just be clear for the record, it was a paraphrase of what he  
9 said.

10 So go ahead.

11 **MR. PETER WARDLE:** That's fair enough, Mr. Commissioner. I  
12 am paraphrasing, and it is late in the day, so I apologize if I don't have it quite right.

13 But if you -- if I suggested to you that after the delays in revenue  
14 service availability, starting in May of 2018 and going through to 2019, that the message  
15 provided by the mayor to citizens of Ottawa was that we would open the system when it  
16 was ready and safe, in your view, would that have been a prudent message to give to  
17 citizens of the City?

18 **MS. NANCY SCHEPERS:** Yes.

19 **MR. PETER WARDLE:** Thank you. Those are all my questions for  
20 you, Ms. Schepers.

21 **COMMISSIONER HOURIGAN:** All right, thanks.

22 Any re-examination?

23 **MR. JOHN ADAIR:** Just very briefly, thanks, Mr. Commissioner.

24 **--- RE-EXAMINATION BY MR. JOHN ADAIR:**

25 **MR. JOHN ADAIR:** And Ms. Schepers, you've been at this for  
26 quite a while and it's late in the day. I really appreciate it. I'll be very quick.

27 **MS. NANCY SCHEPERS:** Okay.

28 **MR. JOHN ADAIR:** Ms. Schepers, I just want to ask you a couple

1 of questions by way of follow up to what Ms. Batner was asking you, who is counsel to  
2 IO.

3 And you'll recall, Ms. Batner took you to the lenders' agreement,  
4 which is a schedule to the project agreement. Do you recall that?

5 **MS. NANCY SCHEPERS:** Yes.

6 **MR. JOHN ADAIR:** She pointed out to you how the lender can  
7 step in and effectively appoint a new company to do the job if they believe RTG is not  
8 capable?

9 **MS. NANCY SCHEPERS:** They have the ability to step in, yes. So  
10 that can include replacing folks, yeah, with the --- F

11 **MR. JOHN ADAIR:** I just want to make sure we're using the same  
12 language, Ms. Schepers. I had understood that to be what "stepping-in" is.

13 **MS. NANCY SCHEPERS:** Yes.

14 **MR. JOHN ADAIR:** And then Ms. Batner also took you to the  
15 contract, the project agreement, I should say, and to the definition of "Revenue Service  
16 Availability"; do you remember that?

17 **MS. NANCY SCHEPERS:** Yes.

18 **MR. JOHN ADAIR:** And Ms. Batner's basic point, if I understood it  
19 correctly, was that the contract actually does address the kind of situation the parties  
20 found themselves in in 2019, and it does that by, in part, allowing the lenders some  
21 step-in rights and in part also providing a specific definition of "Revenue Service  
22 Availability"; I take it you understood that that's also -- you also understood that to be the  
23 point she was making?

24 **MS. NANCY SCHEPERS:** Yes.

25 **MR. JOHN ADAIR:** When you were procuring this project, and  
26 going through the process of working with I.O. to understand what the agreement was  
27 and how it should work and all those other things; did you have the belief that if the  
28 project was very close to done but still in a very difficult state where reliability wasn't

1 there, that it was a viable option for the lender to appoint an entirely new construction  
2 company to come in and finish the job? Like did you take comfort from that in the  
3 contract?

4 **MS. NANCY SCHEPERS:** I thought the contract terms provided  
5 the ability that was necessary and sometimes the contract terms can be taken to  
6 extremes. And extremes will occur when, you know, things are really, really, bad. And  
7 so I wasn't there post-2015 and did I think that that, you know, it was going to get to a  
8 point where, you know, you would have the lenders step-in and you would get rid of the  
9 contractors who were doing the work; did I think that? Absolutely not.

10 But extreme circumstances can happen, and, yes, we would need  
11 to deal with those kinds of things.

12 **MR. JOHN ADAIR:** All right. And in terms of the definition of  
13 "Revenue Service Availability" and the protection that the contract offered by having that  
14 definition in it, you understand – I assume you're aware that what has happened as a  
15 result of the turnover happening, when it did and the way it did, is that there's an  
16 enormous amount of litigation between almost everyone who was involved in this  
17 project; right?

18 **MS. NANCY SCHEPERS:** I understand what – I don't know  
19 myself, like I'm not familiar with it, but I understand that, yes.

20 **MR. JOHN ADAIR:** And so what you get when you have the sort  
21 of contract answering all and this idea that the definition of "Revenue Service  
22 Availability" in the contract is the answer to everything, what you end up with, is a huge  
23 fight over definitions in contracts and what they mean and who met them and who didn't  
24 and all that good stuff; right?

25 **MS. NANCY SCHEPERS:** Yes.

26 **MR. JOHN ADAIR:** So the contract actually doesn't even come  
27 close to solving the problem, does it, because the contract and the resulting litigation  
28 doesn't do a single thing for the people of Ottawa. Like this idea that if you just

1 enforced the contract everything will be fine, is just not true; is it?

2 **MS. NANCY SCHEPERS:** No, enforce the contract because  
3 things are happening. So, you know, what you're speaking to, is the contract has terms  
4 in it that anticipate if things aren't going right. And so if things aren't going right, that's  
5 not in the best interest of the citizens of the City of Ottawa, clearly. But the contract has  
6 to anticipate those things and has to provide clauses that give you the path that you  
7 would follow. So I'm really not understanding where you're going with this.

8 **MR. JOHN ADAIR:** Sure. Let me put it a little bit differently then,  
9 and if I've spoken over you, I don't intend to, so if you weren't finished your answer, I'm  
10 happy to pause.

11 **MS. NANCY SCHEPERS:** Go ahead.

12 **MR. JOHN ADAIR:** Okay, thank you. Let me put it a little bit  
13 differently and in plain terms. Ms. Batner and I are having this little contest back and  
14 forth. She says if you just enforced the contract, because the contract covers all  
15 scenarios, enforcing the contract is the right approach, and I'm suggesting to you that  
16 that's in fact not the case, the right approach is you put the people's interest first; you do  
17 what needs to be done in the circumstances and then if there's litigation later, there's  
18 litigation later. Is that fair, that that's the best approach for the City to take, not the strict  
19 enforcement of the contract?

20 **MS. NANCY SCHEPERS:** I'm really struggling with – you know,  
21 you're giving like a “black” and “white” thing; you have to enforce the contract; you have  
22 signed the contract and so you're obligated to work within it. And contracts have the  
23 ability to – you have ability to work with within them to get the outcome. So that's why  
24 you're there. The City has signed up to it and by default has signed up and to their role,  
25 that is defined in that, and that is enforcing it. So, yeah, you have to do that, and, yes,  
26 you're driven by what's in the best interests of the citizens and of the City of Ottawa.  
27 Absolutely. And does that mean, you know, that's how you approach the contract and  
28 when things go wrong, yes, that's top of mind, what is the best thing to do at this point in



1 time to get the system that the citizens deserve.

2 **MR. JOHN ADAIR:** Thank you, Ms. Schepers, those are all my  
3 questions for you.

4 **COMMISSIONER HOURIGAN:** Thank you, Ms. Schepers, for  
5 testifying today. You're excused.

6 **MS. NANCY SCHEPERS:** Thank you.

7 **COMMISSIONER HOURIGAN:** We're down until tomorrow at  
8 10:00 a.m. Thank you.

9 --- Upon adjourning at 5:13 p.m.

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11

### C E R T I F I C A T I O N

12

13 I, Sandrine Marineau-Lupien, a certified court reporter, hereby certify the foregoing  
14 pages to be an accurate transcription of my notes/records to the best of my skill and  
15 ability, and I so swear.

16

17 Je, Sandrine Marineau-Lupien, une sténographe officiel, certifie que les pages ci-hauts  
18 sont une transcription conforme de mes notes/enregistrements au meilleur de mes  
19 capacités, et je le jure.

20

21



22

Sandrine Marineau-Lupien

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