



Public Hearing

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Commissioner / Commissaire

The Honourable / L'honorable
C. William Hourigan

VOLUME 12

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

Tuesday, June 28, 2022

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Salle de cours au 2^e étage
Ottawa, Ontario
K1N 1E3

Mardi, le 28 juin 2022

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II Appearances / Comparutions

| | |
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| Kate McGrann | Co-lead Counsel / Avocate principale |
| John Adair | Co-lead Counsel / Avocat principal |
| Chris Grisdale | Commission Counsel / Avocat de la Commission |
| Mark Coombes | Commission Counsel / Avocat de la Commission |
| Anthony Imbesi | Commission Counsel / Avocat de la Commission |
| Fraser Harland | Commission Counsel / Avocat de la Commission |
| Liz McLellan | Commission Counsel / Avocate de la Commission |
| Carly Peddle | Commission Counsel / Avocate de la Commission |
| Emily Young | Commission Counsel / Avocate de la Commission |
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| Peter Wardle | The City of Ottawa |
| Betsy Segal | |
| Catherine Gleason-Mercier | |
| Jesse Gardner | |
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| John McLuckie | Amalgamated Transit Union 279 |
| Jaime Lefebvre | |
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| Michael Valo | Alstom Transport Canada Inc. |
| Charles Powell | |
| Lena Wang | |
| Jacob McClelland | |
| | |
| Sarit Batner | Ontario Infrastructure and Lands Corporation (IO) |
| Julie Parla | |
| Morgan Watkins | |
| Solomon McKenzie | |

III Appearances / Comparutions

Kyle Lambert
Jeremiah Kopp

Morrison Hershfield

Heather MacKay
Jeffrey Claydon
Adam Mortimer

The Province of Ontario

Michael Varantsidis
Gary Gibbs
Kim Gillham

Rideau Transit Group – EJV (Engineering Joint Venture)

Jennifer McAleer
Peter Mantas
Maria Braker

Thales Canada Inc.

David Jeanes

Transport Action Canada

Linda Rothstein
Gordon Capern
Michael Fenrick
Jean-Claude Killey
Kartiga Thavaraj
Jesse Wright
Mannu Chowdhury

RTG (Rideau Transit Group General Partnership)

+

OLRTC (Ottawa Light Rail Transit Group General Partnership)

+

RTM (Rideau Transit Maintenance General Partnership)

Michael O'Brien
James Doris

STV

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Ottawa, Ontario

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--- Upon commencing on Tuesday, June 28, 2022, at 9:00 a.m.

THE REGISTRAR: Good morning. The hearing is now resumed.
The Honorable Justice Hourigan is presiding.

COMMISSIONER HOURIGAN: Good morning and welcome to
day 12 of the oral testimony. Today's witness for this morning is Tom Prendergast.

Are you there, sir?

MR. TOM PRENDERGAST: Yes, sir, I'm here.

COMMISSIONER HOURIGAN: Okay. I can't see you so just
stand by for a second.

If you could have him come up on my screen.

MR. TOM PRENDERGAST: Now you should see me, sir.

COMMISSIONER HOURIGAN: Yeah, I see you fine. Thank you.

MR. TOM PRENDERGAST: Okay. That was my fault at my end.

COMMISSIONER HOURIGAN: That's okay. It's okay.

You're going to be asked questions by a number of counsel today.

But before we do that we need to either have you swear an oath to tell the truth or affirm
to tell the truth. What would you prefer.

MR. TOM PRENDERGAST: I'll swear.

COMMISSIONER HOURIGAN: Okay, stand by.

MR. TOM PRENDERGAST, Sworn:

COMMISSIONER HOURIGAN: Thank you. So the first counsel to
ask you some questions is Carly Peddle from the Commission.

Ms. Peddle, are you there?

I see her. Go ahead.

We're having some trouble hearing you, Ms. Peddle. Just check to
make sure you're not muted..

---- EXAMINATION IN-CHIEF BY MS. CARLY PEDDLE:

1 **MS. CARLY PEDDLE:** Okay, Mr. Prendergast, can you hear me
2 now?

3 **MR. TOM PRENDERGAST:** Yes, I can hear you.

4 **MS. CARLY PEDDLE:** And now I can't hear you. One moment.
5 Okay. Can you say something?

6 **MR. TOM PRENDERGAST:** Yes. Testing, one, two, three.

7 **MS. CARLY PEDDLE:** Okay, great. Now I can hear you. And I
8 think you can hear me.

9 **MR. TOM PRENDERGAST:** I can hear you, yes.

10 **MS. CARLY PEDDLE:** Okay, great.

11 So my name is Carly Peddle. I'm Commission counsel on the
12 Public Inquiry into Stage 1 of Ottawa's Light Rail Transit Project. The first thing I'd like
13 to ask you about this morning, Mr. Prendergast, is your educational and professional
14 background as it relates to your work on Ottawa's Light Rail Transit Project.

15 **MR. TOM PRENDERGAST:** I'm a degreed engineer. I have a
16 Bachelor of Science degree in systems engineering with a specialization in urban
17 transportation from the University of Illinois. I have worked in the public transportation
18 sector on both the private and public side for my entire career. The overwhelming
19 majority of that time was spent working at public agencies in a variety of different
20 positions rising up through organizations, up through the, you know, heads of major
21 departments on both the bus and rail side, as well as agency heads at Long Island
22 Railroad, New York City Transit, the transit system out in Vancouver, Canada, and
23 Chairman and CEO of the Metropolitan Transportation Authority in New York.

24 I've worked 47 years in that space and I now work at an
25 engineering company doing work in transportation across all modes -- highway bridge
26 transit, marine, aviation, and goods movement.

27 **MS. CARLY PEDDLE:** And you also worked for Parsons; is that
28 right?

1 **MR. TOM PRENDERGAST:** Parsons Brinckerhoff, yes. That was
2 my first foray -- no, my second foray into the private sector side.

3 **MS. CARLY PEDDLE:** And on Ottawa's Light Rail Transit Project,
4 you were working for STV?

5 **MR. TOM PRENDERGAST:** That's correct.

6 **MS. CARLY PEDDLE:** And you're not currently with STV any
7 longer, is that right?

8 **MR. TOM PRENDERGAST:** That's correct.

9 **MS. CARLY PEDDLE:** Who -- what company are you with now?

10 **MR. TOM PRENDERGAST:** I'm with Aecon.

11 **MS. CARLY PEDDLE:** Okay, thank you. So STV were advisors to
12 the City on the project, is that right?

13 **MR. TOM PRENDERGAST:** Yes.

14 **MS. CARLY PEDDLE:** It provided advice, recommendations, and
15 raise risks but not necessarily provide prescriptive advice? Do I understand that
16 correctly?

17 **MR. TOM PRENDERGAST:** That's correct.

18 **MS. CARLY PEDDLE:** What was your role within STV with respect
19 to the project?

20 **MR. TOM PRENDERGAST:** My role was to lead a group that was
21 called the Independent Assessment Team. It was a team of individuals made up of the
22 joint venture program manager role serving the City of Ottawa and OC Transpo where
23 we were asked to come in and provide assessments of work that was ongoing as an
24 extension of the client's staff and offer findings and make recommendations on areas of
25 concern or areas that needed attention.

26 **MS. CARLY PEDDLE:** And that included the preparedness of
27 operations and maintenance and how the schedule was progressing?

28 **MR. TOM PRENDERGAST:** Yes, it -- it included the -- what one

1 would call “the constructive part of the system” as it was being built out by all the
2 different disciplines leading up to preparation from the start of revenue service and
3 extending slightly into the revenue service period.

4 **MS. CARLY PEDDLE:** And the Independent Assessment Team
5 reported to Mr. Manconi, is that correct?

6 **MR. TOM PRENDERGAST:** That’s correct.

7 **MS. CARLY PEDDLE:** Okay. And Mr. Prendergast, you started
8 on the project in April or May of 2017?

9 **MR. TOM PRENDERGAST:** That’s correct.

10 **MS. CARLY PEDDLE:** Do you know the month?

11 **MR. TOM PRENDERGAST:** No, but I remember it was snowing
12 when we came up there. It was a very late snow, so -- and it might have been May. I
13 was surprised because I -- but it was April or May. I don’t remember the exact month.

14 **MS. CARLY PEDDLE:** Okay, thank you. And you finished your
15 work around the end of 2019, early-2020?

16 **MR. TOM PRENDERGAST:** That’s correct.

17 **MS. CARLY PEDDLE:** The first thing I want to talk to you about
18 today with respect to your work is you told Commission counsel in your interview that
19 you recalled a very brief conversation about a soft start. Do you remember talking
20 about that?

21 **MR. TOM PRENDERGAST:** Yes.

22 **MS. CARLY PEDDLE:** And you couldn’t remember recommending
23 one at the time.

24 **MR. TOM PRENDERGAST:** No, I did not recall recommending
25 one.

26 **MS. CARLY PEDDLE:** There’s been evidence before the
27 Commission that in a meeting with RTG and the City, you recommended a soft start.
28 Does that refresh your memory at all?

1 **MR. TOM PRENDERGAST:** I -- not -- not in terms of
2 recommending. I definitely remember there was a short discussion. In the last question
3 you asked, I believe you said "brief discussion" but there was a short discussion on a
4 soft start, but I do not recall a recommendation.

5 **MS. CARLY PEDDLE:** Okay. What's your view on a soft start?

6 **MR. TOM PRENDERGAST:** I've seen both soft starts and what
7 you would call a hard start, which is just turn the system on and go into full operation.
8 Whether it be an extension of an existing system, meaning -- and when I'm defining
9 "system" there, I'm talking about a transportation system, but it also could be a subpart
10 of that a system, like a new signal system or a new vehicle. And I've seen both. I've
11 seen soft and hard starts. And generally speaking, organizations take a look at them to
12 see what are the benefits and disbenefits of a soft versus a hard start, and then they
13 decide which one is best for their set of circumstances.

14 **MS. CARLY PEDDLE:** And what did you understand soft start to
15 mean?

16 **MR. TOM PRENDERGAST:** A discussion where you wouldn't go
17 into -- it could be -- I don't remember the details there but it generally has to do with
18 limited periods of the day so you're not running the full service period that you expect
19 the system to operate once it gets up into full service, or a reduced number of trains
20 than what you would normally have for full service. And it could have been a
21 combination of both or one or the other.

22 **MS. CARLY PEDDLE:** Did you think that was a good idea to
23 explore?

24 **MR. TOM PRENDERGAST:** To have a discussion, because it
25 benefited me in the times that I had to be part of a decision because there were many
26 times that in a role similar to what John Manconi had as the head of an agency, it wasn't
27 my decision solely. It was the decision that the organization at large took and the board
28 was part of. So I thought it was a good discussion to have.

1 **MS. CARLY PEDDLE:** But ultimately, it wasn't your decision. Is
2 that what ---

3 **MR. TOM PRENDERGAST:** That's correct.

4 **MS. CARLY PEDDLE:** And you said the discussion was brief.
5 Why was -- why was it brief?

6 **MR. TOM PRENDERGAST:** Brief in the sense that I believe the
7 level of information we were providing was already in the minds of people at OC
8 Transpo so it didn't take long for us to be able to articulate what a soft start or a hard
9 start was, and the options that one could use for a soft and a hard start, there were no
10 large areas where they had not already thought about it. So -- because in some issues,
11 you really need to explain something because people -- their limited knowledge of it
12 requires it to be longer. But it was obviously an issue that had been discussed and
13 looked at already and we didn't need to add too much to it. So that's why it was brief.

14 **MS. CARLY PEDDLE:** So do I take it that they had already looked
15 into it and -- did you perceive that a decision had already been made?

16 **MR. TOM PRENDERGAST:** That's my recollection.

17 **MS. CARLY PEDDLE:** And what do you recall the decision was?

18 **MR. TOM PRENDERGAST:** To go with a hard start once they
19 went through the -- all the steps required in the Project Agreement.

20 **MS. CARLY PEDDLE:** Okay. Thank you. With the Independent
21 Assessment Team, I understand that one of the goals was to ascertain the extent to
22 which the schedule was impacted or whether things were on schedule.

23 **MR. TOM PRENDERGAST:** Is your definition of the schedule in
24 that the project schedule in terms of delivering the project? Okay, yes. Yes, it was --
25 that was one of the -- from the initial discussion of what the role of the IAT was going to
26 be, and its scope, that was one of the most -- one of the more critical items that needed
27 -- they wanted the IAT to take a look at.

28 **MS. CARLY PEDDLE:** And I understand from your interview with

1 Commission counsel that although the tunnel collapse happened before your
2 involvement with the project, that you still had -- you were able to assess its impact from
3 your role on the IAT. Is that right?

4 **MR. TOM PRENDERGAST:** Going back to the last question which
5 was, once we started to take a look at the schedule of the project and how well it was
6 tracking, you could see the impact of the tunnel collapse on that schedule.

7 **MS. CARLY PEDDLE:** And you described that to Commission
8 counsel as it put the project in suspended animation mode.

9 **MR. TOM PRENDERGAST:** Yes.

10 **MS. CARLY PEDDLE:** And you explained that that was your
11 perception because the schedule, or end date, was staying static but they were dealing
12 with the collapse so either the schedule was getting compressed or things were getting
13 eliminated. Do you recall saying that?

14 **MR. TOM PRENDERGAST:** Yes, I do recall saying that.

15 **MS. CARLY PEDDLE:** And was that your view at the time?

16 **MR. TOM PRENDERGAST:** It was the view of myself and the
17 other members of the IAT that when you took a look at critical milestones on the
18 schedule that you could see milestones were slipping right around the same time
19 immediately following the tunnel collapse. So there was a correlation between the
20 timing and the focus on the tunnel collapse. So that's where the "suspended animation"
21 statement came from.

22 **MS. CARLY PEDDLE:** You also told Commission counsel that the
23 advice from the IAT, and from you generally, was that the testing and commissioning
24 schedule should not be compressed. Do you recall saying that?

25 **MR. THOMAS PRENDERGAST:** Yes.

26 **MS. CARLY PEDDLE:** If I could call up document STV0000296,
27 please. And while that's being pulled up, Mr. Prendergast, this is an email from you to
28 Michael Morgan, Steven Cripps, Richard Holder, Jocelyne Begin, and it's dated

1 September 5th, 2018. So just wait for that to be pulled up.

2 **MR. THOMAS PRENDERGAST:** If you see me looking up, I've got
3 a big screen on the wall so I can take a look.

4 **MS. CARLY PEDDLE:** That's even better. Sometimes the font is
5 small.

6 Okay. Do you recognize this email, Mr. Prendergast?

7 **MR. THOMAS PRENDERGAST:** Yes.

8 **MS. CARLY PEDDLE:** I just want to draw your attention to the
9 bold italicized portion. It's right at the bottom of the screen, and it says:

10 "Watch item is the substantial number of tests that
11 need to be completed at a rate not even closely
12 demonstrated by RTG to date, and on equipment
13 installations that have not been completed as of yet
14 and are therefore not available for testing. In the
15 context of only 58 days left until a November 2nd RSA
16 date...." (As read)

17 I'll just pause. That was the date of intended RSA at the time, I
18 assume.

19 **MR. THOMAS PRENDERGAST:** Yeah. Go back to the top of the
20 memo so I can see the date of this memo.

21 **MS. CARLY PEDDLE:** The date is actually just in the top right.

22 **MR. THOMAS PRENDERGAST:** Okay. Yes -- 9-5-18. Thank
23 you.

24 **MS. CARLY PEDDLE:** And if I could just go down again so I could
25 continue reading. So just continuing on:

26 "...November 2nd RSA date, the likelihood of
27 completing those tests is diminishing extremely
28 rapidly." (As read)

1 Is this an example of you warning about the compression of the
2 testing schedule?

3 **MR. THOMAS PRENDERGAST:** Yes.

4 **MS. CARLY PEDDLE:** And you also note in this email, Mr.
5 Prendergast, that:

6 "Without an adequate number of spare vehicles, the
7 system would be subject to an unacceptable risk in
8 delivering service." (As read)

9 And that's just at the end of the paragraph that's in the middle of
10 your screen, if you want to just review that.

11 **MR. THOMAS PRENDERGAST:** Yes.

12 **MS. CARLY PEDDLE:** And that was a risk that you communicated
13 to the City?

14 **MR. THOMAS PRENDERGAST:** Yes. At that time with those set
15 of conditions in place, yes.

16 **MS. CARLY PEDDLE:** Yes, of course.

17 Okay. Thank you. That document can be pulled down.

18 I just want to move forward to trial running. I understand, Mr.
19 Prendergast, that you weren't specifically involved in trial running, but the IAT was
20 involved and giving advice on planning. Do I have that right?

21 **MR. THOMAS PRENDERGAST:** Yes, you basically have that
22 right. The trial running, in terms of what it required, was part of the PA, so there were
23 certain elements of it that were fixed. As the date of trial running approached, there was
24 input and support provided by some members of the IAT who had been involved on the
25 project before the IAT, because the IAT was made up of two different sets of members.
26 Some members that were totally independent had not been involved in the project at all
27 prior to the IAT being established. I was one of those. Navin Sagar was another.
28 There may have been a few others. And then other people had been involved in the

1 project earlier, like Larry Gaul and Joe North. So it was a combination of both.

2 **MS. CARLY PEDDLE:** And you explained to Commission counsel
3 that, in your view, the purpose of trial running is to replicate service conditions to beta
4 test the system. Is that correct?

5 **MR. THOMAS PRENDERGAST:** Yes.

6 **MS. CARLY PEDDLE:** And you communicated your view to the
7 City that there was a benefit to doing as much trial running as possible.

8 **MR. THOMAS PRENDERGAST:** Trial running as well as in
9 advance of trial running -- you could use the term "practice running". I don't want to say
10 a problem, but there is a distinction with the use of the term "trial running". It's tied to a
11 part of the PA, so as much exercising of the equipment that you can get in advance of
12 revenue service is beneficial for all parties: the operator, the people that maintain it.
13 You're seeing how the elements work together. You're seeing how it responds in
14 weather. So a combination of both is very beneficial, but trial running -- I just want to
15 make a distinction -- is tied to -- and we tried to make sure, whenever we used trial
16 running, we were talking about the PA requirements for trial running.

17 **MS. CARLY PEDDLE:** So essentially best practice is to run the
18 system for as long as you can before you open to public service.

19 **MR. THOMAS PRENDERGAST:** Yes, and that's the beta testing.

20 **MS. CARLY PEDDLE:** You told Commission counsel that you
21 were generally aware that the trial running criteria changed partway through. Do you
22 remember that?

23 **MR. THOMAS PRENDERGAST:** Yes.

24 **MS. CARLY PEDDLE:** And you said that your understanding was
25 if they changed, it was because it would lead to a higher likelihood of success, and that
26 you understood success to mean reliable service.

27 **MR. THOMAS PRENDERGAST:** Yes.

28 **MS. CARLY PEDDLE:** So if the trial running criteria were set

1 below what was expected at service -- so below what was expected at service
2 conditions -- would that be consistent with the advice you gave the City?

3 **MR. THOMAS PRENDERGAST:** Yes, because I've never been
4 associated with any form of testing of a new piece of equipment or a system where the
5 criteria wasn't looked at and modified. In my experience at New York City Transit, we
6 would acquire new cars for a fleet from the ground up -- brand new car body design,
7 brand new pieces of traction motors and everything -- and we would go through a
8 process. And then the first trains that would be delivered -- and we had a specified test
9 period that the supplier had to successfully complete before we would release cars for
10 acceptance and put them in service. And just about every one of those, we had to
11 modify the criteria. In some cases, we would have criteria that there was no way it was
12 going to pass because we had undue restrictions that we wouldn't normally apply if it
13 was our own fleet in revenue service.

14 So that was the context in which -- and it was not just me. It was
15 other members of the independent assessment team that had been involved in the
16 acceptance of new equipment on a system. That's -- I don't want to say it's a given, but
17 it's pretty much a standard practice.

18 **MS. CARLY PEDDLE:** Okay. I'm just trying to square that with
19 your definition of the purpose of trial running, which is to replicate service conditions.
20 So if the criteria for trial running are set far below the expected level of service, how
21 would that benefit the system or the ---

22 **MR. THOMAS PRENDERGAST:** I'm having difficulty with the
23 definition of the term "far below".

24 **MS. CARLY PEDDLE:** Okay. Well, I'll just give you the real
25 example. If the requirement was for 15 trains to be in service and during trial running it
26 was reduced to 13 -- so that's a reduction in the number of trains required for service --
27 would that be consistent with your advice to the City regarding trial running?

28 **MR. THOMAS PRENDERGAST:** Yes, and I'll explain why. The

1 15-train service requirement was one that they needed to affirm the system could
2 operate, but you wouldn't need 15 trains in service until a number of years that system
3 operated. You're designing a system. A car life is 40 years. A signal system life is 50
4 years. And so you're buying a system where you want the operating service
5 performance limits to be able to provide 15 trains. However, on day one, you're not
6 going to see that level of ridership. You're going to see far lower than that. So you
7 could test 13 trains and say, "It's okay to put them into revenue service," and then some
8 time before you make the final payment to the vendor, the supplier, the consortium, you
9 need to verify that the system can operate 15 trains. But you don't need to do that
10 verification before Day 1, you need to do it before you make the final payment.

11 **MS. CARLY PEDDLE:** How did you know about the level of
12 ridership to expect on the project?

13 **MR. THOMAS PRENDERGAST:** The studies that were done to
14 determine ridership long pre-dated what the IAP was involved in. They went into the --
15 as I understand it, which is typically the way it's done -- it went into the writing of the
16 Project Agreement. So you could specify to the winning bid what the service
17 requirements were going to be in the useful life of the system. So that long pre-dated
18 the IAP.

19 And there's all kinds of ridership analysis standard form that is done
20 in these kinds of systems. They take a look at population growth of the city, they take a
21 look at -- you know, in this particular case, they had a pretty well-known BRT ridership
22 model, and that's how the ridership numbers were derived.

23 **MS. CARLY PEDDLE:** Okay. And so we can rely on those studies
24 for the ridership that's required?

25 **MR. THOMAS PRENDERGAST:** To the extent that people rely on
26 them, yes, because they're not perfect. They're -- you know, because you're seeing into
27 the future. And I am not trying to be facetious, but yes, that's the historical. That's the
28 standard practice we are relying on.

1 **MS. CARLY PEDDLE:** Okay. Mr. Kanellakos told the Commission
2 that he recalled you telling him that 12 out of 12 days and 90 percent -- I think he's
3 referring to availabilities -- and 98 percent availability -- they could be going until
4 Christmas and that that will essentially never be achieved on any rail system.

5 Do you recall telling Mr. Kanellakos that?

6 **MR. THOMAS PRENDERGAST:** In exact words, no, but generally,
7 yes, I definitely remember because I was making a comment about the -- two
8 comments, really -- testing criteria for whether you call it trial running there or trial
9 running on some other system, are generally very, very demanding and in many cases,
10 exceed what the service requirements ever would be. So yes, I recall making the
11 statement.

12 **MS. CARLY PEDDLE:** Okay. And if that's the case, would it make
13 sense to you to set service requirements at that same level and therefore, impose
14 deductions if that level was not met?

15 **MR. THOMAS PRENDERGAST:** What's your definition of
16 deduction?

17 **MS. CARLY PEDDLE:** Any kind of penalty.

18 **MR. THOMAS PRENDERGAST:** Once again, now you're getting
19 into the space of the Project Agreement and the application of the Project Agreement.

20 I've had only one experience with a Project Agreement and that
21 was when I worked in the private sector competing for a similar type P-3 procurement
22 on an existing legacy system in London, where there were pretty well established
23 system service requirements with penalties associated with them, never on the side of
24 the design build finance maintain from the client perspective.

25 So we didn't get into that space because it was -- it would be
26 guided and determined by the Project Agreement as it existed, or if there were changes
27 made to it, but we weren't in that space. We weren't involved with that.

28 **MS. CARLY PEDDLE:** I mean, I'm sure you'll agree with me that it

1 wouldn't be a best practice to impose requirements that were impossible to meet.

2 **MR. THOMAS PRENDERGAST:** No, it wouldn't be a best practice
3 to impose requirements that are impossible to meet. You've got a 2.1 or a 2 point
4 something billion dollar capital investment that you want to be able to place in service,
5 make sure that it's safe, make sure that it's reliable, make sure that it's fulfilling its major
6 function of carrying people for the locale it's for. So if you have criteria that are so
7 stringent you don't pass, you never get to the point of putting the system into service.
8 So yes, you're right.

9 **MS. CARLY PEDDLE:** So the requirements just have to be
10 reasonable?

11 **MR. THOMAS PRENDERGAST:** They have to be reasonable, and
12 as I said earlier in terms of one of the questions, just about every one of the tests that
13 I've been associated with, there was some discussion and modification of criteria to be
14 able to get there, and it was a healthy tension discussion. It was not like, "Oh, yeah.
15 You're right. We're going to do this." There was healthy tension, not only within my
16 own organization, but also with the supplier of the equipment.

17 **MS. CARLY PEDDLE:** I'd just like to move on to your views on
18 maintenance readiness.

19 So is it fair to say, Mr. Prendergast, that your opinion of
20 maintenance at the time prior to substantial completion was that they didn't have the
21 right kind of resources on the team?

22 **MR. THOMAS PRENDERGAST:** That was one of the concerns.

23 **MS. CARLY PEDDLE:** You were concerned about the adequacy
24 of management and supervision?

25 **MR. THOMAS PRENDERGAST:** Yes.

26 **MS. CARLY PEDDLE:** And about how the manufacturing
27 workforce was going to roll over into maintenance and operations?

28 **MR. THOMAS PRENDERGAST:** Yes.

1 **MS. CARLY PEDDLE:** Because that requires a different skillset?

2 **MR. THOMAS PRENDERGAST:** Yes.

3 **MS. CARLY PEDDLE:** Did you have any other concerns, other
4 than what I've just ---

5 **MR. THOMAS PRENDERGAST:** The level of resources, how
6 many people, how many men and women that are actually responsible for -- and when
7 we say "maintenance", it's inspection of equipment, it's troubleshooting of equipment
8 when failures occur, it's running maintenance, which means check fluid levels, like, you
9 make sure your oil in your car is fully -- you know, and you do all that stuff, so it's
10 maintenance in the full context.

11 But the last area that I'm adding into that, those others that you
12 mentioned, is the level of resources that you devote to that.

13 **MS. CARLY PEDDLE:** If the operator could just call up Document
14 COW0451202? And while that's happening, Mr. Prendergast, I can advise you that this
15 is an email chain between you, Mr. Manconi, Mr. North, and a few of your other
16 colleagues at STV. And if you see the date in the upper right-hand corner, it's March
17 5th, 2019.

18 **--- EXHIBIT No. 179:**

19 COW0451202 – Email from John Manconi to Thomas
20 Prendergast et al. Re: Dropbox link 5 March 2019

21 **MR. THOMAS PRENDERGAST:** Yes.

22 **MS. CARLY PEDDLE:** Okay. Do you recognize this email? If we
23 could just go down so that the witness could see the email below?

24 **MR. THOMAS PRENDERGAST:** Yes.

25 **MS. CARLY PEDDLE:** I'm hoping you can help me understand a
26 couple of the things you meant here.

27 So you suggest that Mr. Manconi could also use the example of
28 cold temperature testing to show that the reliability problems were not a result of the

1 vehicles themselves, but inexperience on the part of RTM and RTG.

2 And take as long as you need to read it, but is that generally a fair
3 summary?

4 **MR. THOMAS PRENDERGAST:** Yes.

5 **MS. CARLY PEDDLE:** Then you go on to say -- and this is in the
6 last paragraph:

7 "That might be a point worth making, because it
8 downplays the bad vehicle reliability issue and
9 focuses on the more serious problem of snow
10 removal on the part of RTG, RTM, which is where you
11 want the focus and the pressure to be. Food for
12 thought." (As read)

13 Did I read that correctly?

14 **MR. THOMAS PRENDERGAST:** Yes.

15 **MS. CARLY PEDDLE:** So I just want to break that down. Why
16 would the City want the pressure on RTG and RTM's snow removal rather than vehicle
17 reliability problems?

18 **MR. THOMAS PRENDERGAST:** It really wants both, and in the
19 context of what I'm saying here is, we could not see into the consortium in terms of all
20 the intra-relationships it had, but there were times that we were in meetings where we
21 could see a blame game going on, and I'll articulate what a blame game is.

22 I was Senior Vice President for all subway operations in New York
23 City Transit.

24 So I had power, signals, communications, car equipment which is
25 vehicles, track, structures, rapid transit operations, running the equipment, and stations.

26 And so when a major delay occurred everybody is interested in
27 defending their own turf and blaming somebody else. So it's not natural in the sense
28 that it's okay; it's natural in the sense that it exists when this blame game occurs. When

1 you don't have contractual terms between departments, everybody is on the same side
2 of the fence. But we could see into the organization the vehicles had significant issues
3 with them. They were late; they were having other issues.

4 And in open meetings where we would be with them you could see
5 the blame game on their side.

6 The two times of the year where equipment is really taxed to its
7 limits are in the extremely hot, humid days of summer and to an order of magnitude
8 greater in the winter -- snow, freezing rain, accumulated snow that gets caught up in the
9 undercarriage and does damage to the equipment. And so the statement here was
10 "There's reliability issues on the vehicles." But we don't want everybody else to say
11 that's the main problem. Then we're not dealing with the right-of-way.

12 And in the winter immediately preceding when they went into
13 revenue service there were a number of incidents when they were trying to just do
14 different things. See, this is before trial running. They couldn't because the right-of-way
15 was totally covered with snow. And then when they would run the equipment they
16 would damage the equipment. That's the context in which that last paragraph
17 statement is being made.

18 **MS. CARLY PEDDLE:** Okay. That document can be brought
19 down. And I'd just like another document brought up. STV0000478. And this is
20 another email chain between you, Mr. Prendergast, Mr. Morgan, Mr. Charter, Mr.
21 Manconi, and others. And the date on the top right corner is March 15th or April 15th. Is
22 that right?

23 **--- EXHIBIT No. 180:**

24 STV0000478 – Email from Thomas Prendergast to Larry
25 Gaul et al. Re: Tougher test pass

26 **MR. TOM PRENDERGAST:** Yes.

27 **MS. CARLY PEDDLE:** And do you recognize this email?

28 **MR. TOM PRENDERGAST:** Yes.

1 **MS. CARLY PEDDLE:** Okay. So this is April 15th. Just to situate
2 you, RTG submits its first substantial completion notice at the end of April and
3 substantial completion was achieved in July. So if the operator could just scroll down
4 about four emails, just below -- there's a yellow caution warning.

5 Just continue scrolling. Yeah. Just below there, perfect.

6 This is an email from you?

7 **MR. TOM PRENDERGAST:** Yes.

8 **MS. CARLY PEDDLE:** Okay. And take the time you need to read
9 it. But I'm going to read most of it.

10 So you say, and I'm just starting halfway through the first line:

11 "The commitment by RTM to have critical track signal
12 experts available to respond to disturbed switches is
13 ESSENTIAL. For those of us who have been
14 involved in the daily operation of a major rail system is
15 embedded in our core DNA to have those experts on
16 call and at the ready whenever trains are running and
17 especially during rush hours." (As read)

18 So I'm going to skip a few lines. And then you emphasize the
19 timing here. You say:

20 "If RTM is not focused now on fulfilling this
21 commitment, they will not be ready once service
22 launches." (As read)

23 Did I read that correctly?

24 **MR. TOM PRENDERGAST:** I just don't see that last piece, where
25 you pulled that from.

26 **MS. CARLY PEDDLE:** It's the last, the very last line of the email.

27 **MR. TOM PRENDERGAST:** Okay. I see it, yes.

28 **MS. CARLY PEDDLE:** So first, what did you mean by "core DNA"?

1 **MR. TOM PRENDERGAST:** Core DNA is part of your being. It's
2 an extension of you. So in this context what I'm saying is anybody that's been around a
3 rail transit system in the delivery of service where you have switches that are used on a
4 daily basis, you learn very early very fast. You need to be able to respond to a
5 disturbed switch, meaning it's not functioning properly, because a switch that doesn't
6 function properly will generally result in a signal issue.

7 What do I mean by that? If the signal system cannot ascertain that
8 the switch is in the proper position and locked in place, you will get a restrictive or stop
9 aspect. It will affect operations immediately. Anybody who has been around the daily
10 operation of a transit system, especially one that runs this number of trains, it's part of
11 their being. And you put resources on that to accommodate it. And in some cases you
12 over-subscribe resources because minutes and seconds make a difference. If you have
13 somebody sitting five miles away and this problem occurs and it takes them a while o
14 get out there, all that time gets added to it. So you put the resources in terms of
15 quantity and location where the problems occur. That's a core DNA issue.

16 Brian, myself, Joe North, Larry Ball, people who had decades of
17 experience each one of them, that's a core DNA issue for them.

18 **MS. CARLY PEDDLE:** To your knowledge, did RTM provide these
19 track and signal experts that you're writing about?

20 **MR. TOM PRENDERGAST:** Eventually they increased and when I
21 say "eventually", it took a while before they fully understood the importance of having
22 the right number of resources. And if you can't have the exact right number, you want
23 to make sure you have more than the right number. And they finally got to that point.

24 **MS. CARLY PEDDLE:** When did they finally get to that point?

25 **MR. TOM PRENDERGAST:** I think -- I can't remember. Over a
26 period of time before and then certainly after revenue service they were adding
27 resources because they understood the importance of it.

28 **MS. CARLY PEDDLE:** Did RTM ever get to a point where you

1 thought they were sufficiently resourced?

2 **MR. TOM PRENDERGAST:** What's your definition of "sufficient"?

3 I'm not trying to play games, but what's your definition of "sufficient"?

4 **MS. CARLY PEDDLE:** Well, that in your opinion could deal with
5 regular service conditions as well as issues that would arise as long as they're not
6 completely out of the expectation.

7 **MR. TOM PRENDERGAST:** No, that's fair. Yes, and then I'll
8 qualify "sufficient".

9 The mechanism under which this system was procured, designed,
10 built, financed, and maintained -- and I have to state this because it touches this issue
11 and it touches a lot -- is one in which you're transferring the risk of certain elements and
12 functionality to a third party for a price to a set of performance criteria. And so there
13 were times we were having discussions. Now, if you don't do that and you are like in a
14 public agency and you own all the resources and you're not contracting it out, the
15 standard response is, you devote a lot of resources, especially on a new system and
16 then pull them back over time as the reliability issues get better and people troubleshoot
17 faster and things like that.

18 When it's contracted out risk and it's value for money, they
19 approach it from a different perspective. So that's why I asked the question about
20 "sufficient". Public sector perspective where you're not contracting it out, we would
21 definitely have more resources than we need because we were putting in exceptionally
22 high priority and possibly price on the issue of service reliability. On the private sector
23 side, it's more like the other end of the spectrum. What's the minimum sufficient?

24 And they were adding resources and getting to it. But it's also part
25 of "don't know what you don't know"; you know, if you know it's something you don't
26 have to ask anybody.

27 If I had to -- like, when I was Chairman, talk about debt finance, I
28 had to get a debt finance person. That's not my area of expertise.

1 But then there's another category. I've never -- like, if I didn't ever
2 do something and I didn't know what the hazards were, "don't know what I don't know".
3 And there was a lot of times that they didn't know what they didn't know and we would
4 try to give them recommendations and things. I don't think it was deliberate on their
5 part. They just didn't know what they didn't know.

6 **MS. CARLY PEDDLE:** And by "they", you're talking about RTM?

7 **MR. TOM PRENDERGAST:** RTM. Yes, RTM.

8 **MS. CARLY PEDDLE:** You were also concerned about RTM's
9 understanding of the criticality of some of the issues. Is that right?

10 **MR. TOM PRENDERGAST:** Yes.

11 **MS. CARLY PEDDLE:** And you spoke in your Commission
12 counsel interview about making score for service.

13 **MR. TOM PRENDERGAST:** Yes.

14 **MS. CARLY PEDDLE:** I just wanted to clarify your evidence on the
15 that, just briefly. Is "making score for service" having the right number of vehicles
16 available at the right times to account for both busy periods and to ensure smooth
17 operation -- this is getting long -- while also ensuring that there were vehicles available
18 for spares if an issue were to arise?

19 **MR. TOM PRENDERGAST:** Yes, but I would qualify it. It's
20 primarily used to talk about service as you're entering a rush hour, and there's basically
21 two rush hours a day, morning and afternoon. Because if you would take a look over a -
22 - if you operated 24 hours, a 24-hour period, that, you know, in the 6:00 to 10:00 a.m.
23 period, your peak service requirement climbs. Because you're operating a shorter
24 headway, you need more vehicles. Then it comes down during the middle of the day,
25 and then it goes back up again for the afternoon rush hour.

26 So making score in the context we were using it is, if you needed
27 13 trains for the morning rush hour, that they have 13 trains, plus a spare in the event a
28 train, you know, failed on the system and you had to take it out of service and replace.

1 And in the afternoon, if you needed 12, they had to have 12 trains. So that's the context
2 in which were saying "making score". It's -- that is also a basic DNA issue. You'd say
3 that to anybody who's operated a bus system or a rail system and say, "Did you make
4 score today," it meant, "You put all the buses out. You put all the trains out that you
5 were scheduled to put out."

6 **MS. CARLY PEDDLE:** You told Commission counsel that you
7 perceived no urgency on the part of Alstom to make score. Do you remember that?

8 **MR. TOM PRENDERGAST:** Yes.

9 **MS. CARLY PEDDLE:** And by that, did you mean that Alstom
10 didn't act with urgency in delivering the trains, generally, or specifically getting the trains
11 out on the line in the morning, for example?

12 **MR. TOM PRENDERGAST:** That may have been a secondary
13 concern. The primary was, you know, as they had enough vehicles to be able to do
14 practice running before trial running, and if they said on this, "Hey, listen, we're going to
15 try to run against the schedule and see how we do," it's like, you know, you're studying
16 for a final and you get last year's final, and you take the test and you see how well you
17 do. And if you do real bad, you study even more. If you score 100, you know, you don't
18 study as much.

19 So in this case is they weren't paying the requisite attention to
20 making score. And you have to instill that in somebody. It needs to be second nature
21 that they're making score. There was a lack of urgency on that front.

22 **MS. CARLY PEDDLE:** Okay. If we could now call up document
23 STV0000565, this is an email date June 24th, 2019, from you to Mr. Manconi, Mr.
24 Morgan, Mr. Charter amongst others. Is that right?

25 **--- EXHIBIT No. 181:**

26 STV0000565 – Email from Thomas Prendergast to John
27 Manconi et al. Re: RTM Readiness 24 June 2019

28 **MR. TOM PRENDERGAST:** Yes.

1 **MS. CARLY PEDDLE:** And you recognize this email?

2 **MR. TOM PRENDERGAST:** Yes.

3 **MS. CARLY PEDDLE:** And you're assessing the readiness of
4 RTM for revenue service?

5 **MR. TOM PRENDERGAST:** Yes.

6 **MS. CARLY PEDDLE:** You give RTM an overall rating of a three
7 or a four out of 10. Is that right?

8 **MR. TOM PRENDERGAST:** I'm not seeing that here, but if you
9 scroll down ---

10 **MS. CARLY PEDDLE:** I'm reading -- I'm sorry. I'm reading this in
11 the ---

12 **MR. TOM PRENDERGAST:** Oh, yeah, right in the opening
13 paragraph. That's correct. Yeah, that was a -- that was a composite score, absolutely,
14 yes.

15 **MS. CARLY PEDDLE:** Thank you. So, essentially, you're not very
16 confident in their preparedness?

17 **MR. TOM PRENDERGAST:** Yes, at this time, on June 24th, yes.

18 **MS. CARLY PEDDLE:** Okay. And this is about a month before
19 trail running?

20 **MR. TOM PRENDERGAST:** I believe, but I honestly don't recall
21 when trail running started.

22 **MS. CARLY PEDDLE:** If I said trail running began on -- oh, I'm
23 sorry, I'm actually speaking about -- so substantial completion was July 26th and trail
24 running began shortly thereafter. Does that sound right?

25 **MR. TOM PRENDERGAST:** It sounds right?

26 **MS. CARLY PEDDLE:** Okay. So I just -- you spoke a bit about
27 this email in your Commission interview, and I'm not going to retread what you already
28 went over. I just wanted to go over, specifically, the vehicle inspection, maintenance,

1 and revenue service support. So if the operator could just scroll down -- yes, that's
2 perfect. Just stop right there. Okay. And you mark that as "high importance".

3 **MR. TOM PRENDERGAST:** Yes.

4 **MS. CARLY PEDDLE:** What does "high importance" mean in this
5 context?

6 **MR. TOM PRENDERGAST:** It means high importance. All the
7 items in this email are listed in -- where I'm trying to give a qualifier in terms of how
8 important they are and what the rating is.

9 **MS. CARLY PEDDLE:** Sorry, I ---

10 **MR. TOM PRENDERGAST:** Also, I -- go ahead.

11 **MS. CARLY PEDDLE:** I -- does it mean it's important to get to
12 revenue service, or is it important for the overall operating of the system? I'm just trying
13 to clarify the -- what the importance is referring to.

14 **MR. TOM PRENDERGAST:** High importance on two levels. High
15 importance in the context of where they were at this point in time needed to be focused
16 on, and the overall operation of the system.

17 **MS. CARLY PEDDLE:** Okay.

18 **MR. TOM PRENDERGAST:** And this memo is written in the
19 context of my experience as a CEO and the head of operations over all these
20 disciplines. And I felt it was important that both my team understand where I was
21 coming from, because I'm wrapping it all together, and that I'm notifying the agency,
22 John Manconi, where my head is at if I were sitting in his -- sitting in his shoes. And so
23 it was like a double purpose.

24 **MS. CARLY PEDDLE:** So you're trying to give him all of the
25 information that he needs to make the decisions that he needs to make?

26 **MR. TOM PRENDERGAST:** Yes, and also have the interaction
27 with RTM because he's in the position to be able to affect behaviour change or take
28 action on the part of RTM. We didn't deal with them directly. We provided information

1 to the client, to John and the team, for them to make informed decision and take
2 forward.

3 **MS. CARLY PEDDLE:** Now, you rate vehicle inspection,
4 maintenance, and revenue service support as three or four out of 10. Is that right?

5 **MR. TOM PRENDERGAST:** Yes.

6 **MS. CARLY PEDDLE:** You note Alstom's staff are inexperienced?

7 **MR. TOM PRENDERGAST:** Yes, for troubleshooting defects and
8 making repairs, yes.

9 **MS. CARLY PEDDLE:** And you noted that they had limited
10 resources to do those functions.

11 **MR. TOM PRENDERGAST:** Yes.

12 **MS. CARLY PEDDLE:** And you warn the readers of this email that
13 vehicle availability will suffer, or it could affect vehicle availability, just in the last line
14 there.

15 **MR. TOM PRENDERGAST:** Yes.

16 **MS. CARLY PEDDLE:** In fact, you actually say there's a strong
17 possibility that vehicle availability will suffer.

18 **MR. TOM PRENDERGAST:** Yes.

19 **MS. CARLY PEDDLE:** And that accurately summarizes your view
20 at the time?

21 **MR. TOM PRENDERGAST:** Yes, because we were trying to
22 communicate to John so that he could communicate to them -- excuse me, RTM, the
23 importance of this issue and why they needed to address it.

24 **MS. CARLY PEDDLE:** Okay. And I'm not going to go over it but
25 you also outline some critical vehicle issues that remained outstanding. And if you
26 could just scroll down. And at the bottom there, you note that there's not a yardmaster.

27 **MR. TOM PRENDERGAST:** Yes.

28 **MS. CARLY PEDDLE:** And that's of high importance as well?

1 **MR. TOM PRENDERGAST:** Yes.

2 **MS. CARLY PEDDLE:** And you note that RTM has failed to
3 acknowledge the importance of a yardmaster function?

4 **MR. TOM PRENDERGAST:** Yes, at that time. This is in June of
5 19 -- yes.

6 **MS. CARLY PEDDLE:** Do you recall if and when the yardmaster
7 began?

8 **MR. THOMAS PRENDERGAST:** I don't recall, but it was very late.

9 **MS. CARLY PEDDLE:** Very late -- was it before revenue service?

10 **MR. THOMAS PRENDERGAST:** I don't recall. What I do recall is
11 it may have been after revenue service, but I know it was very late.

12 **MS. CARLY PEDDLE:** Okay. I'd just like to move forward in time
13 now, Mr. Prendergast. If we could bring up COW0451394. So Mr. Prendergast, this is
14 an email from August 8th, 2019.

15 **--- EXHIBIT No. 182:**

16 COW0451394 – Email from Jocelyne Begin to Scott Krieger
17 et al. Re: Asks of Alstom 8 August 2019

18 **MS. CARLY PEDDLE:** If you could just go down, scroll down, so I
19 can see the email. Okay.

20 So this is an email from -- it actually starts with an email from Mr.
21 Krieger from STV. So if we could just scroll to the bottom so Mr. Prendergast can see
22 that.

23 **MR. THOMAS PRENDERGAST:** I see it, yes.

24 **MS. CARLY PEDDLE:** Okay. And the subject is "Asks of Alstom".
25 And Mr. Krieger lists two main concerns there: reliability and response time. Did you
26 see that?

27 **MR. THOMAS PRENDERGAST:** Yes.

28 **MS. CARLY PEDDLE:** And he says that they're not where they

1 need to be in terms of dependable service and notes that they need more technicians,
2 and actually specifies an additional two to three extra technicians every night. Do you
3 see that?

4 **MR. THOMAS PRENDERGAST:** Yes.

5 **MS. CARLY PEDDLE:** And a technician on every train.

6 **MR. THOMAS PRENDERGAST:** Yes.

7 **MS. CARLY PEDDLE:** Did you agree with that advice?

8 **MR. THOMAS PRENDERGAST:** At that time, yes.

9 **MS. CARLY PEDDLE:** Are you aware of anything that was done in
10 response?

11 **MR. THOMAS PRENDERGAST:** Similar to some other responses
12 that I gave, I know they added staff. I don't believe they added all the staff that Scott is
13 recommending here.

14 **MS. CARLY PEDDLE:** That document can be brought down.
15 In addition to the concerns about maintenance readiness, you also
16 had concerns about the reliability of design and the construction, right?

17 **MR. THOMAS PRENDERGAST:** I'm a little confused, because
18 reliability usually is measured against a piece of equipment or a system, and if you're
19 talking about construction, for example, of physical facilities, it's not used in that context.
20 So what is it that you're ---

21 **MS. CARLY PEDDLE:** I'm using reliability loosely there, not in the
22 technical sense.

23 **MR. THOMAS PRENDERGAST:** So is it ---

24 **MS. CARLY PEDDLE:** You had concerns ---

25 **MR. THOMAS PRENDERGAST:** I'm sorry. Go ahead.

26 **MS. CARLY PEDDLE:** You had some concerns about -- you saw
27 some issues with the design and construction.

28 **MR. THOMAS PRENDERGAST:** The construction for sure, and

1 some design elements as they were constructed that may be maintenance issues, yes.

2 **MS. CARLY PEDDLE:** Okay. If we could pull up STV0000633.

3 This is going to be an email chain between you, Mr. Olson, who I understand is a
4 member of STV.

5 **--- EXHIBIT No. 183:**

6 STV0000633 – Email from Thomas Prendergast to John
7 Manconi et al. Re: CP Rail Temp Charts and CN 31 July
8 2019

9 **MR. THOMAS PRENDERGAST:** Okay. This is a track issue.

10 Okay. Yes.

11 **MS. CARLY PEDDLE:** So do you ---

12 **MR. THOMAS PRENDERGAST:** There is a measure of reliability
13 here. Okay. Because when you said “construction”, I was thinking of physical
14 construction of stations and facilities, but this is a system element for the system, yes.
15 Go ahead.

16 **MS. CARLY PEDDLE:** Okay. So do you recognize this email?

17 **MR. THOMAS PRENDERGAST:** Yes.

18 **MS. CARLY PEDDLE:** And in this email -- it’s from July 31st, 2019,
19 and Mr. Olson -- you were forwarding on a memo from Mr. Olson. Is that right?

20 **MR. THOMAS PRENDERGAST:** That’s correct.

21 **MS. CARLY PEDDLE:** And in that memo, it sets out that:

22 “The rail neutral temperature that was set on the track
23 was lower than in other similar climactic conditions.”

24 (As read)

25 Do you recall reading that?

26 **MR. THOMAS PRENDERGAST:** It was lower than other systems
27 used in similar climactic conditions, yes.

28 **MS. CARLY PEDDLE:** Okay. And if I could just scroll down, just

1 down to the email. Okay. I'm just going to ask to bring up STV634. And is this the
2 memo that I was just referring to?

3 **--- EXHIBIT No. 184:**

4 STV0000634 – STV Memorandum Al Bobby and Joe Olsen
5 to Tom Prendergast Re: Stage 1 Continuous Welded Rail
6 Issues Related to Temperature 30 July 2019

7 **MR. THOMAS PRENDERGAST:** Are you asking me?

8 **MS. CARLY PEDDLE:** Yes. That was attached to that email that I
9 just showed you.

10 **MR. THOMAS PRENDERGAST:** Okay.

11 **MS. CARLY PEDDLE:** Is this the memo that Mr. Olson drafted for
12 you?

13 **MR. THOMAS PRENDERGAST:** It's definitely a memo he drafted
14 for me. It may not have been the only one, but yes, he definitely drafted it for me, yes.

15 **MS. CARLY PEDDLE:** But it's referring to rail neutral temperature.

16 **MR. THOMAS PRENDERGAST:** Yes, it is. Yeah.

17 **MS. CARLY PEDDLE:** Thank you. And this memo outlines that:

18 "The rail neutral temperature of Line 1, based on field
19 reports, is 56 to 68 degrees Fahrenheit." (As read)

20 Do you see that?

21 **MR. THOMAS PRENDERGAST:** Yes.

22 **MS. CARLY PEDDLE:** And do you recall that Mr. Olson also noted
23 in this memo that because the rail neutral temperature was set lower than as standard
24 in these climactic conditions, that there was a higher risk of sun kinks or track buckling?

25 **MR. THOMAS PRENDERGAST:** Yes.

26 **MS. CARLY PEDDLE:** And do you recall that this memo sets out a
27 number of recommendations to mitigate ---

28 **MR. THOMAS PRENDERGAST:** Yes.

1 **MS. CARLY PEDDLE:** Do you know what, if anything, was done
2 as a result of this information?

3 **MR. THOMAS PRENDERGAST:** I vaguely recall they made some
4 changes, but they did not -- they took some actions to address the recommendations,
5 but not a full set of actions to address the recommendations.

6 **MS. CARLY PEDDLE:** And who are you referring to when you say
7 “they”?

8 **MR. THOMAS PRENDERGAST:** RTG. When I say “RTG”, RTG
9 actually did the work. They procured the rail. They prepared the roadbed. They
10 dumped the ballasts, installed the ties, dropped the rail. So it was part of the
11 construction phase. But then it kind of slid over to RTM. So it’s probably a combination
12 of RTG and RTM, but that’s on their side of the membrane, so we wouldn’t know.

13 **MS. CARLY PEDDLE:** Okay. Thank you for that document.

14 If we could pull up STV0000512.

15 This is an email -- while it’s being pulled up, I’ll just tell you -- it’s an
16 email from June 9th, 2019 from you responding to Mr. Manconi. And it’s from June 6th --
17 or June 9th, 2019. Do you see that?

18 **MR. THOMAS PRENDERGAST:** Yes.

19 **MS. CARLY PEDDLE:** And you recognize this email?

20 **MR. THOMAS PRENDERGAST:** Yes.

21 **MS. CARLY PEDDLE:** So if we could just scroll down. Mr.
22 Manconi reports that the weekend has been going well.

23 Just go up. Go up slightly. It could just be scrolled up slightly.

24 Okay.

25 So Mr. Manconi reports that the weekend had been going well, but
26 now it’s like there were issues with brake faults.

27 Now you respond at the top, saying:

28 "There are certain failure modes on all trains whereby

1 brakes permanently lock and normal cut-out
2 procedures do not work." (As read)

3 I'm skipping a sentence.

4 "With as many issues as these cars have, it is difficult
5 to tell what happened." (As read)

6 Do you see that?

7 Oh, you have to ---

8 **MR. THOMAS PRENDERGAST:** It's not scrolled up as high, so I
9 can't see it.

10 Yes, I see it. Yes.

11 **MS. CARLY PEDDLE:** What did you mean by "With as many
12 issues as these cars have"?

13 **MR. THOMAS PRENDERGAST:** Go back to the first part of the
14 response.

15 To have brake failures occur on a rail transit system, that's one of
16 the common failures that occur. And then you have to troubleshoot it to get the brakes
17 if they're locked unlocked so the train can be either put back in revenue service,
18 because they go back with their full functionality, or if they don't have full functionality,
19 you had to bring it into the maintenance house and they have to troubleshoot it.

20 So first of all, that's a given, that that is a -- that's a problem, it's an
21 endemic problem with rolling stock, so that's one.

22 Two, there were a lot of outstanding issues on these cars at this
23 point in time, and there was also the interface issue between the vehicle intelligence
24 and the signal intelligence, so there's another layer of complexity.

25 So when this incident occurred and they had trouble cutting it out
26 and getting it back, what you really need to do is do a post-incident review and
27 investigation to try to learn as much as you can why that failure occurred. And it's a
28 troubleshooting skill. You literally need to have somebody who is like a detective-type

1 on the maintenance side that can look at a number of different conditions and rule
2 things out or rule them in as to whether they were causal or contributory factors to the
3 brake issue.

4 But what I mean here is that without that troubleshooting and as
5 there are a lot of issues with the car, it would have been important for them to really do
6 a detailed post-incident review of all the conditions on the car to try to find out why they
7 couldn't cut them out and get them out.

8 **MS. CARLY PEDDLE:** Okay. I just have a few more questions for
9 you, Mr. Prendergast. I'd like to take you to -- briefly to STV0002337. This is a
10 WhatsApp group chat with you and a number of others, as I understand it.

11 If you could just go to page 25 of the PDF, message 499 -- no,
12 sorry, page 25 of the PDF, and then scroll down to message 499.

13 You say, on August 22nd, 2019:

14 "Yes, and you can always say that Ottawa 'took one
15 for the team'. You experienced the pain and others
16 got the gain. And I say as much, neither in jest nor
17 malice, just fact." (As read)

18 Did I read that correctly?

19 **MR. THOMAS PRENDERGAST:** Yes.

20 **MS. CARLY PEDDLE:** What did you mean by that?

21 **MR. THOMAS PRENDERGAST:** What I meant was, when a new
22 piece of rolling stock is made by a manufacturer -- it could be an Alstom, it could be a
23 Bombardier, it could be Siemens, it could be any one of the major car suppliers -- and
24 they're constantly improving their designs. And in some cases, those improvements are
25 tweaked, they're just minor changes, but every once in a while, for lack of a better
26 phrase, they start with a clean sheet of paper and they have a substantive change, and
27 so they're almost designing the car from the floor or the ground up.

28 And so the first agency or party that gets that car inherits all the

1 early life failures that once the combination of the agency and the car supplier resolve,
2 all follow on agencies that are making the procurement of the same car, get the benefits
3 of that learning curve. That's taking one for the team. So in other words, the team in
4 this case is the industry at large or public transit agencies, and Ottawa helped get this
5 car, you know, to the point where it was more production ready and ready for service.
6 That's what it means, basically, the team. It's the industry at large.

7 And everybody has their day. I mean, I've had new equipment on
8 the signal side, not traction car, on the signal side, on the communication side, and on
9 the vehicle side, where I was the -- some people use the word "guinea pig". I don't like
10 that word. You just go through a process of troubleshooting it and beta testing it and
11 perfecting it.

12 **MS. CARLY PEDDLE:** And so throughout this morning or the last
13 hour, we've gone through some examples of issues the system experienced, but those
14 were just some examples, right?

15 **MR. THOMAS PRENDERGAST:** Yes.

16 **MS. CARLY PEDDLE:** And so I understand from Mr. Morgan's
17 evidence that you could raise any risks with him. He wanted you to raise anything you
18 saw; is that fair?

19 **MR. THOMAS PRENDERGAST:** It's fair, but I'm just not sure I
20 understand the context, but it's fair.

21 **MS. CARLY PEDDLE:** As his advisor, you wanted to raise any
22 risks you could see on the system so that everyone could benefit to get the most
23 reliable system?

24 **MR. THOMAS PRENDERGAST:** Yes, in general. But -- and what
25 I mean "in general", I'm saying first of all, that's the IAT in total. It pre-dates Mr. Morgan,
26 goes back to Steve Cripps. Steve Cripps and Michael Morgan were on the client side,
27 actually the -- I don't want to say "frictional face" but the interface with the consortium
28 implementing and living up to the Project Agreement.

1 We reported to John Manconi and when he wanted to make sure
2 information got to Michael Morgan, he either sent it or asked us to give it to him. So in
3 that context, yes, risks that we were flagging for the client that needed to be identified
4 and dealt with, yes. So it was in that context and that level of relationship.

5 **MS. CARLY PEDDLE:** Okay. Yeah.

6 Earlier -- oh, yes, this document could be brought down.

7 Earlier, Mr. Prendergast, you said that changing trial running criteria
8 was perfectly normal in the industry, right?

9 **MR. THOMAS PRENDERGAST:** Well, first of all, as long as we
10 use an expanded definition of "trial run", so it's like, total system acceptance, you know,
11 because in some cases, it could be an elevator or an escalator system, it could be a
12 signal system. But the test that's done to ascertain that it's acceptable to go into service
13 under that standing, it wasn't done all the time, but there were many times that the
14 criteria had to be changed because both parties agree if we stick with this criteria we'll
15 never be able to get it approved. And that was only after we verified there was no
16 safety problem and no significant reliability problem, like, we'd go out of service every
17 day. You couldn't accept that.

18 **MS. CARLY PEDDLE:** Okay. You were speaking about projects
19 generally when you said that ---

20 **MR. TOM PRENDERGAST:** Yes.

21 **MS. CARLY PEDDLE:** --- they are not necessarily problematic.

22 **MR. TOM PRENDERGAST:** Yes.

23 **MS. CARLY PEDDLE:** And whether any particular change should
24 be made depends on what the change is and on the specific project, right?

25 **MR. TOM PRENDERGAST:** Yes.

26 **MS. CARLY PEDDLE:** Okay. So if I could take you to
27 STV002030. And then if we could go to Message 259.

28 --- **EXHIBIT No. 185:**

1 STV0002030 – WhatsApp Chat Log April 2019 to 24
2 December 2020

3 **COMMISSIONER HOURIGAN:** Do you have a page number for
4 us?

5 **MS. CARLY PEDDLE:** I don't. Yes, it's Message 259, so yeah,
6 thank you. My apologies.

7 Okay. And the last four digits of this message, that's your phone
8 number?

9 **MR. TOM PRENDERGAST:** Yes, 1346. Yeah.

10 **MS. CARLY PEDDLE:** And this was sent on August 14th, 2019?

11 **MR. TOM PRENDERGAST:** That's what this says, yes.

12 **MS. CARLY PEDDLE:** Okay. And just to situate you, this is in the
13 midst of trial running?

14 **MR. TOM PRENDERGAST:** If you say so, but I can't, you know...

15 **MS. CARLY PEDDLE:** And you say, in response to a question:
16 "I'm puzzled as to why the tech wasn't at Blair." You say:

17 "Very good question. That's why in all of our
18 discussions with RTG, RTM we have always stated
19 positioning techs at both terminals should be done.
20 And this is all occurring a little over 12 hours since our
21 discussion with them yesterday reinforcing the
22 importance of all parties working together to achieve
23 98 percent plus performance." (As read)

24 Do you see that?

25 **MR. TOM PRENDERGAST:** Yes.

26 **MS. CARLY PEDDLE:** And the 98 percent performance was the
27 original trial running criteria; do you remember that?

28 **MR. TOM PRENDERGAST:** I honestly don't remember but if you

1 say it was and it lines up with that, then it was. But I don't remember.

2 **MS. CARLY PEDDLE:** Okay. And are you aware that two days
3 later on August 16th the City and RTG agreed to change the criteria to reduce the
4 performance levels instead of 98 percent to 96 percent for 9 of 12 days instead of 12 of
5 12 days? Are you aware of that?

6 **MR. TOM PRENDERGAST:** I recall there was a discussion and I
7 recall ultimately the criteria changed but I don't recall when it changed. I really don't.

8 **MS. CARLY PEDDLE:** Did STV advise the City that it should
9 agree?

10 **MR. TOM PRENDERGAST:** I don't think we opined on it.

11 **MS. CARLY PEDDLE:** Okay.

12 **MR. TOM PRENDERGAST:** I don't recall opining on it. But I don't
13 know.

14 **MS. CARLY PEDDLE:** Was STV asked for its opinion?

15 **MR. TOM PRENDERGAST:** I don't recall. There were discussions
16 but I thought they were earlier than this time period. But I honestly don't recall.

17 **MS. CARLY PEDDLE:** Okay. So just to conclude, Mr.
18 Prendergast, as the City was deciding whether to enter public service did you tell them
19 not to proceed?

20 **MR. TOM PRENDERGAST:** No.

21 **MS. CARLY PEDDLE:** Were you asked whether they should enter
22 public service?

23 **MR. TOM PRENDERGAST:** I don't recall being asked.

24 **MS. CARLY PEDDLE:** Did you tell them they would get reliable
25 service?

26 **MR. TOM PRENDERGAST:** I don't recall that. I recall all the way
27 up through and including when it went through trial running and started service, we
28 identified issues that would affect reliability. They passed that information on to RTM

1 and various degrees of response were taken by RTM. But there was never a
2 discussion saying we endorse. That wasn't the role we were playing. It was never --
3 we were never asked to opine it that way. I was to provide input and identify areas of
4 concern and actions that could be taken to mitigate those concerns.

5 **MS. CARLY PEDDLE:** Thank you very much, Mr. Prendergast.
6 Those are my questions.

7 **COMMISSIONER HOURIGAN:** All right. Thank you.

8 Sir, you will now be asked questions by a series of participants.
9 The first is the City of Ottawa.

10 All right. Go ahead.

11 **--- CROSS-EXAMINATION BY JESSE GARDNER:**

12 **MR. JESSE GARDNER:** Good morning, Mr. Prendergast.

13 **MR. TOM PRENDERGAST:** Good morning, sir.

14 **MR. JESSE GARDNER:** I'm Jesse Gardner. I'm counsel for the
15 City of Ottawa. It's G-a-r-d-n-e-r. I'm going to ask you a few questions this morning
16 about your experience on this project.

17 I understand -- and you spoke this morning that you have over 40
18 years of experience in the transit sector; is that fair?

19 **MR. TOM PRENDERGAST:** That's correct.

20 **MR. JESSE GARDNER:** And you've held a number of fairly senior
21 roles which I think you reviewed as well -- CEO of New York City Transit, CEO of Long
22 Island Railroad, Chairman and CEO of the MTA New York; is that right?

23 **MR. TOM PRENDERGAST:** That's correct.

24 **MR. JESSE GARDNER:** So you have extensive experience with
25 respect to public transit projects; is that fair?

26 **MR. TOM PRENDERGAST:** Yes.

27 **MR. JESSE GARDNER:** Okay. And on this project we talked
28 about how you led the IAT, the Independent Assessment Team; is that right?

1 **MR. TOM PRENDERGAST:** Yes.

2 **MR. JESSE GARDNER:** And that was from April 2017 to I think
3 the end of 2019, beginning of 2020; is that accurate?

4 **MR. TOM PRENDERGAST:** Yes.

5 **MR. JESSE GARDNER:** Okay. And now that time period that you
6 were involved leading the IAT included trial running, RSA , and launch. Those activities
7 were included in that time period; is that fair?

8 **MR. TOM PRENDERGAST:** Yes.

9 **MR. JESSE GARDNER:** And you reported primarily to John
10 Manconi at the City; is that right?

11 **MR. TOM PRENDERGAST:** That's correct.

12 **MR. JESSE GARDNER:** Okay. And you'd agree with me that the
13 City had a good team in place for the delivery of this project; is that fair?

14 **MR. TOM PRENDERGAST:** Yes.

15 **MR. JESSE GARDNER:** And you'd agree that the City brought in
16 the right experts, including yourself, and had sufficient expertise to oversee the delivery
17 of the project?

18 **MR. TOM PRENDERGAST:** Yes.

19 **MR. JESSE GARDNER:** And I think you said in your interview with
20 the Commission that there were no gaps in experience or expertise; is that -- do you
21 recall saying that?

22 **MR. TOM PRENDERGAST:** Yes.

23 **MR. JESSE GARDNER:** Okay. So a part of STV's role as I
24 understand it was to assess the Project schedule provided by RTG, compare it to the
25 work, the actual progress of the work on site, and then reporting to the City on the
26 status of the progress of the Project; is that fair?

27 **MR. TOM PRENDERGAST:** Yes.

28 **MR. JESSE GARDNER:** Okay. And this involved preparing a

1 number of presentations on the status of the work for the City; is that right?

2 **MR. TOM PRENDERGAST:** Yes.

3 **MR. JESSE GARDNER:** Okay. So over that course of time that
4 we discussed and understanding that you're preparing reports or presentations for the
5 City, you'd agree that you had a good working relationship with the City; is that fair?

6 **MR. TOM PRENDERGAST:** Yes.

7 **MR. JESSE GARDNER:** And if you raised an issue of concern or a
8 comment, a piece of advice, to the City, the City would consider your advice or your
9 comment and your expertise; is that fair?

10 **MR. TOM PRENDERGAST:** Yes. And when you use the word
11 "you" it was me individually and the IAT as well. Yes.

12 **MR. JESSE GARDNER:** Exactly. And that is what I mean.
13 Now, so it's fair to say that the City was very receptive to the
14 comments that you were providing; is that fair?

15 **MR. TOM PRENDERGAST:** Absolutely.

16 **MR. JESSE GARDNER:** Right. And you were asked by
17 Commission counsel in your interview whether the City ever said, "Your advice is right
18 but we're not going to follow it because of financial constraints or resources or
19 scheduling pressures." Do you recall that?

20 **MR. TOM PRENDERGAST:** Yes.

21 **MR. JESSE GARDNER:** And your answer to the Commission was:
22 "Never. Seriously, that never came up." (As read).
23 Do you recall that?

24 **MR. TOM PRENDERGAST:** Absolutely, and that's what I said.

25 **MR. JESSE GARDNER:** Okay. So it's fair to say, then, that the
26 City was making decisions based the best interests of the project, and the City wasn't
27 rushing due to financial or scheduling pressure? Is that your understanding?

28 **MR. TOM PRENDERGAST:** Yes.

1 **MR. JESSE GARDNER:** And when asked whether the City took
2 steps you thought were deemed not advisable, you answered, "No". Do you recall that?

3 **MR. TOM PRENDERGAST:** Repeat the question?

4 **MR. JESSE GARDNER:** Commission counsel asked you during
5 your interview whether the City took steps that you thought were not advisable. And
6 your response was, "No." Do you recall that?

7 **MR. TOM PRENDERGAST:** Yes.

8 **MR. JESSE GARDNER:** So, based on that answer, I take it that
9 it's your view that -- and based on your experience, that you believe the City took
10 reasonable steps to deliver this project. Is that a fair assessment?

11 **MR. TOM PRENDERGAST:** Absolutely, yes.

12 **MR. JESSE GARDNER:** Okay. So I want to turn to trial running,
13 and I understand that you're not -- you were not on the trial running review team, is that
14 right?

15 **MR. TOM PRENDERGAST:** Yes.

16 **MR. JESSE GARDNER:** But, you know, you're a consultant for the
17 City and at the time, you know, you were aware that trial running was occurring and
18 generally of developments as trial occurred. Is that fair?

19 **MR. TOM PRENDERGAST:** Yes.

20 **MR. JESSE GARDNER:** Okay. And you'd agree that the
21 performance during trial running, on any project like this, is not a guarantee of
22 performance during revenue service, is that right?

23 **MR. TOM PRENDERGAST:** Yes.

24 **MR. JESSE GARDNER:** It gives -- trial running gives you an idea
25 of how the system -- or what the system is capable of. Is that fair?

26 **MR. TOM PRENDERGAST:** Yes, it is fair.

27 **MR. JESSE GARDNER:** Okay. Now, we've touched a little bit this
28 morning on the criteria that was used for this trial running, and is it fair to say that the

1 difference between 98 percent AVKR and 96 percent is not very significant in terms of
2 demonstrating the system's capability? Is that fair?

3 **MR. TOM PRENDERGAST:** It is fair.

4 **MR. JESSE GARDNER:** Okay. And I think you mentioned earlier,
5 you recall having some discussions about -- about trial running with Steve -- Mr.
6 Kanellakos, Steve Kanellakos. Do you recall that?

7 **MR. TOM PRENDERGAST:** Yes.

8 **MR. JESSE GARDNER:** Okay. Do you recall ever mentioning to
9 Mr. Kanellakos that 98 percent as a percentage for AVKR was very high and that it
10 would be unlikely that that could be met for all of trial running?

11 **MR. TOM PRENDERGAST:** Yes.

12 **MR. JESSE GARDNER:** All right. And I believe -- I understand it
13 was your position at that time in talking to Mr. Kanellakos that 96 was more reasonable
14 in terms of an AVKR for trial running than 98, which was quite high.

15 **MR. TOM PRENDERGAST:** Yes.

16 **MR. JESSE GARDNER:** Okay. And you stated earlier that you
17 were never a part -- and I'm paraphrasing, but you were never a part of a testing
18 commissioning process where the criteria was not modified. Is that fair?

19 **MR. TOM PRENDERGAST:** Yes. I mean I think I -- I think I said
20 that in most cases it was modified. And there was a discussion about, "Was the bar set
21 too high?" That was my characterization. But yes.

22 **MR. JESSE GARDNER:** Right, exactly. So, Mr. Prendergast, is it
23 fair to say that it's more the norm than the exception that criteria gets adjusted or
24 modified for trial running where the number of vehicles might be fewer than the full
25 fleet? Is that fair? That's the norm?

26 **MR. TOM PRENDERGAST:** That specific example is related to a
27 new system going into service, and I had limited experience in that. But when it came
28 to the equivalent of trial running for a new fleet, that statement is definitely valid in terms

1 of it was more often than not you had to re-take a look at the performance criteria for
2 pass/fail.

3 **MR. JESSE GARDNER:** But you'd agree with me it's not strange,
4 or unusual, or inappropriate?

5 **MR. TOM PRENDERGAST:** No, I would agree with you.

6 **MR. JESSE GARDNER:** Yeah, that ---

7 **COMMISSIONER HOURIGAN:** All right, sorry, Counsel, we're going
8 -- Counsel, sorry to interrupt. We're going to take the morning break.

9 **MR. JESSE GARDNER:** Okay, thank you.

10 **THE REGISTRAR:** Order, all rise. The Commission will recess for
11 15 minutes.

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

13 --- Upon resuming at 10:45 a.m.

14 **--- MR. TOM PRENDERGAST, Resumed:**

15 **COMMISSIONER HOURIGAN:** Ok, Mr. Gardner, please continue.

16 **MR. JESSE GARDNER:** Thank you, Mr. Commissioner.

17 **--- CROSS-EXAMINATION BY MR. JESSE GARDNER, (cont'd):**

18 **MR. JESSE GARDNER:** Mr. Prendergast, I think I was speaking
19 over you when you were giving your last answer, so I just want to go back. You'd agree
20 with that even on a new-build project like this, it's not unusual or inappropriate to adjust
21 or modify criteria for trial running. Is that fair?

22 **MR. TOM PRENDERGAST:** Yes.

23 **MR. JESSE GARDNER:** In terms of how trial running is assessed,
24 so the process, is it fair to say, you know, you have a group of experts looking at what
25 happens over the course of a day, and they assess data and the circumstances of what
26 happened that day to determine whether a day was a pass or a fail? Is that a fair
27 description?

28 **MR. TOM PRENDERGAST:** Yes.

1 **MR. JESSE GARDNER:** So trial running is not just about raw
2 data? You don't just get the stats and it's a pass or a fail. It requires an exercise of
3 good judgment in relation to the circumstance of what happened that day. Is that fair?

4 **MR. TOM PRENDERGAST:** Yes, because it's -- like you say, it's
5 not just the statistical performance. It's the response of the maintenance provided in
6 terms of how they responded to that trouble, how they troubleshot the equipment, and
7 how they equipment of the line or they fixed the defect and got the service running
8 again. It's the whole picture.

9 **MR. JESSE GARDNER:** Exactly. So when thinking about that
10 whole picture, what happened in a given day, it's important that the City and the RTG is
11 reasonable when they're assessing the circumstance, and they're exercising, you know,
12 fair judgment when determining whether a day is a pass or a fail. Is that fair?

13 **MR. TOM PRENDERGAST:** Yes, reasonable in terms of the
14 impact on the public and the ability to provide the functionality of the service.

15 **MR. JESSE GARDNER:** Right. Thank you. And would you agree,
16 just based on your involvement in trial running, that generally speaking, over the course
17 trial running RTG's performance did improve? Is that fair?

18 **MR. THOMAS PRENDERGAST:** That's my recollection, but as I
19 said earlier, I was not -- I think I followed it on WhatsApp, but I was not intimately
20 involved with it. So that's my recollection.

21 **MR. JESSE GARDNER:** And would you agree with me that
22 running more days of trial running -- an extra week, an extra two weeks -- wouldn't have
23 made a difference in terms of the reliability of the system?

24 **MR. THOMAS PRENDERGAST:** I would agree in general with
25 that, yes.

26 **MR. JESSE GARDNER:** We referenced this earlier. You made
27 reference to a conversation with Mr. Kanellakos that trial running could run until
28 December or Christmas and you wouldn't necessarily find all of the issues with the

1 system. Is that fair?

2 **MR. THOMAS PRENDERGAST:** Yes.

3 **MR. JESSE GARDNER:** Right. And that's normal because these
4 systems do have some issues, and what's key is maintenance. Is that fair, proper
5 maintenance?

6 **MR. THOMAS PRENDERGAST:** That's fair, and the reason it's
7 true is because the longer you run, the more different climactic conditions you
8 experience. But also, from a probability standpoint, if something is going to happen one
9 every n number of times, the closer you get to those n number of times, you will
10 experience that defect. So yes, in answer to your question, the longer it goes, you
11 experience those.

12 **MR. JESSE GARDNER:** And in terms of the timing of opening the
13 system, you mentioned weather and climate impact. So you'd agree that September is
14 a good time of year to launch the system in terms of weather. Is that fair?

15 **MR. THOMAS PRENDERGAST:** Yes. It's one of the best times of
16 the year to run a system. The fall is cool, low humidity. The only issue you have is
17 falling leaves at times, but in terms of the impact on the equipment, the best time of year
18 for most rail systems is the fall.

19 **MR. JESSE GARDNER:** So it's fair to say that it wouldn't have
20 been a good idea for the City to wait and launch in the winter, right?

21 **MR. THOMAS PRENDERGAST:** Absolutely, and that was
22 discussed by the IAT, by the City, and by RTM.

23 **MR. JESSE GARDNER:** Okay, so the decision to launch weather-
24 wise in September was a good decision; is that fair?

25 **MR. THOMAS PRENDERGAST:** Yes.

26 **MR. JESSE GARDNER:** Okay. You made reference earlier in
27 relation to best practice. It's best practice to implement criteria for trial running that's not
28 impossible to meet. You'd agree that that's what the City did, right, and RTG. They

1 landed on criteria that was reasonable; is that fair?

2 **MR. THOMAS PRENDERGAST:** Criteria that was reasonable and
3 met the standard that many systems use in terms of performance -- not a defined
4 standard; a general standard.

5 **MR. JESSE GARDNER:** Okay. Thank you.

6 Now, prior to the achievement of RSA and the launch of the
7 system, you were not concerned that the system was unsafe for passengers; is that
8 fair?

9 **MR. THOMAS PRENDERGAST:** Absolutely. There was nothing
10 that was unsafe. That was the first criteria that had to be met -- absolutely had to be
11 met by me, by the entire IAT, by the City, and even RTM. There was never any
12 flinching on the unsafe issue, none.

13 **MR. JESSE GARDNER:** And I think it's fair to say that there's
14 quite a bit of evidence that the system was, in fact, safe, but you would have warned the
15 City or spoken up or said something if you thought the system was unsafe. Is that fair?

16 **MR. THOMAS PRENDERGAST:** Yes.

17 **MR. JESSE GARDNER:** Okay. Now, with respect to the issue of a
18 soft start, you said it was clear that the City understood the issues around soft start
19 versus a hard start; is that fair?

20 **MR. THOMAS PRENDERGAST:** Yes.

21 **MR. JESSE GARDNER:** And you mentioned a very brief -- there
22 was a brief discussion that was had about this. Now, if you felt that a soft start was
23 necessary for this system, was critical, you would have mentioned that to the City, right?

24 **MR. THOMAS PRENDERGAST:** If it was required, yes, but it was
25 never -- not only not me, the IAT never assumed that position that it was required.

26 **MR. JESSE GARDNER:** Right. The IAT's position on it or
27 perspective was that a soft start wasn't necessary in the service.

28 **MR. THOMAS PRENDERGAST:** That's correct.

1 **MR. JESSE GARDNER:** Now, is it fair to say that going into RSA,
2 your concern -- and I say "your" I mean IAT, STV consultants -- the concern was about
3 the adequacy of the maintenance resources; is that fair?

4 **MR. THOMAS PRENDERGAST:** Yes.

5 **MR. JESSE GARDNER:** Because when you launch a system, you
6 need to have enough maintenance resources available to deal with issues that will
7 naturally arise when you launch a system; is that fair?

8 **MR. THOMAS PRENDERGAST:** Yes -- qualified, experienced,
9 and in the right quantities, all three of those.

10 **MR. JESSE GARDNER:** Okay. And when I say "maintenance" I
11 mean the ability to maintain or to handle regular maintenance and corrective
12 maintenance.

13 **MR. THOMAS PRENDERGAST:** That's right.

14 **MR. JESSE GARDNER:** Right. Is it fair to say that it's a good idea
15 to sort of flood the system with resources when launching?

16 **MR. THOMAS PRENDERGAST:** Yes.

17 **MR. JESSE GARDNER:** And the maintainer, in this case RTM,
18 that is the party responsible for ensuring that sufficient maintenance resources are in
19 place for RSA and for launch; is that fair?

20 **MR. THOMAS PRENDERGAST:** It's not fair; it's what the project
21 agreement calls for, yes.

22 **MR. JESSE GARDNER:** Right, so it's not the City's responsibility
23 to do that; it's RTM's responsibility contractually. And I think that's the normal course.
24 The maintainer provides maintenance resources. Is that right?

25 **MR. THOMAS PRENDERGAST:** Yes.

26 **MR. JESSE GARDNER:** And Alstom was one of the biggest
27 vehicle suppliers and maintainers of these systems in the world; is that fair?

28 **MR. THOMAS PRENDERGAST:** Yes.

1 **MR. JESSE GARDNER:** So you would expect that Alstom knows
2 what it's doing when it's providing maintenance services generally; is that fair?

3 **MR. THOMAS PRENDERGAST:** Yeah.

4 **MR. JESSE GARDNER:** Okay. And you would agree with me that
5 as RSA was approaching, the reliability of the system was improving. Is that right?

6 **MR. THOMAS PRENDERGAST:** Yes.

7 **MR. JESSE GARDNER:** Okay. Yes?

8 **MR. THOMAS PRENDERGAST:** Yes.

9 **MR. JESSE GARDNER:** Now I would like to take you to
10 STV0002337. So this is the WhatsApp discussion working group chat that you were a
11 part of, and I'd like to take you, when it comes up on the screen, to one of the messages
12 that you sent. It's page 10 of the PDF. So I don't see it up on the screen yet. I don't
13 know if you can see it, Mr. Prendergast.

14 **MR. THOMAS PRENDERGAST:** No, I can't see it, and I have to
15 put my glasses on. This is small print.

16 **MR. JESSE GARDNER:** Okay.

17 **COMMISSIONER HOURIGAN:** Stand by, please.

18 **(SHORT PAUSE)**

19 **MR. JESSE GARDNER:** Okay. So page 10 of the PDF, and when
20 we get to the page 10, Mr. Prendergast, we're looking at line item 228. It starts with
21 "lastly". Do you see that up on the screen?

22 **MR. THOMAS PRENDERGAST:** Yes.

23 **MR. JESSE GARDNER:** Okay. So just to situate us, in the texts
24 that are preceding, there's a general discussion about the need for spare vehicles. So
25 when we get to your text here, it's August 13th, 2019, so we're in trial running. It's 9:13
26 in the morning and your comment is:

27 "Lastly, we have now seen a number of times just
28 how valuable spare trains at the ready are to

1 delivering dependable service. With only one spare
2 currently available, and even that is only under the
3 best circumstances, you are truly limited in what you
4 can do once that spare is used. By getting one or two
5 more reliable and readily available spare trains, you
6 can easily see how much more dependable the
7 service delivery could be. Obvious, I know, but worth
8 restating many times. Once you get past trial running
9 and revenue service start-up, the issue of increasing
10 spares should be considered as one of the highest
11 priority items, and especially with winter right around
12 the corner." (As read)

13 Do you recall this text message, Mr. Prendergast?

14 **MR. THOMAS PRENDERGAST:** Yes.

15 **MR. JESSE GARDNER:** Okay. So the part I want to focus on --
16 and we know that this is about needing spare vehicles, but you state:

17 "Once you get past trial running and revenue service
18 start up, the issue of increasing spares should be
19 considered." (As read)

20 So is it fair to say that in your view, the City could open the system,
21 finish trial running, open the system, and then deal with ensuring that there are enough
22 spares ready to maintain reliability? Is that a fair description?

23 **MR. THOMAS PRENDERGAST:** That's a fair description, but in
24 the context of what the statement being made, not only is that fair, it was also the issue
25 of keep the pressure on RTM to get more spare trains.

26 **MR. JESSE GARDNER:** Yes. So is it fair to say that it was -- it
27 would be okay to open the system while putting the pressure on RTM to get spares in
28 place, and that that pressure should stay on even after the system was open?

1 **MR. THOMAS PRENDERGAST:** Yes.

2 **MR. JESSE GARDNER:** But not a reason not to open the system?

3 **MR. THOMAS PRENDERGAST:** Yes, that's correct.

4 **MR. JESSE GARDNER:** Okay. Now, you recall that you and I
5 believe your colleague, Mr. Krieger, raised with the City the issue that we're talking
6 about of maintenance resources? You recall that, right?

7 **MR. THOMAS PRENDERGAST:** Yes.

8 **MR. JESSE GARDNER:** Okay. And so I'd like to take a look at an
9 email at COW0451494, so it's 451494.

10 Okay. So you can see at the top of this email when it comes up, it's
11 a series of emails starting with John Manconi emailing a number of individuals at the
12 City, and then the email chain is forwarded on to you.

13 And so we'll start at the bottom of the chain when it comes up.

14 **COMMISSIONER HOURIGAN:** Just -- sorry, hang on. We're
15 having a technical issue.

16 **MR. JESSE GARDNER:** Okay. So Mr. Prendergast, you can see
17 the email up on the screen?

18 **MR. THOMAS PRENDERGAST:** Yes. I think we just lost it.

19 **COMMISSIONER HOURIGAN:** All right. There's something going
20 on. It's still on our screen, and I know you folks are seeing it, and then it's going off, so
21 there's something, maybe a screen share issue.

22 **MR. SEAN PROUSE:** This is the Zoom host. I think the best
23 option would be to share the entire screen instead of just the individual app.

24 **COMMISSIONER HOURIGAN:** All right. We'll try that.

25 **MR. JESSE GARDNER:** Okay. Can -- you can see that email, Mr.
26 Prendergast, now?

27 **MR. THOMAS PRENDERGAST:** Yes.

28 **MR. JESSE GARDNER:** Okay. If we could just start at the top,

1 and then we'll scroll to the bottom.

2 **MR. THOMAS PRENDERGAST:** Okay.

3 **MR. JESSE GARDNER:** So if you could scroll up?

4 **MR. THOMAS PRENDERGAST:** I just want to see -- that's from
5 John -- that's from ---

6 **MR. JESSE GARDNER:** Yeah.

7 **MR. THOMAS PRENDERGAST:** --- Mr. -- oh, it's to John Manconi.

8 **MR. JESSE GARDNER:** Yeah.

9 **MR. THOMAS PRENDERGAST:** Okay.

10 **MR. JESSE GARDNER:** Sorry, can we scroll to the top of the
11 email, moving up -- yeah, to the very top.

12 Okay. So I just want to -- can you go up further to the top, please?

13 Yeah, above. Okay, right there.

14 So we can see that the email chain below is forwarded to a number
15 of individuals, and your name is included at the top, you can see, so from John to you
16 on August 12th.

17 So now if you could scroll to the bottom of the email? Okay.

18 So I believe this is an email -- if you could scroll up just a little bit,
19 just to see the top of this email -- okay -- from John Manconi on August 9th to a number
20 of individuals at the City.

21 And he states:

22 "Here is an update from numerous meetings we had
23 with RTG and Alstom and RTM. I am happy to advise
24 that RTG/RTM has taken our advice and increased
25 resources across the board. Today, you are already
26 seeing significant improvements by action taken.

27 Here is what Alstom has committed and has already
28 begun. I would use this for discussion with the CEO -

1 -- "

2 That's referring to the CEO of Alstom, as we'll see above.

3 "--- and ask him to confirm that he is fully supportive
4 of this plan and the resourcing that has been put
5 forward." (As read)

6 So if we scroll down, I'd like to just walk you through some of this.

7 So it says:

8 "We've already seen -- started to see positive results
9 and should see very significant improvements." (As
10 read)

11 So if we could just scroll up a little bit so we can see the top of the
12 list? Can we scroll up? Thank you.

13 Number 1 is technicians on the train, so increasing vehicle
14 technicians; vehicle repair technicians; support staff or supervisors; addition of one fleet
15 manager; adding a director of engineering from Hornell; and support for key suppliers
16 overseas.

17 And it says at the bottom:

18 "Resources have already started to arrive, and timing
19 them, some of the dependent clearing customs -- is
20 dependent on clearing customs. Resources are
21 coming from Toronto, Boston, Washington, and
22 Hornell, overall, a very good plan." (As read)

23 So if we could scroll down?

24 So Mr. Prendergast, I'd suggest to you that this information, this
25 update from Mr. Manconi about the steps that Alstom was taking to increase across the
26 board maintenance resources, that was sent to you. Do you recall that?

27 **MR. THOMAS PRENDERGAST:** It was forwarded to us, yes, with
28 the entire IAT as well as some senior members of John Manconi's team.

1 **MR. JESSE GARDNER:** Right. So you'd agree with me then that
2 when you and the IAT and STV raised that there was a concern about maintenance
3 resources, as we talked about earlier, the City was very receptive and they -- and we
4 went to Alstom and pushed Alstom for to get more resources for maintenance on the
5 project. Would you agree that the City did that?

6 **MR. THOMAS PRENDERGAST:** Yes.

7 **MR. JESSE GARDNER:** Okay. And if we can scroll up in the
8 email to the next email above, this email here.

9 So Mathieu Gravel from the City of Ottawa is emailing Mr. Manconi,
10 and he's saying:

11 "The call with Alstom CEO went very well. He is
12 committed to the plan and resourcing his team -- the
13 resources his team has agreed to. He is also
14 committed to maintaining this resourcing plan in the
15 months following the launch." (As read)

16 Now -- and then the mayor thanked Alstom for deploying resources
17 quickly last week.

18 So you'd agree with me that the City took the concerns that you
19 raised and the IAT raised about maintenance resources so seriously that the mayor of
20 Ottawa called the CEO of Alstom to confirm its commitments on securing resources for
21 the launch and into the launch; is that right?

22 **MR. THOMAS PRENDERGAST:** Yes, it was a watershed moment,
23 the highest person in the City of Ottawa talking to the highest person in Alstom and
24 affirming their commitment.

25 **MR. JESSE GARDNER:** Exactly. And so what does this tell us?
26 The City escalated your concern to the highest level within the City and Alstom; is that
27 fair?

28 **MR. THOMAS PRENDERGAST:** Yes.

1 **MR. JESSE GARDNER:** And we know that the launch -- so
2 looking at this email, August 12th, 2018, the call with the mayor and CEO of Alstom has
3 happened.

4 **COMMISSIONER HOURIGAN:** I think you mean 2019, Counsel.
5 You said 2018. Yeah, okay.

6 **MR. JESSE GARDNER:** Sorry, August 12th, 2019. The launch is
7 over -- slightly over a month later, September 14th, 2019.

8 So the issues regarding maintenance resources were being
9 addressed at the highest levels of the City and Alstom over a month before the launch,
10 you'd agree?

11 **MR. THOMAS PRENDERGAST:** Yes.

12 **MR. JESSE GARDNER:** And Alstom set out a plan committing to
13 provide additional resources for maintenance and specified a list of additional roles; is
14 that right?

15 **MR. THOMAS PRENDERGAST:** Yes.

16 **MR. JESSE GARDNER:** And Mr. Manconi was reporting that
17 resources have already started to arrive and improvements were being observed a
18 month before the launch; is that fair?

19 **MR. TOM PRENDERGAST:** Yes.

20 **MR. JESSE GARDNER:** And so would you agree with me that the
21 City demanding commitments on resources for maintenance from a CEO is a fairly
22 significant step?

23 **MR. TOM PRENDERGAST:** Yes.

24 **MR. JESSE GARDNER:** And it was reasonable for the City to rely
25 on the commitments made by the CEO of Alstom that it would deliver on maintenance
26 resources; is that fair for the City to rely on that?

27 **MR. TOM PRENDERGAST:** Yeah. You're talking to the decision
28 maker for Alstom. Yes.

1 **MR. JESSE GARDNER:** And it was reasonable that the City was
2 relying on the improvements in maintenance resources that they were already
3 observing; is that fair?

4 **MR. TOM PRENDERGAST:** Yes.

5 **MR. JESSE GARDNER:** Now, we talked about the P3 model, the
6 P3 project a little bit earlier. You would agree that there's only so much an owner can
7 do to push Project Co. or RGG, Alstom in this case, to perform maintenance services; is
8 that fair?

9 **MR. TOM PRENDERGAST:** There are limits with respect to what
10 a client can do to push a P3 vendor when it comes to issues where the risk has been
11 transferred to that vendor.

12 **MR. JESSE GARDNER:** Right. So the City can't force the
13 maintainer to hire specific people and have a certain number of technicians on staff,
14 right? They can't force Alstom to do that?

15 **MR. TOM PRENDERGAST:** In literal fact, they could. But then
16 they would be opening up the Project Agreement and assuming some of the risk coming
17 back to their side, risk not only in terms of the functionality of the services provided but
18 risk with additional costs for those services.

19 **MR. JESSE GARDNER:** Right. And doing that would be risky and
20 it wouldn't be in line with the Project Agreement and it wouldn't be in line with what the
21 parties agreed to; isn't that right?

22 **MR. TOM PRENDERGAST:** That's correct. It begins to undermine
23 the whole basic underpinning of a P3 transferred risk procurement.

24 **MR. JESSE GARDNER:** Right. So I'd like to take you to another
25 document. It's COW0159023. So when we go to this document it relates to testing and
26 commissioning. It's a letter from Steve Nadon who was the testing and commissioning
27 director for OLRTC.

28 **MR. TOM PRENDERGAST:** Yeah.

1 **MR. JESSE GARDNER:** Okay. So if we scroll down, the top of
2 this letter is an August 26th, 2019 letter to Michael Morgan from Peter Lauch. But if we
3 scroll to the next letter down -- yeah, if you scroll down.

4 So this letter here, it's from OLRTC to RTG and it was forwarded on
5 to the City. And if confirms:

6 "Please find this letter an outline of remaining
7 deficiencies that the OLRTC feels is not critical to
8 Revenue Service." (As read)

9 And so this is in relation to the systems.

10 "As of August 20th, 2019, all systems works are
11 complete with the exception of the following minor
12 deficiencies." (As read)

13 And if we can just scroll down to the bottom of the letter on the next
14 page, at the very bottom of the next page. Thank you. It says:

15 "As Testing and Commissioning Director responsible
16 for systems, I undertake the responsibility of rectifying
17 these items. We confidently believe that all remaining
18 items shall not hinder proceeding with Revenue
19 Service nor do these affect the safety of the train
20 riders." (As read)

21 So my question for you, Mr. Prendergast, is based on these
22 representations or statements being made by the Director of Testing and
23 Commissioning of OLRTC, it's reasonable for the City to understand that the system
24 was ready.

25 **MR. TOM PRENDERGAST:** Yes. Because they're addressing all
26 the minor deficiencies and the other deficiencies with a mitigation and a date for that.
27 Yes.

28 **MR. JESSE GARDNER:** Okay. Thank you. And one final

1 document I'd like to review with you. It's COW0436983. So this is another letter from
2 Mr. Nadon. And he's writing about the systems integration tests. So again, a letter of
3 the same date from Peter Lauch of RTG to Michael Morgan but underneath that letter,
4 or enclosed, is the second letter. Please scroll down. If we scroll down to the next
5 letter. Great.

6 So just on this first page. So it's a testing conformance letter. And
7 it starts:

8 "This letter is to confirm that during the course of
9 systems integration testing, OLRTC has carried out
10 the requisite site surveillance inspection and testing in
11 accordance with standard practice, the requirements
12 of the OLRT Project Agreement and professional
13 industry standards." (As read)

14 And the final paragraph here says:

15 "It is our opinion that in relation to the SIDs listed in
16 Appendix A, the system is in general compliance with
17 the PA requirements, drawings and system
18 architectures which will come together and be safe for
19 use, operation, and maintenance as required." (As
20 read)

21 And so if we scroll up just to the date of this letter, this was August
22 20th, 2019. So would you agree with me, Mr. Prendergast, that when the City receives
23 this letter with the statements I've just read out to you, it was fair and reasonable for the
24 City to understand that the system was ready for Revenue Service including operation
25 and maintenance?

26 **MR. TOM PRENDERGAST:** Yes.

27 **MR. JESSE GARDNER:** Okay. Thank you very much, Mr.
28 Prendergast. Those are my questions.

1 **COMMISSIONER HOURIGAN:** All right. Next up is RTG, OLRTC,
2 and RTM.

3 **--- CROSS-EXAMINATION BY MR. JEAN-CLAUDE KILLEY:**

4 **MR. JEAN-CLAUDE KILLEY:** Good morning, Mr. Prendergast.
5 My name is Jean-Claude Killey. I'm counsel for RTG. It's K-i-l-l-e-y.

6 The STV team was giving, I think, in your early interview with
7 Commission counsel, you described it as qualitative advice to the City. Is that -- do I
8 have that right?

9 **MR. TOM PRENDERGAST:** The overwhelming majority is
10 qualitative, but yes, it was -- there may have been a couple of pieces that were
11 quantitative but it was -- the overwhelming majority is qualitative, yes.

12 **MR. JEAN-CLAUDE KILLEY:** Fair enough. So you used
13 examples of sort of expressing high confidence that they might experience a certain
14 kind of problem?

15 **MR. TOM PRENDERGAST:** Yes.

16 **MR. JEAN-CLAUDE KILLEY:** Moderate confidence, that sort of
17 thing. And also, if I understand correctly, you would help them understand the impact,
18 the potential impact of that problem, so to sort of understand how it may affect them,
19 what risk it posed to them; is that all fair?

20 **MR. TOM PRENDERGAST:** Yes.

21 **MR. JEAN-CLAUDE KILLEY:** So if I understand right, I'm going to
22 put it in my own words. Correct me if you think you need to so I have a good
23 understanding. But I sort of see STV's mandate as encompassing two big picture tasks.
24 First, helping the City assess the facts on the ground, the actual state of things in an
25 independent way; is that fair?

26 **MR. TOM PRENDERGAST:** That's fair.

27 **MR. JEAN-CLAUDE KILLEY:** And then helping the City
28 understand the implications for them of those facts, so the risks generally for the City

1 based on the state of things?

2 **MR. TOM PRENDERGAST:** Yes. And going back to untying this
3 question or comment with an earlier one, it's qualitative so it's the severity of the impact
4 and the likelihood of occurrence, the probability.

5 **MR. JEAN-CLAUDE KILLEY:** Right.

6 **MR. TOM PRENDERGAST:** And so those are the two factors.

7 **MR. JEAN-CLAUDE KILLEY:** Fair enough. So low probability but
8 high impact. You might want to do something about it.

9 **MR. TOM PRENDERGAST:** Yes, correct.

10 **MR. JEAN-CLAUDE KILLEY:** And so I think you said this a few
11 times. It wasn't so much STV's mandate to make recommendations to the City, right?

12 **MR. TOM PRENDERGAST:** No, it was our mandate if we
13 identified an issue that required mitigation, a recommendation that it needed mitigation
14 and some examples of what some of the mitigation strategies could be. So it was
15 definitely recommendations in that space.

16 **MR. JEAN-CLAUDE KILLEY:** So really making sure the City was
17 aware of the risks they were facing and the central consequences so it could make its
18 own decisions on an informed basis; is that ---

19 **MR. TOM PRENDERGAST:** Yes.

20 **MR. JEAN-CLAUDE KILLEY:** --- fair?

21 **MR. TOM PRENDERGAST:** Yes.

22 **MR. JEAN-CLAUDE KILLEY:** --- fair?

23 **MR. TOM PRENDERGAST:** We had -- with examples where the
24 members of the IAT had to mitigate similar type issues but not within the bounds of a
25 P3.

26 **MR. JEAN-CLAUDE KILLEY:** Fair enough, okay. And you think
27 STV was relatively successful in that mandate?

28 **MR. TOM PRENDERGAST:** Yes. And when you say "STV", it's

1 the IAT team in total, so it's more than just STV, but yes, absolutely, yes.

2 **MR. JEAN-CLAUDE KILLEY:** Yeah. Okay. Those are all the
3 questions I have for you this morning. Thank you, Mr. Prendergast.

4 **MR. TOM PRENDERGAST:** Thank you.

5 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
6 Next is Alstom.

7 **MR. CHARLES POWELL:** Hi. Good morning, Mr. Commissioner,
8 counsel for Alstom. We have no questions for the witness.

9 **COMMISSIONER HOURIGAN:** All right. Next up is the witness'
10 counsel, so this is STV's counsel.

11 **--- CROSS-EXAMINATION BY MR. MICHAEL O'BRIEN:**

12 **MR. MICHAEL O'BRIEN:** Good morning, Mr. Prendergast.

13 **MR. TOM PRENDERGAST:** Good morning, sir.

14 **MR. MICHAEL O'BRIEN:** Michael O'Brien for -- I'm counsel to
15 STV Incorporated, o'-b-r-i-e-n.

16 Mr. Prendergast, I'd like to ask you about a document you were
17 taken to by Commission counsel. The document is STV0002337. And it will take a
18 moment for the document to come up but this is the thread of WhatsApp messages that
19 have been referred to two times during this examination.

20 **MR. TOM PRENDERGAST:** Okay.

21 **MR. MICHAEL O'BRIEN:** I'll ask that -- I'll ask that you be taken to
22 page 25 of the messages. And I'll just ask the controller to please frame the screen so
23 that not only message 499 is in view but also message 498, focusing on the two
24 columns on the right. So there's an image that's in message 498; I'd like that entire
25 image to be captured in the screen, please. Perfect.

26 So, Mr. Prendergast, you were asked questions about your
27 message at no. 499, which is the bottom message on the screen. I see that that
28 message looks to be responding, in fact, to a message sent at no. 498, approximately

1 22 minutes earlier. Do you see that?

2 **MR. TOM PRENDERGAST:** Yes.

3 **MR. MICHAEL O'BRIEN:** And the image seems to be a
4 screenshot of a vehicle, and it looks like it's quoting an article that says:

5 "This mock-up is the Alstom Citadis Spirit Cab model
6 built by Alstom and comes out of Brampton, Ontario."

7 (As read).

8 Do you see that?

9 **MR. TOM PRENDERGAST:** Yes.

10 **MR. MICHAEL O'BRIEN:** Were you in fact responding to this
11 message when you wrote your message at 499? And perhaps for greater context, you'll
12 note at the top of the -- this screenshot, there's a reference to the word "Hurontario",
13 and it says, "Starting in 2022." Are you aware that the City of Mississauga
14 commissioned the Alstom Citadis Spirit for its Hurontario Line to begin in 2022?

15 **MR. TOM PRENDERGAST:** I'm vaguely familiar with it. And -- but
16 the characterization that the vehicle had been -- this particular class of vehicle had been
17 in service -- there was a characterization, and I can't remember who made it, that this
18 particular vehicle had been in service a number of different places. And over time, we
19 weren't sure that that was a sufficient, you know, sample of experiences to say that it
20 was fully burned in. So I think in that context, we're responding because the -- you
21 know, the specifications -- the operational requirement specifications for the Ottawa
22 system are pretty demanding, as they should be, given the nature of service they
23 expected that system to experience throughout its useful life.

24 **MR. MICHAEL O'BRIEN:** Yes, and I think just -- I just want your
25 message at no. 499 to -- I just want you to have an opportunity to properly situate that
26 message in the context. It appears as though you're being sent a screenshot that
27 suggests that this vehicle's going to be used on another line in Ontario and that's the
28 context for your response that Ottawa "took one for the team", being the industry.

1 **MR. TOM PRENDERGAST:** Yeah, it's very likely because I --
2 when I -- I definitely remember "took one for the team" was a comment about, whoever
3 the first entity is that is experiencing something new, they are plowing new ground and
4 their experiences will be directly translatable to the benefits of others.

5 **MR. MICHAEL O'BRIEN:** Thank you, Mr. Prendergast.
6 Mr. Commissioner, I don't have any further questions for this
7 witness.

8 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
9 Any re-examination?

10 **MS. CARLY PEDDLE:** No. No, thank you.

11 **COMMISSIONER HOURIGAN:** All right.

12 Mr. Prendergast, thank you very much for testifying today. It was
13 very helpful to the Commission. You're excused.

14 And we're down until two o'clock. Thank you.

15 **MR. TOM PRENDERGAST:** Thank you, sir.

16 **THE REGISTRAR:** Order, all rise. The Commission is adjourned
17 until 2:00 p.m.

18 --- Upon recessing at 11:23 a.m.

19 --- Upon resuming at 1:58 p.m.

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

21 **COMMISSIONER HOURIGAN:** All right. Good afternoon. The
22 witness for the afternoon is John Manconi, City of Ottawa.

23 Mr. Manconi, are you there?

24 **MR. JOHN MANCONI:** Yes, I am. Good afternoon.

25 **COMMISSIONER HOURIGAN:** Good afternoon. You're going to
26 be asked a series of questions by various lawyers involved for the participants and
27 Commission counsel. Before we do that, though, we need to have you either swear an
28 oath to tell the truth or affirm to tell the truth. Which do you prefer?

1 **MR. JOHN MANCONI:** Affirm.

2 **COMMISSIONER HOURIGAN:** All right. Stand by.

3 **--- MR. JOHN MANCONI: Affirmed**

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

5 **COMMISSIONER HOURIGAN:** All right. Thank you.

6 Mr. Manconi, first up is Commission counsel, Mr. Adair. He'll be
7 asking questions of you first.

8 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR:**

9 **MR. JOHN ADAIR:** Good afternoon, Mr. Manconi. Can you hear
10 me okay?

11 **MR. JOHN MANCONI:** Yes, I can. Good afternoon.

12 **MR. JOHN ADAIR:** Terrific. Thank you.

13 Mr. Manconi, I just want to start with some questions about the
14 interaction between staff and council, and I'll keep them specific to this project. On this
15 project, sir, my understanding is staff's role was to run the project on a day-to-day basis,
16 and then on issues that required significant decisions, those would be taken to council
17 with a recommendation for council to decide. Is that fair?

18 **MR. JOHN MANCONI:** There was multiple reporting regimes.
19 Matters that were relating to the operation of the transit system, whether it was bus or
20 rail, would go to Transit Commission, and matters that were associated with the build
21 and the P3 would go to FEDCO. And that was governed by a report that was done
22 many years ago to ensure that there was consistency on what matters went to the
23 appropriate standing committee.

24 **MR. JOHN ADAIR:** Right, and that's a helpful detail. In either
25 case, though, whether it goes to the Transit Commission or it goes to FEDCO, it's still a
26 body that is, I'll say, above staff and has been designated with the decision-making
27 authority.

28 **MR. JOHN MANCONI:** It is the governing bodies, yes.

1 **MR. JOHN ADAIR:** And there's sort of a materiality threshold that
2 exists within staff's judgement about what decisions are significant enough that they
3 need to go to either FEDCO or the Transit Commission.

4 **MR. JOHN MANCONI:** Sorry, could you repeat that?

5 **MR. JOHN ADAIR:** Yeah. Staff needs to exercise some degree of
6 discretion about what issues you take up the ladder to either Transit Commission or
7 FEDCO, correct?

8 **MR. JOHN MANCONI:** No, not necessarily.

9 **MR. JOHN ADAIR:** All right. Let me see if I can be a bit more
10 specific, because I have a particularly type of decision I want to ask you about.

11 If we could just call up, Mitchell, please -- Mr. Manconi, I'm just
12 going to show you the transcript from your formal witness interview. It's TRN76, page
13 56, which I think is 57, Mitchell, in the PDF. And if we could just go to line 4 of page 56
14 and then scroll as far down as you can while keeping line 4 on the page. Okay.

15 Now, Mr. Manconi, just to refresh you, you were interviewed by
16 Commission counsel, Ms. Kate McGrann, and this is the transcript from that interview.
17 And you were being asked questions in this portion about the relationship between RTG
18 and the City. And in lines 4 through 10 you said that it was a collaborative and
19 professional relationship, and then you say:

20 "Certainly they [meaning RTG] understood that I was
21 going to be unrelenting in ensuring that we met all the
22 requirements of the project agreement and the safety
23 certification and the independent certifier. That was a
24 non-negotiable and they understood that." (As read)

25 And then Ms. McGrann asks you the following question. She says
26 at line 11:

27 "Were there any other non-negotiable components?"
28 (As read)

1 And then beginning at line 14, you said:

2 "They understood that the project agreement was a
3 signed legal document and that neither Steve, [which
4 I take to be Mr. Kanellakos], nor I or anyone had
5 council's authority to deviate from that. So if there
6 was any requests for deviations, we would always
7 consider them, but, you know, depending on what the
8 project agreement says, there was always a path to
9 how those decisions needed to be made. So there
10 was no ability for Steve or myself to arbitrarily make a
11 decision that deviated from the project agreement and
12 that was a non-negotiable." (As read)

13 And that's an accurate description of your understanding of what
14 had to go to council, at least with respect to decisions about the project agreement. Is
15 that fair?

16 **MR. JOHN MANCONI:** When you apply the overlay of
17 governance, which included the delegated authority report that Mr. Kanellakos had
18 when the project was awarded for the City manager role, and also the delegated
19 authority roles that both he and I had and that staff had through the council delegated
20 authority report. And then on top of that, Steve and I and others would always use our
21 judgement to inform council, like we did on many occasions, about the project.

22 **MR. JOHN ADAIR:** Okay, so let's just unpack that. We're trying to
23 deal with two things. Number one, the last bit of your answer was really directly related
24 to the questions that I had started this little portion with, which is that staff has to
25 exercise judgement about what goes to council and what doesn't, and I believe you've
26 just confirmed that that's accurate.

27 **MR. JOHN MANCONI:** Once you apply the rules that are
28 governed through the delegated authority report and standing committee reports, which

1 dictate what goes to those various standing committees and council.

2 **MR. JOHN ADAIR:** And then the other thing you said is that this
3 transcript has to be read, effectively, in conjunction with the delegated authority. So let
4 me just ask it -- the question directly. I read the transcript as to say that whatever the
5 delegated authority was or wasn't, the basis in which you were operating is that neither
6 you nor Mr. Kanellakos had, as you say, the ability to make a decision that deviated
7 from the Project Agreement; that was a non-negotiable.

8 Is it right -- even considering the delegated authority, is it right that
9 the two of you did not have authority to deviate from the Project Agreement?

10 **MR. JOHN MANCONI:** Again, there was authority that's governed
11 through the delegated authority report when the project was awarded to the City
12 manager, and then all the applicable delegated authorities to the various functions that
13 the council ---

14 **MR. JOHN ADAIR:** Right. So the question is, you understood --
15 let's start with this -- you understood what those delegated authorities were?

16 **MR. JOHN MANCONI:** I do, yes.

17 **MR. JOHN ADAIR:** You did at the time?

18 **MR. JOHN MANCONI:** Yes.

19 **MR. JOHN ADAIR:** And you'd have to, in order to be able to do
20 your job properly, correct?

21 **MR. JOHN MANCONI:** We are trained in understanding the
22 delegated authority reports, yes.

23 **MR. JOHN ADAIR:** Okay. So as someone who understands the
24 delegated authority that was in place on this specific project, did you and Mr. Kanellakos
25 or did you not have authority to deviate from the Project Agreement?

26 **MR. JOHN MANCONI:** Again, the delegated authority to the ---

27 **MR. JOHN ADAIR:** No, no. I understand that there was delegated
28 authority.

1 **COMMISSIONER HOURIGAN:** Sorry, I'm going to interrupt. This
2 is the third time. We understand about the delegated authority. I think Counsel's fairly
3 put the question to you. You need to answer the question that's asked of you, all right?
4 So please do that.

5 **MR. JOHN ADAIR:** So Mr. Manconi, I'm not someone who has a
6 lot of experience with delegated authority, so I'm trying to actually understand what it
7 was. That's what I'm trying to get at.

8 Did you have the ability to deviate from the Project Agreement or
9 not?

10 **MR. JOHN MANCONI:** Within the delegated authority report, yes.

11 **MR. JOHN ADAIR:** Right. And when could you deviate and when
12 could you not deviate? What was the sort of demarcation point?

13 **MR. JOHN MANCONI:** I would have to pull out the delegated
14 authority report to be specific on that.

15 **MR. JOHN ADAIR:** Generally speaking, was it basically on
16 significant decisions you couldn't deviate but on more minor ones you could? Would
17 that be a fair statement?

18 **MR. JOHN MANCONI:** In general terms?

19 **MR. JOHN ADAIR:** In general terms, yes.

20 **MR. JOHN MANCONI:** Yes.

21 **MR. JOHN ADAIR:** Okay, thank you.

22 Now, sir -- sorry, Mitchell, I'm going to move on, but I want to leave
23 this up just for a minute, because we're going to come back to it in a minute.

24 Mr. Manconi, I want to follow up on a somewhat related topic which
25 is protections that the City had in place in order to ensure that it had -- that it would
26 receive a safe and reliable system, and I'm going to suggest a few of these to you and
27 see if we can get agreement.

28 And the first one I want to talk to you about is the language of the

1 contract itself.

2 And Mitchell, if we could go to page 42? So it's a -- like, you could
3 one. I apologize, and then my numbering's going to be off from yours. Thank you -- to
4 line 12.

5 And Mr. Manconi, here you were being asked by Ms. McGrann
6 about the City's approach to the relationship, and you gave the evidence that you'll see
7 on the page there. You say leading up to the first delay, there was not a lot of
8 documented disputes. It was a good relationship, and that frequently -- I'm
9 paraphrasing a little, obviously, but I hope fairly.

10 And then you say, beginning at the right-hand side of line 15:

11 "You know, the collective focus of Infrastructure
12 Ontario, myself, Mr. Kanellakos, Mr. Morgan, was we
13 have signed the Project Agreement, legally binding
14 the consortium to give us a system that met all the
15 requirements of the Project Agreement. And so the
16 approach that we all took in a very professional
17 manner was when there were issues -- I wouldn't call
18 them disputes, but interpretations and discussions --
19 we would, you know, we would all have our laptops
20 and we would go --- "

21 And then, Mitchell, if you can just go just to line 6 there ---

22 "--- to that lengthy Project Agreement and say, you
23 know, 'What clause are you referring to?' and we
24 would open it up and we would get technical people to
25 look at it and work our way through it. And we did
26 that often in a positive, collaborative environment."

27 (As read)

28 And I'm going to suggest to you, sir, that adherence to the Project

1 Agreement is one of the ways that staff protected the City's interest in getting a safe and
2 reliable system. Do you agree with that?

3 **MR. JOHN MANCONI:** Yes.

4 **MR. JOHN ADAIR:** And then another mechanism that staff had
5 available in order to protect the City's interest in getting a safe and reliable system is
6 where the Project Agreement did not have specific requirements, it was -- it sort of
7 referred to an issue but didn't have specific requirements -- the parties would do their
8 best to fix specific criteria, correct?

9 **MR. JOHN MANCONI:** We would work our way through it, yes.

10 **MR. JOHN ADAIR:** And Mitchell, sorry, we can take that down,
11 please and thank you.

12 And so there are some examples, some ones we've heard about
13 already in this Commission, as to the City and RTG working on coming up with specific
14 criteria, and those include, for example, the Go No-Go list?

15 **MR. JOHN MANCONI:** That was the City's idea, yes.

16 **MR. JOHN ADAIR:** Yeah, it was something that the City was using
17 in order to bring some discipline to a difficult process. The City created a list so that it
18 had some criteria that it could use to measure?

19 **MR. JOHN MANCONI:** Correct. Our professionals gave us advice
20 on constructing that list. The City wanted a final scorecard that we could go to.

21 **MR. JOHN ADAIR:** And what that does, that kind of list is, it allows
22 you to have something concrete and measurable to guide your decision making,
23 correct?

24 **MR. JOHN MANCONI:** It's part of the assessment of where we are
25 with the project.

26 **MR. JOHN ADAIR:** Yeah, but my point is, it would have been more
27 nuanced than that. My point is, it doesn't just give you some -- you could make
28 decisions in any manner. People could -- one person could just wake up in the morning

1 and see how they feel, to take a silly example that's very subjective. The value of a
2 concrete list of items is, it gives you something to measure performance against, and
3 you can use that to help inform good decision making?

4 **MR. JOHN MANCONI:** Well, in this case, it was a rollup of all of
5 the inputs, which there were hundreds if not thousands of inputs, that brought it --
6 distilled it down to a concrete Go No-Go list that is used in the launch of systems and
7 big projects.

8 **MR. JOHN ADAIR:** Right. And I appreciate that the Go No-Go list
9 was a rollup of a bunch of different issues. My question for you is simply, I'm asking you
10 to confirm that having a concrete list helps ensure good decision making?

11 **MR. JOHN MANCONI:** On the Go No-Go aspect, absolutely.

12 **MR. JOHN ADAIR:** Right. And that helps ensure that the City gets
13 what it wanted, which is a safe and reliable system?

14 **MR. JOHN MANCONI:** Correct.

15 **MR. JOHN ADAIR:** And the same could be said of the trial running
16 criteria. When you develop a set of criteria, that helps you with good decision making,
17 and that helps ensure a safe and reliable system?

18 **MR. JOHN MANCONI:** The criteria was a measurement tool.

19 **MR. JOHN ADAIR:** Right, and those measurement tools are
20 important for all the reasons we just covered?

21 **MR. JOHN MANCONI:** Correct.

22 **MR. JOHN ADAIR:** They're a protection for the City?

23 **MR. JOHN MANCONI:** They're a measurement tool to measure
24 progress on the launch and the system.

25 **MR. JOHN ADAIR:** Right, and the act of measuring against
26 something specific is something that protects the City?

27 **MR. JOHN MANCONI:** In this case it was important because there
28 was no specific criteria in the Project Agreement, correct.

1 **MR. JOHN ADAIR:** Right. And then another mechanism that was
2 part of the mix, in terms of things that helped ensure good decision making and ensure
3 that the City gets a safe and reliable system, is oversight from council through FEDCO?

4 **MR. JOHN MANCONI:** Council is ultimately responsible, yes.

5 **MR. JOHN ADAIR:** Yeah, and council's responsibility exercised, at
6 least as a starting point through FEDCO, is something that assists in ensuring that
7 decisions are made for the right reasons and in the right way?

8 **MR. JOHN MANCONI:** At council level, not at the tactical level.

9 **MR. JOHN ADAIR:** Sure. But council exercises oversight over
10 staff, right? I don't mean every council reviews every single thing that's done every day.
11 We know that's not the way it works, but council exercise ultimate oversight, correct?

12 **MR. JOHN MANCONI:** Correct.

13 **MR. JOHN ADAIR:** And the act of exercising that ultimate
14 oversight contributes to good decision making?

15 **MR. JOHN MANCONI:** Can't argue with that, yeah.

16 **MR. JOHN ADAIR:** Okay.

17 And then the last -- the fourth and last sort of protection I just want
18 to see if we put on the table is you also had the benefit of input from outside experts?

19 **MR. JOHN MANCONI:** We assembled an expert panel, yes.

20 **MR. JOHN ADAIR:** Right. And having experts in the field assist
21 you in your analysis, again, contributes to and protects the City to ensure good decision
22 making and protects that the City's going to get the system that it paid for?

23 **MR. JOHN MANCONI:** It also helps work through complex
24 decisions and complex variations, yes.

25 **MR. JOHN ADAIR:** Right. Now, sir, if we can move into the
26 summer of 2019, it doesn't really much matter, any specific date in the summer of 2019,
27 but as we head into June, July, August, by that point, there had been several missed
28 RSA dates already, correct?

1 **MR. JOHN MANCONI:** I believe four of them, yes.

2 **MR. JOHN ADAIR:** And several of those dates -- I'm not sure if it
3 was all four -- but several of them had been announced publicly?

4 **MR. JOHN MANCONI:** They -- we had informed council that they -
5 - yes, yeah.

6 **MR. JOHN ADAIR:** They didn't not only just informed council, but
7 the dates of RSA, the anticipated dates, some of them, at least, had been announced
8 publicly, correct?

9 **MR. JOHN MANCONI:** It made it to the public domain, yes.

10 **MR. JOHN ADAIR:** Right. And when dates for RSA that are
11 announced publicly are not met repeatedly, then public pressure to get the system open
12 now. So would you agree with me?

13 **MR. JOHN MANCONI:** Everybody in Ottawa wanted that system
14 to open, yes.

15 **MR. JOHN ADAIR:** And Mr. Slade, when he was giving evidence
16 last week said that there was, from his perspective of course, there was pressure on the
17 CITY to get to RSA and he described it as "very political and unlike anything he had
18 ever seen before on another project." Were you aware that he gave that evidence?

19 **MR. JOHN MANCONI:** I heard it in the media.

20 **MR. JOHN ADAIR:** I'm sorry?

21 **MR. JOHN MANCONI:** I heard it in the media, yes.

22 **MR. JOHN ADAIR:** All right. And do you agree with Mr. Slade that
23 there was, at the time, significant pressure on the City side?

24 **MR. JOHN MANCONI:** There -- large projects of this scope and
25 scale always generate a lot of interest and a lot of pent up demand for execution of
26 these large scale projects, whether they're rail, whether it's a new piece of city
27 infrastructure. How people describe it as pressure or an excitement or a built-up
28 demand, that's up to the individual.

1 **MR. JOHN ADAIR:** And while I appreciate the comment that large
2 projects always generate that kind of reaction, to put it neutrally, it's also the case that
3 the more missed deadlines, particularly publicly-announced deadlines there are the
4 worse or the greater the pressure gets; is that fair?

5 **MR. JOHN MANCONI:** It depends on the individuals, how they
6 take that energy.

7 **MR. JOHN ADAIR:** Right. Let's do it this way. Your perception in
8 the summer of 2019, having had these several missed publicly-announced deadlines,
9 your perception -- was it that there was pressure and it was mounting?

10 **MR. JOHN MANCONI:** There was disappointment. There was
11 anticipation. There was pressure. There was excitement. There was energy, all sorts
12 of things could describe the environment. And it depends on who it was from the
13 customers' perspective, they were worn out because they had gone through five years
14 of detours.

15 **MR. JOHN ADAIR:** Right. And from your perspective as the
16 person who was sort of running point, trying to bring this thing home, I can only imagine
17 having read the texts and the emails and all the documents that I've been through, that
18 you personally were under a lot of pressure to get this thing open.

19 **MR. JOHN MANCONI:** There was a lot of stress and a lot of work
20 and a lot of focus.

21 **MR. JOHN ADAIR:** Right. And Mr. Slade said that his impression
22 was that that was coming from the -- that it was political and it was coming from the
23 elected officials. Was that a part of the situation you've just described?

24 **MR. JOHN MANCONI:** Not to me, no.

25 **MR. JOHN ADAIR:** Okay. You would say there was no pressure
26 coming your way from elected officials to get this thing done in the summer of 2019;
27 that's your evidence?

28 **MR. JOHN MANCONI:** That is my evidence. There was a lot of

1 asks and a lot of disappointments with missed deadlines, a lot of people that were
2 anxious. But there was no political pressure to get it done by a certain date exerted on
3 me.

4 **MR. JOHN ADAIR:** I didn't -- I wasn't suggesting there was
5 pressure to get it done by a certain date, just to be clear. I'm suggesting to you that
6 elected officials were putting pressure on you to get it done, period.

7 **MR. JOHN MANCONI:** No.

8 **MR. JOHN ADAIR:** Okay. Now, you also were aware on the RTG
9 side that RTG was under pressure financially because of the missed deadlines, correct?

10 **MR. JOHN MANCONI:** Correct.

11 **MR. JOHN ADAIR:** And so whether -- on the City side whether
12 there was pressure coming from elected officials or just the general desire to get this
13 thing done, both sides were working exceptionally hard to get to RSA, correct?

14 **MR. JOHN MANCONI:** Exceptionally hard, yes.

15 **MR. JOHN ADAIR:** And both sides had very significant interest,
16 what I'll call personal interest, in the sense of different from the other in getting it done.
17 You understand what I mean by that?

18 **MR. JOHN MANCONI:** No, I don't.

19 **MR. JOHN ADAIR:** So RTG's interest was a financial interest,
20 right?

21 **MR. JOHN MANCONI:** No, I don't agree with that. There could be
22 people in RTG that had a pure financial interest. But there was a lot of passionate
23 people on RTG's side also that were very interested in getting the project done for the
24 City and having a successful outcome for their firms. And yes, the bottom line was
25 important to them but they also were passionate about getting the project done.

26 **MR. JOHN ADAIR:** And so, sir, is it your evidence that you did not
27 believe at the time that RTG was under a significant financial stress and pressure?

28 **MR. JOHN MANCONI:** I've already answered that. They were

1 under financial stress and pressure.

2 **MR. JOHN ADAIR:** Right. And you were aware that that was
3 potentially affecting their decision making?

4 **MR. JOHN MANCONI:** That could have -- I can't speak on their
5 behalf. They could have been affected. It could have been affecting some of them; it
6 could have been affecting all of them. But I can't speak on their behalf.

7 **MR. JOHN ADAIR:** And sir, the protections we talked about a few
8 minutes ago in terms the language of the contract, oversight by Fedco, the experts, et
9 cetera, those protections -- and I think you'll agree with me -- become particularly
10 important as the pressure to get the system open mounts.

11 **MR. JOHN MANCONI:** As long as you don't lose sight of problem
12 solving, which we did throughout the entire project where asks were considered and we
13 worked collaboratively to sort things out.

14 **MR. JOHN ADAIR:** And what you want to avoid as pressure
15 mounts to get a system open -- what you want to avoid it you want to avoid making a
16 bad decision and opening it too early, right?

17 **MR. JOHN MANCONI:** Sorry. Say that again?

18 **MR. JOHN ADAIR:** When you're in a situation where there's
19 pressure to get it done, one of the things you want to avoid is making a bad decision
20 and opening too early, correct?

21 **MR. JOHN MANCONI:** I don't know what you mean by "too early".

22 **MR. JOHN ADAIR:** Before the system is safe and reliable.

23 **MR. JOHN MANCONI:** Our goal was always to open it once it met
24 the criteria to be safe and reliable.

25 **MR. JOHN ADAIR:** Right. And you want to avoid allowing the
26 pressure to cause you to make a bad decision, right?

27 **MR. JOHN MANCONI:** Correct.

28 **MR. JOHN ADAIR:** And one of the ways to ensure that you avoid

1 that outcome is by relying on those safeguards we talked about -- oversight from Fedco,
2 expert advice, reliance on the Project Agreement language, et cetera, correct?

3 **MR. JOHN MANCONI:** And many other things, correct.

4 **MR. JOHN ADAIR:** Right. I want to talk to you now about the
5 evolution of the system and the vehicles for a particular period of time. And I'm not
6 placing any magic on the dates here, but roughly speaking, fall of 2018 through to
7 summer of 2019. And hopefully you will recall that in the fall of 2018 there was a great
8 deal of back and forth about trying to meet different RSA deadlines between the City
9 and RTG?

10 **MR. JOHN MANCONI:** Correct.

11 **MR. JOHN ADAIR:** And you had STV working with you as part of
12 the Independent Assessment Team helping you understand what was realistic and what
13 wasn't?

14 **MR. JOHN MANCONI:** Correct.

15 **MR. JOHN ADAIR:** And helping you understand whether what
16 RTG was telling you could be relied upon.

17 **MR. JOHN MANCONI:** Yes.

18 **MR. JOHN ADAIR:** And do you recall STV telling you that at times
19 in the fall of 2018 that they were concerned that RTG appeared to be rushing towards
20 RSA prematurely?

21 **MR. JOHN MANCONI:** That obviously came up, yes.

22 **MR. JOHN ADAIR:** Okay. And then in -- and I'm just going to take
23 us sort of through chronologically here. In December of 2018 you had, among other
24 times, you had the Independent Assessment Team do an analysis of RTG's proposed
25 schedule. Do you recall that?

26 **MR. JOHN MANCONI:** Do I recall us doing that exercise? Yes. I
27 don't know exact dates. It was a while ago, but yes.

28 **MR. JOHN ADAIR:** Okay. Let me ask if we could just pull up a

1 document, please. It's COW523469.

2 **--- EXHIBIT No. 186:**

3 COW0523469 – Email from John Manconi to Steve
4 Kanellakos et al. Re: Debrief City Manager – IAT Results 20
5 December 2018

6 **MR. JOHN MANCONI:** If you see me turning away I'm just moving
7 to the larger screen.

8 **MR. JOHN ADAIR:** No problem.

9 **COMMISSIONER HOURIGAN:** Mr. Manconi, we've had some
10 issues today too. So if at any point you can't see a document or it's not appearing, just
11 let us know. All right?

12 **MR. JOHN MANCONI:** Okay. So far, so good. Thank you.

13 **COMMISSIONER HOURIGAN:** Okay.

14 **MR. JOHN ADAIR:** In December -- this email was December 20th
15 of 2018, sir, and you send it to Mr. Kanelakos with a copy to some other people. And
16 you provide a copy of the presentation from the Independent Assessment Team with
17 respect to sort of where things stand at that time, correct?

18 **MR. JOHN MANCONI:** M'hm. Yes.

19 **MR. JOHN ADAIR:** And the third sentence of your email, your
20 covering email, says:

21 "The situation is very serious and the lenders will be
22 withholding the December draw payment." (As read)

23 Do you see that?

24 **MR. JOHN MANCONI:** Yes, I do.

25 **MR. JOHN ADAIR:** And that was an accurate of the time that the
26 situation was very serious?

27 **MR. JOHN MANCONI:** Yes.

28 **MR. JOHN ADAIR:** Okay. I'm going to take us into the attachment

1 to that which Mitchell -- yeah, I'm going to need to ask you to call up a different
2 document. It's COW523470.

3 **--- EXHIBIT No. 187:**

4 COW0523470 – Confederation Line Stage 1 OTC/IAT
5 Assessment Review of RTG's Ability to Enter Trial Running
6 1 February 2019

7 **MR. JOHN ADAIR:** And this is the cover page of the Independent
8 Assessment Team's assessment that you attached to your email, I can tell you, Mr.
9 Manconi. If we just go to page 13, please. I'm sorry, the end of page 12. And then 14,
10 sorry. There we go.

11 Sorry, Mr. Manconi. Under the heading, "LRVs" it says:

12 "The vehicle retrofit program is increasing in scope as
13 new deficiencies are discovered. Retesting of key
14 elements and functions is still required. Concerns are
15 growing that new issues keep developing. Are there
16 other unknown issues out there?" (As read).

17 And as of late-December, or mid-December, I guess, in this case,
18 of 2018, your independent experts were telling you that there was a fairly significant
19 degree of concern with respect to the vehicles, correct?

20 **MR. JOHN MANCONI:** Yes.

21 **MR. JOHN ADAIR:** And that was no surprise to you because that
22 concern had existed before that, right?

23 **MR. JOHN MANCONI:** Correct.

24 **MR. JOHN ADAIR:** And it continued to exist after that?

25 **MR. JOHN MANCONI:** Things continued to improve on the
26 vehicles over time.

27 **MR. JOHN ADAIR:** Okay. So that's December of '18. Let's take a
28 look at April of 2019. If we can go, please, to STV476.

1 **--- EXHIBIT No. 188:**

2 STV0000476 – Email from Larry Gaul to Troy Charter et al.

3 Re: tougher test pass 15 April 2019

4 **MR. JOHN ADAIR:** This is an email from Larry Gaul to Troy
5 Charter and others, including yourself. Now we're middle of April of 2019, and Mr. Gaul
6 was one of the members of the Independent Assessment Team?

7 **MR. JOHN MANCONI:** Mr. Gaul was part of -- he was what was
8 called "operational support" to Troy, and he would also be included in some of the IAT
9 workshops, yes.

10 **MR. JOHN ADAIR:** And he says:

11 "This past week has been an eye opener. The
12 number of vehicle and system (switch failures) is very
13 concerning." (As read).

14 And so the concerns about the vehicles and the system persisted, I
15 gather, at least until the middle of April of 2019, right?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. JOHN ADAIR:** So even four or five months -- even though
18 Alstom, and RTG, and the other contracting parties had had four or five months since
19 the concerns we looked in December of 2018, the issues persisted?

20 **MR. JOHN MANCONI:** Yes.

21 **MR. JOHN ADAIR:** And then, if we can go into May of 2019, so a
22 month later, I'm going to ask for COW451314.

23 **--- EXHIBIT No. 189**

24 COW0451314 – Email from John Manconi to Jocelyne Begin

25 Re: Concerned 8 May 2019

26 **MR. JOHN ADAIR:** Now, the bottom email of this chain, Mr.
27 Manconi -- you may recall once you see it -- the bottom email's an email from yourself
28 to Peter Lauch and Claude Jacob from RTG and RTM, respectively. The subject is

1 “Concerned”, and you tell them you have a concern because there was an incident at
2 the MSF involving a collision between two vehicles and you weren’t told about it. Do
3 you recall that?

4 **MR. JOHN MANCONI:** I do now that I’ve seen this, yes.

5 **MR. JOHN ADAIR:** And then you forwarded that email. If we go,
6 there’s a response, which I’m not overly concerned about, and then you forwarded the
7 email and the response up to -- if we go up one more email, to Mr. Prendergast? That’s
8 the, “See response May 7, 2019,” and then Mr. Prendergast responds. Do you see
9 that?

10 **MR. JOHN MANCONI:** Sorry, I’m looking at -- yeah, the one that
11 says, “First of all”?

12 **MR. JOHN ADAIR:** Yeah. And that’s an email from Tom
13 Prendergast to yourself. And then the last -- the one I want to ask you about the detail
14 of, although I’m happy for you to read as much or as little as you like, is the top email on
15 the page.

16 **MR. JOHN MANCONI:** Okay.

17 **MR. JOHN ADAIR:** Ah, sorry, just there, yeah. So here’s Mr.
18 Prendergast to you. Mr. Prendergast and you have gone back and forth about the issue
19 that’s raised in the emails below. He says -- this is May of 2019:

20 “RTG is totally consumed with achieving substantial
21 completion and then RSA.” (As read).

22 And he says:

23 “They’re looking to probably try to blame it on Alstom.”
24 (As read).

25 And he was expressing to you the concern there that RTG was
26 perhaps rushing towards the substantial completion and RSA when they weren’t ready,
27 correct?

28 **MR. JOHN MANCONI:** Among other things.

1 **MR. JOHN ADAIR:** And that was five months or so after the IAT
2 had expressing that very concern in December of '18?

3 **MR. JOHN MANCONI:** Yes, along with the overarching findings
4 that there was a lack of focus. It wasn't lack of ability.

5 **MR. JOHN ADAIR:** Well, whether it was lack of focus or lack of
6 ability, almost six months later the very same sentiment was being expressed, correct?

7 **MR. JOHN MANCONI:** This deals with a different issue, though.
8 This deals with a collision in the yard, a reported collision which was coupling of
9 vehicles. The email went a bit too fast but I believe it was coupling of vehicles that was
10 not reported.

11 **MR. JOHN ADAIR:** Right. And what Mr. Prendergast is saying --
12 in addition to dealing with that specific issue, what he's also saying in his email of May 8
13 that's at the top of the page here, in the first sentence is -- he's saying, "They're rushing
14 and I'm concerned about it." Fair? Right? And that's exactly the sentiment that had
15 been expressed five or six months earlier, right?

16 **MR. JOHN MANCONI:** Was that in the previous correspondence?
17 I don't recall that but if you say that, yeah.

18 **MR. JOHN ADAIR:** It wasn't in the December. But when I asked
19 at the outset whether in the fall of '18 RTG -- STV had expressed a concern to you that
20 they were rushing, you agreed with me.

21 **MR. JOHN MANCONI:** Correct.

22 **MR. JOHN ADAIR:** Right. So whether it was a lack of ability, or a
23 lack of focus, or a lack of resources, or some combination of those things, the issue
24 persisted that there was a perception that RTG was rushing and potentially making poor
25 decisions, correct.

26 **MR. JOHN MANCONI:** That was the perception, correct, yes.

27 **MR. JOHN ADAIR:** All right. And I'm going to move on to the RTS
28 submission for substantial completion that made in late-April of 2019 into early May.

1 And if I could just call up AGG137, please.

2 **--- EXHIBIT No. 190:**

3 AGG0000137 – Independent Certifier’s Report on
4 Substantial Completion 13 May 2019

5 **MR. JOHN ADAIR:** And just while we’re waiting for that, Mr.
6 Manconi, you’ll recall that RTG submitted for substantial completion in the spring of
7 2019 and the City objected?

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN ADAIR:** The City did not feel substantial completion
10 had been reached?

11 **MR. JOHN MANCONI:** Correct.

12 **MR. JOHN ADAIR:** And the IC agreed with the City and said,
13 “Substantial completion has not been reached.”

14 **MR. JOHN MANCONI:** Correct.

15 **MR. JOHN ADAIR:** And among other reasons that substantial
16 completion had not been reached as of May 13th of 2019, the date of this report, is that
17 there were ongoing problems with the vehicles.

18 **MR. JOHN MANCONI:** I would have refresh my memory with the
19 report, but if that what it says, yes.

20 **MR. JOHN ADAIR:** Sure, if we could go to page 6, please,
21 Mitchell. And I’m just going to ask you to scroll down to Item 11, so it’s actually going to
22 take us onto page 7, thank you. You can just take a minute and read that for yourself,
23 Mr. Manconi, but I believe what you’ll there is the IC confirming that there were ongoing
24 issues with the reliability of the vehicles.

25 **MR. JOHN MANCONI:** Yes, two issues there, A and B, correct.

26 **MR. JOHN ADAIR:** Right. And those were just examples, correct.
27 It was not presented as an exhaustive list?

28 **MR. JOHN MANCONI:** That’s what it says there, correct.

1 **MR. JOHN ADAIR:** And the issue is, just so we can kind of track
2 them a little bit more specifically, were brake defects or failure and door issues?

3 **MR. JOHN MANCONI:** Correct.

4 **MR. JOHN ADAIR:** And there may or may not have been others in
5 the IC's mind. We don't know. But those are the two that she listed there as examples.

6 **MR. JOHN MANCONI:** Correct.

7 **MR. JOHN ADAIR:** Now, if we can just scroll down to Page 19,
8 please. And this is the City's letter that was appended to the IC's report where the City
9 objected to the submission the submission for substantial completion. Do you,
10 generally speaking, remember that the City authored a letter objecting the submission?

11 **MR. JOHN MANCONI:** Generally speaking, yes, I believe Mr.
12 Morgan crafted with input from others. But yeah, generally aware of it, correct.

13 **MR. JOHN ADAIR:** Right. And if you go under the heading "3
14 Vehicles", you'll see in the last sentence of the first paragraph:

15 "The City requires **all...**"

16 And all appears to be bolded:

17 "...vehicles to be ready for use as at substantial
18 completion, which is a requirement of the Project
19 Agreement." (As read).

20 Do you see that?

21 **MR. JOHN MANCONI:** Yes, I do.

22 **MR. JOHN ADAIR:** And that was the City's position at the time
23 that all vehicles not only had to be built and delivered but also available for use, correct?

24 **MR. JOHN MANCONI:** Correct. At the time, yes.

25 **MR. JOHN ADAIR:** And that's either 34 single or, if we want to
26 treat them as couples, it's 17, correct?

27 **MR. JOHN MANCONI:** I believe so, yes.

28 **MR. JOHN ADAIR:** And that was a requirement of substantial

1 completion under the Project Agreement?

2 **MR. JOHN MANCONI:** I believe so, yes.

3 **MR. JOHN ADAIR:** And as we agreed earlier, those requirements
4 in the Project Agreement are part of what protects the City and ensures you get a safe
5 and reliable system, correct?

6 **MR. JOHN MANCONI:** The vehicle count, not necessarily on the
7 safety part. It -- the vehicle count affects service depending on the volume that you
8 need to deliver.

9 **MR. JOHN ADAIR:** Fair enough. At a minimum, it affects whether
10 the system is reliable.

11 **MR. JOHN MANCONI:** Not necessarily. It depends on ridership.

12 **MR. JOHN ADAIR:** Right, and depends on the vehicles and how
13 many come into service, and out of service, and all that. But generally speaking, the
14 more vehicles you have, the easier it is to deliver a reliable service.

15 **MR. JOHN MANCONI:** Generally speaking, yes.

16 **MR. JOHN ADAIR:** And that reliability is one of the reasons the
17 City insisted -- when RTG submitted in the spring of '19, the reliability is one of the
18 reasons the City insisted on meeting the requirements of substantial completion under
19 the Project Agreement, right?

20 **MR. JOHN MANCONI:** Correct, at that time, yes.

21 **MR. JOHN ADAIR:** And then, if we can go, please to STV500.

22 **--- EXHIBIT No. 191:**

23 STV0000500 – Email from John Manconi to Thomas
24 Prendergast Re: Switch 329 Disturbed 25 May 2019

25 **MR. JOHN ADAIR:** These are emails among yourself and Mr.
26 Prendergast and other members of the City staff and the IAT, and we really care about
27 the first email, because I don't intend to take you into the depths of switch 329 being
28 disturbed. But generally speaking, Mr. Prendergast was telling you, in the opening

1 words of his email there, that there were a number of switch problems being
2 experienced at the same time, correct?

3 **MR. JOHN MANCONI:** Correct.

4 **MR. JOHN ADAIR:** And he says:

5 "I would find it difficult to believe that the switch
6 problems are mechanical, track side not signal side,
7 and not signal related, but that is a comment made by
8 someone hundreds of miles away." (As read)

9 Do you see that?

10 **MR. JOHN MANCONI:** Yes.

11 **MR. JOHN ADAIR:** And what he was telling you is that the number
12 of switch problems led him to believe that it went beyond just mechanics on the track
13 side, correct?

14 **MR. JOHN MANCONI:** Yeah. He was saying he wasn't sure what
15 exactly it was.

16 **MR. JOHN ADAIR:** Well, he was saying he would find it difficult to
17 believe that it was the mechanics on the track side, correct?

18 **MR. JOHN MANCONI:** With the caveat that he wasn't physically
19 there.

20 **MR. JOHN ADAIR:** Correct. Then if we can go, please, to
21 STV510. I'm happy to give you as much time to look at this if you want, Mr. Manconi,
22 but just generally speaking, you can kind of skim it as we're talking here. Generally
23 speaking, STV was raising, among other things -- or identifying and discussing, rather,
24 brake faults that were occurring in or around June 9th.

25 **MR. JOHN MANCONI:** Correct.

26 **MR. JOHN ADAIR:** And brake faults are one of the issues that the
27 IC had identified in early May as being one of the reasons the vehicles were not reliable.

28 **MR. JOHN MANCONI:** Yes.

1 **MR. JOHN ADAIR:** And also brake faults were a known issue
2 back in the fall and winter of 2018, when concerns about reliability were being raised.

3 **MR. JOHN MANCONI:** Correct.

4 **MR. JOHN ADAIR:** So whether it's a resource issue or a focus
5 issue or an ability issue, the problem was not being solved.

6 **MR. JOHN MANCONI:** No. I would need to scroll down this email
7 to respond.

8 **MR. JOHN ADAIR:** All right. Please do. Mr. Manconi, it's a little
9 awkward because we're all on Zoom here and you don't have control of the screen, but
10 if you just ask Mitchell to scroll up or down as needed, I'm sure he'll be able to do so.
11 --- A short pause

12 **MR. JOHN MANCONI:** Okay. For some context on that, the issue
13 that was being provided by the experts that you were just citing, both Larry and Tom
14 and so forth, was -- there was reluctance on Alstom to do what is very common in the
15 rail industry, and that is to enable operators of vehicles to do troubleshooting on brake
16 issues and other issues so that you did not have to wait for a tech. So some of the
17 context around this is that those brake issues could be resolved if there was consensus
18 on troubleshooting guides being developed for our operators so that we could minimize
19 the number of disruptions.

20 **MR. JOHN ADAIR:** Okay. And let's just clarify one thing there. I
21 don't think they're saying the brake issues will be resolved in the sense of they won't
22 occur. I think what you're saying -- and I just want to make sure we're understanding
23 one another -- what you're saying is they might occur, but it would be something that it's
24 possible that the operator might be able to address.

25 **MR. JOHN MANCONI:** Yeah, but what we're up against is -- I think
26 being a city that's fairly new to rail operations, brake faults occur on trains. It's how you
27 deal with them, whether it's with techs, whether it's with technology, or whether it's
28 through troubleshooting. And what the experts, both Mr. Gaul and Mr. Tom

1 Prendergast, were advising -- and I believe we eventually get there with Alstom and
2 others -- is that with our techs doing some limited troubleshooting in the cab, they could
3 expedite the process of relieving the brakes and doing resets and so forth and get those
4 trains mobilized, and it would minimize these issues. So my point being, it's not that the
5 brakes were defective; it's that the response of the brake was not being addressed. So
6 our advisors were pushing hard on can we put in interim measures -- or permanent
7 measures to address this.

8 **MR. JOHN ADAIR:** Okay, well, let's follow it through and we'll see
9 whether the brake issues persisted or in fact were addressed, as you said in your
10 answer there -- that you believe you eventually got there.

11 If we go to STV565, please. We're now towards the end of June,
12 Mr. Manconi, and Mr. Prendergast sends an email with respect to his views on the
13 readiness of RTM to undertake the maintenance responsibilities. I think it's probably
14 enough if you read the first paragraph of his email to yourself, although you're welcome
15 to read as much more of it as you like.

16 **MR. JOHN MANCONI:** I'm familiar with this email.

17 **MR. JOHN ADAIR:** And Mr. Prendergast was telling you at that
18 time that we he was giving RTM a fairly low grade in terms of its readiness to undertake
19 maintenance.

20 **MR. JOHN MANCONI:** For reasons that I mentioned earlier on,
21 yes.

22 **MR. JOHN ADAIR:** Right. And STV, your outside experts, were
23 expressing concern about whether the maintenance partner on this project was in fact
24 able to undertake the maintenance, correct?

25 **MR. JOHN MANCONI:** We knew that Alstom, a world leader in
26 vehicles and vehicle maintenance, could do everything that was required to run this
27 operation if they focused and did what we recommended, which was to add additional
28 resources both in the yard, out in the field, and during and after launch period.

1 **MR. JOHN ADAIR:** Just to clarify two things there, his rating was
2 not of Alstom; it was of RTM ---

3 **MR. JOHN MANCONI:** Correct.

4 **MR. JOHN ADAIR:** --- who was ---

5 **MR. JOHN MANCONI:** Alstom does most of the maintenance
6 work.

7 **MR. JOHN ADAIR:** Right, ultimately at the responsibility of RTM.

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN ADAIR:** And what he's saying is the RTM group is not
10 ready. Whatever the reason may be, they are not performing.

11 **MR. JOHN MANCONI:** That's what this email says, yes.

12 **MR. JOHN ADAIR:** And that's something that you were aware of
13 as of late June, when you were roughly a month away from RSA -- sorry, from trial
14 running.

15 **MR. JOHN MANCONI:** Trial running began at the beginning of
16 August, yes.

17 **MR. JOHN ADAIR:** Roughly a month away.

18 **MR. JOHN MANCONI:** Yeah.

19 **MR. JOHN ADAIR:** And then when you get into trial running, I'm
20 going to suggest to you that the problems of vehicle reliability and readiness and
21 maintenance persisted. Do you agree?

22 **MR. JOHN MANCONI:** No, I disagree. They had some very great
23 days during trial running.

24 **MR. JOHN ADAIR:** Okay. Let's go to another document, then.
25 I'm going to ask to call up, please, COW157313. And this is a letter that the City wrote
26 to Mr. Lauch with respect to the IMIRS system.

27 **--- EXHIBIT No. 192:**

28 COW0157313 – Letter City of Ottawa to RTG Re: Trial

1 Running and post-RSA Processes, Data Governing and
2 Reporting (IMIRS) 30 July 2019

3 **MR. JOHN MANCONI:** Yes.

4 **MR. JOHN ADAIR:** And if we scroll down, Deloitte had advised
5 you. If you look at the middle paragraph there that's in front of a copy of the Deloitte
6 report, Deloitte had advised you that the IMIRS system was not performing, correct?

7 **MR. JOHN MANCONI:** Correct.

8 **MR. JOHN ADAIR:** And the IMIRS system was part of the way
9 that the maintenance would be done in terms of all of the various parts of the
10 maintenance operation communicating with one another.

11 **MR. JOHN MANCONI:** It's a big maintenance management
12 system, yes.

13 **MR. JOHN ADAIR:** And if the big maintenance management
14 system is not performing, that's a problem.

15 **MR. JOHN MANCONI:** It can be, yes.

16 **MR. JOHN ADAIR:** It was a problem, correct?

17 **MR. JOHN MANCONI:** I need to see the rest of the letter. I don't
18 remember this letter specifically.

19 **MR. JOHN ADAIR:** All right. I don't think the answer is in the rest
20 of this letter, but I don't want to be unfair to you either, so take as much time as you'd
21 like to read the rest of the letter.

22 **MR. JOHN MANCONI:** Yes, I believe the letter is saying that the
23 mitigation measure will be increased monitoring, but again, I haven't read the whole
24 letter.

25 **MR. JOHN ADAIR:** Mr. Manconi, I want to give you the chance to
26 read it, but I think the summary of the letter is it was not performing at that time, and the
27 mitigation suggested was increased monitoring.

28 **MR. JOHN MANCONI:** I believe that's what it says, yes, because

1 you can provide mitigation measures with things.

2 **MR. JOHN ADAIR:** Sure. And whether those work or not remains
3 to be seen in the fullness of time, correct?

4 **MR. JOHN MANCONI:** The IMIRS system?

5 **MR. JOHN ADAIR:** Yeah. It's true of any mitigation measure, but
6 whether the mitigation measures of the IMIRS system worked or didn't work remained
7 to be seen. But this was the state of affairs as of July 30th.

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN ADAIR:** The second day of trial running.

10 **MR. JOHN MANCONI:** I'd have to check the exact dates, but yeah

11 ---

12 **MR. JOHN ADAIR:** So let's go to ---

13 **MR. JOHN MANCONI:** --- that's the ---

14 **MR. JOHN ADAIR:** I'm sorry, Mr. Manconi. Go ahead.

15 **MR. JOHN MANCONI:** The exact dates of trial running -- if you
16 say this is the second day that that letter went out, that's when it went.

17 **MR. JOHN ADAIR:** Right. And on the second day -- we're going
18 to come to it in a second; I don't want to make you take my work for it, but on the
19 second day of trial running, you were told that a major maintenance system, Information
20 Management System, was not functioning properly.

21 **MR. JOHN MANCONI:** Sorry, I was told that?

22 **MR. JOHN ADAIR:** The City had been told that by Deloitte.

23 **MR. JOHN MANCONI:** Okay.

24 **MR. JOHN ADAIR:** And if we can go, please, to the trial running
25 score cards which are at COW270758. And Mitchell, if you just would be so good as to
26 scroll down about three or four pages you'll see the first score card. Next page, thank
27 you.

28 So this is, Mr. Manconi, this is the first day of trial running being

1 July 29th.

2 **MR. JOHN MANCONI:** Okay.

3 **MR. JOHN ADAIR:** And you'll see the score is a fail.

4 **MR. JOHN MANCONI:** Yes.

5 **MR. JOHN ADAIR:** And if we just look at the various components,
6 we don't need to spend a lot of time on it but for headway it's a fail, correct?

7 **MR. JOHN MANCONI:** Correct.

8 **MR. JOHN ADAIR:** And what you were trying to achieve in Items 3
9 and 4 in terms of headway is 93 percent?

10 **MR. JOHN MANCONI:** I believe to, 93 or 94, something like that,
11 yes.

12 **MR. JOHN ADAIR:** And what you were achieving is high 60s, mid
13 70s in the afternoon at least on that day?

14 **MR. JOHN MANCONI:** Sorry, is that on the score card? I'm trying
15 to find it.

16 **MR. JOHN ADAIR:** Yeah, if you look at Item 3 and Item 4 they're
17 both a fail and then if you go across to the right it's the ratio 68.9 and 75.6.

18 **MR. JOHN MANCONI:** Oh, there it is. Yes, yeah.

19 **MR. JOHN ADAIR:** And then if we go down to maintenance.

20 Maintenance was a pass. The vehicle kilometre ratio was well under the minimum,
21 correct?

22 **MR. JOHN MANCONI:** Yeah, on looking at the right-hand side,
23 yes.

24 **MR. JOHN ADAIR:** And Mr. Morgan gave evidence yesterday that
25 when you're in the range of 89, 90, 91 percent for vehicle availability ratio that has
26 ruined someone's day. You accept that? That's the kind of performance that's ruined
27 the commute; do you accept that as accurate?

28 **MR. JOHN MANCONI:** Yeah, I look at it the other way. You get

1 over 95 percent, you're in very good service.

2 **MR. JOHN ADAIR:** Okay. And when it -- that's one thing but it
3 doesn't necessarily tell me when you're into a serious problem. Mr. Morgan's evidence,
4 as I say, was in the high 80s, low 90s you've ruined the commute. Do you accept that
5 as accurate?

6 **MR. JOHN MANCONI:** I accept that, yes.

7 **MR. JOHN ADAIR:** And you were below even that threshold on
8 the first day of trial running.

9 **MR. JOHN MANCONI:** Correct.

10 **MR. JOHN ADAIR:** And then there were a number of fails
11 including the station availability?

12 **MR. JOHN MANCONI:** Yes.

13 **MR. JOHN ADAIR:** And also under the major systems?

14 **MR. JOHN MANCONI:** Yes.

15 **MR. JOHN ADAIR:** And if we just go to the next day, please.

16 So this is now Day 1 again because the first day was a fail. It's
17 Tuesday, July 30th and this day is a repeat and again there are -- I'm not going to say
18 everything was a fail because that wouldn't be fair. But there are failures across the
19 board, correct?

20 **MR. JOHN MANCONI:** Yes.

21 **MR. JOHN ADAIR:** And we can scroll down and kind of look at it.
22 Some things pass; lots of things failed. Again, you're well below that 90 percent
23 minimum and you're well into the territory of having ruined the commute, correct?

24 **MR. JOHN MANCONI:** Yes.

25 **MR. JOHN ADAIR:** And the systems fails and all that stuff. And if
26 we can go to Day 3, please.

27 And Mr. Manconi, I'm just going here because you said -- I had
28 suggested to you a moment ago that the problems persisted into trial running and you

1 said, "No, we had some really good days." We're now at the -- what's listed as the third
2 day of trial running, July 31st, and again this one is now a restart and again there are
3 failures across the board.

4 **MR. JOHN MANCONI:** Okay.

5 **MR. JOHN ADAIR:** And we can scroll down a little bit so that I'm
6 not being unfair to you. Some things do pass. But there are so many failures that there
7 has to be a restart, correct?

8 **MR. JOHN MANCONI:** Yes.

9 **MR. JOHN ADAIR:** And then if we can go down to the next page?
10 This is now August 1st. And this is a pause day?

11 **MR. JOHN MANCONI:** Correct. Which was provided for in the
12 terms.

13 **MR. JOHN ADAIR:** Yeah. And we're going to come to that. And
14 the reason for a pause is where the system is not meeting expectations to a significant
15 degree you have the opportunity to take a pause, correct?

16 **MR. JOHN MANCONI:** I believe both parties have to agree to it,
17 but yes.

18 **MR. JOHN ADAIR:** Right. And the reason you take a pause is
19 because, as we've seen, the results were in fairness nowhere near the thresholds that
20 had been set.

21 **MR. JOHN MANCONI:** They had difficult days.

22 **MR. JOHN ADAIR:** Not just to say they had difficult days. The
23 results were nowhere near the thresholds that had been set; is that fair?

24 **MR. JOHN MANCONI:** They didn't ask, correct.

25 **MR. JOHN ADAIR:** Okay. And if go to the next page, please?
26 This is also a repeat day and now into the fifth or sixth day of trial running. It says five
27 but I'm not quite sure whether the counting gets a little bit lost there. In any case, you're
28 now several days into trial running and it's another repeat?

1 **MR. JOHN MANCONI:** M'hm. Yes.

2 **MR. JOHN ADAIR:** And would you agree with me then, having
3 seen these results and having been refreshed, that the problems in terms of reliability of
4 the system, communications, vehicle availability, et cetera, those problems persisted
5 into trial running?

6 **MR. JOHN MANCONI:** Well, if you scroll down, there are much
7 better days, high 90 days. They ended up with a very high average. And what we used
8 the time on the pause days was to ask what was going on and collect our observations.
9 And it wasn't all vehicle related. It was, as I said earlier on, it was lack of focus in the
10 maintenance facility and a concerted effort on making sure that needed to be done was
11 getting done.

12 **MR. JOHN ADAIR:** And just so we're clear, first of all I want to be
13 fair to you. I'm absolutely -- you're absolutely right that there were days where good
14 results were achieved. My suggestion to you is the problems persisted. Do you agree
15 with that or no?

16 **MR. JOHN MANCONI:** Some problems persisted; many problems
17 got rectified and many things improved.

18 **MR. JOHN ADAIR:** And Mr. Holder's evidence, when he testified
19 last week -- he was the person at the City responsible for trial running, if I have that
20 right.

21 **MR. JOHN MANCONI:** He was part of the team on trial running.

22 **MR. JOHN ADAIR:** And he was the head of the trial running team
23 from the City side?

24 **MR. JOHN MANCONI:** I don't recall whether he was the head. I
25 would have to check that.

26 **MR. JOHN ADAIR:** Okay. His evidence was he oversaw trial
27 running for the City. Do you accept that?

28 **MR. JOHN MANCONI:** I accept that.

1 **MR. JOHN ADAIR:** Okay. And he said last week that the system
2 continued to display reliability problems even after RSA. Do you agree with that
3 evidence?

4 **MR. JOHN MANCONI:** Parts of the system, yes.

5 **MR. JOHN ADAIR:** And let's now talk about the decisions that
6 were made in terms of how to address these vehicle problems and system reliability
7 problems, maintenance problems, et cetera. We can take that down, Mitchell, We'll
8 probably have to come back to it but -- just at a high level, and we've been over this a
9 little bit. So I'm just touching on this for context, Mr. Manconi.

10 But you will recall, of course, the RTG submitted for substantial
11 completion in April of 2019 and the City rejected it.

12 **MR. JOHN MANCONI:** Correct.

13 **MR. JOHN ADAIR:** And one of the reasons the City objected is
14 because you did not at the time have available for use all 34 vehicles, right?

15 **MR. JOHN MANCONI:** Correct.

16 **MR. JOHN ADAIR:** Which the City had said at the time was a
17 requirement of substantial completion under the Project Agreement and of course that's
18 accurate, right?

19 **MR. JOHN MANCONI:** Yes.

20 **MR. JOHN ADAIR:** And then substantial completion was
21 submitted again in late July?

22 **MR. JOHN MANCONI:** I believe so, yeah.

23 **MR. JOHN ADAIR:** And there were some, at the time, what I'll call
24 technical or relatively modest deficiencies that existed?

25 **MR. JOHN MANCONI:** I believe there were nine.

26 **MR. JOHN ADAIR:** And minor deficiencies -- I'm going to use the
27 right term. Minor deficiencies are actually part of the process; that's something that's
28 understood will exist at substantial completion, right?

1 **MR. JOHN MANCONI:** Yeah. And there's a process to deal with
2 those.

3 **MR. JOHN ADAIR:** Right. And I just ask you that in addition to
4 those minor deficiencies, there were also more significant problems. So for example,
5 you still didn't have 34 vehicles.

6 **MR. JOHN MANCONI:** I would have to double check at that time
7 what the vehicle count was, but yeah, I'll go with that.

8 **MR. JOHN ADAIR:** That sounds right, eh?

9 **MR. JOHN MANCONI:** I believe so.

10 **MR. JOHN ADAIR:** Okay. And there were also ongoing and
11 substantial reliability problems with the vehicles that you did have.

12 **MR. JOHN MANCONI:** So we had a mix. And on the vehicle
13 count were there 34 physical vehicles there? I believe there were. We would have to
14 check the records of what state were the final signoff. Were there minor deficiencies on
15 those vehicles, and so forth. And the same with the reliability. As you know, reliability
16 across the fleet was increasing dramatically and we had multiple inputs on that in terms
17 of the reliability of the fleet.

18 **MR. JOHN ADAIR:** Okay. So when you say "reliability of the fleet"
19 let's just do this. First of all, there were 34 vehicles that existed in the sense that they
20 had been built but you didn't have 34 available for use; and someone will correct me if
21 I'm wrong.

22 Lets separate that out from reliability for a moment. Of the vehicles
23 that were available for use, I'm going to suggest to you that even right up until the very
24 day of substantial completion, there were significant reliability problems.

25 **MR. JOHN MANCONI:** Well, the testing that demonstrated, for
26 example, 15 double vehicles, they had very successful dates with those vehicles.

27 **MR. JOHN ADAIR:** Okay. Let's see if we can be ---

28 **MR. JOHN MANCONI:** And the score cards support that.

1 **MR. JOHN ADAIR:** I'm sorry, go ahead.

2 **MR. JOHN MANCONI:** And the score cards support that.

3 **MR. JOHN ADAIR:** Okay. I'm going to see if we can be a little
4 more specific.

5 Can we get, please, COW593687?

6 **--- EXHIBIT No. 193:**

7 COW0593687 – WhatsApp Chat Log 16 July 2019 to 9
8 October 2019

9 **MR. JOHN ADAIR:** And Mitchell, if I can ask you to scroll down to
10 July the 25th. And I'm just going to get it up on my screen as well because unfortunately
11 I don't have the page numbers for you. I apologize.

12 So Mr. Manconi, first of all, this is a WhatsApp chat group that you
13 were part of.

14 **MR. JOHN MANCONI:** Yes. I believe that's the operational --
15 what's -- I don't know if it's the operational one or another one, yeah.

16 **MR. JOHN ADAIR:** Yeah, I'll tell you. So this is the one that I'm
17 going to call LRT updates, because I believe that's the name you assigned it when you
18 created it, and this is the ---

19 **MR. JOHN MANCONI:** Okay.

20 **MR. JOHN ADAIR:** --- one that includes Mr. Kanellakos and Mr.
21 Alan Hubley and others, not the City operational team and the IAT, okay?

22 **MR. JOHN MANCONI:** Fair enough.

23 **MR. JOHN ADAIR:** And if you go down to the entry -- if you just
24 look at the entry, rather, that's at the bottom of the page in front of you, July 25th, 10:13
25 a.m., you say, "So a bunch of updates, first, on launch data."

26 And this is the 25th. Substantial completion, just so you know, was
27 certified on the 26th. The City supported it on the 26th, and it was certified on the 26th.

28 **MR. JOHN MANCONI:** Correct.

1 **MR. JOHN ADAIR:** On the 25th, so the day before:

2 "First on launch data. Today was the first day where
3 we applied very stringent PA requirements on what
4 constitutes vehicles that are revenue service ready.
5 Unfortunately, RTM did not do well. Only four
6 vehicles are on the line." (As read)

7 That's 4 out of 15?

8 **MR. JOHN MANCONI:** Fifteen (15) is only for morning peak or
9 afternoon peak, so there are times that we only have 4 vehicles on the line, we have 11,
10 we have 7. It's different periods of the day and we -- that there's different vehicles on
11 the line.

12 **MR. JOHN ADAIR:** Right. And what you were saying is, when you
13 talk about the morning launch on that day, and that being the first day where you apply
14 the stringent PA requirements for what constitutes revenue service ready, it's 4 of 15,
15 correct?

16 **MR. JOHN MANCONI:** If it was a weekday, that's what they would
17 have been mimicking before we did the adjustment to 13, correct.

18 **MR. JOHN ADAIR:** And it was a weekday, I can tell you. I believe
19 it was a Wednesday.

20 And that's the day before substantial completion is accepted, you
21 had 4 of 15? And then if we go down to July 26th -- just pause there for one second --
22 July 26th, right in the middle of page 12, 12:00 p.m., Matt Gravel, who's in -- might be
23 Gravel -- who's in the mayor's office, he says to you, "How did the launch go this
24 morning?"

25 You respond at 12:33 p.m., "Five trains. Other did not meet launch
26 criteria."

27 Do you see that?

28 **MR. JOHN MANCONI:** Yes.

1 **MR. JOHN ADAIR:** So on the day before substantial completion
2 was accepted, and on the day substantial completion was accepted, the results were in
3 the neighbourhood of 4 or 5 out of 15 trains, correct?

4 **MR. JOHN MANCONI:** Yes, but we would need to drill down into
5 why they weren't launched. There are ---

6 **MR. JOHN ADAIR:** So ---

7 **MR. JOHN MANCONI:** --- inspection sheets that get conducted in
8 the morning and you could have had a dirty train, so we could have been very
9 prescriptive -- and it appears that's exactly what we're doing here -- to say, "Let's mimic
10 if we were going to have zero deviation from the morning inspection sheet."

11 So you could have a train that wasn't washed, you could have had
12 a vehicle that wasn't cleaned inside, you could have had some issue, a ripped seat, or
13 so forth. So that could have been what we were doing at that point in time.

14 **MR. JOHN ADAIR:** So you'd agree with me, you don't really need
15 to drill down into the nuances of why you were at 33 or slightly less than 33 percent of
16 your trains being available for launch? That's just a bad day and it indicates poor
17 reliability; do you agree with that?

18 **MR. JOHN MANCONI:** No, because my earlier statement is
19 important. Again, I didn't read all of it, but I said we were -- if we could scroll back up ---

20 **MR. JOHN ADAIR:** I'm sorry. Go back to the top, please? Yeah.

21 **MR. JOHN MANCONI:** Yeah. So there's important words in there.
22 This is an important exercise that mimics the trial running environment. So they have
23 some work to do to ensure vehicles are ready for morning launch. That's called making
24 score. So was everything done on that inspection sheet?

25 So I don't know what was the problem there. The vehicle could
26 have been perfectly reliable, but we were doing a very rigid review of inspection sheets
27 at this point.

28 **MR. JOHN ADAIR:** All right. And the people you were reporting to

1 on this chat thread were Mr. Hubley, who is the Chair of the Transit Commission?

2 **MR. JOHN MANCONI:** Correct.

3 **MR. JOHN ADAIR:** And Mr. Serge Arpin, who was the mayor's
4 chief of staff?

5 **MR. JOHN MANCONI:** He was on that, yes.

6 **MR. JOHN ADAIR:** Mr. -- is it Gravel or Gravel?

7 **MR. JOHN MANCONI:** Gravel.

8 **MR. JOHN ADAIR:** Gravel, I'm sorry, Mr. Gravel and Mr.
9 Armbruster we see there, who are also in the mayor's office?

10 **MR. JOHN MANCONI:** Yes, and Mr. Kanellakos.

11 **MR. JOHN ADAIR:** Right. So the higher ups, if I can put it that
12 way?

13 **MR. JOHN MANCONI:** This was me reporting to my boss and the
14 mayor and the chair and their staff the status and progress that we had on this very
15 important project, yes.

16 **MR. JOHN ADAIR:** Right. And if the issue had been that the
17 inspection sheets weren't filled out or that a train was dirty, you would have told them
18 that?

19 **MR. JOHN MANCONI:** Not necessarily.

20 **MR. JOHN ADAIR:** You would not want to reassure the mayor and
21 the chair of the Transit Commission on the very day that you were to substantial
22 completion, that in fact, launching 5 out of 15 trains was fine because it was an issue of
23 dirtiness or cleaning or something like that?

24 **MR. JOHN MANCONI:** May have done that later on in the day.
25 One of the things I do is, if I don't have all the information, I don't pass it on until it's
26 been verified.

27 **MR. JOHN ADAIR:** All right. And then if we go down to -- sorry, if
28 we just stay with your July 25th 10:13 message ---

1 **MR. JOHN MANCONI:** Yes.

2 **MR. JOHN ADAIR:** --- the next -- you say at the outset of the
3 message, you say, "A bunch of updates, and the first is the launch date."

4 I'm going to take you now to the second where it says, "On
5 substantial completion," so about three lines down on the second page, in the middle of
6 the page.

7 **MR. JOHN MANCONI:** Yes.

8 **MR. JOHN ADAIR:**

9 "On substantial completion, one letter is problematic,
10 so a legally binding contract letter is being sent to
11 them in a bit stating our requirements. The issue is
12 with software that provides the camera feeds to the
13 operator ensuring that all doors are clear, and they're
14 the same software drives all the data to the customer
15 signs and station announcements. It is not
16 functioning and needs to be corrected, as it is safety
17 related." (As read)

18 You see that?

19 **MR. JOHN MANCONI:** Absolutely.

20 **MR. JOHN ADAIR:** And that was a -- there was -- in addition to the
21 reliability problems, whatever the cause of them were -- there was also a safety issue?

22 **MR. JOHN MANCONI:** No. There was an issue with the camera
23 that was brought up and it was serious enough that my direction to the entire team was
24 that if there was not a mitigation measure that was put forward by RTG that was
25 validated by the independent assessment team, my chief safety officer who worked for
26 me, who was directly reporting to me, and all his operational experts, if that mitigation
27 measure did not meet with their approval, we would not proceed to trial running and we
28 would stop everything immediately, including substantial completion and the launch of

1 the rail system.

2 **MR. JOHN ADAIR:** Okay. Let's just clarify one thing. You must
3 not have said, "We're going to stop substantial completion," because the very next day,
4 you accepted substantial completion before the problem had been solved.

5 **MR. JOHN MANCONI:** The -- it was up to Mr. Morgan to ensure
6 that if they were going to bring forward a mitigation measure, we could issue substantial
7 completion, so he worked those mechanics out accordingly.

8 **MR. JOHN ADAIR:** Right. And the way that the problem of not
9 having enough vehicles and reliability issues and the safety issue here not yet being
10 fully functional, the way that those problems that would prevent substantial completion
11 were solved is the parties entered into an agreement that substantial completion could
12 take place despite those issues, correct?

13 **MR. JOHN MANCONI:** My recollection of it is that there was nine
14 minor deficiencies identified. Seven of them had to be mitigated before -- sorry, seven
15 of them had to be addressed before trial running, and I believe two were mitigated,
16 something like -- in that order.

17 **MR. JOHN ADAIR:** And I don't want to get hung up on
18 nomenclature here, but when you talk about "minor deficiencies", let's just be clear,
19 what you did is, you agreed either to defer some of these issues or to treat them as
20 minor deficiencies, correct?

21 **MR. JOHN MANCONI:** We treated them accordingly and we
22 assigned what needed to be done to address them.

23 **MR. JOHN ADAIR:** Okay. Let's come at it a different way.

24 The last substantial completion application in May of 2019, which
25 the City rejected, one of the reasons for rejecting it was the City's position was, we
26 needed all 34 trains available for use, right?

27 **MR. JOHN MANCONI:** Yes.

28 **MR. JOHN ADAIR:** And you didn't have that as of July 26th, right?

1 **MR. JOHN MANCONI:** I don't know what was in that letter. I don't
2 recall, and I don't know where we were with the vehicle count at that point.

3 **MR. JOHN ADAIR:** Okay. Take my word for it that you didn't have
4 34 trains that were available for use on July 26th. And I'm going to suggest to you that
5 the way the City solved that problem is by entering into the substantial completion
6 agreement.

7 **MR. JOHN MANCONI:** Okay.

8 **MR. JOHN ADAIR:** Is that fair?

9 **MR. JOHN MANCONI:** Fair enough.

10 **MR. JOHN ADAIR:** And Mr. Holder's evidence was that without the
11 substantial completion agreement, the requirements for substantial completion would
12 not have been met. Do you accept that as accurate?

13 **MR. JOHN MANCONI:** Yes.

14 **MR. JOHN ADAIR:** So rather than do what you had done the last
15 time and say, "No, we're insisting on the contract requirements for substantial
16 completion," what the City did is, it entered into an agreement to either defer or treat as
17 minor the issues that had caused -- that would otherwise have caused you to miss
18 substantial completion, right?

19 **MR. JOHN MANCONI:** We did what are done on these large-scale
20 projects that ensured that we had everything documented as minor deficiencies that
21 could be addressed.

22 **MR. JOHN ADAIR:** And what changed, sir, between May of 2019
23 and July of 2019 in terms of why 34 vehicles were required in May but not in July?

24 **MR. JOHN MANCONI:** So we knew that ridership was declining.

25 **MR. PETER WARDLE:** Sorry, if I could interject here?

26 **COMMISSIONER HOURIGAN:** Stand by. Go ahead.

27 **MR. PETER WARDLE:** So Mr. Adair continues to put to the
28 witness that there were -- 34 vehicles were not available in July. The witness has said a

1 number of times that he doesn't know.

2 I just want Mr. Adair to be very careful when he puts the suggestion
3 to Mr. Manconi that 34 were not available in July.

4 **MR. JOHN ADAIR:** Fair enough. And let me just -- to the extent
5 that I'm properly understanding Mr. Wardle's interjection, let me clarify one thing
6 because we have done this already but I want to be -- remind you, 34 vehicles were
7 built and existed but not available for use, okay? That's what I believe we're going to
8 see as we go forward.

9 **COMMISSIONER HOURIGAN:** All right.

10 Mr. Wardle, anything else?

11 **MR. PETER WARDLE:** No, thank you, sir.

12 **COMMISSIONER HOURIGAN:** Okay.

13 **MR. JOHN ADAIR:** Mr. Manconi, in any case, let's just talk for a
14 minute about who made the decision. Let's start with this. You recall that there was
15 substantial agreement entered into?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. JOHN ADAIR:** Sorry, a substantial completion agreement?

18 **MR. JOHN MANCONI:** Yes.

19 **MR. JOHN ADAIR:** And you'll recall that it required some degree
20 of modification of the requirements and the Project Agreement, correct?

21 **MR. JOHN MANCONI:** No, not necessarily. That's not how I view.
22 It's not different than when you take occupancy of a new house and there's minor
23 deficiencies. You and the builder do your walkthrough and you come up with a list, and
24 you've agreed to move into your house. As ---

25 **MR. JOHN ADAIR:** All right. Let's ---

26 **MR. JOHN MANCONI:** My staff -- my staff was tasked to put
27 together the minor deficiency list and to document what needed to be done with that list.
28 And that was all in accordance with accepted practices, project management practices,

1 ensuring that the City was protected. As you know, we held back funds for the vehicles,
2 and so forth, so.

3 **MR. JOHN ADAIR:** All right. Let's move forward to RSA and we'll
4 come back -- or sorry, trial running, and we'll come back to that. We can take that
5 down, please, Mitchell, thank you. Trying to sort of piece this together, Mr. Manconi, in
6 a sensible fashion, there were trial running criteria that were agreed upon in 2017. Do
7 you recall that?

8 **MR. JOHN MANCONI:** Yes, I do.

9 **MR. JOHN ADAIR:** And then Mr. Slade evidence before the
10 Commission is that he came on in his role for OLRTC, which I'll sort of use
11 interchangeably with RTG just for present purposes, in 2018, and then he developed a
12 set of criteria for use for trial running in 2019. Do you understand that to be his
13 evidence?

14 **MR. JOHN MANCONI:** I don't know if he said that. I don't know
15 who was involved in developing that new criteria.

16 **MR. JOHN ADAIR:** Okay. I think that's a fair statement of his
17 evidence. If I've got it wrong, someone will correct me. And I'll just ask you to accept
18 that that's what he said for present purposes, okay?

19 **MR. JOHN MANCONI:** Absolutely.

20 **MR. JOHN ADAIR:** Mr. Holder, who was in -- working for you,
21 correct?

22 **MR. JOHN MANCONI:** No, he worked for Mr. Morgan.

23 **MR. JOHN ADAIR:** Sorry, for the City. I apologize.

24 **MR. JOHN MANCONI:** He worked for Mr. Morgan under the Rail
25 Office, yes. And Mr. Morgan reported to me.

26 **MR. JOHN ADAIR:** And his evidence was that he signed off on the
27 2019 criteria. Do you have any reason to dispute that?

28 **MR. JOHN MANCONI:** Yes, I do.

1 **MR. JOHN ADAIR:** All right. And what's the basis for disputing
2 that evidence?

3 **MR. JOHN MANCONI:** Because when this issue of why the criteria
4 had moved from what the City had agreed to, which was 96 percent, nine days out of
5 12, fully documented in 2017, my recollection when this subject -- the request to move
6 back to that came up, one of the issues that I specifically recollect was that those in the
7 room, after all of the preparatory work we had done, and governance and oversight in
8 terms of the launch system and the program, somebody said the documentation was
9 not signed off. And that's when I asked to back, and I wanted to understand why we
10 had moved to this 98 percent, who had worked on it, why wasn't the document signed.
11 And I know you've seen emails that speaks to me asking for that information.

12 **MR. JOHN ADAIR:** All right. Let's try to deal with that. First of all,
13 your understanding on day 1 of trial running was that the criteria was the 96 percent that
14 had been signed off on in 2017?

15 **MR. JOHN MANCONI:** So I know when I gave testimony, I
16 struggled with remembering what exactly we went into launch on, and that's because
17 there was a lot going on. I do recollect that I said to my staff, "We're good to go." I had
18 been briefed on the 96 percent. I don't recollect -- and that's not to say that it didn't
19 happen -- on the 98 percent. And so obviously we're measuring at the 98 percent when
20 we started the launch.

21 **MR. JOHN ADAIR:** All right. And you were aware -- whether you
22 remember it now, you would have been aware at the time that you were measuring on
23 98 percent.

24 **MR. JOHN MANCONI:** That's what the scorecards were reporting
25 on, yes.

26 **MR. JOHN ADAIR:** And you were otherwise aware of that through
27 your discussions with your team and you understood that that's where the threshold
28 was?

1 **MR. JOHN MANCONI:** Yeah, I struggled a lot to remember all
2 those percentages because there was a lot of detail back and it was many years ago,
3 but yes, that's -- when I look back and, you know, heard everything that I've heard in the
4 last couple of weeks, we were measuring to 98 percent. I mean I don't know all those
5 score cards by line item as some other people did. I relied on my technical staff for that.

6 **MR. JOHN ADAIR:** Right. And the scorecards all refer to 98
7 percent, correct?

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN ADAIR:** And you saw those at the time?

10 **MR. JOHN MANCONI:** I -- no, actually, the way the system
11 worked, the governance was, there would be a reporting through from Troy and the
12 team and Richard on what the score from the previous day was. I believe that meeting
13 occurred at 2:00 p.m. each day, or shortly thereafter, because that team was working to
14 address the scorecard and they would come in and they would say whether it was a
15 pass or a fail. To be frank with you, pass/fail was what I was interested in. The
16 numbers mattered but I was looking for, "Did they pass or did they fail?"

17 **MR. JOHN ADAIR:** All right. If we can call up, please, a
18 document, COMH18.

19 **--- EXHIBIT No. 194:**

20 COMH0000018 – Text Messages between Troy Charter and
21 Richard Holder July and August 2019

22 **MR. JOHN ADAIR:** If we can go to page 4 of 30, please. And just
23 scroll down one more. This is a series of text messages, Mr. Manconi, between Charter
24 and Mr. Holder. And I know that weren't an author or recipient of these, so I'm not
25 asking you whether they are -- you know, whether you recall sending them, or seeing
26 them, or anything like that. But Mr. Holder sent Mr. Charter a text message on August
27 6th:

28 "FYI, John is not going to move off the 98 percent."

1 (As read).

2 Do you recall discussing with either Mr. Holder or Mr. Charter in
3 and around that time of the possibility of moving off of the 98 percent threshold and
4 saying, "No, I'm not moving off that"?

5 **MR. JOHN MANCONI:** During the testing, my recollection is that
6 Mr. Lauch brought up, "Would the City consider reverting to what everyone had
7 originally agreed to in 2017," which was a very high threshold of 96 percent -- going
8 back to that. I immediately said, "I will need to review this with my team to understand
9 what it means." This is the point that I mentioned earlier on. I -- this is where the issue
10 of whether or not the document was signed off or not and I said I wanted to meet with
11 my team, my experts; I wanted to see 98 percent agreement; I wanted to see the 96
12 percent agreement.

13 Either way, 96 or 98 is a very high threshold but I did not give them
14 an answer and I do not know why my staff are commenting on whether I was going to
15 move off the 98 because my decision-making framework was to have input from
16 everyone across that table, including the advisors, chief safety officers, technical staff,
17 and also to look at what the agreements said. So I cannot comment on what that text is
18 about.

19 **MR. JOHN ADAIR:** Yeah. I mean I don't need you to comment
20 specifically on why Mr. Holder sent that to Mr. Charter, but at any point did you say to
21 either Mr. Holder or Mr. Charter, or anybody else on your side of the fence, "We're not
22 moving off the 98 percent"?

23 **MR. JOHN MANCONI:** I do not recollect making that statement.

24 **MR. JOHN ADAIR:** Okay. Are you -- is that -- just to be clear, is
25 that, "It may have happened; it may not have happened," you just don't recall? Or is
26 that you saying, "I specifically don't think I made it"?

27 **MR. JOHN MANCONI:** That was in 2019. I don't recall if I made
28 that statement.

1 **MR. JOHN ADAIR:** Right. Now, if we can go, please, to a different
2 set of chat messages. The document ID is STV2337. And if we can go, please, to
3 page 4, message 75. And if I can ask, Mitchell, just to expand it for Mr. Manconi. There
4 we go. Mr. Manconi, you wrote the next morning to your team. And you wrote to
5 Michael Morgan and said:

6 “Michael, two things. Can you send us the language
7 on the PA relating to the 98 percent? I want a
8 meeting with me, you, Troy, Joe, Pat, Larry, Tom, et
9 cetera, immediately following ops readiness.” (As
10 read).

11 **MR. JOHN MANCONI:** Yes.

12 **MR. JOHN ADAIR:** And I don't -- I don't see, Mr. Manconi,
13 anybody suggesting that there was any confusion or uncertainty about whether the 98
14 percent agreed upon. Are you aware of any document where anyone expresses
15 confusion or uncertainty about whether that 98 percent had been agreed upon?

16 **MR. JOHN MANCONI:** No, as I said before, at the time, when I
17 asked, “Why did we move to 98 and who did the work to getting it to 98?” --
18 remembering that we had an expert team to put together the 96 and we had full sign-off
19 from RTG and RTM, OLRTC -- all parties -- to use the 96, which is a very high
20 benchmark -- I asked why the 98, and this lines up with what I've just told you. I asked
21 to see the language. That was my style. I wanted to know what was involved, who did
22 what, why. And then obviously we had a meeting and we looked at it and considered
23 the decision and we moved forward on it, with input from everyone.

24 **MR. JOHN ADAIR:** I think that's right, if we can just go down to
25 message 117, please. There's a text from you there or a chat message from you there.
26 You ask for a meeting with Peter Lauch and Matt Slade -- or you ask your colleagues to
27 attend a meeting with Peter Lauch and Matt Slade the next day at your office at 12:30.
28 So that would be around August 9th.

1 **MR. JOHN MANCONI:** Correct.

2 **MR. JOHN ADAIR:** And that meeting took place?

3 **MR. JOHN MANCONI:** It probably did.

4 **MR. JOHN ADAIR:** And Mr. Slade testified that at that meeting,
5 the City pulled out the 2017 criteria and suggested reverting to those criteria. Do you
6 recall that?

7 **MR. JOHN MANCONI:** I recall that.

8 **MR. JOHN ADAIR:** All right. Do you say it didn't happen?

9 **MR. JOHN MANCONI:** My recollection of this, as I stated before,
10 is that the request to revert back to the 96 came from RTG. I believe it was Mr. Lauch.
11 That is my recollection of it.

12 **MR. JOHN ADAIR:** All right. And then if we just go back -- well,
13 just one more. Let me deal with one more on this and then we'll come back for a
14 second. If we just go down to message 259, which is page 12, this is Mr. Prendergast --
15 he saw this text earlier today -- affirming the commitment of all parties to achieve 98 per
16 cent plus. And this is on the 14th, so five days after the meeting. Do you see that?

17 **MR. JOHN MANCONI:** Sorry, you're at 259?

18 **MR. JOHN ADAIR:** Yeah. And take a minute to read it, Mr.
19 Manconi. I don't want to be unfair to you, obviously. I just want to give you the
20 summary first.

21 --- A short pause

22 **MR. JOHN MANCONI:** Yes, so this ties into the advice that we
23 spoke about earlier on, where it was focus and flood the system with technicians and
24 resources. And part of our discussions with RTG at the time -- because they were very
25 receptive to our advice. We had experts that had launched rail systems, and we said,
26 "Have technicians at both ends", as you've seen here. "Have technicians on the
27 vehicles. Flood the system with techs", not just because it's Ottawa and it's a busy
28 system, but that's what you do when you launch a new system. You over-resource and

1 then you peel those resources back. So this is a positive statement that it looks like in
2 12 hours they're realizing that, "Yeah, we've been right all along, and we can get them
3 to cooperate and add those resources."

4 **MR. JOHN ADAIR:** Right. And just the part I'm focusing on is Mr.
5 Prendergast, who is one of the outside experts, affirms the commitment on the 14th of
6 August to 98 per cent plus performance. Do you see that?

7 **MR. JOHN MANCONI:** I see that, yeah.

8 **MR. JOHN ADAIR:** So your experts were telling you, or at least
9 operating on the basis, that the target should be 98 per cent, correct?

10 **MR. JOHN MANCONI:** No, that's not how I read that.

11 **MR. JOHN ADAIR:** All right. Mr. Prendergast was asked this
12 morning about it and he said that the experts were not asked about the change
13 specifically from the 2019 criteria to the 2017 criteria. Were you aware of that?

14 **MR. JOHN MANCONI:** I was not aware that that's what he said,
15 but I can assure you that everyone in that room was asked for input and it was a
16 unanimous decision that moving from 98 to 96 had no impact to the reliability and the
17 service outcome promise that the customer was going to get, which was service under
18 five minutes and running from Tunney's to Blair at about, I think, 24 minutes' total travel
19 time. And that 96 per cent was a very, very high target that was something that
20 everyone could support, and I can assure you that everyone in that room agreed to that.

21 Why? That's how we made every single decision in that ramp
22 room. I went around the table, and if anyone objected to it -- and nobody did -- I was
23 not moving forward until we had consensus on it. And I can assure you we had
24 consensus on this matter.

25 **MR. JOHN ADAIR:** When you say everybody in the room agreed,
26 this is the meeting of August 9th?

27 **MR. JOHN MANCONI:** No, I'm saying that we held a meeting with
28 the people that were in that ramp room, which included Mr. Prendergast and others, and

1 we asked, "Here's the request. Here's what the movement would look like, 96 to 98. Is
2 everyone supportive?" And everyone was 100 per cent supportive.

3 **MR. JOHN ADAIR:** Okay. Let's just go back up. I apologize, but
4 Mitchell, if we can just go back up to message 117. Here's your email -- your text,
5 rather, out to the group of people who are going to have the meeting with Peter Lauch
6 and Matt Slade that I was asking you about a moment ago.

7 **MR. JOHN MANCONI:** Yeah.

8 **MR. JOHN ADAIR:** And you see the people you asked to attend
9 are Troy, Michael, Joce, correct?

10 **MR. JOHN MANCONI:** And Joce, yes, my chief of staff.

11 **MR. JOHN ADAIR:** Yes. I'm sorry. And not Mr. Prendergast.

12 **MR. JOHN MANCONI:** Correct.

13 **MR. JOHN ADAIR:** And not anyone from STV.

14 **MR. JOHN MANCONI:** But you're assuming we didn't have other
15 meetings. We had meetings throughout the days.

16 **MR. JOHN ADAIR:** Right. And the meeting that you ---

17 **MR. JOHN MANCONI:** This is a chat room for me to understand
18 what the request -- my recollection of this meeting was, what is the request -- I believe I
19 had asked for the information the day before or the night before. We had obviously
20 looked at it and we were brainstorming as to what the request was and what that would
21 look like. And obviously we've had multiple meetings, as these further chats elaborate
22 on, where we didn't just simply says yes. We also enforced things such as techs and
23 extra resources and more expertise, which you'll see later on, that did evolve and that
24 get committed by very senior levels of the other side of the team, with the CEO of
25 Alstom.

26 **MR. JOHN ADAIR:** So there were multiple meetings among the
27 ramp people to discuss this issue, correct?

28 **MR. JOHN MANCONI:** There could have been. All I'm saying is

1 there was meetings throughout the day. It was a very busy time.

2 **MR. JOHN ADAIR:** Okay. Just help me with whether you recall
3 this accurately or not, and if you don't, you don't. But were there more than one
4 meeting among the people participating in ramp on this issue? Was this a sufficiently
5 significant issue that it would have been talked out multiple times?

6 **MR. JOHN MANCONI:** I can't tell you how many times we talked it
7 out. I can assure you I recall having a meeting with top advisors, including Tom, my
8 chief safety officer, Mr. Jim Hopkins, Troy, Michael, Joce -- those folks -- where we said,
9 "Here is the ask. Let's go around the room. Let's assess and let's make the decision."

10 **MR. JOHN ADAIR:** Right. Mr. Prendergast just doesn't recall any
11 of those discussions, I guess. I mean, that's the only explanation we have for that.

12 **MR. JOHN MANCONI:** I can't comment on his behalf.

13 **MR. JOHN ADAIR:** Fair enough. And if we could just go back one
14 last time to 259 on page 12. After Mr. Prendergast noted his 98 per cent performance
15 on the 14th, not one person among yourself, Troy, Michael Morgan -- anybody else --
16 said, "We've talked about this numerous times, Tom. What are you talking about?"

17 **MR. JOHN MANCONI:** But again ---

18 **MR. JOHN ADAIR:** "We've been through this. We've asked you
19 for your opinion and you're supportive of a move to 96."

20 **MR. JOHN MANCONI:** That's an assumption. This is a chat
21 where we ---

22 **MR. JOHN ADAIR:** It's not an assumption; it's not in there.

23 **MR. JOHN MANCONI:** Correct, but you can't assume that that did
24 not occur in those meetings, or that there wasn't subsequent meetings where we asked
25 for his input.

26 **MR. JOHN ADAIR:** Right. There are five, six, seven responses
27 within half an hour of his texts and nobody responds to say that.

28 **MR. JOHN MANCONI:** That's what it appears like, yes.

1 **MR. JOHN ADAIR:** All right. And then can we just go lastly, on
2 this topic, please, to COW593687? And if I can ask you, Mitchell, please, to go to page
3 5 and to scroll down to August 9th at 4:11 in the afternoon. There we go.

4 So August 9th, Mr. Manconi -- just so you have the timing lined up,
5 August 7th is the day when you ask for the 98 per cent language. August 8th in the
6 evening is the day of the message we just looked at where you call for the meeting with
7 Troy and Michael and Joce. And then August 9th is the day of the meeting with Peter
8 Lauch and Matt Slade where Peter and Matt say you -- or, sorry, Matt says you raised
9 the issue of reverting to the 2017 criteria. And then if we go to your message at 4:11
10 p.m. to the LRT updates group, just before that Mr. Gravel, at 3:58 p.m., asks for an
11 update on the impact of "Wednesday and yesterday, full reset or repeat days".

12 Just pausing there, do you recall that the 7th and 8th were fail or
13 reset or repeat days, according to the scorecard? I can take you to it if you want.

14 **MR. JOHN MANCONI:** Certainly. No, that's fine.

15 **MR. JOHN ADAIR:** All right. They were tough days, and then Matt
16 was asking you for an update of exactly what the impact would be, right?

17 **MR. JOHN MANCONI:** Okay.

18 **MR. JOHN ADAIR:** And then your response is:

19 "It's all part of a bigger strategy that I am bringing you.

20 Hang tight, please. Also, today is going very well."

21 (As read)

22 That's what you said a couple hours after your meeting with Matt
23 Slade and Peter Lauch. Do you see that?

24 **MR. JOHN MANCONI:** Yes.

25 **MR. JOHN ADAIR:** And the strategy that you were bringing to
26 them was to change back to the 2017 criteria.

27 **MR. JOHN MANCONI:** No. Part of the strategy was the issue of
28 the techs, the technicians, to ask RTM, Alstom, RTG, OLRTC, which were in this

1 transition to build, testing, commissioning and launch, to flood the system with extra
2 technicians. And I don't recall when I shared with the mayor's office and the city
3 manager that we were reverting to the 96 per cent. I know that we talked about it. I
4 don't really remember the exact dates. I know that I reported that out when I held the
5 press conference with all of council on the 96 and 98, but this specific one I believe
6 related to when I -- we finally had that moment where Alstom and RTM were committing
7 to massive amounts of technicians and resources, not because the trains were
8 unreliable -- because they had proven in the past that they could run. It was when there
9 was issues, could they respond quickly to the issue out on the track or out on the
10 switch?

11 And that's important foreshadowing to what happened in the fall,
12 because many of those issues would have been addressed had they had the
13 technicians in perpetuity going into the winter, which was our recommendation: to keep
14 them there for a few months and then peel them back. So this was part of the
15 commitment that they had agreed to to do major investment to have additional
16 resources at the maintenance yard so they could have clean scorecards in the morning,
17 they could have techs on vehicles, they could have techs out in the field, and so forth.
18 That's my recollection of what that's about.

19 **MR. JOHN ADAIR:** Okay. Let me see if I can come at this way.
20 Your evidence, just to summarize, is at some point you asked about the 98, and you
21 were told that the 98 may in fact never have been signed off on and that there was a
22 group decision, as a result of that uncertainty -- a group decision to go back to 96. Is
23 that, generally speaking, a fair summary?

24 **MR. JOHN MANCONI:** An important piece is there was a request
25 made to revert back to the agreed-upon 96 per cent, which was a very high standard.
26 We ---

27 **MR. JOHN ADAIR:** Right.

28 **MR. JOHN MANCONI:** --- carefully considered it. Sorry, go

1 ahead.

2 **MR. JOHN ADAIR:** I'm sorry; I'm going to add it in. You learned
3 that there was uncertainty about whether the 98 had ever been signed off on. You
4 asked for more info. There was a discussion of the 96 where RTG asked to go back,
5 and there was a robust discussion among the various experts and powers that be, and
6 ultimately a decision was made to go to 96.

7 **MR. JOHN MANCONI:** And RTG agreed to that, which my
8 understanding now as to why they moved to the 98 was to maximize their monthly
9 payment. They wanted to see if they could hit 100 per cent every day.

10 **MR. JOHN ADAIR:** And you're aware that we have heard
11 evidence from other people who were part of the trial running process.

12 **MR. JOHN MANCONI:** Yes.

13 **MR. JOHN ADAIR:** Mr. Holder.

14 **MR. JOHN MANCONI:** Yes.

15 **MR. JOHN ADAIR:** Mr. Morgan.

16 **MR. JOHN MANCONI:** Yes.

17 **MR. JOHN ADAIR:** Mr. Slade.

18 **MR. JOHN MANCONI:** Yes.

19 **MR. JOHN ADAIR:** And you're aware that we've received some
20 1.5 million documents.

21 **MR. JOHN MANCONI:** Yes, I am.

22 **MR. JOHN ADAIR:** And are you aware, sir, that you are the only
23 witness who has said that there was some confusion over whether it was 98 or 96, that
24 you raised the question of 98 versus 96 and RTG suggested reverting back to the 96,
25 and there was then a robust discussion among all the experts, ultimately landing on a
26 decision to go with 96? Are you aware that you are the only person who has given that
27 evidence?

28 **MR. JOHN MANCONI:** No, I said I was the only one that was

1 confused over the 96/98.

2 **MR. JOHN ADAIR:** Right, and not one other witness has said you
3 were confused over the 98 or the 96.

4 **MR. JOHN MANCONI:** I've said that I was. I said that in my
5 testimony earlier on, if you remember, and Mr. Morgan said he didn't recollect. And
6 you've told me what Mr. Slade had said.

7 **MR. JOHN ADAIR:** Right, and no one has said that there were a
8 series -- or one or more or two or more -- robust discussions where everyone, including
9 the outside experts, like STV, agreed that 96 was more appropriate. No one else has
10 said that. Does that trouble you at all in terms of your recollection?

11 **MR. JOHN MANCONI:** No. That is my recollection.

12 **MR. JOHN ADAIR:** Does it trouble you at all that your recollection
13 has changed from your formal interview to today?

14 **MR. JOHN MANCONI:** Not at all. As I said, I've seen more
15 documents. I've seen some of the testimony. I've seen some of the transcripts. And
16 my memory at the time when I gave that first testimony was I couldn't -- we went into it.
17 I asked if we were set to go. We were set go. Was it 98 or 96? Obviously it was 98.
18 The scorecards reflect that; I'm not disputing that.

19 **MR. JOHN ADAIR:** All right. And you agree with me that the 2017
20 criteria of 96 over 9 of 12 days was easier to meet than the 2019 criteria.

21 **MR. JOHN MANCONI:** We wanted an A and we asked for 96 per
22 cent. They ended up, at the end of the day, with 96.9 per cent -- 97 per cent. These
23 are such minor numbers. We wanted an A on the system. The experts came up with
24 that information. That's wasn't John Manconi. Those were people like you've heard:
25 Joe North, other people, RTG, RTM, OLRTC. All those folks that were involved in that
26 agreement ---

27 **COMMISSIONER HOURIGAN:** Mr. Manconi ---

28 **MR. JOHN MANCONI:** --- they came up with that.

1 **COMMISSIONER HOURIGAN:** --- I think it was a fairly specific
2 question, so I'm going to ask counsel to ask the question of you again and you'll have
3 an opportunity to answer it, all right? Go ahead.

4 **MR. JOHN ADAIR:** You're aware, sir, that the 2017 criteria were
5 easier to meet.

6 **MR. JOHN MANCONI:** It was a lower number to meet.

7 **MR. JOHN ADAIR:** And included 9 of 12 days rather than 12
8 straight.

9 **MR. JOHN MANCONI:** That's what the language in that
10 agreement had, yes.

11 **MR. JOHN ADAIR:** And if we can go to the trial running
12 scorecards again one more time, it's COW270758. And if we can just go to page 5,
13 please, Mitchell, you'll see day one. So July 29th, July 30th, July 31st, and August 1st
14 we're all either fails or repeats, correct, the first four days?

15 **MR. JOHN MANCONI:** Correct.

16 **MR. JOHN ADAIR:** And then if we go to August 3rd, which is page
17 10, that's the first pass day, correct?

18 **MR. JOHN MANCONI:** It appears so, yes.

19 **MR. JOHN ADAIR:** And I'm happy to take you through them if you
20 want to, but August 3rd, 4th, 5th, and 6th were all passes, four straight days, right?

21 **MR. JOHN MANCONI:** Yeah. What were the percentages on
22 those?

23 **MR. JOHN ADAIR:** We can go through them if you like. So
24 August 3rd is on page 10 and the percentage was either 93 or 97 -- I guess 97, based
25 on the handwritten notes.

26 **MR. JOHN MANCONI:** Yeah, 97.

27 **MR. JOHN ADAIR:** And if we go to August 4th, just scroll down --
28 99, yeah. And then August 5th -- 95. And August 6th is 91. Do you see that?

1 **MR. JOHN MANCONI:** Yeah.

2 **MR. JOHN ADAIR:** And August 6th is a pass.

3 **MR. JOHN MANCONI:** You'd have to go to the top there to
4 confirm.

5 **MR. JOHN ADAIR:** Yeah. You see that?

6 **MR. JOHN MANCONI:** Yeah.

7 **MR. JOHN ADAIR:** And 91 is where Mr. Morgan said:

8 "In that territory, you're ruining someone's commute."

9 (As read)

10 **MR. JOHN MANCONI:** So is that the aggregate score?

11 **MR. JOHN ADAIR:** No, that's that day.

12 **MR. JOHN MANCONI:** AVKR.

13 **MR. JOHN ADAIR:** Yeah.

14 **MR. JOHN MANCONI:** Yeah.

15 **MR. JOHN ADAIR:** But it's marked as a pass.

16 **MR. JOHN MANCONI:** Okay.

17 **MR. JOHN ADAIR:** And then if we go to August 7th, August 7th was
18 a very bad day. It fails on the headways. If we can just scroll down a bit, Mitchell,
19 please. Fail on maintenance, one out of two; fail on the kilometres. You're down to 85
20 per cent. You see all that?

21 **MR. JOHN MANCONI:** Yes.

22 **MR. JOHN ADAIR:** August 7th was a bad day, right? Correct?

23 **MR. JOHN MANCONI:** Yes.

24 **MR. JOHN ADAIR:** And August 8th is a restart. Again you fail on
25 the headway and you fail on the kilometres, right?

26 **MR. JOHN MANCONI:** Yes.

27 **MR. JOHN ADAIR:** So of the first 10 or 11 days, you had four
28 passes and the rest were either fails, repeats, or restarts, right?

1 **MR. JOHN MANCONI:** Correct.

2 **MR. JOHN ADAIR:** And if we can just go to one more document,
3 just while we're here. If I can take you, please, to ALS66772. I'm just going to ask,
4 Mitchell, if we can just scroll down to the next email. So just go up so that we can see
5 who's sending it and who's receiving it.

6 **--- EXHIBIT No. 195:**

7 ALS0066772 – Email from Jerome Wallut to Angelo
8 Guercioni et al. 8 August 2019 Re: City Meeting Summary 7
9 August 2019

10 **MR. JOHN ADAIR:** This is an email, Mr. Manconi, from Peter
11 Launch to a huge number of people involved with the RTG partners. It's not an email
12 that goes to you ---

13 **MR. JOHN MANCONI:** Okay.

14 **MR. JOHN ADAIR:** --- but there is a reference to a statement you
15 made at a meeting you participated in that I want to ask you about.

16 **MR. JOHN MANCONI:** Okay.

17 **MR. JOHN ADAIR:** So Mr. Launch says:

18 “Dear Board, I'm taking some licence here and using
19 key parts of Matt Slade's email.” (As read) ...

20 And he says:

21 “This evening we met with Mr. Manconi and his team
22 for a one—hour meeting that lasted two hours. It was
23 a very very difficult meeting.” (As read)

24 This evening being August 7th, which is one of those days we
25 looked at that was a really bad day.

26 **MR. JOHN MANCONI:** Okay.

27 **MR. JOHN ADAIR:** If we can scroll down. First of all, do you
28 remember a one-hour meeting that lasted two hours that involved the RTG reps and

1 was a very difficult meeting?

2 **MR. JOHN MANCONI:** We had thousands of meetings over the
3 five-year period. So I ---

4 **MR. JOHN ADAIR:** Sure. I mean, I expect you may not remember
5 this one anyway, but to be fair, the trial running meetings would be among the most
6 important, right?

7 **MR. JOHN MANCONI:** I was meeting around the clock. I'm not
8 disputing the meeting occurred but ---

9 **MR. JOHN ADAIR:** Understood. And there were some meetings
10 that were quite difficult in the sense of you had to be really strong on RTG, correct?

11 **MR. JOHN MANCONI:** I was always there to protect the City's
12 interest, correct.

13 **MR. JOHN ADAIR:** And if we just scroll down to the paragraph
14 that starts, "The final conversation..."

15 If we stop there, and just go up just a bit, Mitchell. I'm sorry.

16 Alstom left after their presentation. Then there's a brief discussion
17 around deficiencies and then it says:

18 "The final conversation was around the trial running
19 scorecard and how we are trending on lost vehicle
20 kilometres. The message was clear. We are passing
21 but as a passenger experience the days that are
22 passes would be horrendous for the City and public
23 outcry would be brutal as well as from the mayor and
24 council." (As read)

25 Do you remember a meeting where there was a discussion that
26 even the pass days were horrendous in terms of the customer experience?

27 **MR. JOHN MANCONI:** as I said before, I don't remember the
28 specifics of this meeting. I'm not disputing that it occurred.

1 **MR. JOHN ADAIR:** Do you remember a meeting where anyone
2 said, "Look guys, even the days we're passing are actually horrendous"?

3 **MR. JOHN MANCONI:** I don't remember that.

4 **MR. JOHN ADAIR:** Okay. it's consistent at least with Mr. Morgan
5 saying that a day of 91 percent, you've ruined someone's commute. And we just saw
6 91 percent on August 7th, the day of the meeting, right? They're consistent. It's
7 consistent with what Mr. Morgan has said?

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN ADAIR:** And then it says:

10 "The score card for today will be addressed in the
11 committee meeting tomorrow at 2:00 p.m. but we are
12 expecting a fail meaning that you restart from Day 1.
13 We tried to make a case for a repeat as opposed to a
14 restart, another favour we need from the client." (As
15 read)

16 So RTG was putting pressure on you to do them favours and score
17 things differently, right?

18 **MR. JOHN MANCONI:** No.

19 **MR. JOHN ADAIR:** They were not asking you for favours?

20 **MR. JOHN MANCONI:** They were not asking me to score
21 differently.

22 **MR. JOHN ADAIR:** Were they asking the City to score differently?

23 **MR. JOHN MANCONI:** Not that I'm aware of. I don't know what
24 that sentence means.

25 **MR. JOHN ADAIR:** All right. Can we scroll down. Under the --
26 after this general washup on Alstom, the next paragraph.

27 "Manconi made it clear that he wants to know what's
28 in it for me to get you a pass on trial running." (As

1 read)

2 Did you ever say anything to RTG along the lines of “What’s in it for
3 me if I get you a pass?”

4 **MR. JOHN MANCONI:** I don't recall making that statement.

5 **MR. JOHN ADAIR:** Are you saying today that you never would
6 have said that?

7 **MR. JOHN MANCONI:** I do not recall making that statement.

8 **MR. JOHN ADAIR:** Not my question. Is it the case that you would
9 not have said it, or is it the case that you just simply don't recall; it may have happened,
10 it may not have.

11 **MR. JOHN MANCONI:** I would not have said that. I don't recall
12 saying that.

13 **MR. JOHN ADAIR:** Okay. Mr. Lauch is going to testify obviously.
14 But I'm going to suggest to you now in fairness that in fact that that meeting, after
15 another disastrous day of trial running, you said to RTG, “What’s in it for me to get you a
16 pass?”

17 **MR. JOHN MANCONI:** I believe the context, if I connect this letter
18 which I'm just seeing now for the first time. He says, “Another favour we need from the
19 clients...” So is this him saying, “Can you do what he’s saying in that paragraph?” And
20 me being sarcastic and saying, “Why would I do that?”

21 That’s how I'm interpreting that, but again, I don't recall making that
22 statement.

23 **MR. JOHN ADAIR:** Okay. And then just to the extent it helps
24 refresh your memory, he writes:

25 “We have been down that road before. He did bring
26 up the issues of the public eye and the SNC Stage 2
27 issue.” (As read)

28 Do you recall, in the context of talking about whether they would

1 pass on trial running discussing other issues including Stage 2?

2 **MR. JOHN MANCONI:** I don't know what time period. I don't recall
3 when Stage 2 was awarded but I know people were making comments about why would
4 you give SNC Lavalin more work when this project was delayed four times. That was
5 made by many many people in terms of the public perception. And in terms of being
6 down the road before, that lines up with when there is a solution that needs to be made,
7 we always had to view from what's in it for the City, what's in it for the contractor, which
8 is a discussion we would have in terms of things like that.

9 I know that yesterday the discussion that we made, the concession
10 we made was to allow them to go to double vehicles on the weekend. That was a win-
11 win. A win for them, de-risking the project, and that's an example of what's in it for the
12 City.

13 **MR. JOHN ADAIR:** And the last one on this. I'm going to suggest
14 to you that what happened is as you saw on August 7th that you were starting to slide
15 back into days that were bad, and as you saw that even the days that were passes were
16 horrendous, what you did is you suggested to RTG that you could get them a pass by
17 reverting to the old criteria as long as they were prepared to help you out on Stage 2.

18 **MR. JOHN MANCONI:** Absolutely not. I totally disagree with that.

19 **MR. JOHN ADAIR:** And if Mr. Lauch says that that's what
20 happened,. You disagree with him?

21 **MR. JOHN MANCONI:** I disagree with that 100 percent.

22 **MR. JOHN ADAIR:** Okay. Mr. Commissioner, I wonder if now is a
23 convenient time for the afternoon break.

24 **COMMISSIONER HOURIGAN:** It's fine. We'll take the break.

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

26 The Commission will recess for 15 minutes.

27 --- Upon recessing at 3:40 p.m.

28 --- Upon resuming at 3:58 p.m.

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

2 **--- MR. JOHN MANCONI, Resumed:**

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

4 **MR. JOHN ADAIR:** Thank you, Mr. Commissioner and Mr.
5 Manconi.

6 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR, (cont'd):**

7 **MR. JOHN ADAIR:** Mr. Manconi, just before the break when I was
8 asking you about the change in the trial running criteria, one of the answers you gave
9 was that council was briefed on that change, I believe you said.

10 **MR. JOHN MANCONI:** Yes, when I debriefed on the results of the
11 trial running, I told them that our criteria was at 96 percent. RTG wanted 98. And then I
12 gave them the results, but they landed at 96.9 or 97 percent. And then I also told them
13 about the reduction in the train volume counts.

14 **MR. JOHN ADAIR:** Okay. And did you tell them that RTG's
15 project manager -- I don't know if that title is exactly right, but it's close enough -- RTG's
16 project manager, Mr. Slade, had come up with 98 percent prior to trial running?

17 **MR. JOHN MANCONI:** I didn't -- I'll say it again. I did not know
18 who or why the 96 percent got changed to 98. I do not know. I don't know why that
19 was the case. I'm understanding now, apparently, it's to maximize their monthly
20 payment, but I do not know. And 96, 98, 97, those are all fantastic numbers in terms of
21 reliability.

22 **MR. JOHN ADAIR:** And did you tell them that you were unable to
23 hit 96 on a substantial portion of the trial running days?

24 **MR. JOHN MANCONI:** We had days of 99.

25 **MR. JOHN ADAIR:** Not my question. Did you tell them that you
26 didn't hit 96 on a substantial portion of the trial running days?

27 **MR. JOHN MANCONI:** I would have to go back to my notes as to
28 what I said exactly at that briefing.

1 **MR. JOHN ADAIR:** I'm going to suggest to you you didn't tell
2 council that.

3 **MR. JOHN MANCONI:** I don't know if you've been through my
4 briefing notes. I don't know. I can't debate that with you.

5 **MR. JOHN ADAIR:** All right. Let's look at what council did get. If
6 we can go, please, to COW104401 -- what they got in writing, at least. This is a memo
7 to council, Mr. Manconi, you'll see, of August 7th, 2009, and it's signed by Mr. Morgan
8 but it was sent with a c.c. to you, which I can show you if we need it. Generally
9 speaking, you were receiving these emails -- sorry, these memos?

10 **--- EXHIBIT No. 196:**

11 COW0104401 – City of Ottawa Memo from Director, Rail
12 Construction Program to Mayor and Members of Council Re:
13 O-Train Light Rail Transit Stage 1 and Stage 2 Quarterly
14 Update 7 August 2019

15 **MR. JOHN MANCONI:** Again, thousands of memos and emails.
16 Of course, if this went out, I would have received it.

17 **MR. JOHN ADAIR:** Right. And the date is August the 7th, which
18 I'm going to come back to in a minute. If you go -- if we can go to the top of the second
19 page, please, under the heading "Systems Vehicle Testing and Commissioning", so
20 now we're talking about -- more specifically about some of the issues we've been
21 looking at today. There are four bullet points. And you'd agree with me that upon
22 reading those four bullet points, one would think everything was going reasonably well
23 with the systems, the vehicles, the testing, and commissioning?

24 **MR. JOHN MANCONI:** Sorry, the memo is for what now? Can we
25 just go back?

26 **MR. JOHN ADAIR:** Yeah. Yeah, it's for -- it's an update to council.

27 **MR. JOHN MANCONI:** Relating to what topic, sorry? O-Train ---

28 **MR. JOHN ADAIR:** Page 1 and page 2.

1 **MR. JOHN MANCONI:** Oh, it's a combined memo on the quarterly
2 update. Okay, yes.

3 **MR. JOHN ADAIR:** Yeah. So there's a stations update, there's a
4 guideway update, and I'm sort of trying to focus us on the issues we've been talking
5 about so far this afternoon, the systems, the vehicles, the testing, and commissioning.

6 **MR. JOHN MANCONI:** M'hm.

7 **MR. JOHN ADAIR:** And the suggestion I'm making is that if you
8 read those four bullet points, that a reasonable reader would conclude that things were
9 going reasonably well with testing and commissioning.

10 **MR. JOHN MANCONI:** Yes, and that answers your question
11 earlier on about the vehicles also, yes.

12 **MR. JOHN ADAIR:** And there's no sort of reference there to -- as
13 of August 7th, I believe you have five fail days and two pass days. That's not referred
14 to?

15 **MR. JOHN MANCONI:** We were not reporting on the testing.

16 **MR. JOHN ADAIR:** And I actually misspoke, sir. I'm sorry. I think
17 you had four fail days and four pass days, and I put that to you incorrectly, so I
18 apologize.

19 **MR. JOHN MANCONI:** The purpose of this memo was not to
20 update council on testing results. This was a ---

21 **MR. JOHN ADAIR:** Sorry, may I just ask you quick clarity on one
22 thing? But I do want you to answer but I'm confused because it says it's an update and
23 then it says the heading "Systems, Vehicles, Testing, and Commissioning".

24 **MR. JOHN MANCONI:** Yes. So let's go back to the top and let's
25 connect the dots.

26 **MR. JOHN ADAIR:** Sure.

27 **MR. JOHN MANCONI:** Because your opening questions were very
28 important -- governance. The Delegated Authority Report, I believe, speaks to issuing a

1 quarterly update on the program. That's what this memo was about. This was not
2 about updating council on the testing of Stage 1 trial running.

3 **MR. JOHN ADAIR:** Well, then why was there a heading
4 specifically saying "testing" if it wasn't to update on testing? I'm really missing
5 something here.

6 **MR. JOHN MANCONI:** Because ---

7 **MR. JOHN ADAIR:** And it's in the middle of trial running.

8 **MR. JOHN MANCONI:** Because, as you heard Mr. Kanellakos
9 clarify at a council meeting, we had told council we would start testing and report when
10 testing was completed.

11 **MR. JOHN ADAIR:** Well, but then why were you reported on
12 testing at all if testing wasn't completed yet and the commitment was only to report
13 when it was completed?

14 **MR. JOHN MANCONI:** This is a general heading that followed the
15 format of previous memos, is my recollection, and gives updates on where we are
16 across the board on Stage 1 and Stage 2.

17 **MR. JOHN ADAIR:** All right. Can we scroll down to the second
18 page, please. There's a heading, "Path -- keep going -- "Path to Revenue Service
19 Availability".

20 **MR. JOHN MANCONI:** Yes.

21 **MR. JOHN ADAIR:** And there's a specific update there about
22 when trial running started, a specific update there about when RSA was anticipated,
23 and then an update about what would happen following RSA, correct?

24 **MR. JOHN MANCONI:** Correct.

25 **MR. JOHN ADAIR:** So you were giving council some fairly specific
26 about the fact that trial running had started, what was anticipated by way of RSA, and
27 what would happen after RSA, correct?

28 **MR. JOHN MANCONI:** Correct.

1 **MR. JOHN ADAIR:** And nowhere in there does it say, for example,
2 “We had to take a pause”?

3 **MR. JOHN MANCONI:** Again, we had told council we would report
4 when trial running was completed ---

5 **MR. JOHN ADAIR:** All right.

6 **MR. JOHN MANCONI:** --- not during.

7 **MR. JOHN ADAIR:** So let’s take a look ---

8 **MR. JOHN MANCONI:** So Mr. Kanellakos ---

9 **MR. JOHN ADAIR:** Sorry, go ahead.

10 **MR. JOHN MANCONI:** --- was clear to me, we were not going to
11 report. He reminded me of that very important update we had told council, that we
12 would report to them when trial running was completed. And, in fact, he issued the
13 memo when trial running was completed.

14 **MR. JOHN ADAIR:** And I guess on that theory, sir, if the
15 commitment that you and Mr. Kanellakos was, “We will not report until trial running is
16 completed,” then trial running could be completely and utterly disastrous every single
17 day, day after day could be a fail, and there would be no report to council.

18 **MR. JOHN MANCONI:** If it went on for an extended period of time,
19 obviously we’d make a decision on that, but that was our commitment. And council
20 does not get involved in all matters relating to the operational aspects of any operation.
21 And the commitment that Mr. Kanellakos had reminded that we had done to council
22 was, “We were start trial running and we will report when trial running is done.” Now, in
23 your scenario, if it went on for 20, 30 days of disastrous results, could he, as the City
24 Manager, suggest that we should report? Obviously, he could make that decision at
25 that point in time. But at this particular point in time, he correctly reminded me that we
26 were going to report at the end of trial running, which was our commitment we had
27 made to council.

28 **MR. JOHN ADAIR:** And is the issue there just that managing trial

1 running is a process for staff, and the process for council is to be informed when it's
2 over.

3 **MR. JOHN MANCONI:** No, it's more than that. If you had a bad
4 day and you reported that out, it would then generate a bunch of work, a bunch of
5 questions, what exactly happened, why that happened? It would take the focus off
6 what was important, which was monitoring trial running and executing on the trial
7 running process.

8 **MR. JOHN ADAIR:** That's interesting. Let's just follow up on that.
9 So I guess what -- if you had multiple bad days in a row, that would
10 only exacerbate the problem you've just described of questions from council, right?

11 **MR. JOHN MANCONI:** No. That's hypothetical. I'm suggesting to
12 you that the commitment we had made was, we were going to report at the end of trial
13 running, and that's what ---

14 **MR. JOHN ADAIR:** You've told me ---

15 **MR. JOHN MANCONI:** --- we were ---

16 **MR. JOHN ADAIR:** You've told me that, and I appreciate that. And
17 then you went further and said, "If we tell them we're having bad days, we're going to
18 get questions," and my suggestion, following up on that, is if you have multiple bad
19 days, the questions will only increase, right?

20 **MR. JOHN MANCONI:** They could.

21 **MR. JOHN ADAIR:** And council would want to know, "Why are we
22 having multiple bad days? What's being done about it? Do -- decisions being made
23 that need to be made, that kind of thing, correct?"

24 **MR. JOHN MANCONI:** It could happen, yes.

25 **MR. JOHN ADAIR:** And sir, that's exactly the function of council is
26 to say, "This project is now not working. It's not in -- it's not meeting the criteria that
27 have been set. We need to be informed about that so that we can make decisions,"
28 right?

1 **MR. JOHN MANCONI:** Sorry, was that an opinion or is that a
2 question?

3 **MR. JOHN ADAIR:** It's a question. I am putting it to you that the
4 function of council is that when a project like this gets launched for trial running and
5 things are going as badly as they were, council needs to know that so that they can ask
6 those very questions, exercise the oversight that you agreed with me was important.

7 **MR. JOHN MANCONI:** They did do that. They did that through all
8 the many, many reports to FEDCO, Transit Commission, quarterly memos, escalation of
9 issues, public debates about disagreeing with RTG when they were putting out dates
10 that we disagreed with, setting up the IAT team, reporting on alternate solutions that
11 RTG wanted that were -- aren't feasible. We did all that.

12 **MR. JOHN ADAIR:** When was council told that the first three days
13 were so bad you needed to take a pause?

14 **MR. JOHN MANCONI:** I don't believe we did -- said that. Again,
15 we'd have to go look at the notes in terms of what exactly I said and what Mr.
16 Kanellakos' memo said.

17 **MR. JOHN ADAIR:** When was council told that the -- of the first
18 seven or eight days, the results were so bad that you had to consider changing the
19 criteria, whether you raised it or RTG raised it? When were they told that?

20 **MR. JOHN MANCONI:** Well, it wasn't that it was so bad that we
21 had to consider changing the criteria, it was a request that was put to us to revert back
22 to the criteria that was established in 2017 that all parties had agreed upon its
23 professional input.

24 **MR. JOHN ADAIR:** Just for -- well, we'll go down that rabbit hole --
25 just for a moment, in 2017 when those criteria were arrived at, there had been no
26 meaningful testing of sort of the individual component parts, right?

27 **MR. JOHN MANCONI:** What do you mean by the individual
28 component parts?

1 **MR. JOHN ADAIR:** Well, I was -- I don't want to get caught up in
2 that. I mean the testing that occurs before trial running, but let me ask it differently.

3 The problems that we looked at with reliability in the fall of 2018,
4 RTG rushing to completion, problems with the brakes, problems with the doors, the
5 problems that persisted in 2019 and caused you to object to substantial completion, and
6 the IC to agree with you that substantial completion wasn't ready, all the analyses by
7 STV we've seen of the reliability of problems, and the maintenance problems, none of
8 that existed in 2017, did it?

9 **MR. JOHN MANCONI:** The problems, the challenges?

10 **MR. JOHN ADAIR:** No, the specific information you had from your
11 experts and others that you received in the fall of 2018 and into 2019 that I've taken you
12 through here today, obviously, those documents and analyses didn't exist in 2017,
13 correct?

14 **MR. JOHN MANCONI:** Those specific analyses, no.

15 **MR. JOHN ADAIR:** And so by the middle of 2019, when the trial
16 running criteria were re-designed by Mr. Slade, you had a lot more information about
17 what the system was, what had been built and delivered, than you did in 2017, right?

18 **MR. JOHN MANCONI:** We did.

19 **MR. JOHN ADAIR:** And the information you had, whether they
20 were fixed or not, is that up until very recently, there had been serious reliability
21 problems, right?

22 **MR. JOHN MANCONI:** There had been inconsistencies, there had
23 been very good situations, there's been challenging situations, and as I said before, the
24 details matter in terms of the brake example that I gave you. The brakes had a solution
25 to them. It was a training issue. The deployment of vehicles, the vehicles were -- the
26 reliability was improving.

27 Did they have a yardmaster? Did they have the proper people at
28 the right time? Was there shifts set up? Were they flooding the system with technicians

1 as we had suggested?

2 So it's a variation of those things. And the thing with modern
3 railroads is, it's an integrated system with complex elements that need to be looked at
4 holistically. But the framework for 2017 was, the task was simple. There was no
5 specific criteria in the Project Agreement. We, the City, took the initiative to establish
6 we wanted a measuring tool, and we tasked professionals to come up with what do
7 other agencies do? What do you recommend, given our system? And they came up
8 with 96 percent 9 days out of 12.

9 For some reason, Mr. Slade wanted 98 percent. I cannot speak on
10 his behalf. I don't know why he wanted that. You've told me that that's what he wanted.
11 I cannot speak on his behalf. Ninety-six (96) is an A, 98 is an A, they landed at 97.

12 **MR. JOHN ADAIR:** All right. Let's see if we can just go to a
13 document here. Mitchell, if I could ask you please to call up COW366, please?

14 Do you recognize this document, Mr. Manconi?

15 **--- EXHIBIT No. 197:**

16 COW0000366 - Draft City of Ottawa Memo from General
17 Manager to Mayor and Members of Council et al. Re: RTG
18 postpones Trial Running 31 July 2019

19 **MR. JOHN MANCONI:** Again, thousands, as you've said -- what
20 did you say, millions of documents? Yes, it's a document that we published.

21 **MR. JOHN ADAIR:** Let's try to do a little better than that. This is a
22 document you were specifically asked about when you were interviewed by
23 Commission counsel. Of the very few documents you were asked about, this is one of
24 them?

25 **MR. JOHN MANCONI:** Oh, yes. Okay. Yes, that's the one that
26 did not go to council, yes.

27 **MR. JOHN ADAIR:** Yeah, and you -- I am sure you reviewed this
28 in preparation for giving evidence today?

1 **MR. JOHN MANCONI:** I have seen it, yes.

2 **MR. JOHN ADAIR:** And this is a memo that was drafted under
3 your name. If you scroll to the second page, you'll see -- top of the second page, we'll
4 see your name, and if we go back up to the top of the first page so we can kind of get
5 the date and who's it's going to, and whatnot, this is a memo that you prepared in draft
6 to go to mayor and council?

7 **MR. JOHN MANCONI:** Correct.

8 **MR. JOHN ADAIR:** July 31st of 2019?

9 **MR. JOHN MANCONI:** Yes.

10 **MR. JOHN ADAIR:** And the purpose of the memo was to advise
11 the members of council that the first few days of trial running had not gone well, and that
12 a pause needed to be taken, correct?

13 **MR. JOHN MANCONI:** Yes.

14 **MR. JOHN ADAIR:** And this was never sent to council?

15 **MR. JOHN MANCONI:** That's correct.

16 **MR. JOHN ADAIR:** And the reason it wasn't sent to council is
17 because you and Mr. Kanellakos and the other members of the LRT updates chat group
18 didn't want the questions to be raised that you referred to a few moments ago?

19 **MR. JOHN MANCONI:** So I don't know if that's in the chat room. I
20 don't recall it being in a chat room. I do recall Mr. Kanellakos -- and it took me a while
21 because it was a while ago -- that when he gave his update council, he was absolutely
22 correct in that he reminded me, he said, "John, our commitment to council, when we
23 told them what we were doing was, we would let them know when trial running was
24 completed. We are not going to be issuing that memo."

25 And I agreed with him.

26 **MR. JOHN ADAIR:** And in exercising -- before he reminded you of
27 that, in exercising the judgement that we talked about at the outset of my examination of
28 you, when you were exercising your judgement, you felt it appropriate and necessary to

1 draft this memo updating council on the state of affairs?

2 **MR. JOHN MANCONI:** I have a track record of overinforming.
3 That's generally been my style. And I thought at the time that this would be helpful --
4 and if we could scroll down, I'd like to see more of the memo to refresh my memory -- I
5 thought it would be helpful to say, "Yeah, we are using the provisions of the agreement
6 to pause," and we told them what had occurred. Mr. Kanellakos being the City manager
7 and my boss, reminded me of what we had told council and that's what we were going
8 to do, was not issue the memo.

9 **MR. JOHN ADAIR:** And in not issuing the memo, Mr. Kanellakos
10 ensured that the kinds of questions about what was going wrong and why would not be
11 asked by council, right?

12 **MR. JOHN MANCONI:** I can't speak on his behalf.

13 **MR. JOHN ADAIR:** All right. What was happening at the same
14 time, sir, July 31st, the very day that this memo was intended to be sent to council to
15 inform them of what was going on, and right around the same time that Mr. Kanellakos
16 told you not to send it, you were giving daily and in some cases hourly updates to Mr.
17 Hubley and the mayor?

18 **MR. JOHN MANCONI:** (Audio problem) as general manager, it
19 was to keep them apprised of generally how things were going. Those chat rooms
20 were set up. There was an operational one. That was to create the cadence needed
21 with operational matters in City hours, whether it was 5:00 in the morning, midnight, and
22 so forth, and the other one with Chair Hubley, Mr. Kanellakos, the Mayor, the Mayor's
23 Chief of Staff, the Mayor's staff, was to give them general updates on how things were
24 going.

25 **MR. JOHN ADAIR:** And why within the governance structure
26 where staff handles the day-to-day up to a point and then beyond that point it has to go
27 to either FEDCO or the transit Commission; why would you be updating only the Mayor
28 and Mr. Hubley and not anyone else? I find that puzzling.

1 **MR. JOHN MANCONI:** Well, I think you've answered yourself; one
2 was the Chair Transit Commission and one was the Chair of FEDCO and one was my
3 boss and they were general updates to give them awareness of where we were.

4 **MR. JOHN ADAIR:** And why are the only people who are
5 deserving of or entitled to those updates the Chair of the Transit Commission and the
6 Chair of FEDCO, rather than FEDCO and the Transit Commission?

7 **MR. JOHN MANCONI:** I didn't say they were entitled to it, sir.

8 **MR. JOHN ADAIR:** They asked for it?

9 **MR. JOHN MANCONI:** We set that up to inform them.

10 **MR. JOHN ADAIR:** I'm sorry, my question was, did they ask you
11 to do that?

12 **MR. JOHN MANCONI:** We set it up to keep them informed.

13 **MR. JOHN ADAIR:** Sir, you are well aware that that is not my
14 question. Did they or did they not ask you to set it up for that purpose?

15 **MR. JOHN MANCONI:** I don't recall if they asked; they would ask
16 for regular updates and this was a mechanism that we set up to give them an update on
17 where we were with this process.

18 **MR. JOHN ADAIR:** All right. And the people – just so we're clear,
19 when we say "they asked for regular updates", the people we're talking about are
20 specifically the Mayor and Mr. Hubley?

21 **MR. JOHN MANCONI:** The Mayor, the Chair – Chair Hubley and
22 Mr. Kanellakos; of course those were their committees and their files and they asked for
23 updates, yes. Do I – I don't specifically remember whether it was our idea or it was in
24 response to them wanting to know how to keep them informed in general terms.

25 **MR. JOHN ADAIR:** And you agree with me that FEDCO is a
26 committee, meaning more than one person?

27 **MR. JOHN MANCONI:** Yes.

28 **MR. JOHN ADAIR:** And the Transit Commission also has more

1 than one Commissioner?

2 **MR. JOHN MANCONI:** Yes.

3 **MR. JOHN ADAIR:** And one of the ways that FEDCO is effective
4 as a committee is there's more than one voice in the room and different people may
5 have different opinions about how something should be done and it can lead to a
6 healthy debate?

7 **MR. JOHN MANCONI:** If you're there talking about something
8 that's to be debated, yes; this was general information sharing.

9 **MR. JOHN ADAIR:** And the same with the Transit Commission
10 having multiple people can lead to healthy debate among different people with different
11 ideas?

12 **MR. JOHN MANCONI:** This was general information sharing; it
13 was not about debating topics.

14 **MR. JOHN ADAIR:** Right. And what you were doing in that
15 general information sharing is giving information only to two very specific people and not
16 anyone else on those committees who were charged with the responsibility for this
17 project?

18 **MR. JOHN MANCONI:** I'm not disputing that.

19 **MR. JOHN ADAIR:** I'm sorry?

20 **MR. JOHN MANCONI:** I'm not disputing that.

21 **MR. JOHN ADAIR:** And whose decision was it that the
22 information shouldn't go to the rest of FEDCO and the Transit Commission; was that
23 yours?

24 **MR. JOHN MANCONI:** We never spoke about that.

25 **MR. JOHN ADAIR:** Did you ever wonder whether it should go to
26 the people – the other two committees to whom you reported?

27 **MR. JOHN MANCONI:** Not through the chats but obviously you
28 saw through my memo that I thought that was a point where I could have informed the

1 Commission – or the City Council – really, it was addressed to all Council.

2 **MR. JOHN ADAIR:** Right. And other people told you in fact
3 you're not going to do that?

4 **MR. JOHN MANCONI:** I answered that question; the City Manager
5 reminded me of what we had agreed to Council and we stuck with that because that's
6 what our commitment to Council was.

7 **MR. JOHN ADAIR:** Do you agree in retrospect that it's not a great
8 idea to have that kind of information going to only two people on those two committees
9 and prevent those committees from having a debate about the issues?

10 **MR. JOHN MANCONI:** Sir, my job was to set up a framework that
11 oversaw the entire program. We wanted to ensure that people such as my boss were
12 informed. We did not have time to pick up the phone to call and hold meetings or bring
13 issues. So I don't do retrospect. These were the right decisions at the time. A multi-
14 billion program...

15 **COMMISSIONER HOURIGAN:** Sorry, I'm going to interrupt,
16 please. It's not a question of whether you do retrospect or not. Again, a very specific
17 question in retrospect. Okay? That was the question that was asked of you. And,
18 again, I need you to listen to the question and answer the question. If you want to add
19 to it, it's fine, but you can't just say "I don't do retrospect". So I'm going to ask counsel
20 to put the question to you again and I want you to answer it, please.

21 **MR. JOHN ADAIR:** My question, Mr. Manconi, to you, sir, is, do
22 you agree in retrospect that it is not appropriate to have information shared with only the
23 Chair of each of those two committees rather than the whole committee and, thereby,
24 prevent any kind of meaningful or fulsome debate?

25 **MR. JOHN MANCONI:** In retrospect, I would do the same thing
26 that we did here.

27 **MR. JOHN ADAIR:** You would do exactly the same thing; your
28 evidence here today is you would do exactly the same thing of setting up a private

1 “WhatsApp” chat with only certain people who are handpicked, on certain committees
2 and not the rest of the committee; that’s your evidence here today, you would do it the
3 same way?

4 **MR. JOHN MANCONI:** To me the “WhatsApp” chat were not an
5 attempt to be private and you look at the number of people on people on those chats;
6 there’s nothing – how can they possibly for me be private? Those were information
7 channels that we set up and you asked me in retrospect would I do it the same way? I
8 needed a communication channel to keep them informed. They were asked to be kept
9 informed. This was the channel that we used. It was not about privacy. It was not about
10 hiding anything and the large number of people on those chats clearly demonstrate that.

11 **MR. JOHN ADAIR:** And one way you could keep them informed is
12 by sending the very kinds of memos that you wrote here on the screen in front of you and
13 that it was ultimately quashed; right? That would be a way to do it that would be efficient?

14 **MR. JOHN MANCONI:** It could be a way. I would disagree; that
15 wouldn’t be efficient to write memos and be sending all that.

16 **MR. JOHN ADAIR:** All right. We can take that down, Mitchell.
17 Thank you.

18 Just lastly on that topic, Mr. Manconi, you’re aware that the FEDCO
19 meetings are open to Council and the public?

20 **MR. JOHN MANCONI:** Yes, I am.

21 **MR. JOHN ADAIR:** And you’re aware that presentations that are
22 made to FEDCO are therefore available to Council and the public?

23 **MR. JOHN MANCONI:** Yes, I am.

24 **MR. JOHN ADAIR:** And I think we can agree without much difficulty,
25 your private “WhatsApp” chat group was not available to Council or the public?

26 **MR. JOHN MANCONI:** Agree.

27 **MR. JOHN ADAIR:** And so if Council or the public wanted to know
28 what information the Chair of FEDCO had available, they would not be able to do that

1 because they wouldn't have the "WhatsApp" chat?

2 **MR. JOHN MANCONI:** Correct.

3 **MR. JOHN ADAIR:** And if they wanted to know what information
4 the Chair of the Transit Commission had available to him, they wouldn't be able to do that
5 because they wouldn't have access to the "WhatsApp" group?

6 **MR. JOHN MANCONI:** Correct.

7 **MR. JOHN ADAIR:** Right. Let me just move on to a different topic
8 here, Mr. Manconi; it's the last substantial one I have for you.

9 There was a term sheet signed at the end of August between the City
10 and RTG?

11 **MR. JOHN MANCONI:** Yes.

12 **MR. JOHN ADAIR:** And that amended the project agreement?

13 **MR. JOHN MANCONI:** I'm sorry, again, lots of documents; I'll take
14 your word for it.

15 **MR. JOHN ADAIR:** Let me call it up – I'm sorry, Mr. Manconi.

16 **MR. JOHN MANCONI:** Any term sheets were handled by Mr.
17 Morgan, so...

18 **MR. JOHN ADAIR:** Sure. So it's RTG151032.

19 And just while we're waiting for that, Mr. Manconi, I take it you're not
20 saying that you had no involvement at all in this term sheet; you didn't review anything
21 like that; are you?

22 **MR. JOHN MANCONI:** No, I just need you to understand; you know,
23 a multi-billion dollar program; I'm at the top. I mean I'm just – I get briefed and I have
24 professional staff with high credentials like Mr. Morgan who did a fantastic job and knew
25 the project agreement inside out. So don't expect me to know every word in some of
26 these term sheets, as you can imagine.

27 **MR. JOHN ADAIR:** Okay. I think you'll see from my question, sir,
28 and very few of them, if any, have expected you to know the words of a document and

1 certainly these ones won't.

2 **MR. JOHN MANCONI:** If you look, sir, at – if we could just scroll
3 down, Mitchell, to the “Binding nature”, just to that category. You'll see there that it clearly
4 states that this is amending the project agreement?

5 **MR. JOHN MANCONI:** Okay.

6 **MR. JOHN ADAIR:** And amending the project agreement is a fairly
7 big deal?

8 **MR. JOHN MANCONI:** Yes.

9 **MR. JOHN ADAIR:** And then if we go to the next page, you'll see a
10 number of vehicles and the project agreement is amended so that RSA can be achieved
11 with 13 double-car trains; do you see that?

12 **MR. JOHN MANCONI:** Yes.

13 **MR. JOHN ADAIR:** And then you'll see under “Completion of Trial
14 Running” there's reference to the 96 per cent, 9 out of 12 days?

15 **MR. JOHN MANCONI:** Correct.

16 **MR. JOHN ADAIR:** And that one really formalizes an earlier
17 agreement?

18 **MR. JOHN MANCONI:** Correct. What we talked about earlier, yes.

19 **MR. JOHN ADAIR:** Right. And I don't know exactly when the
20 agreement was made to down to 13 vehicles, the timing of that doesn't much matter. I
21 just want to take you through some information about the vehicles. And this is 13 vehicles
22 available for you use; right?

23 **MR. JOHN MANCONI:** Correct. Morning peak period. Remember
24 that the schedule changes. We go down 11, 7, 4, 3, and so forth.

25 **MR. JOHN ADAIR:** Yeah. But it's not 13 for morning peak plus
26 two spares. It's 13 available. Maybe you'll end up with more than that. Maybe you
27 won't.

28 **MR. JOHN MANCONI:** You make a great point because part of

1 the strategy on that was the ridership piece and also giving RTG RTM ability to fix minor
2 defects and increase the fleet count and address all those minor deficiencies that were
3 in the vehicles that were outstanding.

4 **MR. JOHN ADAIR:** Right, but at least ---

5 **MR. JOHN MANCONI:** And have spares.

6 **MR. JOHN ADAIR:** Right. But at least as of when you open the
7 commitment would be 13 which is not enough to give spares during morning peak.

8 **MR. JOHN MANCONI:** No. But what we saw time and time again
9 with the reliability increasing and the deficiencies being knocked off, they generally
10 would have a spare or in some cases they would have two. So it was varying days,
11 depending on what they were doing with those vehicles that needed the deficiencies
12 addressed.

13 **MR. JOHN ADAIR:** Okay. And I was going to go through three
14 documents on the subject of vehicles. If we can go, please, to COW93.

15 **--- EXHIBIT No. 198:**

16 COW0000093 – O-Train Confederation Line Project Update
17 10 September 2018

18 **MR. JOHN ADAIR:** And this is a September 2018 presentation to
19 Fedco. You'll see September 10th, 2018. One of the presentations I think we've talked
20 about, sort of these generally being made.

21 And Mitchell, if we could go to page 23, please. And my numbering
22 must be off for some reason. Go to 24, please. Thank you.

23 The last bullet point there, sir, and you can take a minute to look at
24 it.. But you made it clear to Fedco that you need all 34 vehicles tested and
25 commissioned in order to ensure that you could provide the level of service prescribed
26 in the Project Agreement. Do you see that?

27 **MR. JOHN MANCONI:** Yes.

28 **MR. JOHN ADAIR:** And that was the case as of September of

1 2018?

2 **MR. JOHN MANCONI:** Correct.

3 **MR. JOHN ADAIR:** And then if we can go, please, to the next
4 document which is COW442451. And this is a ramp report, sir?

5 **--- EXHIBIT No. 199:**

6 COW0442451 – Transportation Services Department Rail
7 Activation Management Program (RAMP) 18 March 2019

8 **MR. JOHN MANCONI:** Yes.

9 **MR. JOHN ADAIR:** From March of 2018. And the ramp team was
10 basically a large collection of individuals who were involved in the project on an
11 operational level?

12 **MR. JOHN MANCONI:** Yes, along with the experts that we talked
13 about.

14 **MR. JOHN ADAIR:** Yeah. And I actually meant to include them. I
15 didn't -- the description I gave was intended to included them so thank you for clarifying
16 that.

17 And if you go to page 4 of 22, please Mitchell. Hopefully my
18 numbering -- yes.

19 So there's two pages of these ongoing ramp reports that appear
20 every time. The first is the list of 10 critical elements.

21 **MR. JOHN MANCONI:** Yeah.

22 **MR. JOHN ADAIR:** And those are the elements that are critical to
23 achieve RSA.

24 **MR. JOHN MANCONI:** Correct.

25 **MR. JOHN ADAIR:** And Item number 1 is 34 vehicles.

26 **MR. JOHN MANCONI:** Yes.

27 **MR. JOHN ADAIR:** Not 26.

28 **MR. JOHN MANCONI:** Correct.

1 **MR. JOHN ADAIR:** And just so we're clear on the numbers, the 34
2 translates into 17. So if we want to do apples to apples to the term sheet, we've got to
3 say 34 is 17. Right?

4 **MR. JOHN MANCONI:** Yeah.

5 **MR. JOHN ADAIR:** And then if we can then go to the last
6 document here. Sorry, I've got two more. I apologize. It's ONT1430.

7 Mr. Manconi, just take a minute. If we just scroll down just a little
8 bit on the first page here you'll see a Confederation Line update, a quarterly report,
9 rather, prepared for the Ministry of Transportation.

10 **--- EXHIBIT No. 200:**

11 ONT0001430 – Confederation Line Project Quartely Report
12 # 30 8 March 2019

13 **MR. JOHN MANCONI:** Okay.

14 **MR. JOHN ADAIR:** And these were quarterly reports that were
15 going to the funding partners, the Ministry of Transportation among others.

16 **MR. JOHN MANCONI:** Okay.

17 **MR. JOHN ADAIR:** And if you go to page 7, please Mitchell, just
18 above the heading "Schedule management". It says:

19 "The City is currently monitoring all critical elements
20 and many are trending very well. The results of
21 vehicle testing and the ability of RTG to operate 15
22 double car trains consistently will ultimately determine
23 the new RSA date." (As read)

24 So the representation to the province, the funding partner that
25 kicked in the \$600 million in March of '19 is that RS would only happen after RTG had
26 demonstrated that it could run 15 doubles consistently; correct?

27 **MR. JOHN MANCONI:** Correct.

28 **MR. JOHN ADAIR:** And I don't know if you saw it or not. But Mr. --

1 it could be either Mr. Holder or Mr. Morgan. I can get the evidence if you need it. One
2 of them said that you were having trouble getting 15 doubles out on the line during trial
3 running. Do you agree with that evidence?

4 **MR. JOHN MANCONI:** No. There were days -- and again my
5 speaking notes speak to that. They demonstrated they could do 15 double car service
6 which was important for us to see. And it's documented in the score cards.

7 **MR. JOHN ADAIR:** All right. And one of the reasons, of course,
8 that the IAC rejected the first substantial completion submission is because you didn't
9 have 34 trains?

10 **MR. JOHN MANCONI:** I believe so. That's what we were talking
11 about earlier on, yes.

12 **MR. JOHN ADAIR:** And then just one last document on this
13 specific subject. If we can go to COW451394, please. If you don't have that I can give
14 you a different one. Just one second.

15 It's fine. I don't need it. Yeah.

16 And sir, you will recall that in September of 2018 RTG made a
17 proposal to change some of the project requirements in order to meet RSA by
18 November '18?

19 **MR. JOHN MANCONI:** They may have. I'm sorry. You're going to
20 have to refresh my memory.

21 **MR. JOHN ADAIR:** Okay. The -- in any case, sir, what happens is
22 when you come into the term sheet at the end of August of 2019 you agree to drop the
23 number of required vehicles to 13, right?

24 **MR. JOHN MANCONI:** That was done during trial running, correct.

25 **MR. JOHN ADAIR:** And I understand that the reason that was
26 done is because at some point Mr. Scrimger ---

27 **MR. JOHN MANCONI:** Yes, Scrimger..

28 **MR. JOHN ADAIR:** Scrimger, at some point during trial running he

1 said that ridership was lower than had been anticipated and so you could actually meet
2 demand with 13 vehicles?

3 **MR. JOHN MANCONI:** Yeah. Mr. Scrimger had done some work
4 in that regard, I believe the year before, about where we were on ridership vis-a-vis
5 what had been forecasted when the whole Project Agreement was put on. And you'll
6 know that -- yeah, so ridership was down. That was public knowledge,. We were way
7 down from the projections. And to meet our commitments of service under five minutes
8 13 trains, without overcrowding was where we landed. And that was ---

9 **MR. JOHN ADAIR:** So Mr. Scrimger ---

10 **MR. JOHN MANCONI:** --- in our best interests to do that.

11 **MR. JOHN ADAIR:** I'm sorry, I thought you were done. I
12 apologize for talking over you.

13 Mr. Scrimger had done work in the year before, being 2018, to look
14 at ridership and had appreciated that ridership was down?

15 **MR. JOHN MANCONI:** Yeah. He did a great spreadsheet that
16 shows that ridership was down, I believe. That was some of his work that he had done.
17 And he demonstrated that we didn't need all those vehicles and he reminded us of that
18 during trial running.

19 **MR. JOHN ADAIR:** All right. If we can go to STV292, please?

20 **--- EXHIBIT No. 201:**

21 STV0000292 – Email from Thomas Prendergast to John
22 Manconi Re: Trains and Rideau 9 September 2019

23 **MR. JOHN ADAIR:** And while we're calling that up, it's because of
24 Mr. Scrimger's view that ridership was down and therefore you could get by with fewer
25 vehicles that you were prepared to proceed on that basis?

26 **MR. JOHN MANCONI:** It was a combined issue. A, we didn't
27 need the vehicles. So no different than bus service. If you only need 900 vehicles to
28 meet your bus service, you don't put 950 vehicles out.

1 The other thing it did is it helped RTG, Alstom, OLRTC finish the
2 minor deficiencies on the vehicles, have spares available for us back to what I was
3 mentioning earlier on in terms of having vehicles in case one of those 13 had to be
4 pulled off, and knock off the deficiencies because our term sheet was very clear. We're
5 going to aggressively monitor them on the vehicles to ensure that everything was
6 completed. So it was good for customers. It was good for the City. I believe -- we
7 would have to double check. But also Mr. Morgan -- I know he held money back on the
8 vehicles and he also did some financial adjustments on the measurements for the
9 monthly payments and so forth. So back to that partnership that we talked about
10 before, and we could meet our service commitment of service under five minutes
11 without any overcrowding.

12 **MR. JOHN ADAIR:** And if we can just go on the bottom email on
13 this chain, please Mitchell. And just go -- scroll up to the top of that email.

14 Sorry to drag you around there. So Mr. Scrimger sent you an email
15 September 3rd, 2018 with respect to, among other things, the trains and Rideau.

16 **MR. JOHN MANCONI:** Okay.

17 **MR. JOHN ADAIR:** And the first point he makes, which is the only
18 one -- the first -- 1 and 1A, which are the only ones that really matter. And this was an
19 analysis to RTG suggesting that perhaps you should get fewer vehicles and proceed
20 with fewer vehicles. He says:

21 "Impact of fewer trains being available. Please see
22 the attached table. This shows how fewer trains
23 available for service affects the frequency, the
24 number of people on each train, and the degree
25 overcrowding. Each is calculated with different
26 numbers of trains available and different levels of
27 ridership demand." (As read).

28 **MR. JOHN MANCONI:** Yes.

1 **MR. JOHN ADAIR:** And then he says:

2 “1A on ridership demand.” (As read).

3 If we can just scroll down a little bit, Mitchell. I appreciate that -- “on
4 ridership demand” and he goes through some analysis to show that ridership is actually
5 down about 20 percent from what you anticipated, and says:

6 “Given that it may take some time for ridership to
7 increase to the previously predicted levels ...”

8 And the skipping over the parentheses:

9 “... it may be acceptable to have fewer trains in
10 service and a reduced line capacity for a short period
11 of time.” (As read).

12 That’s the analysis you were talking about?

13 **MR. JOHN MANCONI:** I believe so, yeah. Again, it’s a long time
14 ago. But this was in response -- you’re absolutely right. You -- this -- we were
15 constantly getting requests -- not constantly, but I know Alstom and RTM had said, “Do
16 you still need 15 trains?” And we were clear we needed to demonstrate they could do
17 15 double trains, which they did.

18 **MR. JOHN ADAIR:** And then once they did, you were content to
19 drop down to 13?

20 **MR. JOHN MANCONI:** For all the reasons that I just noted.

21 **MR. JOHN ADAIR:** Yeah. If we just go up to the next email. This
22 is -- sorry, Mitchell, it’s one -- it’s actually one below that. There’s on in the middle of
23 the two of them. That right there. You then forward it to Mr. Prendergast and you say:

24 “Tom, can you review? Pat has done a good first cut
25 on this. I agree with many points. I don’t agree with
26 banking on the lower -- with the banking on lower
27 ridership. Please review and we can discuss prior to
28 meeting with RTG. The options he lays out is on

1 assumptions of a tester and a reliable fleet, which we
2 both know is not the case. Full 34 fleet continues to
3 be my position. As the accountable executive, people
4 seem to want me to take risk to the public, which I will
5 not do.” (As read).

6 Before I ask you about this, I just want to give you the benefit of Mr.
7 Prendergast’s response, just the first few parts because that’s where he get into the
8 vehicle reliability. It says:

9 “Here are my comments.”

10 And then he says:

11 “To begin with, I agree with you wholeheartedly that
12 you cannot treat this fleet as if it is a tested and
13 reliable one. I’m confident that at some point in the
14 future, the car being provided by Alstom will be a
15 reliable one, but you cannot count on that anytime
16 soon. As you know, reliability is the root measure...”

17 (As read).

18 And he goes on. And effectively, you can -- and feel free, please,
19 to read the -- the rest of the email. But he goes on to agree with you that you can’t
20 compromise on the number of vehicles despite the lower ridership.

21 **MR. JOHN MANCONI:** Yeah, multiple inputs into that.

22 **MR. JOHN ADAIR:** Yeah, so my point is simply, you did exactly
23 the opposite in August of 2019, correct?

24 **MR. JOHN MANCONI:** No. A year later, because this is in 2018 --
25 a year later, ridership had not rebounded and, at this point in time -- the request was in
26 2018, “Can you lower the vehicle count?” I stuck to the position -- we, collectively, stuck
27 to the position that we needed to see 15 double-cars run on the system in the morning
28 peak. And they demonstrated that, and the scoresheets reflect that. So ridership did

1 not rebound back. They demonstrated the 15 double-vehicles.

2 We knew they had minor deficiencies on portions of the fleet. We
3 knew we could hold back money. We knew we could ding for oversight on the vehicle
4 deficiencies. And what I said a few minutes, that put all together in terms of, yes, they
5 could do 10,700 if we got to that, and we were nowhere near that; yes, we could hold
6 money back; yes, it would help them improve their reliability which what we want for our
7 customers; and yes, we could hold back funds, I believe, also in the monthly payment.
8 We'd have to doublecheck on that.

9 So it was that partnership piece that we talked about, but also
10 ensuring that they met the commitment of having the 15 vehicles on the line.

11 **MR. JOHN ADAIR:** I'm going to suggest to you, sir, that the
12 reason you drop from 17 doubles -- after having rejected that option in September of
13 '18, the reason you accepted it in August of '19 is because failure to meet RSA was not
14 an option.

15 **MR. JOHN MANCONI:** I disagree with that.

16 **MR. JOHN ADAIR:** And I believe, as you put it in one of your texts,
17 which I'm happy to show you, if you want, cancellation of launch was not an option.

18 **MR. JOHN MANCONI:** There was a very specific point in time
19 dealing with radio issues that had happened two days before launch. And I can tell you,
20 and I will say it over and over again, I had no concerns cancelling launch. I did almost
21 twice, once with the camera issue, and once the night before launch, public launch,
22 where there was an unfortunate incident with a woman that attempted suicide at
23 Tunney's Pasture, jumping onto the catenary and we had de-energize the system. So I
24 was always prepared to cancel launch if need be, if safety was going to be
25 compromised, or anything significant.

26 **MR. JOHN ADAIR:** Right. But if safety -- I'm sure it's the case that
27 if safety was going to be compromised, you would have cancelled the launch, but if
28 reliability was going to be compromised, you would not, and did not, cancel the launch.

1 **MR. JOHN MANCONI:** No, that's not true because the system ran
2 perfectly for three weeks, so perfectly that people were asking me to take off the parallel
3 bus service. And none of the issues that came up post-launch occurred during the
4 testing. All those issues that Mr. Morgan took you through yesterday occurred post-
5 launch and occurred because they didn't stick to their commitment of flooding the
6 system with technicians. Many of those things could have been averted. So reliability,
7 the fleet was up on reliability. They had demonstrated the 15 double-vehicles. They
8 scored 96.9 percent. We met our customer service expectation of under five minutes.
9 And the reliability, as you say by the numbers was increasing every single day and
10 doing very, very well.

11 **MR. JOHN ADAIR:** Sir, I can show you probably 25 to 50 chat
12 messages, and other texts, and other emails where brake issues, door issues, and
13 electrical issues, all of which existed pre-RSA, came up post-RSA. But it's probably
14 easier if we just agree that the reliability did not improve, and the proof is in the fact that
15 we're here.

16 **MR. JOHN MANCONI:** It was not a reliability ---

17 **MR. JOHN ADAIR:** Do you agree with me that the reliability did
18 not improve?

19 **MR. JOHN MANCONI:** So, sir, when a door gets affected, on
20 many systems, operators can do what's called "door isolations". We were not permitted
21 to do that on this vehicle, hence the request for tests.

22 **MR. JOHN ADAIR:** Yeah. Let me just restate my question
23 because I probably asked it in a way that was compounded and unfair. Do you agree
24 with me that the issues -- some of the issues that came up post-RSA were many of the
25 same issues that were pre-RSA -- brakes, doors, electrical, maintenance?

26 **MR. JOHN MANCONI:** Components, but not identical issues. We
27 did not see systemic that came up in the late fall and early winter post-RSA. And during
28 the three weeks of full parallel bus service running, there was -- as you've heard, we

1 were operating at 98, 99 percent some days. We were not seeing those systemic
2 issues that occurred later on.

3 **MR. JOHN ADAIR:** Two last issues, Mr. Manconi, which will be
4 shorter. And for the first, I just need to call up a document. It's COW593687. And if we
5 can go to page 2, please, July 20th, 6:05 p.m. There we are. This is the WhatsApp
6 chat group that I call "The LRT Updates Group", just using your name for it, where the
7 Mayor's Office and Mr. Hubley were on the chat group with you and Mr. Kanellakos.
8 And you'll see on July 20th at 6:05, Mr. Gravelle told you that the Mayor was authorizing
9 you to send out a particular memo.

10 **MR. JOHN MANCONI:** Sorry, it that the 5:47?

11 **MR. JOHN ADAIR:** At 6:05, sir.

12 **MR. JOHN MANCONI:** Oh, sorry, 6:05. Let me get to that.

13 **MR. JOHN ADAIR:** And you may want to read 5:47 if it's helpful to
14 you for context.

15 **MR. JOHN MANCONI:** Yeah. Yes, it says:

16 "Mayor's okay with memo from you to council." (As
17 read).

18 Okay.

19 **MR. JOHN ADAIR:** And at different point in time over the course of
20 this chat group -- we're going to see some of them -- the mayor was weighing in through
21 his people his office. The mayor was weighing in on whether to send a memo and, if
22 so, when?

23 **MR. JOHN MANCONI:** Yes.

24 **MR. JOHN ADAIR:** And if you can go to, Mitchell, the same page,
25 July 23rd, 7:13 a.m. So you just scroll down. There we go. At 7:13 a.m., Mr. Manconi,
26 you were giving an update to this group on the morning's launch?

27 **MR. JOHN MANCONI:** Yes.

28 **MR. JOHN ADAIR:** Without taking us through the details of which

1 train was late by which -- by how many minutes, in the middle of that text, you say:
2 "I share this level of detail as it will be relevant in today's briefing to the mayor." (As
3 read).

4 Do you see that?

5 **MR. JOHN MANCONI:** Yes.

6 **MR. JOHN ADAIR:** Were there daily briefings to the mayor or just
7 regular briefings to the mayor?

8 **MR. JOHN MANCONI:** So there was briefing as needed. The
9 mayor would often call for it. His staff would call for it. Or the City manager would call
10 for it. You can tell there was a lot of activity, a lot of updates. So whenever they called,
11 we made ourselves available.

12 **MR. JOHN ADAIR:** Right. And just, generally speaking, using
13 your recollection to the best of your ability, were you either directly or indirectly briefing
14 the mayor on a daily basis or just frequently?

15 **MR. JOHN MANCONI:** Well, again, I'm not trying to be obtuse
16 about this, but the daily chat obviously was a period of time. The mayor would often call
17 for updates, the city manager -- it was very regular, and as we got into launch and then -
18 - in the winter of that first year, when we had a lot of problems, there was also regular
19 meetings and updates.

20 **MR. JOHN ADAIR:** Okay. And if we can go to the top of page 5,
21 please, there's an entry August 1st, 8:34 p.m. Mr. Manconi, I'm going to give you a
22 second to read that to yourself.

23 **MR. JOHN MANCONI:** Okay.

24 **(SHORT PAUSE)**

25 **MR. JOHN MANCONI:** Yes, I remember that, yeah.

26 **MR. JOHN ADAIR:** The mayor, I gather, had asked you about the
27 possibility of starting on Friday but treating it as a Saturday.

28 **MR. JOHN MANCONI:** Yes.

1 **MR. JOHN ADAIR:** And you told the mayor why, just from a
2 practical perspective, that couldn't be done, because effectively there were too many
3 scheduling issues and automated system issues.

4 **MR. JOHN MANCONI:** Yeah. The system is run by a computer,
5 so you'd have to bypass it and reload a schedule and so forth.

6 **MR. JOHN ADAIR:** You'd sort of have to convince the computer
7 that Friday is Saturday, which computers are not in the habit of being convinced of.

8 **MR. JOHN MANCONI:** That's one way of explaining it, yes.

9 **MR. JOHN ADAIR:** And leaving that part aside, Mr. Manconi, is it
10 the case that the mayor himself was coming up with ideas about how trial running could
11 be implemented? That's what appears here.

12 **MR. JOHN MANCONI:** No. This is the mayor -- I don't remember
13 why he wanted the Saturday-Friday, but the mayor is known for wanting to have a
14 granular level of detail. He was suggesting this launch date, if everything went well. I
15 don't know why. When I see this, I remember the discussion. I don't know why those
16 were important to him, but the mayor did not get into dictating trial running protocols and
17 things. He asked a lot of questions; there's no doubt about it. That's his style. He
18 wants to understand the detail.

19 **MR. JOHN ADAIR:** So just two things on that. Number one, the
20 mayor told us in his formal interview that he doesn't get into the weeds. I take it you
21 would disagree with that. You would say, as you just did, he's someone who's known to
22 want a granular level of detail.

23 **MR. JOHN MANCONI:** The mayor would -- and I don't say this in a
24 negative way. I don't know how he does it. The mayor would text me or email me or
25 call me when there was issues on the line such as -- even if it wasn't affecting public
26 service. One day there was a door that was stuck at a washroom and he wanted to
27 know why it was propped open, so he does get into detail.

28 **MR. JOHN ADAIR:** Right. So you would disagree with his

1 evidence that he gave under oath that he doesn't get into detail.

2 **MR. JOHN MANCONI:** I'm not going to comment on -- I don't
3 know what he said under oath. I'm saying that he gets into details associated with
4 things such as what we've explained here about a launch date.

5 **MR. JOHN ADAIR:** Right. And is the reason that he came up with
6 the idea -- and I'm not saying he dictated how trial running would be done, but is the
7 reason that he came up with the idea of starting on the Friday but treating it as a
8 Saturday, is that because it was easier to hit the targets on Saturday perhaps?

9 **MR. JOHN MANCONI:** Oh, I doubt that very much. That was not
10 the discussion. I don't believe that's the case. It had something to do with the launch.
11 That's all I remember about it being a good day for a launch. I don't know. It was not
12 about hitting the targets. That's not my recollection.

13 **MR. JOHN ADAIR:** Friday was a good day for a launch. How
14 does that link to treating it as a Saturday? I don't understand that at all.

15 **MR. JOHN MANCONI:** I told you. I don't recollect. I know this
16 was wrapped around something about the event. Look, the event was important to me,
17 but that was not my focus. The focus was on the system for the public, so I don't know
18 why he had that in his head. It had nothing to do with hitting the trial numbers. That's
19 not my recollection of it.

20 **MR. JOHN ADAIR:** All right. If we can just go down to September
21 18th, which is on page 16. And if we go to September 18th, 5:50 a.m., Mr. Manconi, you
22 say:

23 "I just sent you, Serge, [meaning Serge Arpin], and
24 chair, [meaning I think Mr. Hubley], a text string from
25 mayor." (As read)

26 Do you see that?

27 **MR. JOHN MANCONI:** Sorry, what number are you on again, and
28 what time?

1 **MR. JOHN ADAIR:** I'm sorry, Mr. Manconi. It's 5:50 a.m. It's
2 about the third one down.

3 **MR. JOHN MANCONI:** Early morning. Okay.

4 **MR. JOHN ADAIR:** And I can take you to them, Mr. Manconi, but
5 there are probably half a dozen references to texts you received from the mayor or sent
6 to him or exchanges you had. And the mayor was, as you said a few moments ago, I
7 think texting you frequently during this period.

8 **MR. JOHN MANCONI:** Yes.

9 **MR. JOHN ADAIR:** And there's a reference in the WhatsApp chat,
10 the one that was the operational team between you and the IAT and your city staff --
11 there's a reference in one of the messages to the mayor texting you non-stop, and I
12 take it at times it felt that way.

13 **MR. JOHN MANCONI:** Again, he has amazing energy levels and
14 wants to know what's going on, not just in transit, even in my public works days and in
15 my other portfolios.

16 **MR. JOHN ADAIR:** And I'm going to take you back to something
17 that we heard a little while ago. Mr. Slade testified last Friday, and he said that he
18 believed that the pressure on the City side was coming from the mayor's officer, political
19 pressure to get this thing open. And I'm going to suggest to you that that in fact was the
20 case.

21 **MR. JOHN MANCONI:** Pressure for what, sorry?

22 **MR. JOHN ADAIR:** To get the system open.

23 **MR. JOHN MANCONI:** The mayor was not exerting pressure on
24 me to get the system open. The mayor and others wanted the system open, but they
25 were not exerting pressure on me to do anything to get the system open.

26 **MR. JOHN ADAIR:** Had there been any other occasion in your
27 time in the City of Ottawa working for the City of Ottawa where you were on a chat
28 group with the mayor and the mayor was texting you non-stop?

1 **MR. JOHN MANCONI:** I just said that he texts me on a regular
2 basis.

3 **MR. JOHN ADAIR:** Had there been any other time where he had
4 been texting you in a manner that felt like it was non-stop with respect to any other
5 project other than this one?

6 **MR. JOHN MANCONI:** Day-to-day service stuff. Again, he wants
7 to know stuff.

8 **MR. JOHN ADAIR:** All right. And I'm going to suggest to you that
9 if the mayor of the city is texting you non-stop, or what feels like non-stop -- whether it
10 was or not is sort of beside the point -- that's pressure on you to achieve RSA.

11 **MR. JOHN MANCONI:** No. No, absolutely not.

12 **MR. JOHN ADAIR:** Okay, sir, last topic here -- we can take that
13 down, Mitchell thanks -- and I'll be very brief. I take it, sir -- and I ask this in all
14 seriousness, as I do all the questions; I don't need to qualify it -- but this period from
15 2019 and 2020, when you were trying to get this thing open and then ultimately did
16 open it with the problems that we all know occurred, was among the most stressful and
17 difficult of your professional life.

18 **MR. JOHN MANCONI:** Very stressful, yes.

19 **MR. JOHN ADAIR:** And you would have been receiving so many
20 texts and WhatsApp chat messages over the course of trial running and into RSA that it
21 would be almost impossible to stay on top of them.

22 **MR. JOHN MANCONI:** No, disagree.

23 **MR. JOHN ADAIR:** All right. You would have been receiving a
24 huge number. I can see you stayed on top of them by working what appears to be 17-,
25 18-hour days. It was a huge number of texts and WhatsApp chats, in any case.

26 **MR. JOHN MANCONI:** I had a process for managing all the inputs
27 and outputs, and I had a great team that delivered information, responded, assisted me.
28 They were professional and so forth. We had a great setup in terms of dealing with the

1 pressure that comes with launching a very complicated project such as this.

2 **MR. JOHN ADAIR:** And sir, you were asked in your formal
3 interview -- and I'm happy to take you to it, because I don't want to be at all unfair to
4 you, so please tell me if you want to see it -- you were asked if you were reporting on a
5 daily basis the results of trial running to anyone, such as Mr. Kanellakos or the mayor,
6 and your answer was that you were reporting to Mr. Kanellakos. Do you recall that?

7 **MR. JOHN MANCONI:** I believe I said I was reporting to Mr.
8 Kanellakos, but yeah, again, I didn't remember everything. And then I saw the
9 WhatsApp chats, which clarified a lot of things for me.

10 **MR. JOHN ADAIR:** You were asked ---

11 **MR. JOHN MANCONI:** I completely forgot about the WhatsApp
12 chats.

13 **MR. JOHN ADAIR:** All right. That was going to be my question for
14 you. Is it the case that -- because you didn't mention the WhatsApp chats in your
15 interview when you were asked who you were reporting to and specifically whether you
16 were reporting to the mayor, and I gather that the reason you didn't tell Commission
17 counsel about the WhatsApp chat group involving yourself, Mr. Hubley, the mayor, and
18 Mr. Kanellakos is because you completely forgot about it.

19 **MR. JOHN MANCONI:** I completely forgot about it. The minute I
20 became of the WhatsApp, I immediately remembered that we had set up a number of
21 WhatsApp channels like you've seen in the stuff that you've shared with me.

22 **MR. JOHN ADAIR:** Had you ever before had a WhatsApp group
23 involving yourself, Mr. Kanellakos, and the mayor?

24 **MR. JOHN MANCONI:** We -- I know Mr. Kanellakos has set up
25 WhatsApp chats on critical files and so forth, yes.

26 **MR. JOHN ADAIR:** Had you yourself ever participated in a
27 What'sApp chat group between yourself, Mr. Kanellakos, and the mayor?

28 **MR. JOHN MANCONI:** I would have to go back and check. I've

1 been on WhatsApp chats, I've been on text chats, yes, absolutely.

2 **MR. JOHN ADAIR:** All right. Thank you. Those are all my
3 questions for you.

4 **COMMISSIONER HOURIGAN:** All right. Mr. Manconi, we're going
5 to have some questions from other counsel. It's now almost five o'clock. We've been
6 going at it for three hours.

7 The schedule we have calls for a break at 6:30. If you want a break
8 before that, just let us know and we'll do that, okay? Don't be shy.

9 **MR. JOHN MANCONI:** Just keep going. This is good. Thank you.

10 **COMMISSIONER HOURIGAN:** Yeah, but if you get to a point
11 where you need a break, just don't hesitate to let us know.

12 Okay. So next ---

13 **MR. JOHN MANCONI:** --- Thank you.

14 **COMMISSIONER HOURIGAN:** Yeah. Next up is RTG, OLRTC,
15 RTM.

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

17 **MR. MICHAEL FENRICK:** Good morning -- good afternoon, Mr.
18 Manconi.

19 It's ---

20 **MR. JOHN MANCONI:** Good afternoon.

21 **MR. MICHAEL FENRICK:** I can't believe I made that mistake.

22 **MR. JOHN MANCONI:** Hopefully, we're not off for a good morning.

23 **MR. MICHAEL FENRICK:** No, we'll try not to, and I think I'll be
24 relatively brief with you today.

25 I just wanted to start with a couple of points, one which you've
26 raised a number of times, that it's your understanding that -- I'll tell you that Mr. Lauch's
27 and Mr. Slade's evidence disagrees with who proposed the 98, 96 percent change, but
28 that's not what I'm getting at.

1 What I'm getting at is, you said a number of times that it was your
2 understanding that you've recently learned that that was in order to maximize the
3 service payment that RTG was going to receive. Do you recall giving that evidence?

4 **MR. JOHN MANCONI:** I believe I just said that now, yeah. I think
5 that's what has been suggested to me, because I was trying to figure out why they went
6 to 98.

7 **MR. MICHAEL FENRICK:** And I don't want to know if it's your
8 counsel, but who suggested that to you?

9 **MR. JOHN MANCONI:** I don't recall. Again, I've been getting a lot
10 of questions about the 98, right, since my first interview and stuff, and I'm trying to put
11 all the pieces back together. But somebody suggested that perhaps -- my
12 understanding of it is, if you go to the 98, that's perfect on all fronts, not just the
13 vehicles, but everything else, so that there's no penalty implied to. But I may be wrong.
14 I don't know. Again, to me, the 96, 98, they're so close. It was the right thing to do.

15 **MR. MICHAEL FENRICK:** And I think I'm just taking issue, Mr.
16 Manconi, with the sort of characterization that it's the maximized payment. I mean, it's
17 also what's expected under the Project Agreement; is that fair?

18 **MR. JOHN MANCONI:** Again, I just learned that. I was listening to
19 some testimony. Again, I think everybody assumes I know every single word of a --
20 thousands of pages in that Project Agreement, but nobody ever anticipates perfection
21 on any railroad. You know, I've ridden many of them, I've been part of those. So I don't
22 know exactly what it says, and so again, I was trying to find out why the 98? What's so
23 important about that?

24 **MR. MICHAEL FENRICK:** Okay. And I'd put it to you -- we can
25 leave it there, Mr. Manconi. I just wanted to -- it sounds like you're not aware of the
26 standards in the Project Agreement, at this time, and that's ---

27 **MR. JOHN MANCONI:** Not at that level of detail, no.

28 **MR. MICHAEL FENRICK:** Okay. Now, I want to talk a little bit

1 about the P-3 model, and just at a high level of generality. But it's fair to say that this
2 was a complex project; is that fair?

3 **MR. JOHN MANCONI:** It's -- yeah, it was complicated.

4 **MR. MICHAEL FENRICK:** And there's a number of stakeholders
5 who are involved?

6 **MR. JOHN MANCONI:** Yes.

7 **MR. MICHAEL FENRICK:** The City, the public, the private sector --
8 -

9 **MR. JOHN MANCONI:** Customers, council ---

10 **MR. MICHAEL FENRICK:** --- customers, yeah. And one of the
11 features though of the P-3 model, I think you'd agree with me, is that it requires a design
12 build phase first?

13 **MR. JOHN MANCONI:** Yeah.

14 **MR. MICHAEL FENRICK:** And a 30-year maintenance term
15 thereafter?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. MICHAEL FENRICK:** And that's a very lengthy kind of
18 relationship?

19 **MR. JOHN MANCONI:** Yes.

20 **MR. MICHAEL FENRICK:** And you'd agree with me that a project
21 such as this one works best where the stakeholders are working collaboratively and
22 cooperatively?

23 **MR. JOHN MANCONI:** Yes. In fact, those were some of our early
24 principles that we shared about the 30-year maintenance period that I brought up that
25 nobody was even talking about.

26 **MR. MICHAEL FENRICK:** And you were taken to a number of
27 examples in your formal interview, Mr. Adair took you to, where you talked about
28 working collaboratively and cooperatively with RTG. Do you recall that?

1 **MR. JOHN MANCONI:** Yes.

2 **MR. MICHAEL FENRICK:** And you would agree with me that no
3 party should take an overly aggressive or adversarial approach to the relationship?

4 **MR. JOHN MANCONI:** Yeah. There's also moments where either
5 party had difficult days and would challenge each other, yeah.

6 **MR. MICHAEL FENRICK:** But in general, that's not what I'm
7 asking. I'm asking here about taking an overly aggressive approach.

8 **MR. JOHN MANCONI:** Agree.

9 **MR. MICHAEL FENRICK:** Okay. And I just want to take you then
10 to a couple of text exchanges, because I'm sort of having a difficulty squaring that
11 approach with some of the things that I've seen, at least in some of the text messages.

12 And so the first one I want to take you to is from July 7th, 2019.

13 Before we get to the document, it's a text exchange between you
14 and Mr. Armbruster. At the time, Mr. Armbruster was the special assistant to Mayor
15 Watson on community relations; is that correct?

16 **MR. JOHN MANCONI:** I don't remember his specific title, but
17 yeah, he was in his office.

18 **MR. MICHAEL FENRICK:** He was in the mayor's office? Okay.

19 And the document I want to take you to is COW0593687, and it's
20 on page 1 near the bottom of that page. And it's an exchange between you and Mr.
21 Armbruster that begins, "Is September 7th public launch still possible?"

22 Do you see that?

23 **MR. JOHN MANCONI:** Where are you? Which -- what time?

24 **MR. MICHAEL FENRICK:** Sorry, it should be near the bottom of
25 the page.

26 **MR. JOHN MANCONI:** Oh yeah. Okay. "Thanks very much for
27 the update"?

28 **MR. MICHAEL FENRICK:** Yeah. And "Is September 7th public

1 launch possible, knowing what you know as of today?"

2 Do you see that?

3 **MR. JOHN MANCONI:** Yeah.

4 **MR. MICHAEL FENRICK:** And then you go on to say:

5 "They lost a week of buffer for giving ---

6 Sorry, excuse me.

7 "--- for getting through trial running. They cannot be --
8 they cannot lose any more time or they will slip. I had
9 a meeting with them yesterday and by the time I was
10 done, there was RTG/RTM blood all over the
11 boardroom floor. They got a wakeup call, and I
12 couldn't have been any clearer." (As read)

13 That sort of language doesn't reflect a spirit of collaboration, does
14 it, Mr. Manconi?

15 **MR. JOHN MANCONI:** It's a period in time. They knew that I was
16 always partnering with them, and yes, I was very direct, as I was there protecting the
17 public's interest, and I made it crystal clear that they needed to step up their game.

18 **MR. MICHAEL FENRICK:** So -- but it's aggressive and adversarial
19 language. It's blood all over the floor. I mean, that's pretty graphic stuff.

20 **MR. JOHN MANCONI:** Yes, but you know, there's thousands of
21 texts where there's positive dialogue and thousands of meetings. And yes, that's -- that
22 was, in looking back at it, a little bit harsh, but you know, I don't remember the specifics
23 of it, but I was very, very direct with them, as I needed to be to get their attention.

24 **MR. MICHAEL FENRICK:** And I'm going to suggest to you, Mr.
25 Manconi, that you were trying to communicate to the mayor's office that no matter what,
26 you were going to see this project launched in September?

27 **MR. JOHN MANCONI:** No. No, I was demonstrating no matter
28 what, I was unrelenting, and there are emails, there's texts, I've heard people give

1 evidence, that I was there to protect the public, the Project Agreement, to be a partner,
2 to protect the customers that have gone through five years of detours, and so forth, and
3 council. And I was not going to cave to deviations that were inappropriate, unfair, one
4 sided, illogical, and -- because quite frankly, at this point in time, we had heard many
5 false, false -- or not false, but many promises that didn't get acted upon.

6 And so was I direct? Absolutely. Should I have characterized it as
7 blood all over the boardroom floor? No.

8 **MR. MICHAEL FENRICK:** But you know, the mayor's office would
9 be happy to hear that?

10 **MR. JOHN MANCONI:** Everyone was frustrated with four repetitive
11 delays, dates that were promised that they did not execute on, and constant, constant
12 reminder from everyone on OLRTC, RTG, and Alstom that they were ready and they
13 had everything under control and they were on schedule.

14 **MR. MICHAEL FENRICK:** So the next text I want to take you to is
15 from October 15, 2019. And I want to just situate this one in time, October 15th, 2019,
16 was approximately a month after public service had commenced; is that fair?

17 **MR. JOHN MANCONI:** Correct.

18 **MR. MICHAEL FENRICK:** And the system had run well for a few
19 weeks, but then was experiencing challenges by that point?

20 **MR. JOHN MANCONI:** Significant challenges, yes.

21 **MR. MICHAEL FENRICK:** And by that point, the City had
22 cancelled parallel bus service?

23 **MR. JOHN MANCONI:** Three weeks after launch, correct.

24 **MR. MICHAEL FENRICK:** So the text messages between you, Mr.
25 Morgan, and Mr. Scott Krieger. Mr. Krieger is with STV; is that correct?

26 **MR. JOHN MANCONI:** Correct.

27 **MR. MICHAEL FENRICK:** And, of course, we heard from Mr.
28 Morgan yesterday, so we know that he's the Director of the Rail Office; is that correct?

1 **MR. JOHN MANCONI:** Mr. Morgan is Director of the Rail Office,
2 yes.

3 **MR. MICHAEL FENRICK:** Yes. So if we could pull up
4 STV0002337, and page 90 of that document once we have it.

5 **COMMISSIONER HOURIGAN:** Give us the number again, please.

6 **MR. MICHAEL FENRICK:** Yeah, it's STV0002337, and it's page
7 90, question -- or sorry, text 1094, beginning there.

8 **MR. JOHN MANCONI:** All right. Which one?

9 **MR. MICHAEL FENRICK:** I think it's question -- well, it begins at
10 question -- sorry, it's question 1902. Excuse me. That's where it begins.

11 **MR. JOHN MANCONI:** Yeah.

12 **MR. MICHAEL FENRICK:** Or text 1902.

13 **MR. JOHN MANCONI:** Yeah.

14 **MR. MICHAEL FENRICK:** And I just want you to read down to
15 1904.

16 **MR. JOHN MANCONI:** Yes. You've read that, sir?

17 **MR. MICHAEL FENRICK:** Yeah. And here you say that, you
18 know, there's an issue with IMIRS, at the beginning, that Scott has identified. Mr.
19 Morgan says, "Thanks, Scott." And you say:

20 "I want them destroyed with penalties." (As read).

21 Now, is that language that's consistent with a good collaborative
22 relationship?

23 **MR. JOHN MANCONI:** The language there is reflective of a lot of
24 frustrations and a lot -- again, a lot of committing to things and not delivering, including
25 us calling people to wake them up to let them know that there's was issues in the yard.

26 **MR. MICHAEL FENRICK:** That's not my question, sir. My
27 question is, is that a collaborative -- is that an example of collaborative and cooperative
28 approach?

1 **MR. JOHN MANCONI:** That wasn't shared with them. That was
2 with my team. And I was saying, "Load them up on penalties." And could it be
3 described at collaborative? At that point, in isolation, no.

4 **MR. MICHAEL FENRICK:** And I want to turn next to -- this is in the
5 same document -- page 101. And this is a text exchange -- sorry, it's question -- sorry,
6 excuse me. I'm used to reading transcripts, Mr. Manconi, not text messages.

7 **MR. JOHN MANCONI:** It's okay.

8 **MR. MICHAEL FENRICK:** It's text message 2232. And this is a
9 text exchange between you and Mr. Morgan. And so on October 27th, 2019 ---

10 **MR. JOHN MANCONI:** Yes.

11 **MR. MICHAEL FENRICK:** --- there's a reference here that --
12 please read the whole text message, but you say:

13 "Okay, Michael, you need to connect with me when
14 you can today. Major developments and also the
15 mayor has ordered zero money goes to RTG or RTM.
16 The tap is officially off and the mayor has full
17 authority." (As read).

18 And it goes on and continues on, and you ask Mr. Morgan to
19 provide you with a list of the holdbacks were part of that term sheet that Mr. Adair took
20 you to. Do you see that text exchange?

21 **MR. JOHN MANCONI:** Sure do, yes.

22 **MR. MICHAEL FENRICK:** Okay. So you've received direction
23 from the Mayor's Office, or from the mayor himself, that no money goes to RTG or
24 RTM?

25 **MR. JOHN MANCONI:** That was -- at that point in time, yes.

26 **MR. MICHAEL FENRICK:** And that the taps are turned off?

27 **MR. JOHN MANCONI:** Yeah.

28 **MR. MICHAEL FENRICK:** And that money would have been used

1 for the service payment in order to provide maintenance; is that fair?

2 **MR. JOHN MANCONI:** Yes, but we're speculating that that's in
3 fact what happened. What probably happened is we went in and we explained to him
4 what the City Manager had said all along, and what we did. We didn't turn the taps off.
5 We told the mayor and we told council -- because some people didn't want us to pay
6 them anything and we always said we would pay them what they were entitled to be
7 paid. And so the mayor was obviously very frustrated here, and the tap did not get
8 turned off because that's not how the Project Agreement works. So -- and we did give
9 them payments.

10 **MR. MICHAEL FENRICK:** You're aware that -- that to this day, in
11 fact, there's been no payments received by RTG for those few months of service other
12 than for the first one day of service in August?

13 **MR. JOHN MANCONI:** Well, if we're going to get into the details,
14 there was a \$13M settlement that was done and they couldn't get signoff on it. So we
15 were very close to resolving that but there was other ---

16 **COMMISSIONER HOURIGAN:** Sorry, sorry, sorry, sorry. Just
17 stop. We don't want to hear about settlements, settlement discussions, any of that.
18 There could be privilege attached to that. So I know it answers the question in your
19 mind but we've got to be careful about what we talk about here.

20 **MR. JOHN MANCONI:** Absolutely.

21 **COMMISSIONER HOURIGAN:** So we don't talk about what
22 lawyers tell us. We don't talk about, you know, negotiations for settlements. That kind
23 of thing, we've got to be careful about, okay?

24 **MR. JOHN MANCONI:** Okay.

25 **COMMISSIONER HOURIGAN:** Okay.

26 **MR. JOHN MANCONI:** One thing there was -- there was payments
27 made to them.

28 **MR. MICHAEL FENRICK:** And we're just going back just to the list

1 that you provided for Mr. Morgan. I going to suggest to you that you being asked by --
2 you were asking for that list so you could report up to the mayor the volume of money
3 you were holding back from RTG in order to satisfy them; is that fair?

4 **MR. JOHN MANCONI:** We had a running list of what they were
5 paid, what they were held back, and we shared that with the mayor, and we've also
6 shared that in-camera with council.

7 **MR. MICHAEL FENRICK:** Okay. I'm now going to show you a text
8 message from January 19, 2020. That's STV -- sorry, it's a different document this
9 time. Actually, just going back to that exchange, I don't think you need to pull it up. Are
10 you aware that the City has asserted privilege over that text exchange?

11 **MR. JOHN MANCONI:** Has a what, sorry?

12 **MR. MICHAEL FENRICK:** That they asserted privilege over that
13 text exchange that I just took you to?

14 **MR. JOHN MANCONI:** I'm not aware of that.

15 **MR. MICHAEL FENRICK:** Okay. That's fine. I do want to take
16 you to the next exchange that I have here, which is ---

17 **COMMISSIONER HOURIGAN:** Sorry, Counsel, just for the benefit
18 of those watching at home, you've mentioned that a privilege claim was asserted. It
19 was denied by an independent arbiter. So that, in fact, was the information. It hasn't
20 been withheld for privilege reasons, just in case anybody's confused at home. That
21 documentation's been produced. You've asked Mr. Manconi questions on it. Okay?

22 **MR. MICHAEL FENRICK:** Yeah. Thank you, Mr. Commissioner.
23 And I would have gotten to that but the witness wasn't aware, so thank you for that
24 clarification.

25 **COMMISSIONER HOURIGAN:** No, it's just we have to always
26 remember that this is for the public and they don't necessarily have the background to
27 understand what's privileged and what's not, and what's been produced and what
28 hasn't. So I didn't want there to be any kind of misunderstanding that something hadn't

1 been produced. It has been produced now. Okay.

2 **MR. MICHAEL FENRICK:** Of course, Mr. Commissioner.

3 So the next document I just want to take you to is STV0002492.

4 **--- EXHIBIT No. 202:**

5 STV0002492 – WhatsApp Chat Log 29 December 2019 to
6 24 December 2020

7 **MR. MICHAEL FENRICK:** And it's page 15, and it begins, I believe,
8 at question 4163. And it's a text from -- text from you saying:

9 "I'm hammering Peter right now. Troy, don't let him
10 win the "I am sorry" BS game. They should have
11 listened to us. Flood the line with staff. They didn't
12 and now we are being destroyed in the media and
13 social media. Don't cut him any breaks. Et cetera."
14 (As read).

15 Do you see that text?

16 **MR. JOHN MANCONI:** Absolutely, yeah.

17 **MR. MICHAEL FENRICK:** And Peter is Mr. Lauch?

18 **MR. JOHN MANCONI:** Yes.

19 **MR. MICHAEL FENRICK:** And he was -- at the time, he was
20 RTG's CEO?

21 **MR. JOHN MANCONI:** Yes.

22 **MR. MICHAEL FENRICK:** And are you aware that we've heard
23 this word "hammering" before from one of the Deloitte witnesses who was a City
24 consultant? Are you aware of that?

25 **MR. JOHN MANCONI:** I'm aware of him.

26 **MR. MICHAEL FENRICK:** And that was your approach to your
27 interactions with RTG's CEO; is that fair?

28 **MR. JOHN MANCONI:** No.

1 **MR. MICHAEL FENRICK:** And I'm going to suggest to you that
2 your biggest concern at this time was the -- that you were being destroyed in the media
3 and in social media?

4 **MR. JOHN MANCONI:** No. my biggest concern was the customers
5 that were getting stranded on our line.

6 **MR. MICHAEL FENRICK:** Well, you didn't mention that, sir. You
7 talked about the fact that you were being destroyed in the media and social media; is
8 that fair?

9 **MR. JOHN MANCONI:** You asked me what my concern was.
10 That's my answer. There was people -- thousands of people were getting stranded.

11 **MR. MICHAEL FENRICK:** Sir, that's not ---

12 **MR. JOHN MANCONI:** And ---

13 **MR. MICHAEL FENRICK:** It's not what you wrote, sir. Is that what
14 you wrote in this text message?

15 **MR. JOHN MANCONI:** It's what I'm alluding to, and that's what the
16 issue was -- our brand, our customers, everyone was hurting tremendously.

17 **MR. MICHAEL FENRICK:** Well, then, I'm surprised you didn't say
18 that in this text message because you certainly talked about the impact you were having
19 in the media from the negative coverage.

20 **MR. JOHN MANCONI:** Well, if we scroll down, you can see
21 Peter's response.

22 **MR. MICHAEL FENRICK:** Now, I didn't -- sorry, sir, I didn't mean
23 to cut you off there.

24 **MR. JOHN MANCONI:** No, it's fine.

25 **MR. MICHAEL FENRICK:** So I want to just briefly now -- it's your -
26 - are you aware that under the Project Agreement in Schedule 18 that it's the City's
27 responsibility to communicate to the media?

28 **MR. JOHN MANCONI:** Yes.

1 **MR. MICHAEL FENRICK:** And that RTG has to receive the City's
2 approval before it can communicate to the media?

3 **MR. JOHN MANCONI:** Yes.

4 **MR. MICHAEL FENRICK:** And you would agree with me that it
5 was the City's responsibility to put in place a sound communications plan about this
6 project?

7 **MR. JOHN MANCONI:** Yes.

8 **MR. MICHAEL FENRICK:** And you'd agree with me that a sound
9 communications plan includes expectation management?

10 **MR. JOHN MANCONI:** Yes.

11 **MR. MICHAEL FENRICK:** Clarity?

12 **MR. JOHN MANCONI:** Yes.

13 **MR. MICHAEL FENRICK:** Transparency?

14 **MR. JOHN MANCONI:** Yes.

15 **MR. MICHAEL FENRICK:** And during the construction phase you
16 were involved in the construction phase. Was it your view that the City was engaged
17 with RTG on a daily basis regarding construction of the project?

18 **MR. JOHN MANCONI:** We had staff at all levels engaged, yes.

19 **MR. MICHAEL FENRICK:** As were the City's consultants?

20 **MR. JOHN MANCONI:** Yes.

21 **MR. MICHAEL FENRICK:** And so the City was well aware of the
22 challenges that were facing the construction on the project; is that right?

23 **MR. JOHN MANCONI:** The City had its views on the projects.
24 OLRTC disagreed with the City's views.

25 **MR. MICHAEL FENRICK:** That's fair. But you had a view that you
26 described in your formal interview that you considered that the work schedules that
27 were being provided were overly optimistic. Is that fair?

28 **MR. JOHN MANCONI:** Yes, it is fair.

1 **MR. MICHAEL FENRICK:** But the City didn't communicate that to
2 the public, did it?

3 **MR. JOHN MANCONI:** Yes, we did.

4 **MR. MICHAEL FENRICK:** The City announced these dates and
5 did not in fact cover them off by saying that they had a different view.

6 **MR. JOHN MANCONI:** Sorry, which dates?

7 **MR. MICHAEL FENRICK:** The dates in which -- the dates that you
8 referred to a number of times in terms of substantial completion being achieved.

9 **MR. JOHN MANCONI:** No, we did communicate that and we did
10 communicate when we disagreed with the dates. There was Fedco updates. There
11 was updates that we provided and s forth on those four delays. There was discussions
12 about those. There was debates. And Mr. Lauch put out a date at one of our
13 committees and I was asked if I agreed and I totally disagreed. And yes, we did put out
14 this information to mayor and members of council and the public.

15 **MR. MICHAEL FENRICK:** So I want to take you to MHH0040571.
16 And you want to go to page 6 of that document? And it's the paragraph beginning, "My
17 hope is we're going to launch this train in the first quarter of 2019..."

18 **--- EXHIBIT No. 203:**

19 MHH0040571 – Email from Denise Lamoureux to Jocelyne
20 Daigle et al Re: Media Monitoring – 11 September 2018

21 **COMMISSIONER HOURIGAN:** Are we on the right document
22 here?

23 **MR. JOHN MANCONI:** I'm not sure.

24 **COMMISSIONER HOURIGAN:** We've got a media monitoring
25 document up. Is that what you're looking for?

26 **MR. MICHAEL FENRICK:** Yes, I think it is what I'm looking for.
27 Sorry, there's an echo on my voice. I apologize.

28 **COMMISSIONER HOURIGAN:** No, that's fine. We don't have

1 page numbers. So maybe help us a little of what you're looking for.

2 **MR. MICHAEL FENRICK:** I missed that. Can you help me out
3 here? Sorry. It's page 6 of the document, midway through the document. And this ---

4 **COMMISSIONER HOURIGAN:** What's the -- what wording are
5 you talking about? Or you want to direct us to? That might help.

6 **MR. MICHAEL FENRICK:** "My hope is we're going to launch this
7 train in the first quarter of 2019."

8 I'm sorry, Mr. Commissioner. I actually have a significant visual
9 impairment so it's challenging for me to do it on the fly.

10 **COMMISSIONER HOURIGAN:** No, I was aware of that. That's
11 fine. That's why we thought it would be better to just get the words. And so Mitchell ---

12 **MR. MICHAEL FENRICK:** Okay. And just if you go down a little
13 bit you indicate in this media report of -- I think it's of a Fedco meeting -- that you will
14 hold their feet to the fire. Do you see that, Mr. Manconi?

15 **MR. JOHN MANCONI:** Yes, I do.

16 **MR. MICHAEL FENRICK:** And you're aware that throughout the ---
17 or following the sink hole on the construction that RTG was asking the City for schedule
18 relief.

19 **MR. JOHN MANCONI:** That's my understanding, yeah.

20 **MR. MICHAEL FENRICK:** And the City wouldn't grant it?

21 **MR. JOHN MANCONI:** I believe that's accurate.

22 **MR. MICHAEL FENRICK:** And the City wasn't prepared to accept
23 the delay?

24 **MR. JOHN MANCONI:** What do you mean by that? I'm sorry.

25 **MR. MICHAEL FENRICK:** Well, the City wasn't prepared to accept
26 that there would be a delay and grant the schedule relief that had been sought.

27 **MR. JOHN MANCONI:** Yeah. The nuances of how all that works, I
28 don't have that level of expertise, how all those things are interconnected. That's better

1 directed at Mr. Morgan.

2 **MR. MICHAEL FENRICK:** Okay. and that's fair. I don't need to
3 make a technical point over it. I was just trying to get the fact out. And so I'm just going
4 to suggest to you that throughout this project we've seen a number of examples of this
5 already in your various text messages that your approach to contract administration on
6 this project was to adopt an approach where you were going to penalize RTG during the
7 operations phase. Is that fair?

8 **MR. JOHN MANCONI:** No. I told every one of those directors that
9 were doing the build and I actually told the RTM board when I met with them all that
10 success for me -- because again, during the construction phase no one was looking to
11 the 30-year window. I had an advisor that had coached me on that I said, "Let's work
12 together, get the system launched, and success is that you're getting your monthly
13 payment and that the deltas on those monthly payments are so negligible that you're
14 making the profits that you need to make. And my profitability is happy customers.

15 I was absolutely talking about that for years. That 30-year
16 concession, to your point, I agree with you 100 percent. It's very important and I
17 understood how important it was to the consortium. And that's what my approach to the
18 30-year period was all along and continues to be to this day.

19 **MR. MICHAEL FENRICK:** Okay. Those are my questions, Mr.
20 Manconi. Thank you.

21 **COMMISSIONER HOURIGAN:** Thank you, Counsel. Next up is
22 Alstom.

23 **MR. MICHAEL VALO:** Thank you, Mr. Commissioner.

24 **---- CROSS-EXAMINATION BY MR. MICHAEL VALO:**

25 **MR. MICHAEL VALO:** Good afternoon, Mr. Manconi. My name is
26 Michael Valo and I'm a lawyer for Alstom.

27 This shouldn't take too long. I only have really one line of
28 questioning.

1 Sir, you had indicated to Commission counsel that the reason the
2 City was prepared to reduce the number of vehicles required for RSA from 15 to 13 was
3 because ridership was anticipated to be much lower than originally forecast. Do you
4 recall that?

5 **MR. JOHN MANCONI:** Yeah. Ridership was in fact much much
6 closer, yes, lower.

7 **MR. MICHAEL VALO:** And that's consistent, sir. I don't know if
8 you saw Mr. Morgan's testimony but that's consistent with his evidence that it was really
9 the result of a calibration effort that was done in around that time to match vehicles to
10 ridership. And it wasn't really about reliability. Do you agree with that?

11 **MR. JOHN MANCONI:** Are you talking about what was in the PA
12 or our review of it?

13 **MR. MICHAEL VALO:** No, the change, sir, the change to RSA
14 from 15 to 13 vehicles.

15 **MR. JOHN MANCONI:** Absolutely. It was about calibrating to --
16 everybody knows we were -- our ridership was not rising, It was declining and flat and
17 we were calibrating the service to what we needed out there.

18 **MR. MICHAEL VALO:** Okay. I'd like to -- if Mitchell, the Court
19 Operator, would assist. If we could call up RTG00151032. This is the term sheet, sir,
20 that the City interested into with RTG that you had reviewed with Mr. Adair. And I
21 wanted to look at a provision of the agreement that you hadn't gone to and that's
22 number 8 and it's on page 3. And here it is.

23 You'll see, Mr. Manconi, it's an express term of this term sheet that
24 RTG is to provide a timeline for getting itself up from 13 to 15 cars, that it has to provide
25 a reliability growth plan, and it's expected to meet the reliability demonstration test of the
26 trial running test procedure. That's the 2019 procedure, isn't it?

27 **MR. JOHN MANCONI:** I'm just reading it, sir.

28 Yeah, so a timeline, a growth plan getting to the 50,000 kilometres,

1 and yeah, the 15, Yes.

2 **MR. MICHAEL VALO:** And I'm going to suggest to you, sir, that
3 this provision is here because the reduction of 13 trains was very much viewed as an
4 exception, a temporary exception to allow RSA to be achieved. Would you agree with
5 that?

6 **MR. JOHN MANCONI:** It was a -- as you said, I'll use your term. It
7 was a calibration of the service and we had seen the demonstration that they could put
8 15 double vehicles out there.

9 **MR. MICHAEL VALO:** Sir, that's not quite answering my question.
10 If the expectation was -- you had said to Commission counsel, sir, "It's like a bus
11 service. If you don't need the buses you don't run the buses." Correct?

12 **MR. JOHN MANCONI:** Correct.

13 **MR. MICHAEL VALO:** But what you're looking for for RTG here is
14 as soon as possible for them to show the City how they're going to get to 15 trains. Doi
15 you agree with that?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. MICHAEL VALO:** And so for -- if ridership isn't expected to
18 require 15 trains, why would you require this as a part of the term sheet?

19 **MR. JOHN MANCONI:** Oh, very simple. Because what generally
20 happens with rail systems is it attracts massive ridership gain. In fact, our long-range
21 financial plan had that; the studies had that. So if ridership escalated, we wanted to be
22 ready for that.

23 **MR. MICHAEL VALO:** I'm just trying to understand the timelines.
24 Are you expecting ridership to escalate immediately, within a month, within a year?
25 What's your expectation?

26 **MR. JOHN MANCONI:** Sir, there's no science to that. It is all over
27 the map. There are systems that open up and ridership takes off immediately. There's
28 also economic situations. There's the downside, such as COVID. Forecasting ridership

1 is an art and a science, but two things we wanted to do -- we had demonstrated we
2 could do 15 double trains if we were at that 10,700 passengers per hours -- check; that
3 was done. We knew reliability of the fleet was going on -- check; that was done. We
4 also wanted the safeguard that if ridership did take off and we needed that capacity, we
5 wanted to have a timeline for that, and yes, it could be in months.

6 **MR. MICHAEL VALO:** And you'd agree, in fact, as part of the term
7 sheet, RTG was still charged against an availability ratio measured against 15 trains,
8 right, not 13 trains?

9 **MR. JOHN MANCONI:** Again, I don't have the specifics, but I was
10 alluding to that, that I believe, yes, that was a protection for the City on that to safeguard
11 on that because that was something that we wanted.

12 **MR. MICHAEL VALO:** So I'm still trying to understand. If the City
13 really believed that it only required 13 trains, why would it measure RTG against 15?

14 **MR. JOHN MANCONI:** Because that was the requirement, and as
15 has been stated many times, there had to be a scenario where both parties were in
16 agreement. And there was trade-offs to be had, and those were some of the trade-offs
17 that we negotiated with them.

18 **MR. MICHAEL VALO:** Okay. Thank you, Mr. Manconi. Those are
19 all my questions.

20 Thank you, Mr. Commissioner.

21 **COMMISSIONER HOURIGAN:** All right. Thank you.

22 Next up is Infrastructure Ontario.

23 **MR. DEVON JOHNSON:** Good afternoon. Devon Johnson for
24 Infrastructure Ontario. We have no questions for this witness. Thank you.

25 **COMMISSIONER HOURIGAN:** All right. Thank you.

26 Next is up STV.

27 **MR. THEO MILOSEVIC:** Theo Milosevic for STV. We have no
28 questions either. Thank you.

1 **COMMISSIONER HOURIGAN:** Thank you.

2 Next up is the Province of Ontario.

3 **MR. JEFFREY CLAYDON:** Jeffrey Claydon for the Province of
4 Ontario. We have no questions for this witness.

5 **COMMISSIONER HOURIGAN:** All right. Next is Thales.

6 **MS. MARIA BRAKER:** Hello. Maria Braker for Thales. We have
7 no questions for this witness.

8 **COMMISSIONER HOURIGAN:** All right. Next is Amalgamated
9 Transit Union Local 279.

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

11 **MR. JOHN McLUCKIE:** Good afternoon, Mr. Manconi, Mr.
12 Commissioner. My name is John McLuckie, for the record, sir.

13 **MR. JOHN MANCONI:** Hi, John.

14 **MR. JOHN McLUCKIE:** So Mr. Manconi, you're obviously familiar
15 with my client, the Amalgamated Transit Union.

16 **MR. JOHN MANCONI:** I know them well.

17 **MR. JOHN McLUCKIE:** And you know that they represent the staff
18 that maintain your buses at OC Transpo.

19 **MR. JOHN MANCONI:** Yes.

20 **MR. JOHN McLUCKIE:** And you know that they represent the staff
21 that maintain your trains at Alstom.

22 **MR. JOHN MANCONI:** Yes.

23 **MR. JOHN McLUCKIE:** They've done that for a number of years,
24 in terms of maintaining the buses, correct?

25 **MR. JOHN MANCONI:** Correct.

26 **MR. JOHN McLUCKIE:** And in fact, the ATU has been around for
27 more than 100 years in this city maintaining whatever transit system the city has
28 operated, correct?

1 **MR. JOHN MANCONI:** Correct.

2 **MR. JOHN McLUCKIE:** So from streetcars through to buses
3 through to electric buses, today we maintain them all.

4 **MR. JOHN MANCONI:** Save and except the original O-Train line.

5 **MR. JOHN McLUCKIE:** Right. But we've maintained streetcars,
6 buses, electric buses -- a wide range of vehicles.

7 **MR. JOHN MANCONI:** Correct.

8 **MR. JOHN McLUCKIE:** And would you agree that my clients are
9 good at maintaining those vehicles for you?

10 **MR. JOHN MANCONI:** Your clients are very good at doing vehicle
11 maintenance and operations, yes.

12 **MR. JOHN McLUCKIE:** And my clients are capable of being
13 trained to maintain new vehicles -- for example, hybrid buses when you brought them a
14 few years ago.

15 **MR. JOHN MANCONI:** Double-deckers -- yes, absolutely.

16 **MR. JOHN McLUCKIE:** So they can learn new skills.

17 **MR. JOHN MANCONI:** They can.

18 **MR. JOHN McLUCKIE:** They can learn to maintain new vehicles.

19 **MR. JOHN MANCONI:** With proper training programs and tools
20 and resources, yes.

21 **MR. JOHN McLUCKIE:** And they've demonstrated all of that in the
22 past.

23 **MR. JOHN MANCONI:** They have as long as I was there, yes.

24 **MR. JOHN McLUCKIE:** And in terms of the reporting relationship,
25 just so that we're all clear, you were the manager of transit.

26 **MR. JOHN MANCONI:** I was the general manager of
27 transportation services. The portfolio included transit operations and the LRT and other
28 parts of the portfolio.

1 **MR. JOHN McLUCKIE:** So ultimately, all of the people that
2 maintain the buses, through to the guy that's on the tools on the bus, ultimately reports
3 up through you.

4 **MR. JOHN MANCONI:** Through managers, supervisors, and
5 directors, yes.

6 **MR. JOHN McLUCKIE:** And public accountability is achieved
7 because, through you and through council, he's a City employee.

8 **MR. JOHN MANCONI:** Accountability is achieved through multiple
9 inputs, including that, yes.

10 **MR. JOHN McLUCKIE:** In terms of the relationship you have with
11 the contractors here -- so the City has a contract with RTG.

12 **MR. JOHN MANCONI:** The maintenance contract is with RTM,
13 correct.

14 **MR. JOHN McLUCKIE:** Well, actually, the maintenance contract
15 between the City is with RTG, and then RTG assigned that to RTM ---

16 **MR. JOHN MANCONI:** Correct.

17 **MR. JOHN McLUCKIE:** --- and then further subcontracted that
18 down to Alstom, correct?

19 **MR. JOHN MANCONI:** There's a whole infrastructure set up in the
20 governance, yes.

21 **MR. JOHN McLUCKIE:** And this is what would typically be called
22 a P3 model, correct?

23 **MR. JOHN MANCONI:** This is the maintenance period or the P3,
24 yes.

25 **MR. JOHN McLUCKIE:** And that means that the people that clean
26 and maintain the trains, they don't work directly for the City, correct?

27 **MR. JOHN MANCONI:** Correct.

28 **MR. JOHN McLUCKIE:** And they don't report to you.

1 **MR. JOHN MANCONI:** Not directly, no.

2 **MR. JOHN McLUCKIE:** In fact, they don't even report to you
3 indirectly. They report up through their chain of command, through Alstom, through
4 RTM, through RTG, and then the City's relationship is only at the top of that pyramid,
5 between themselves and RTG.

6 **MR. JOHN MANCONI:** We established, as part of our yard
7 configuration, working environments where we collocated to have those relationships
8 that you're suggesting in terms of the supervisory level, shop floor level, and so forth.
9 So we are collocated with them, and that was intentional to make sure that there was
10 appropriate dialogue.

11 **MR. JOHN McLUCKIE:** They don't work for the City, correct?

12 **MR. JOHN MANCONI:** They do not -- not directly, no.

13 **MR. JOHN McLUCKIE:** And we're going to go to this in just a
14 minute, but you don't have the ability to direct a manager from Alstom to either add
15 staff, remove staff, or redeploy them in a specific way.

16 **MR. JOHN MANCONI:** No. We pay for service outcomes.

17 **MR. JOHN McLUCKIE:** And one of the service outcomes you pay
18 for is a maintenance crew that maintains a reliable light rail system. Would you agree
19 with that?

20 **MR. JOHN MANCONI:** Slight difference of opinion -- we pay for
21 service outcomes. We dictate how much service we need. How they get there, that's
22 entirely up to them.

23 **MR. JOHN McLUCKIE:** Not to split hairs with you, sir, but having a
24 reliable light rail service is what ultimately the taxpayers are paying for. Would you not
25 agree with that?

26 **MR. JOHN MANCONI:** Yes. When you say it that way -- safe,
27 reliable -- yes, absolutely.

28 **MR. JOHN McLUCKIE:** And that's Alstom's job, through their

1 relationship with RTM and RTG, to deliver that to the taxpayers of Ottawa.

2 **MR. JOHN MANCONI:** If they want their monthly payment, yes.

3 **MR. JOHN McLUCKIE:** And this P3 arrangement, this was a
4 choice the City made to arrange their operations in this way, correct?

5 **MR. JOHN MANCONI:** Correct.

6 **MR. JOHN McLUCKIE:** And in the past, transit had always been
7 delivered directly by the City, correct?

8 **MR. JOHN MANCONI:** As we talked about earlier, yes.

9 **MR. JOHN McLUCKIE:** And it was delivered using bus fleets. I
10 mean, you had about 1,000 buses at one point.

11 **MR. JOHN MANCONI:** I think they're still at that count right now,
12 yes.

13 **MR. JOHN McLUCKIE:** And the City had the ability to set up a
14 contract with RTG in the way that most met its needs, correct?

15 **MR. JOHN MANCONI:** The City always has its ability to set up any
16 contract they want, yes.

17 **MR. JOHN McLUCKIE:** So one of the things that the City did in
18 this contract is they required RTG to recognize the ATU as the union for their
19 employees, did they not?

20 **MR. JOHN MANCONI:** I believe that was a requirement that's
21 enshrined in our collective agreement, yes.

22 **MR. JOHN McLUCKIE:** And it was open to the City to require RTG
23 not only to recognize the union, but also to recognize the union's contract with the City
24 and its terms and conditions. Isn't that true?

25 **MR. JOHN MANCONI:** I don't know that level of detail. You'd
26 have to ask David White or someone from labour relations.

27 **MR. JOHN McLUCKIE:** Any reason to believe that you couldn't
28 have -- if you required them to recognize the union, you couldn't also require minimum

1 payments, benefit levels, things such as that?

2 **MR. JOHN MANCONI:** Mr. McLuckie, I don't recall those specifics.
3 I know there's a clause that says if we get into a P3, any maintenance regime will need
4 to be ATU-certified local. I don't know the details associated with that. I don't recall
5 what those are.

6 **MR. JOHN McLUCKIE:** And the details in terms of having Alstom
7 maintain the trains and maintain the infrastructure -- so the electrical, the trains, the
8 tracks -- that again was a choice of the City, correct?

9 **MR. JOHN MANCONI:** That decision was made by those
10 individuals that set up that P3.

11 **MR. JOHN McLUCKIE:** And you're familiar with other transit
12 systems, in Toronto in particular -- or in Ontario, particularly Toronto, sir.

13 **MR. JOHN MANCONI:** I'm familiar with systems across North
14 America and Europe.

15 **MR. JOHN McLUCKIE:** And you know that other systems perform
16 those roles in house, including in Toronto.

17 **MR. JOHN MANCONI:** There is a mix of all that, yes, absolutely.

18 **MR. JOHN McLUCKIE:** So in Toronto, for example, the subway
19 cars are maintained by ATU members that work directly for the City of Toronto.

20 **MR. JOHN MANCONI:** Correct.

21 **MR. JOHN McLUCKIE:** And the subway tracks, the subway
22 tunnels, the subway stations are maintained by ATU staff, again reporting directly to the
23 City of Toronto.

24 **MR. JOHN MANCONI:** I don't know all the details, but yes, that's
25 the general understanding, yeah.

26 **MR. JOHN McLUCKIE:** And the City chose a different model
27 where, rather than their staff, they subcontracted all of those responsibilities.

28 **MR. JOHN MANCONI:** Correct.

1 **MR. JOHN McLUCKIE:** And are you aware that the staff of Alstom
2 makes significantly less than the staff of OC Transpo?

3 **MR. JOHN MANCONI:** I do not know what they make.

4 **MR. JOHN McLUCKIE:** Would it surprise you to learn that?

5 **MR. JOHN MANCONI:** No.

6 **MR. JOHN McLUCKIE:** Would you agree that employee retention
7 is in some ways tied to the pay and benefits of employees?

8 **MR. JOHN MANCONI:** Absolutely. You know my style, and yeah,
9 that's definitely lined up with that.

10 **MR. JOHN McLUCKIE:** I do. You and I have met before. And in
11 terms of ensuring that employees stay on the job and you recruit new employees,
12 having good pay and good benefits goes hand in hand with that, correct?

13 **MR. JOHN MANCONI:** It's all part of that environment of a good
14 work environment.

15 **MR. JOHN McLUCKIE:** So to introduce the profit mechanism,
16 you'd agree that Alstom in this to make a profit, correct?

17 **MR. JOHN MANCONI:** Absolutely.

18 **MR. JOHN McLUCKIE:** So it's in their interest to pay staff as little
19 as possible, and yet still deliver maintenance on the trains, because that's how they
20 make their money. Would you agree with that?

21 **MR. JOHN MANCONI:** I can't agree to it because I don't know
22 their profit model. They have a construct that I'm not privy to. I don't know how they
23 make their margins or their profits.

24 **MR. JOHN McLUCKIE:** But just as a matter of common sense --
25 and I don't have much time, so I don't want to take you through this for too long -- but
26 the cheaper that RTG and Alstom and RTM can deliver the product to the City, so a
27 reliable, safe, transit system, the more money that they make on the contract with the
28 City. Would you agree with that?

1 **MR. JOHN MANCONI:** It could be.

2 **MR. JOHN McLUCKIE:** You wouldn't agree that they make more
3 money if they can deliver to you at a cheaper unit cost?

4 **MR. JOHN MANCONI:** At a cheaper unit cost, yes.

5 **MR. JOHN McLUCKIE:** So if they can reduce the cost of the
6 maintenance teams, they stand to make more money?

7 **MR. JOHN MANCONI:** As long as they're not incurring penalties.

8 **MR. JOHN McLUCKIE:** So let's talk about the reliability of the
9 train, and in terms of the number of maintenance staff. Would you agree that the
10 number of maintenance staff reflects the level of maintenance that can be performed on
11 the train?

12 **MR. JOHN MANCONI:** Again, we don't have insight into that. As
13 you heard in my testimony, and as you've probably heard in the past, our advice to them
14 was to over-service, particularly at the front end, and make sure that they had the
15 appropriate staff to have the reliability that we need and deserve.

16 **MR. JOHN McLUCKIE:** And we've heard from other individuals
17 who testified before this Inquiry, some from your management team, some consultants
18 that you hired, some individuals even from RTG, that indicated that they had concerns
19 in the summer of 2019 as to the number of maintenance staff that Alstom was capable
20 of deploying. Would you agree with ---

21 **MR. JOHN MANCONI:** Yes.

22 **MR. JOHN McLUCKIE:** --- that?

23 **MR. JOHN MANCONI:** I was one of those, yes.

24 **MR. JOHN McLUCKIE:** And you, in fact, in your interview with
25 Commission counsel, shared that you were concerned as to the number of staff that
26 Alstom had available for maintenance?

27 **MR. JOHN MANCONI:** Absolutely.

28 **MR. JOHN McLUCKIE:** And you indicated in your interview with

1 Commission counsel that in your view, leading into the transfer of the service to the City
2 and the availability of the service to the public, that Alstom should be "flooding the
3 system with technicians". Do you remember saying words to that effect?

4 **MR. JOHN MANCONI:** Yes, and they -- their CO committed to
5 doing that.

6 **MR. JOHN McLUCKIE:** And you indicated, in fact, in your
7 testimony, that you had suggested to Alstom at one point that ideally, you would like to
8 see one technician per vehicle. Do you recall saying that to the Commission ---

9 **MR. JOHN MANCONI:** Yes, I do.

10 **MR. JOHN McLUCKIE:** And you indicated that you had suggested
11 that to RTG and you had been told that you could not direct them to do that. Do you
12 remember saying that?

13 **MR. JOHN MANCONI:** Correct.

14 **MR. JOHN McLUCKIE:** So in your view at the time, as the
15 manager responsible for the service, having one technician on each train was the best
16 way to ensure reliable service, correct?

17 **MR. JOHN MANCONI:** Correct.

18 **MR. JOHN McLUCKIE:** And you suggested that to your contractor,
19 correct?

20 **MR. JOHN MANCONI:** Correct.

21 **MR. JOHN McLUCKIE:** And your contractor refused to that?

22 **MR. JOHN MANCONI:** They added some technicians, but not to
23 the level that we asked for, correct.

24 **MR. JOHN McLUCKIE:** And not to the level that you wanted them
25 to have?

26 **MR. JOHN MANCONI:** Correct.

27 **MR. JOHN McLUCKIE:** And not to the level that you believe was
28 required to ensure reliable service?

1 **MR. JOHN MANCONI:** That's what the experts were advising us,
2 yes.

3 **MR. JOHN McLUCKIE:** I would suggest to you that they weren't
4 prepared to do that because that would have come at a significant cost to Alstom, RTG,
5 RTM.

6 **MR. JOHN MANCONI:** I'd assume it would, yes.

7 **MR. JOHN McLUCKIE:** So their interest, again, was in providing
8 the level of maintenance required by the contract rather than what was required to
9 ensure a safe and stable public transit service?

10 **MR. JOHN MANCONI:** I can't comment on their behalf.

11 **MR. JOHN McLUCKIE:** In terms of the maintenance that was
12 happening, so you indicated in your interview with Commission counsel that one of your
13 concerns was the consistency of the maintenance. Do you recall her asking you
14 questions about that?

15 **MR. JOHN MANCONI:** Consistency, cadence, focus, yes.

16 **MR. JOHN McLUCKIE:** And you use different words for it, but I
17 think your concern overall was they couldn't keep it up. When they did a good job, they
18 did a good job, and then it suddenly stopped; is that fair?

19 **MR. JOHN MANCONI:** Yes.

20 **MR. JOHN McLUCKIE:** And you were concerned that they would
21 bring in staff. You had talked in your interview, they would bring in staff from New York
22 State, they would bring in staff from France, and things would get going, and then I take
23 it, those staff would go home, and things would revert to a less reliable service. Would
24 you agree with that?

25 **MR. JOHN MANCONI:** Yeah. I don't know where they would go,
26 but something would happen in which -- yeah.

27 **MR. JOHN McLUCKIE:** So they would fix it for a short term, and
28 then, as you said, issues would flare up again?

1 **MR. JOHN MANCONI:** Different issues would flare up, yeah.

2 **MR. JOHN McLUCKIE:** I'm going to suggest to you that Alstom
3 was not providing the level of maintenance support that the City expected to keep this
4 service reliable.

5 **MR. JOHN MANCONI:** Sorry, is that -- are you asking me to ---

6 **MR. JOHN McLUCKIE:** Yes, would you agree with that, that
7 Alstom was not providing the level of maintenance support that you felt was needed to
8 keep this system reliable?

9 **MR. JOHN MANCONI:** They were inconsistent in that, yeah.

10 **MR. JOHN McLUCKIE:** That they were not providing a level of
11 support?

12 **MR. JOHN MANCONI:** There was days they were, and there was
13 days they were not.

14 **MR. JOHN McLUCKIE:** And you, as the manager of OC Transpo,
15 lacked the ability to tell them to add further staff or to deploy those staff in a different
16 way?

17 **MR. JOHN MANCONI:** The interpretation I got from my staff that
18 knew the Project Agreement, we could not direct them to set up their construct. Our
19 mechanism was to ask for the service outputs and then there was the payment
20 mechanisms to the multi-regime that we would be incentivizing them to perform.

21 **MR. JOHN McLUCKIE:** And that's different than with OC Transpo.
22 You have a concern, as the general manager. You have the ability to make things
23 happen in whatever way you deem and your staff deems to be appropriate, true?

24 **MR. JOHN MANCONI:** Correct.

25 **MR. JOHN McLUCKIE:** So just to move on to a new area, if I
26 could, so in terms of the parallel bus service ---

27 **MR. JOHN MANCONI:** Yes.

28 **MR. JOHN McLUCKIE:** --- evidence that the parallel bus service

1 was set up to run for about three weeks. Do you remember that?

2 **MR. JOHN MANCONI:** Yeah.

3 **MR. JOHN McLUCKIE:** And the parallel bus service at that point
4 was running side by side the bus -- the light rail service, correct?

5 **MR. JOHN MANCONI:** Correct.

6 **MR. JOHN McLUCKIE:** And that bus service was being provided
7 directly by OC Transpo?

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN McLUCKIE:** And that bus service was being provided
10 at the cost of OC Transpo?

11 **MR. JOHN MANCONI:** The -- I don't remember where we landed
12 on who paid for that. I believe it was part of our budget, yes.

13 **MR. JOHN McLUCKIE:** And in terms of running that service, that
14 was essentially providing a buffer for the train, right? People were still able to get
15 downtown from the suburbs via the buses?

16 **MR. JOHN MANCONI:** It was providing multiple things. A) if
17 something went wrong, the parallel was there. B) there was -- we knew through our
18 focus groups that some customers were going to be reluctant to do the transfer,
19 remembering that we were taking away direct routes. We were introducing a transit at
20 both -- a transfer at both ends.

21 We made it very, very clear that it was only going to be there for the
22 three weeks, so it was a buffer, it was a protection. It was also -- we knew there was
23 going to be some people that were going to wait til the last minute to adopt a transfer in
24 their commute.

25 **MR. JOHN McLUCKIE:** And leading into the point of when the
26 train and the -- when the parallel bus service stopped, you had issued layoff notices to a
27 variety of OC Transpo staff, correct?

28 **MR. JOHN MANCONI:** Yes, but nobody got laid off.

1 **MR. JOHN McLUCKIE:** And we can talk about that in a second,
2 but you had issued layoff notices and indicated some 350 bus operator positions were
3 potentially affected?

4 **MR. JOHN MANCONI:** That was at the high end, and then we
5 adjusted through the period as the numbers shrunk and shrunk.

6 **MR. JOHN McLUCKIE:** And you also indicated to City council that
7 about 40 buses from the fleet would be retired when the train service took over?

8 **MR. JOHN MANCONI:** Correct.

9 **MR. JOHN McLUCKIE:** And it was going to be ---

10 **MR. JOHN MANCONI:** Something in that order. I thought it was
11 30, but -- 30 to 40.

12 **MR. JOHN McLUCKIE:** My information was 40, but I could stand
13 to be corrected, sir.

14 **MR. JOHN MANCONI:** Again, lots of numbers being thrown
15 around, so ---

16 **MR. JOHN McLUCKIE:** The City stood to save money with the
17 elimination of those positions and the elimination of those buses?

18 **MR. JOHN MANCONI:** Absolutely.

19 **MR. JOHN McLUCKIE:** And in terms of when the train service
20 took over, you're correct in that the number of layoffs was reduced, but those positions
21 were reallocated within OC Transpo, were they not?

22 **MR. JOHN MANCONI:** We had a number of things with the union.
23 We had a great relationship of 18 year. We did re-deployment, we did staff raises, we
24 did a bunch of things. We added resources in certain areas like the fleet area, and so
25 forth, to reduce, and I think we got down to no layoffs, because we were partners in
26 getting to that.

27 **MR. JOHN McLUCKIE:** If I could ask the clerk to pull up a
28 document, Mr. Commissioner, COMH0000029?

1 Mr. Manconi, I'm just going to introduce this document to you. So
2 this is a memo that you would have authored or someone authored under your
3 signature being directed to the mayor, his members of council, and the members for the
4 Transit Commission. Do you see that?

5 **MR. JOHN MANCONI:** Yes, I do.

6 **MR. JOHN McLUCKIE:** And if I could just have the clerk drop the
7 document down slightly, please? Okay. And just right there is fine.

8 And this would have come out in October of 2019. The date's at
9 the top. If you like, we can go back to it, so October 3rd, 2019.

10 **MR. JOHN MANCONI:** Okay.

11 **MR. JOHN McLUCKIE:** So this is rounding of the point that the
12 parallel bus service is ending, correct?

13 **MR. JOHN MANCONI:** Correct.

14 **MR. JOHN McLUCKIE:** So the train took over on the 14th of
15 September, there was three weeks of parallel service, and then that was being
16 withdrawn?

17 **MR. JOHN MANCONI:** Correct.

18 **MR. JOHN McLUCKIE:** I'm going to take you to the middle
19 paragraph that starts, "The 16-month delay". Do you see that, sir?

20 **MR. JOHN MANCONI:** Yes.

21 **MR. JOHN McLUCKIE:** So initially, as you look upwards in the
22 letter, I'm sorry, initially, the impact was to be 345 positions?

23 **MR. JOHN MANCONI:** Yes.

24 **MR. JOHN McLUCKIE:** That was reduced to 339?

25 **MR. JOHN MANCONI:** Yes.

26 **MR. JOHN McLUCKIE:** That you've indicated in this middle
27 paragraph that starts, "The 16-month delay"?

28 **MR. JOHN MANCONI:** Yes.

1 **MR. JOHN McLUCKIE:** The total FT reduction was going to be
2 201, correct?

3 **MR. JOHN MANCONI:** Where do you see the 201, sorry?

4 **MR. JOHN McLUCKIE:** So the middle paragraph that starts, "The -
5 --"

6 **MR. JOHN MANCONI:** Oh -- yes, yes. Yeah.

7 **MR. JOHN McLUCKIE:** And you say:

8 "By continuing to carefully manage vacancies, retirements,
9 et cetera, along with the requirements to resource proposed
10 initiatives, including within the draft 2020 budget associated
11 with the expanded bus service, improvements to ---

12 **MR. JOHN MANCONI:** Yes.

13 **MR. JOHN McLUCKIE:** --- the liability Para Transpo regulatory
14 requirements, we can advise a total FT reduction will be 201.
15 The remaining 138 will be used to fill the vacancies and
16 service initiative noted above."

17 Do you see that, sir?

18 **MR. JOHN MANCONI:** Yeah.

19 **MR. JOHN McLUCKIE:** So you're going to be down from where
20 you had been by 201 operator positions, correct?

21 **MR. JOHN MANCONI:** With no layoffs, correct.

22 **MR. JOHN McLUCKIE:** No layoffs, but you're still 201 drivers less
23 than you were.

24 **MR. JOHN MANCONI:** Correct.

25 **MR. JOHN McLUCKIE:** And the remaining 138 were reallocated to
26 other priorities within OC Transpo?

27 **MR. JOHN MANCONI:** Correct.

28 **MR. JOHN McLUCKIE:** So I'm going to suggest to you, sir, that

1 with the elimination of those positions and the retirement of those 40 buses, you took
2 away the cushion that would be available if something went wrong with the train. You
3 didn't have that cushion rapidly available to you anymore. Would you agree with that?

4 **MR. JOHN MANCONI:** No, because we ended up re—deploying
5 30 buses.

6 **MR. JOHN McLUCKIE:** Right. And you ended up having to pull
7 staff of other routes and take away service from other areas of the city to redeploy it to
8 parallel the train again, did you not?

9 **MR. JOHN MANCONI:** We did a number of things. Staff were ver
10 supportive as was the union. We worked collaboratively and did incentives to work
11 weekends and premium overtimes and so forth. We did everything we could to take
12 care of the strain that was occurring to our customers as a result of the train going
13 down, yes.

14 **MR. JOHN McLUCKIE:** Again, sir, my question was fairly specific.
15 So at that point in time you had to remove service from other areas of the city when it
16 became clear that parallel service was going to be needed again. You had to take
17 operators off other routes that would otherwise be driving and re-allocate them to
18 provide this parallel service to the train. Do you recall that happening, sir?

19 **MR. JOHN MANCONI:** Yes, I do.

20 **MR. JOHN McLUCKIE:** So again I'm going to suggest to you that
21 by removing that number of staff -- those 201 FTEs -- and by removing those buses
22 from service, you removed the buffer that would otherwise have been available to you
23 had the train run into problems?

24 **MR. JOHN MANCONI:** So not to split hairs, but there was never a
25 contemplation in any system for a full parallel service. So to your point, yes. With
26 significant breakdowns of the train we had to run full parallel service. That's when we
27 had to draw in other routes. For bridging activities we had planned that out and that's
28 when you would pull from very frequent routes and the impact to customers would be

1 minimal. So our service planning and our FTE count allocated all that.

2 **MR. JOHN McLUCKIE:** And you removed that buffer
3 notwithstanding the reliability problems that had been demonstrated with the train over
4 the summer of 2019. Is that correct?

5 **MR. JOHN MANCONI:** No. The system went through the testing
6 regime. It went through well and it ran for three weeks of good parallel service. And as
7 I said earlier, then things that we hadn't seen during the testing or prior to the testing
8 came up post-launch. And we got into the situation that we got into which resulted in
9 that elimination of that buffer being available to us.

10 **MR. JOHN McLUCKIE:** So sir, you wouldn't agree with me then,
11 or would you agree with me, that there were reliability problems demonstrated by the
12 train through July and August of 2019? My friend Commission counsel took you
13 through that at length earlier today. Would you agree with that?

14 **MR. JOHN MANCONI:** Sorry, say the question again, Mr.
15 McLuckie?

16 **MR. JOHN McLUCKIE:** Would you agree that in July and August
17 of 2019 --- and again, Commission counsel took you through the score sheets and the
18 fails and the passes.

19 **MR. JOHN MANCONI:** Yes, yeah.

20 **MR. JOHN McLUCKIE:** And there were reliability issues being
21 demonstrated by the Light Rail system in July and August of 2019.

22 **MR. JOHN MANCONI:** There were some issues that were coming
23 out that could have been mitigated and in fact were mitigated. And the reliability of the
24 fleet was improving every day.

25 **MR. JOHN McLUCKIE:** But notwithstanding those issues of
26 reliability, a decision was made by the City to end the parallel bus service and to
27 remove the buses and the operators that would have provided the ability to rapidly
28 redeploy that service. Is that correct, sir?

1 **MR. JOHN MANCONI:** Yes, because it met the criteria.

2 **COMMISSIONER HOURIGAN:** Counsel, you're out of time. But I'll
3 let you wrap up; give you a couple of minutes.

4 **MR. JOHN McLUCKIE:** One final question then, sir.

5 So that was the decision within the purview of the City to make that
6 choice, correct, Mr. Manconi?

7 **MR. JOHN MANCONI:** The City, yes.

8 **MR. JOHN McLUCKIE:** Thank you, Mr. Commissioner.

9 **COMMISSIONER HOURIGAN:** Right. Thank you, Counsel.
10 Next up is Morrison Hershfield.

11 **MR. KYLE LAMBERT:** Thank you, Mr. Commissioner. Kyle
12 Lambert for Morrison Hershfield. No questions for Mr. Manconi.

13 **COMMISSIONER HOURIGAN:** Next up is Transportation Action
14 Canada, Mr. Jeanes.

15 **---- CROSS-EXAMINATION BY MR. DAVID JEANES:**

16 **MR. DAVID JEANES:** Yes, thank you. David Jeanes, J-e-a-n-e-s
17 for Transport Action. Hello, Mr. Manconi.

18 **MR. JOHN MANCONI:** Hello, Mr. Jeanes.

19 **MR. DAVID JEANES:** I only have five minutes. So I've just got a
20 few questions. One of them has actually just been covered in some detail by Mr.
21 McLuckie about the duration of the parallel bus service.

22 But I wanted to talk to you about the concept of a soft launch.
23 We've had a lot of people so far among the witnesses on the suppliers side, consultants
24 that you hired who have said that a soft launch is common in other systems and it has
25 the advantage that it gives you some opportunity to learn how the system is working
26 without subjecting it to the full Day 1 loads. But the indication was that when this was
27 raised with you, that you basically rejected the idea. Is that correct?

28 **MR. JOHN MANCONI:** No, in fact I reported to Fedco what was

1 bought to us in a conversation, and that's what it was. There was no formal
2 presentation. I think Mr. Slade and Mr. Lauch asked about, at one of our meetings,
3 would we consider a soft launch. And we said, "Tell us what you're thinking about."

4 So the suggestions that they brought forward -- again, this went to
5 Fedco -- was they talked about not completing the Rideau Station on both entrances.
6 They talked about the possibility of Ottawa U being the terminus points or going from
7 Blair to Ottawa U. They talked about, you know, a restricted hours of operation so not
8 running the timetable that we talked that we talked about. And we took a lot of time to
9 walk them through what that would mean in particular for the customer. The highest
10 order of level was our customers had gone through five years of detours. They were
11 exhausted. So more changes to their commute was going to be difficult on them.

12 **MR. DAVID JEANES:** Okay.

13 **MR. JOHN MANCONI:** Secondly ---

14 **MR. DAVID JEANES:** Thank you, Mr. Manconi. Sorry to interrupt
15 but I only have five minutes and I've got a couple of other things.

16 **MR. JOHN MANCONI:** Okay.

17 **MR. DAVID JEANES:** I just wanted to say that yes, what you're
18 saying is consistent, I think, with what we've heard. But for instance, what you've just
19 described the possibility of operating between Blair and the University of Ottawa, had
20 that been done, it obviously wouldn't have benefited the people who wanted to get
21 downtown. But the population of the University of Ottawa and people who worked in
22 Alta Vista or around Tremblay or around St. Laurent might have provided at least some
23 low level of load for getting some experience with the system. Would you agree with
24 that?

25 **MR. JOHN MANCONI:** No, because the issue isn't -- again, that's
26 why the details matter -- is that you have to look at it holistically as the customers.
27 Remember, we're on detour on King Edward Avenue, so you may have been able to get
28 to Ottawa U. but if you had to go a bit deeper into the city you'd have a double transfer.

1 So dear customer, we're going to take what's direct Orleans to
2 downtown's example and we're going to give you a double transfer. And I know you
3 know this, Mr. Jeanes.

4 **MR. DAVID JEANES:** Yeah.

5 **MR. JOHN MANCONI:** Introducing a transfer in any commute is
6 difficult. So doing a double transfer is even more painful for the customer.

7 **MR. DAVID JEANES:** Yeah. All right. I don't want to stay with
8 that any longer because I have another point which is about reliability.

9 You've talked a lot about the number of trains for service and I think
10 you would probably agree that if you start with 15 trains and you think about capacity
11 and availability on that basis, and you lose a train or two, your system capacity is going
12 to drop by 7 percent, 15 percent if you lose two trains, something like that.

13 But what we actually saw in 2019 in August, September, and
14 October and so on, were many many blocked trains tht it took a long time to get them
15 out of the system. Sometimes they were blocked at the end stations but often at
16 intermediate stations. And when that happened, extensive parts of the system dropped
17 to single line operation which really meant that people were waiting maybe eight
18 minutes for a train instead of four minutes for a train. And that's a 50 percent hit on
19 capacity. So I'm just wondering; had that been considered when you already knew in
20 August that blocked trains and the difficulty of getting them out of the system was going
21 to be difficult.

22 **MR. JOHN MANCONI:** Yeah, a great question. I mean, part of the
23 challenge is limited crossovers so we couldn't do that crossover service that you talked
24 about.

25 The challenge after those three weeks of great service was the
26 problems where these trains were stalling out was -- you could have had 100 trains.
27 You couldn't put any more capacity on the line. So those pictures of those large crowds
28 at Tunney's that ewe all saw, and so forth, that was not because we didn't have enough

1 trains. We couldn't get to the people fast enough, exactly to your point ---

2 **MR. DAVID JEANES:** Yeah.

3 **MR. JOHN MANCONI:** --- where you're on degraded service and
4 degraded service is very very painful.

5 **MR. DAVID JEANES:** Yeah. And not only longer intervals, much
6 longer intervals between trains when you're in single line operation, but people were
7 also reporting that it was taking them an hour, hour and a half to get from one end of the
8 line to the other, just because of the disruptive scheduling there.

9 **MR. JOHN MANCONI:** I absolutely agree with you.

10 **MR. DAVID JEANES:** Yeah. Again I think I only have time for
11 maybe one more question.

12 You had some pretty high-powered experts working for you directly.
13 We heard from Tom Prendergast today. You had the Parsons people, Tom Fodor, Mike
14 Palmer, tremendously experienced there. I think Mike Palmer said that he had basically
15 been running half of the Toronto Transit system, buses and trains, for a period of time
16 before he went into his consulting work with Parsons. And of course Tom Fodor ---
17 lots of experience with -- do you feel that you got value for money from those experts?
18 Because we've heard that a lot of them had serious reservations about the readiness of
19 the system and that their advice may not have been taken.

20 **MR. JOHN MANCONI:** Well, I need to clear up a few things. The
21 Parsons folks, they were not part of my independent assessment team. They were not
22 advisors to me. I had staff that hired them. I actually didn't even know we hired them,
23 and they were only getting part of the story. I've seen some of the testimony. I was
24 surprised to hear some of those comments, including betting whether or not I was going
25 to make it and so forth. That's just not appropriate.

26 So I can't comment on the Parsons folks. Are they talented folks
27 and everything else? I don't know them well enough. I met Mr. Palmer once. But you
28 need to be in all of the levels of detail. So when you hear people like Tom Prendergast,

1 former chairman of MTA, he's seen it all, built it all, but what's also not evident is also at
2 the operational level, I had experienced people that had launched services in Dallas, in
3 Boston, in other areas that were embedded with my team, and they were doing things
4 that aren't as exciting as building a station or a train. They were doing, as you know,
5 the business: detailed scheduling rosters, operations training simulation, logistics in the
6 control room. All those drills we ran, those were those teams. The advice we had from
7 those people was invaluable.

8 Remember, part of the reason the City did a P3 -- there was a great
9 article that was written in the Citizen -- we had zero rail experience, other than running
10 the Trillium Line, which was 100 per cent outsourced on the maintenance. And you now
11 that; you were involved in that. So we flooded our intelligence. I think at one point I had
12 400 years of rail experience surrounding me looking at risks and so forth -- great value
13 for the money.

14 **MR. DAVID JEANES:** Okay, thank you very much. And I'm out of
15 time, so thank you.

16 **COMMISSIONER HOURIGAN:** All right. Thank you, Mr. Jeanes.
17 Next is witness counsel, so counsel for the City.

18 **MR. PETER WARDLE:** Mr. Commissioner, I'm wondering if we
19 could take a short break.

20 **COMMISSIONER HOURIGAN:** That's fine. How long do you want
21 to break for?

22 **MR. PETER WARDLE:** I need 15 minutes, if that's convenient, sir.

23 **COMMISSIONER HOURIGAN:** Yeah, that's fine. So we'll break
24 for 15.

25 **MR. PETER WARDLE:** Thank you very much.

26 **THE REGISTRAR:** All rise. The Commission will recess for 15
27 minutes.

28 --- Upon recessing at 5:58 p.m.

1 --- Upon resuming at 6:16 p.m.

2 **COMMISSIONER HOURIGAN:** Mr. Wardle, are you there?

3 **MR. PETER WARDLE:** I am, Mr. Commissioner.

4 **COMMISSIONER HOURIGAN:** Is that enough time or do you
5 need more time?

6 **MR. PETER WARDLE:** I am ready to go, Mr. Commissioner.

7 **COMMISSIONER HOURIGAN:** Okay. Go ahead.

8 **MR. PETER WARDLE:** Thank you very much.

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

10 **MR. PETER WARDLE:** Mr. Manconi, how long did you work for
11 the City of Ottawa.

12 **MR. JOHN MANCONI:** Combined service, 32 years with the
13 former City of Nepean and Ottawa.

14 **MR. PETER WARDLE:** And is it fair to say, then, that you're
15 familiar with the concept of delegated authority?

16 **MR. JOHN MANCONI:** Yes, I am.

17 **MR. PETER WARDLE:** And I understand there is, in fact, a
18 delegated authority bylaw, correct?

19 **MR. JOHN MANCONI:** Correct.

20 **MR. PETER WARDLE:** And there are City policies dealing with
21 delegated authority.

22 **MR. JOHN MANCONI:** Correct.

23 **MR. PETER WARDLE:** And in this case, you weren't involved in
24 this project at the time it was approved by council in December 2012; is that correct?

25 **MR. JOHN MANCONI:** That's correct.

26 **MR. PETER WARDLE:** I'm going to suggest to you that in
27 December 2012, as part of the motion approving the contract award to RTG, council
28 gave delegated to the City Manager -- and I'm going to quote from a document:

1 "... to negotiate, approve, execute, deliver, amend,
2 and extend the Project Agreement and associated
3 ancillary agreements for the OLRT Project, the
4 Highway 417 Widening Project, and specific civil
5 works subject to the terms and conditions described
6 in this report." (As read).

7 And I know you're not familiar with the specific language, Mr.
8 Manconi, correct?

9 **MR. JOHN MANCONI:** Correct. I know -- I understand it at broad
10 terms, yes.

11 **MR. PETER WARDLE:** But your -- your -- this would be consistent
12 with other projects you've been involved with during your long tenure at the City,
13 correct?

14 **MR. JOHN MANCONI:** This project outlined what authority the City
15 Manager, and that's what good project management stuff does.

16 **MR. PETER WARDLE:** All right. So is it fair to say that, given the
17 delegated authority to the City Manager, council would not be involved in the
18 operational details of the Project Agreement?

19 **MR. JOHN MANCONI:** Correct.

20 **MR. PETER WARDLE:** And that would include any amendments
21 to the Project Agreement?

22 **MR. JOHN MANCONI:** As it's written there, you're correct.

23 **MR. PETER WARDLE:** And it would also not include any changes
24 or variations to the Project Agreement, correct?

25 **MR. JOHN MANCONI:** Correct. And that was very intentional,
26 was my understanding, because we would have been bogged down and the project
27 would not have met its outcome.

28 **MR. PETER WARDLE:** And there's a variation process in the

1 Project Agreement. You would have had some familiarity with that because you sat on
2 the executive steering committee for a period of time?

3 **MR. JOHN MANCONI:** Correct.

4 **MR. PETER WARDLE:** And if I told you that there were over 500
5 variations to the Project Agreement over the life of the contract, would that surprise
6 you?

7 **MR. JOHN MANCONI:** Not at all.

8 **MR. PETER WARDLE:** And none of those variations required the
9 consent or approval of council given the delegated authority to the City Manager,
10 correct?

11 **MR. JOHN MANCONI:** That's my understanding, correct.

12 **MR. PETER WARDLE:** And with respect to this -- your evidence
13 today, first of all, about the changes that were made at substantial completion, the
14 substantial completion agreement, with Mr. Morgan has already testified about, and the
15 RSA term sheet, those, again, would be amendments to the Project Agreement which
16 would be part of the delegated authority granted to the City Manager; is that fair?

17 **MR. JOHN MANCONI:** That's fair, yes.

18 **MR. PETER WARDLE:** So the issue with respect to those
19 amendments is not about whether council has to approve them. It's simply whether
20 there should be appropriate reporting to council; is that fair?

21 **MR. JOHN MANCONI:** It's fair.

22 **MR. PETER WARDLE:** Okay. And let's just for one second about
23 the reporting that was done because my friend didn't take you to this -- my friend, Mr.
24 Adair -- but there was a memorandum that went to the mayor and members of council
25 to advise on the outcome of trial running, correct?

26 **MR. JOHN MANCONI:** Correct.

27 **MR. PETER WARDLE:** And I'm just going to ask that that be
28 turned up. It's COW0104291. And perhaps we can just spend a minute, Mr. Manconi,

1 to allow you to review it. First of all, is this the memorandum that was provided at the
2 end of trial running?

3 **MR. JOHN MANCONI:** I believe so, yes.

4 **MR. PETER WARDLE:** Okay. And would and your team have
5 been involved in preparing this document which ultimately goes to mayor and members
6 of council under the signature of the City Manager?

7 **MR. JOHN MANCONI:** I believe we were, yes.

8 **MR. PETER WARDLE:** If we go down to under "Performance
9 Targets" on page 1, and we look at that last paragraph:

10 "The City of Ottawa established target for the trial-
11 running period that were based on industry best
12 practices and focused on the two most important
13 criteria, safety and customer dependability." (As
14 read).

15 Is that an accurate statement, Mr. Manconi?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. PETER WARDLE:** And then it goes on to say:

18 "For example, the target system customer
19 dependability was 96 percent over nine days during
20 the 12 days of continuous trial running days using
21 various measurements across a variety of lenses
22 including, critically, a safety lens." (As read).

23 Is that an accurate statement?

24 **MR. JOHN MANCONI:** Yes.

25 **MR. PETER WARDLE:** And then it goes on to say:

26 "I am pleased to confirm that no critical safety events were encountered over the trial-
27 running period that required a restart of trail running." (As read).

28 Is that also an accurate statement?

1 **MR. JOHN MANCONI:** Yes.

2 **MR. PETER WARDLE:** And then if we go over to the next page,
3 you'll see at the top of the page:

4 “The City remained sensitive to the fact that the 96
5 percent target was not captured nor defined by the
6 Project Agreement requirements and recognize that
7 the trial running review team require additional tools
8 to deal with specific events or issues that would arise
9 during the testing period. A variety of options,
10 including repeat days and restart options were
11 provided to the review team to ensure that the testing
12 was rigorous while at the same time flexible.” (As
13 read).

14 And again, was that an accurate statement?

15 **MR. JOHN MANCONI:** Yes.

16 **MR. PETER WARDLE:** And then lastly, you'll see:

17 “RTG, as part of their trial running test plans indicated
18 that they wanted to not only meet these targets but
19 exceed them. RTG targeted a figure of 98 percent for
20 service availability and wanted to assess if they could
21 reach 98 percent for the entire 12-day period.” (As
22 read).

23 And I know you've said today that you couldn't recall the reason for
24 them wanting to choose 98 percent, but does this refresh your memory that this must
25 have been information that you or members of your team had at the time?

26 **MR. JOHN MANCONI:** Yes.

27 **MR. PETER WARDLE:** And is this also an accurate statement?

28 **MR. JOHN MANCONI:** Yes.

1 **MR. PETER WARDLE:** And then lastly -- and I won't take you
2 through the last two paragraphs, but if you could just read them to yourself, and perhaps
3 I will read the first sentence:

4 "Upon completion of trial running, RTG achieved
5 between 96 and 98 percent service availability over a
6 designated nine-day period as of Monday, August 19,
7 2019, which is in line with the City's target
8 expectations. Based on the continued operation of
9 the system through yesterday, August 22nd, 2019, the
10 trial running review team confirms that the 12 days of
11 trial running have been completed with a running
12 average of approximately of 97 percent." (As read).

13 And at the last -- that last figure, the 97 percent, is that consistent
14 with what the IC reported in her report of 96.9 percent?

15 **MR. JOHN MANCONI:** Yes.

16 **MR. PETER WARDLE:** And is this paragraph accurate, to the best
17 of your knowledge?

18 **MR. JOHN MANCONI:** Yes, it is.

19 **MR. PETER WARDLE:** Thank you. We can take that document
20 down. Let's just talk for a moment about Mayor Watson. And first of all, Mr. Manconi,
21 you've had many dealings with Mayor Watson over your years at the City, correct?

22 **MR. JOHN MANCONI:** Correct.

23 **MR. PETER WARDLE:** And is it fair to say, first of all, that the
24 mayor of a municipality occupies somewhat of a different role than the other members
25 of council?

26 **MR. JOHN MANCONI:** Absolutely. I've worked for six head of
27 councils and they all have that same approach in terms of they do occupy a different
28 position.

1 **MR. PETER WARDLE:** And I'm going to suggest to you that, in
2 fact, the mayor has a specific statutory authority under the municipal act which other
3 members of council do not have, correct?

4 **MR. JOHN MANCONI:** My understanding, yes.

5 **MR. PETER WARDLE:** And Mr. Watson is effectively the CEO of
6 the organization, correct?

7 **MR. JOHN MANCONI:** Correct.

8 **MR. PETER WARDLE:** And in that role, Mr. Watson is entitled to
9 get regular reports from City staff, including the City Manager and people like yourself
10 when you were the General Manager of OC Transpo, correct.

11 **MR. JOHN MANCONI:** Agree with that, yes.

12 **MR. PETER WARDLE:** And there's nothing untoward in giving Mr.
13 Watson information on a regular basis that you're not giving to all members of council
14 because of that special role he occupies?

15 **MR. JOHN MANCONI:** Every mayor and head of council I've
16 worked for has expected that.

17 **MR. PETER WARDLE:** Okay. And having the mayor office
18 contact you, either directly or indirectly through the mayor's chief of staff or one of his
19 assistance, would not have been uncommon during your years at the City.

20 **MR. JOHN MANCONI:** It was not uncommon.

21 **MR. PETER WARDLE:** And having a WhatsApp chat to
22 communicate on a regular basis about important issues, again, was an efficient way to
23 communicate information in a timely way to the mayor. Is that fair?

24 **MR. JOHN MANCONI:** That's exactly why we set it up.

25 **MR. PETER WARDLE:** And you were taken to a particular text --
26 and I won't take you back to it, but it was plucked out of thousands of texts that we've
27 produced, and it referred to you saying that there had been non-stop texting by the
28 mayor. Do you recall being asked about that?

1 **MR. JOHN MANCONI:** Yes.

2 **MR. PETER WARDLE:** Okay. And I'm going to suggest to you
3 that that non-stop texting by Jim Watson was when the problems arose in the fall of
4 2019 and he was getting deluged with complaints from members of the public.

5 **MR. JOHN MANCONI:** I agree with that.

6 **MR. PETER WARDLE:** And the texts -- and I can tell you this
7 because my friend Mr. Adair didn't take you to any texts during the trial running period.
8 There is no constant texting from the mayor during the trial running period; isn't that
9 right?

10 **MR. JOHN MANCONI:** Quite the opposite. The mayor and the city
11 manager were very prescriptive in saying, "Leave that team. They have so much on
12 their plate. Let them concentrate" and so forth, and they were very respectful of that.

13 **MR. PETER WARDLE:** So I'm going to suggest to you -- and we
14 don't need to go through all the chats, but I'll suggest to you that what we saw in the
15 chats -- and it's there for everyone to see -- during the trial running period is that on a
16 daily basis, someone from the mayor's office, usually an assistant, wanted an update as
17 to whether there was a pass or fail or a restart, fair?

18 **MR. JOHN MANCONI:** Exactly.

19 **MR. PETER WARDLE:** And there was nothing inappropriate about
20 that process.

21 **MR. JOHN MANCONI:** Nothing. Again, it was the right thing to do.

22 **MR. PETER WARDLE:** And again, my friend attempted to draw
23 the insinuation that there was some unfairness in Jim Watson getting a daily update, as
24 compared to councillors. But isn't it right, Mr. Manconi, that Jim Watson occupies a
25 different position than the rest of council?

26 **MR. JOHN MANCONI:** Yes. He's head of council.

27 **MR. PETER WARDLE:** And what Mr. Adair didn't point you to, Mr.
28 Manconi, is anything in the chats that suggested that Jim Watson or any member of his

1 staff was pressuring you during trial running; isn't that fair?

2 **MR. JOHN MANCONI:** It's fair because they were not pressuring
3 me.

4 **MR. PETER WARDLE:** Let's turn to a different topic for a moment.
5 I want to clear up a little bit of confusion about vehicles delivered and trains running on
6 the line. So let's start with vehicles.

7 So I'm going to suggest to you that it was always the case that the
8 City of Ottawa expected 34 vehicles to be provided by RTG at revenue service
9 availability, correct?

10 **MR. JOHN MANCONI:** Correct.

11 **MR. PETER WARDLE:** And I'm going to suggest to you that that is
12 in fact what the City of Ottawa got. At revenue service availability, it got 34 vehicles that
13 were delivered.

14 **MR. JOHN MANCONI:** My recollection was we had 34 but some of
15 them had some deficiencies.

16 **MR. PETER WARDLE:** Right. And those were dealt with in the
17 RSA term sheet, correct?

18 **MR. JOHN MANCONI:** That's my understanding.

19 **MR. PETER WARDLE:** And that would be things -- we don't need
20 to go through them, but things like the cab doors and the problem with the platform
21 edge cameras, right?

22 **MR. JOHN MANCONI:** Glare in the cab -- yes.

23 **MR. PETER WARDLE:** And so for each of those vehicles -- and I
24 know you weren't involved in all the operational details, that some of this was left to Mr.
25 Morgan and his staff, right?

26 **MR. JOHN MANCONI:** Correct.

27 **MR. PETER WARDLE:** But I'm going to suggest that, first of all,
28 one of the conditions of RSA was there had to be a bill of sale for each of these

1 vehicles. Do you recall that?

2 **MR. JOHN MANCONI:** Yes, I do recall that.

3 **MR. PETER WARDLE:** And there had to be a safety certificate
4 from Alstom with respect to each vehicle, correct?

5 **MR. JOHN MANCONI:** Yes, I recall that.

6 **MR. PETER WARDLE:** And there also had to be, on RSA, a
7 certificate from the Independent Safety Auditor.

8 **MR. JOHN MANCONI:** Correct.

9 **MR. PETER WARDLE:** And my understanding is that before the
10 City accepted revenue service availability, you had a meeting with all your staff and all
11 of your advisors, including all of the outside experts, and you canvassed them about
12 whether the City was now ready to accept revenue service availability. Is that correct?

13 **MR. JOHN MANCONI:** Yes.

14 **MR. PETER WARDLE:** And you asked everyone in the room
15 whether “we are good to go”. Do you remember saying that?

16 **MR. JOHN MANCONI:** Absolutely.

17 **MR. PETER WARDLE:** And the response you got back from
18 everyone, including all the outside consultants, was that the City was ready and it was
19 time to proceed to revenue service availability, correct?

20 **MR. JOHN MANCONI:** That’s correct.

21 **MR. PETER WARDLE:** Now, 34 vehicles handed over at revenue
22 service availability -- that is a completely different concept, isn’t it Mr. Manconi, than the
23 number of double-car trains required for morning peak during weekday service, correct?

24 **MR. JOHN MANCONI:** Yes.

25 **MR. PETER WARDLE:** And that was the change that was made
26 during the trial running process. It was a change to one aspect of the operation: the
27 number of double-car trains that would be operating on the system during the morning,
28 peak, correct?

1 **MR. JOHN MANCONI:** Correct.

2 **MR. PETER WARDLE:** Let's talk for a minute about the
3 scorecards. So you were taken to COW270758, and perhaps we can turn that up now.

4 **COMMISSIONER HOURIGAN:** Sorry. Give us the number again
5 one more time, please.

6 **MR. PETER WARDLE:** I'm sorry, Mr. Commissioner -- 270 -- I
7 think there's probably a couple of zeros in front of that -- 270758. If we could please
8 turn to the last page of this document.

9 And you're familiar with this chart, Mr. Manconi?

10 **MR. JOHN MANCONI:** Yes, I am.

11 **MR. PETER WARDLE:** And if we went back and we actually
12 added the days from July 29th, which is the first day of trial running, we would see some
13 additional criteria, correct?

14 **MR. JOHN MANCONI:** Yes.

15 **MR. PETER WARDLE:** So my friend put some questions to you.
16 You can see that, if we look at this chart -- so first of all, there are three days at the very
17 beginning, at the end of July, that aren't shown here that aren't very successful, right?

18 **MR. JOHN MANCONI:** Yes.

19 **MR. PETER WARDLE:** And then you'll see that on Saturday,
20 August 3rd, there are a number of days that count and then there's a pause and then a
21 restart, and then it starts all over again on Friday August the 9th. Do you see that?

22 **MR. JOHN MANCONI:** Yes.

23 **MR. PETER WARDLE:** And my friend put some questions to you
24 about not telling council that there had been various failures during the trial running
25 period. Do you recall all of that?

26 **MR. JOHN MANCONI:** Yes, I do.

27 **MR. PETER WARDLE:** Can I suggest to you that the way trial
28 running works is that it is an exam that the project code takes as long as it takes to pass

1 it? Isn't that right?

2 **MR. JOHN MANCONI:** Yes.

3 **MR. PETER WARDLE:** So the fact that they have failed on a
4 number of days is completely irrelevant if, in fact, they ultimately meet the criteria that
5 are set out that the parties have agreed to. Isn't that fair?

6 **MR. JOHN MANCONI:** Yes.

7 **MR. PETER WARDLE:** And let me put an analogy to you, and I
8 was thinking about my passing of my driver's licence. If I went for my driver's licence
9 when I was 18 and I failed it four or five times, and then I went and got my driver's
10 licence, would I then come home and tell my parents that I had failed my driving licence
11 examination four out of five times? Probably not. Isn't that right, Mr. Manconi?

12 **MR. JOHN MANCONI:** Probably not.

13 **MR. PETER WARDLE:** What I would tell my parents is that I had
14 obtained my driver's licence, correct?

15 **MR. JOHN MANCONI:** Yes.

16 **MR. PETER WARDLE:** And in this case, the completion of the
17 requirements of trial running doesn't come with some asterisk that says, "Oh but you
18 failed four or five days at the beginning." That's completely irrelevant. All that matters
19 is that ultimately you meet the criteria. Isn't that the case?

20 **MR. JOHN MANCONI:** Yes. And that's exactly what Mr.
21 Kanellakos reminded me of.

22 **MR. PETER WARDLE:** And so if you had gone to council and
23 said, in the middle of trial running and said, "Oh, on July 29th through to July 31st, there
24 were three failure days." As you said yourself, it would have led to a lot of questions,
25 right?

26 **MR. JOHN MANCONI:** Yes.

27 **MR. PETER WARDLE:** And Mr. Kanellakos reminded you at the
28 time that you had advised council that you would report at the end of trial running,

1 correct?

2 **MR. JOHN MANCONI:** Correct. He also reminded me that once
3 you've given that information, whether it's positive or negative, there's nothing they can
4 do with it. The exam, as you call it, needed to keep going,

5 **MR. PETER WARDLE:** Right. The exam needed to keep going
6 and if in fact RTG had not met the criteria then you would have had to go back to the
7 drawing board and figure out what to tell council, right?

8 **MR. JOHN MANCONI:** Correct.

9 **MR. PETER WARDLE:** And if, as Mr. Adair suggested to you that
10 they failed trial running for 30 days in a row, well, you wouldn't have hidden that from
11 council, right?

12 **MR. JOHN MANCONI:** No. I've demonstrated that I'm transparent
13 in that regard. And that's what I said earlier on.

14 **MR. PETER WARDLE:** You and Mr. Kanellakos would have taken
15 steps to ensure that the right information was in front of council, correct?

16 **MR. JOHN MANCONI:** Correct.

17 **MR. PETER WARDLE:** But that didn't happen here because after
18 some early failures RTG met the criteria that everyone ultimately agreed to.

19 **MR. JOHN MANCONI:** That's right.

20 **MR. PETER WARDLE:** And as I understand Mr. Prendergast said
21 earlier today it's not uncommon to have changes made to the criteria during the trial
22 running process; fair?

23 **MR. JOHN MANCONI:** That is a very important statement. It
24 comes from an expert.

25 **MR. PETER WARDLE:** I just want to take you quickly to a couple
26 of issues that arose out of the chat. We can take this down.

27 If we go to the chat at the operational level STV0002337. And I'm
28 just going to take you quickly to Chat 75.

1 So hopefully you can read it, Mr. Manconi. So what it says is, it's
2 dated August 7th. And it says:

3 "Michael, two things. Can you send us the language
4 on the PA relating to the 98 percent?" (As read)

5 Now, just stopping there, Mr. Adair took you to this but he didn't ask
6 you about the working, "the language in the PA". Did you ultimately learn that there was
7 no language in the PA about the 98 percent?

8 **MR. JOHN MANCONI:** Correct. There was no metrics in the
9 Project Agreement to measure trial running.

10 **MR. PETER WARDLE:** Let's go briefly to ACS66772. We can
11 take this document down.

12 **COMMISSIONER HOURIGAN:** ALS or ACS?

13 **MR. PETER WARDLE:** I think that's my ---

14 **COMMISSIONER HOURIGAN:** Yeah, it's ALS. Go ahead.

15 **MR. PETER WARDLE:** That happens to be my bad writing, Mr.
16 Commissioner.

17 **COMMISSIONER HOURIGAN:** I thought it might be.

18 **MR. PETER WARDLE:** It is, and it's late in the day.

19 So you were asked about this lengthy email exchange and if we go
20 down the page you'll see there's a email from Peter Lauch starting, "Dear Board", and
21 the date is also August 7th. And it talks to a meeting, a very difficult meeting with you
22 and your team. Do you see that?.

23 **MR. JOHN MANCONI:** Yes.

24 **MR. PETER WARDLE:** And if we go down to the very very bottom
25 you'll see the sentence:

26 "Manconi made it clear that he wants to know what's
27 in it for me, to get you a pass on trial running."

28 Now, Mr. Manconi, is it fair to say that you would never have made

1 a statement like this to Mr. Lauch or to Mr. Slade?

2 **MR. JOHN MANCONI:** That is not my style. I would never made
3 that statement.

4 **MR. PETER WARDLE:** And did you ever offer anyone preferential
5 treatment in connection with a pass on trial running?

6 **MR. JOHN MANCONI:** Never.

7 **MR. PETER WARDLE:** Thank you. If we could go now to a
8 different chat and I'll just get myself organized. COW0593740.

9 And I'd like to go to go to August 9th at 5:37.

10 And if we just go up the page a little bit where the cursor is to 4:12
11 you'll see the reference.

12 "John Manconi, it's all part of a bigger strategy that I
13 am..." I assume this should have been "...bringing to
14 you. Hang tight, please. Also today is going very
15 well."

16 Do you see that?

17 **MR. JOHN MANCONI:** Yes.

18 **MR. PETER WARDLE:** And then right below that Mr. Gravel who
19 is one of the mayor's assistants says, "Okay, merci."

20 Do you see that?

21 **MR. JOHN MANCONI:** Yes.

22 **MR. PETER WARDLE:** And then almost a few minutes later, 5:37,
23 "Everyone please read email I just sent."

24 And Mr. Kanellakos responds:

25 "Great work, John. You and your team have been the
26 difference."

27 Do you see that?

28 **MR. JOHN MANCONI:** Yes.

1 **MR. PETER WARDLE:** So I just want to make sure that for the
2 record we get the email you were sending at around this time. And I just want, Mr.
3 Commissioner, you to note that Mr. Manconi's last text or message is at 5:37.
4 "Everyone please read email I just sent."

5 I'm now going to take us to another document. You can take that
6 down.

7 We can turn up COW0451494. And if we go to the bottom of the
8 first page, and we look at that email and we just go up a little bit, please. Thank you.

9 So you'll see an email from you dated Friday, August 9th, 2019,
10 5:36 p.m. to a number of respondents. Is that the email that's referred to in the
11 message we were just looking at?

12 **MR. JOHN MANCONI:** Yes.

13 **MR. PETER WARDLE:** And it describes the update from the
14 numerous meetings that we have had with RTG, Alstom, and RTM; and had such
15 meetings taken place over the past previous few days?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. PETER WARDLE:** And if we go down a little bit to the second
18 paragraph, you say, "I am happy to advise that RTG RTM has taken our advice and
19 increased resources across the board."

20 And the issue of resources, does this go back to the question of
21 making sure that RTM and Alstom provided sufficient resources to handle maintenance
22 activities?

23 **MR. JOHN MANCONI:** Maintenance activities and any troubles
24 they encountered on the line, yes.

25 **MR. PETER WARDLE:** And then you'll see that you outline -- and I
26 won't take you through it in detail. You say, "Here is what Alstom has committed and
27 has already begun."

28 And then there are six items below. Is that correct?

1 **MR. JOHN MANCONI:** Yes.

2 **MR. PETER WARDLE:** And then if we go back to the top of the
3 email, the part that's on the screen, you'll see it says in that first sentence:

4 "Matt, the messaging to the mayor, is this email for his
5 call with the CEO of Alstom?" (As read).

6 And was it the case at this time, Mr. Manconi, that you had brought
7 in the mayor, or suggested that the mayor become involved because you thought it was
8 important enough to get him to reach out to the CEO of Alstom?

9 **MR. JOHN MANCONI:** Yes, we wanted commitment that the top
10 official at CO was committing to this plan, which was a very, very important moment in
11 time.

12 **MR. PETER WARDLE:** And, in fact, if we go up to the top email --
13 so this is now August the 12th -- Mr. Gravel is reporting back to you that the mayor had a
14 call with the CEO at of Alstom, correct.

15 **MR. JOHN MANCONI:** Correct.

16 **MR. PETER WARDLE:** And the email says that:

17 "He is committed to the plan and resourcing his team
18 has agreed to. He is also committed to maintain this
19 resourcing plan in the months following the launch as
20 he recognizes we have no other choice but to ensure
21 the system launch is a success." (As read).

22 And in the last sentence, the mayor thanked Alstom for deploying
23 resources quickly last and congratulated him on the last two days. Is there anything in
24 this email chain, in your view, Mr. Manconi, that is in any way inappropriate?

25 **MR. JOHN MANCONI:** None.

26 **MR. PETER WARDLE:** And, in fact, weren't you just doing the
27 right thing at a critical point in trial running? You had concerns about resourcing. You
28 were using all of the tool available to you including the mayor, the CEO of the City of

1 Ottawa, to make the phone call to get the commitment that Alstom would bring the
2 resources to the table?

3 **MR. JOHN MANCONI:** I wanted to ensure that what we were
4 being told at the staff level was endorsed by the CEO, the top official of Alstom. And
5 yes, it was appropriate, and it's the right thing to do when in you're in leadership role.

6 **MR. PETER WARDLE:** I just want to deal with one last topic. And
7 we can take this down. You were asked some questions by my friend on behalf of RTG
8 about the payment mechanism and about whether the City was applying it in a punitive
9 way. Do you recall those questions?

10 **MR. JOHN MANCONI:** Yes, I do.

11 **MR. PETER WARDLE:** Okay. I'd just like to show you
12 COW0104397.

13 **COMMISSIONER HOURIGAN:** Okay, sorry, give us the number
14 again.

15 **MR. PETER WARDLE:** COW0104397.

16 **COMMISSIONER HOURIGAN:** All right, just stand by.

17 **MR. PETER WARDLE:** So I want to just -- because some
18 questions were asked of you about, you know, Mayor Watson wanting to "turn off the
19 tap" and things of that nature, I just want to ask you a little bit about this memorandum.
20 So, first of all, is it fair to say that after the problems developed in the late fall of 2019,
21 there were a number of councillors who were concerned about whether the City should
22 be making further payments to RTG?

23 **MR. JOHN MANCONI:** Yes.

24 **MR. PETER WARDLE:** And in fact, isn't it true that one of the
25 councillors, at least, Councillor Menard, stated publicly that the City of Ottawa should
26 terminate the 30-year agreement with the maintainer?

27 **MR. JOHN MANCONI:** There was all kinds of suggestions that
28 were being thrown, including that, yes.

1 **MR. PETER WARDLE:** And I'm going to suggest to you that what
2 the City did -- and I'm assuming you and your staff would have been involved, first of all,
3 in the preparation of this document and documents like it, correct?

4 **MR. JOHN MANCONI:** Yes, correct.

5 **MR. PETER WARDLE:** And the purpose of this memorandum was
6 to explain to council the position the City of Ottawa was taking with respect to the
7 payment agreement and the reasons for withholding payment.

8 **MR. JOHN MANCONI:** Correct.

9 **MR. PETER WARDLE:** And again, as part of an effort to be
10 transparent so that council could know what the position the City was taking in this fairly
11 difficult time. Is that not fair?

12 **MR. JOHN MANCONI:** Yes.

13 **MR. PETER WARDLE:** Okay. And you'll see, if we go down the
14 first page, there's a reference to "media clarification", a Fedco meeting. Do you recall
15 this?

16 **MR. JOHN MANCONI:** Yes.

17 **MR. PETER WARDLE:** And you'll see it says in the next
18 paragraph:

19 "As noted publicly on numerous occasions, for all
20 contractual matters with RTG, the City if following the
21 Project Agreement requirements to ensure that the
22 City's rights and interests are preserved. The Project
23 Agreement is highly prescriptive in terms of the
24 application of performance adjustments made against
25 RTG for maintenance services provided during the
26 maintenance period." (As read).

27 Do you see that?

28 **MR. JOHN MANCONI:** Yes.

1 And re-examination?

2 **MR. JOHN ADAIR:** Just very briefly, Mr. Commissioner.

3 **--- RE-EXAMINATION BY MR. JOHN ADAIR:**

4 **MR. JOHN ADAIR:** And Mr. Manconi, it's been a tremendously
5 long afternoon for you, so I'm going to be very brief, and I appreciate your time.

6 Mr. Manconi, Mr. Wardle was asking you about text messages with
7 the mayor, and one question he asked you, I just wanted to make sure I understood
8 properly your answer. I believe he asked -- and forgive me if my note is incorrect. I
9 believe Mr. Wardle asked you if you -- if the mayor was texting you during trial running,
10 and I think you said he was leaving you alone during trial running. Is that accurate ---

11 **MR. JOHN MANCONI:** No, I believe ---

12 **MR. JOHN ADAIR:** --- in terms of what you were asked and what
13 you said?

14 **MR. JOHN MANCONI:** No, I believe he asked me if he was texting
15 me non-stop.

16 **MR. JOHN ADAIR:** All right, thank you.

17 **MR. JOHN MANCONI:** And I ---

18 **MR. JOHN ADAIR:** Actually, one of things I wanted to clarify, so I
19 appreciate that. And, sir, just with respect to text messages, specifically, I'm going to
20 suggest to you that we actually don't know whether the mayor was or was not texting
21 you during trial running, or how frequently, because neither your text messages nor his
22 are available.

23 **MR. JOHN MANCONI:** Okay.

24 **MR. JOHN ADAIR:** Are -- well, let's just start with yours. Are your
25 text message from the period of trial running still available?

26 **MR. JOHN MANCONI:** No, I -- when I retired from the City, I
27 turned in my phone. And it contained personal pictures and personal texts and I was
28 advised by IT, the only way to get rid of that stuff is to wipe the phone, and that's what

1 they did. And I was not worried about any texts or WhatsApp chats that existed
2 because other people were -- again, I said it before. There were 16 people on that's
3 WhatsApp chat that are still at the City.

4 **MR. JOHN ADAIR:** Yeah, and that's all fine. And are you aware
5 that we have not received any text messages from the mayor's phone because those
6 are not available either, in fairness?

7 **MR. JOHN MANCONI:** I can't comment on that. I'm not at the
8 City.

9 **MR. JOHN ADAIR:** Right. The upshot is, sitting here today, we
10 don't know one way or the other whether there were or were not text messages
11 exchanged between you and the mayor during trial running, correct?

12 **MR. JOHN MANCONI:** Sorry, I'm confused. We have the
13 WhatsApp log. I don't know what you're talking about -- texts?

14 **MR. JOHN ADAIR:** I'm sorry. I'm separating our text messages
15 from WhatsApp.

16 **MR. JOHN MANCONI:** Oh.

17 **MR. JOHN ADAIR:** I apologize if that wasn't clear.

18 **MR. JOHN MANCONI:** Sorry.

19 **MR. JOHN ADAIR:** We don't know one way or the other what text
20 messages were or were not exchanged between you and the mayor during that period.

21 **MR. JOHN MANCONI:** That period where we're using the
22 WhatsApp channel, I don't recollect if we were texting at all. Obviously you've seen the
23 emails and you've seen the WhatsApps.

24 **MR. JOHN ADAIR:** Right. And you don't recall one way or the
25 other whether there were texts in addition to that.

26 **MR. JOHN MANCONI:** Our communication channel that we
27 established, as I said earlier today, was to use that WhatsApp group chat on the
28 operational side and with the mayor and the City managers and the chair.

