

Ottawa Light Rail Commission

Brian Guest
on Wednesday, May 18, 2022



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OTTAWA LIGHT RAIL COMMISSION
BOXFISH INFRASTRUCTURE GROUP - BRIAN GUEST
MAY 18th, 2022

--- Held via Zoom Videoconferencing, with all
participants attending remotely, on the 18th day
of MAY, 2022, 9:00 a.m. to 12:17 p.m.

1 COMMISSION COUNSEL:

2 Kate McGrann, Co-Lead Counsel Member

3 Anthony Imbesi, Litigation Counsel Member

4

5 PARTICIPANTS:

6 Brian Guest: Boxfish Infrastructure Group

7 John Mather & Max Libman: DMG Advocates LLP

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11 ALSO PRESENT:

12 Leila Heckert, Stenographer/Transcriptionist

13 Chandani Joshi, Virtual Technician

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INDEX OF EXHIBITS

NO. /	DESCRIPTION	PAGE
1	Curriculum Vitae of Brian Guest.	7

* * The following is a list of documents undertaken to be produced, items to be followed up, or questions refused. * *

INDEX OF UNDERTAKINGS

The documents to be produced are noted by U/T and appear on the following page/line: 55/25; 66/16; 82/22; 105/10.

1 --- Upon commencing at 9:00 a.m.

2 BRIAN GUEST: AFFIRMED.

3 KATE MCGRANN: Good morning. My name
4 is Kate McGrann. I'm one of the co-lead counsel
5 for the Ottawa Light Rail Transit Public
6 Inquiry, joined this morning by my colleague,
7 Anthony Imbesi, as a member of the Commission's
8 counsel team.

9 The purpose of today's interview is to
10 obtain your evidence under oath or solemn
11 declaration for use at the Commission's public
12 hearings.

13 This will be a collaborative
14 interview, such that my co-counsel, Mr. Imbesi,
15 may intervene to ask certain questions. If the
16 time permits, your counsel may also ask
17 follow-up questions at the end of this
18 interview.

19 This interview is being transcribed
20 and the Commission intends to enter this
21 transcript into evidence at the Commission's
22 public hearings either at the hearings or by way
23 of procedural order before the hearing is
24 commenced.

25 The transcript will be posted to the

1 Commission's public website along with any
2 corrections made to it after it is entered into
3 evidence.

4 The transcript, along with any
5 corrections later made to it, will be shared
6 with the Commission's participants and their
7 counsel on a confidential basis before being
8 entered into evidence.

9 You will be given the opportunity to
10 review your transcript and correct any typos or
11 other errors before the transcript is shared
12 with the participants or entered into evidence.
13 Any non-typographical corrections made will be
14 appended to the transcript.

15 Pursuant to section 33(6) of the
16 Public Inquiries Act 2009, a witness at an
17 inquiry shall be deemed to have objected to
18 answer any question asked him or her upon the
19 ground that his or her answer may tend to
20 incriminate the witness or may tend to establish
21 his or her liability to civil proceedings at the
22 instance of the Crown or of any person.

23 And no answer given by a witness at an
24 inquiry shall be used or be receivable in
25 evidence against him or her in any trial or

1 other proceedings against him or her thereafter
2 taking place, other than a prosecution for
3 perjury in giving such evidence.

4 As required by section 33(7) of that
5 Act, you are hereby advised that you have the
6 right to object to answer any questions under
7 section 5 of the Canada Evidence Act.

8 We plan to take a break at around
9 10:30, but if you need a break at any point in
10 time, just let us know and we will pause for a
11 break.

12 BRIAN GUEST: Okay.

13 KATE MCGRANN: To begin, we asked your
14 counsel to provide a copy of your CV in advance
15 of the interview. I'm just going to show you
16 what was sent across by sharing my screen.
17 Please work. Here we go. I'm showing you the
18 first page of a four-page document. Happy to
19 scroll through it. Just let me know if you want
20 me to slow down at any point.

21 My question for you is: Do you
22 recognize this document?

23 BRIAN GUEST: Yeah, it looks like my
24 CV. I'm not sure it's my most recent one, but,
25 yeah, it's my CV.

1 KATE MCGRANN: If there is a more
2 recent CV that you have that you'd like us to
3 use --

4 BRIAN GUEST: It's my most recent.

5 KATE MCGRANN: Then we will have this
6 introduced as Exhibit 1 to your interview.

7 EXHIBIT NO. 1: Curriculum Vitae of
8 Brian Guest.

9 KATE MCGRANN: One quick question,
10 when I was looking at this, I noticed that it
11 appears to cover work from -- up to 2005, and
12 then we pick up again in 2011.

13 What were you working on during the
14 period between that time, or just let me know if
15 I've missed something.

16 BRIAN GUEST: I was working in climate
17 change. So after I left the Prime Minister's
18 office, I was a big climate change guy. And so
19 I kind of got into activism around that. I also
20 did some private work with environmental
21 companies that are pursuing new technologies
22 that can make a difference in the climate change
23 space.

24 So we kind of went into a climate
25 change zone for a while there. And, you know,

1 not a lot of that work, you know, lends itself
2 to a resume. It was -- I also took a good
3 break, by the way, because politics is, you
4 know...

5 KATE MCGRANN: Could you provide us
6 with a brief description of your professional
7 background and experience as it relates to the
8 work that you did Stage 1 of Ottawa's light rail
9 transit system. So just to be clear, up until
10 the point that you begin working on the project.

11 BRIAN GUEST: Sure. Well, I started
12 my career at what was the regional municipality
13 of Ottawa-Carleton at the time for -- there was
14 an amalgamation of the lower two municipalities
15 in to one city. At the time -- at that time I
16 was a nursing assistant at the Children's
17 Hospital of Eastern Ontario.

18 So my first real major job was working
19 for a consulting firm in the political space.
20 And then I assisted Bob Chiarelli in running for
21 regional chair. His -- he had to come home
22 because his wife had passed on. And he decided
23 he wanted to run for regional chair against a
24 gentleman named Peter Clark.

25 We run that campaign and succeeded.

1 Once he took office in 1998, I was a principal
2 advisor to him in terms of policy. I was the
3 policy guy, you know, and that's where my
4 interests were.

5 So for four or five years, I was at
6 the Region, and then at the City once there was
7 an amalgamation of the City. So I know the
8 building, I know the people, they know me from
9 that kind of extensive work.

10 During that time, I was responsible
11 for the Trillium, what is now the Trillium line,
12 at the time was Mr. Chiarelli's commitment to a
13 pilot light rail, which when you look back on
14 it, you know, it was \$16 million. That was the
15 budget for the pilot rail project and that was
16 limited by what we get through Council. I think
17 it was originally thought to be 12 and we
18 delivered it for -- it came in over -- it wasn't
19 possible to deliver it for 12.

20 But we delivered it for 16 and it was
21 very successful. So I kind of, I knew that's an
22 EMU service, which stands for Electrical and
23 Mechanical Unit. So it's a little bit
24 different. It was on legacy rail corridor. But
25 I got very familiar with the issues in terms of

1 delivering that sort of project.

2 After that, I joined the Ministry of
3 Finance working for Paul Martin as, again, a
4 principal advisor, his directive communications
5 and senior policy advisor where I did a whole
6 lot of files for him.

7 And then after Mr. Martin became Prime
8 Minister of Canada, I became his deputy
9 principal secretary where I work with the clerk
10 of the Privy Council and the Cabinet and deputy
11 ministers on, you know, the issues of the day,
12 climate change, the new deal for cities and
13 communities, which I was a very big part of,
14 that really dealt with a lot of local issues and
15 tax-based issues.

16 And then in 2005, I chose to leave
17 government, and then I did climate change for a
18 while, was my focus until I didn't feel like I
19 was making a big enough difference anymore in
20 that.

21 And then I started working basically
22 with environmental companies. And then I
23 basically went full time on -- was at the time a
24 pre-procurement phase of -- a pre-procurement
25 phase of what is now the Stage I LRT. And I

1 stayed with that project right through to when
2 it was awarded, I think that was December
3 of 2012.

4 At some point after that, I felt like
5 the procurement was done and the value that I
6 could help in terms of issue processing and
7 commercial advice was sort of, you know -- I
8 didn't have direct construction oversight
9 experience at the time, I do now, but then I
10 didn't. And I was much more interested in
11 pursuing what was happening in Toronto.

12 So I effectively moved to Toronto. I
13 started then doing five days a week in Toronto
14 working for Metrolinx in the delivery of the
15 Eglinton Crosstown procurement. And since that
16 time, I've continued with Metrolinx in a pretty
17 dedicated way.

18 I'm pretty passionate about their
19 overall program and it's very demanding. You
20 know, we are doing 100 billion dollars' worth of
21 infrastructure, three LRTs in construction at
22 one time, including all the claims and
23 construction management that flows from that.

24 We are doing three subways that are
25 now just entering procurement and early work

1 phases. And we are doing GO Expansion which is
2 an electrification of the entire GO network.

3 So basically the bottom line is I
4 spent my career in public service advising
5 people that have decisions that they need to
6 make on behalf of the taxpayer in terms of
7 dealing with very complex, very fast-moving
8 issues and understanding them and helping others
9 understand them so they can make the decisions
10 that they need to make whether they are senior
11 civil servants or politicians.

12 KATE MCGRANN: Prior to your work on
13 Stage I of Ottawa's light rail transit system,
14 did you have any rail experience other than the
15 work that you did on the Trillium line?

16 BRIAN GUEST: No. I have lots of
17 public policy experience, but I did the first
18 LRT in Ottawa. There were no LRTs in Ontario.
19 And I wasn't doing, you know, technical -- like,
20 we had an owner's engineer, well, I guess they
21 call it technical adviser, which was a
22 consortium of four companies: Morrison
23 Hershfield, Jacobs, URS, I think, and STV.

24 And STV was the lead. They were doing
25 the technical specifications, and Deloitte, I

1 believe, was on board at that time as well.

2 So I was more to help with the issue
3 processing and to help the office, you know,
4 perform going forward into the procurement.

5 KATE MCGRANN: With respect to the
6 work that you did on the first light rail in
7 Ottawa, your role there is issue processing. Is
8 that right?

9 BRIAN GUEST: Yes. It was the first
10 LRT so first we had to acquire the corridor from
11 CP Rail. So there was a big negotiation around
12 how to do that.

13 There was lots of tax issues in
14 relation to starting to own that corridor.
15 There was a lot of stakeholders that were
16 interested in the project. I had to deal with a
17 lot of stakeholders. And their concerns, where
18 they wanted to see stations, kind of make sure
19 that our budget was okay, so that we didn't try
20 to do something so large that Council wouldn't
21 support it.

22 And, you know, all the safety issues,
23 signalling issues, vehicle selection issues.
24 But that was like a trinket compared to, you
25 know, the projects that I worked on since.

1 KATE MCGRANN: And any issues that you
2 probably find on that project that you saw again
3 when you worked on Stage I.

4 BRIAN GUEST: Well, I mean, public
5 policy issues are always -- what kind of species
6 of them that, you know, there are hundreds of
7 types of them. I don't think there was
8 technical -- I mean, I became very familiar with
9 the technical kind of questions and issues that
10 you need to be thinking about.

11 But it wasn't delivered like, you
12 know, on a turnkey design build basis. It was
13 -- it was, you know, whatever it is, 11
14 kilometres long. We were running two trains
15 back and forth. It was very simple.

16 There were issues around the
17 maintenance and storage facility, equipping it,
18 what we were going to need in order to keep the
19 system running.

20 So I guess, yeah, I guess, there were
21 was some aspects of that for sure. But more I'm
22 -- I'm modestly good at understanding things
23 quickly and framing them up for decision-makers
24 and talking about what the -- how to get their
25 priorities on the table and make sure that they

1 are well aware of all the things in detail, in
2 the detail they need in order to make choices.

3 KATE MCGRANN: And prior to your work
4 on Stage I of Ottawa's light rail transit
5 system, could you just describe your P3
6 experience.

7 BRIAN GUEST: My P3 experience. I
8 didn't have P3 experience.

9 KATE MCGRANN: And more specifically
10 that you worked on putting together a project
11 that was to be delivered by way of a design,
12 build, finance, maintain before.

13 BRIAN GUEST: No.

14 KATE MCGRANN: With respect to the
15 work that you did pre-procurement up until the
16 close of project agreement on Stage I, could you
17 just describe your role to us, what you looked
18 like day-to-day in terms of the work you did?

19 BRIAN GUEST: Sorry. Can you give me
20 that question again. I got a little muddled
21 there.

22 KATE MCGRANN: The work that you did
23 from pre-procurement up until the financial
24 close of the project agreement for Stage I,
25 would you describe what your role was?

1 BRIAN GUEST: Well, I was principally
2 advising John Jensen who was the director of the
3 project. I came onto the project when
4 Mr. Jensen basically called me out of the blue
5 and invited me into his office to talk about the
6 issues that the project was facing at the time.
7 We had a good conversation.

8 He, at the time, thought I could be of
9 assistance. The project wasn't going great at
10 that time. It was still pre-procurement. But
11 the alignment that had been selected by
12 environmental assessment was what they call the
13 cross-country alignment, and it was derived from
14 a planning exercise that focused on origin and
15 destination data for employment and for where
16 people were coming from and going to.

17 So it was kind of like drawing a line
18 diagonally across the downtown core and, sort
19 of, counting the number of people who would have
20 the shortest walk to get to the alignment.

21 And it didn't -- it didn't -- I think
22 it was done at a functional design level like,
23 after the alignment selected. I wasn't involved
24 in any of this, but I think it was done to about
25 a 5 percent level, just confirm where it would

1 go.

2 At the time, it was, you know -- it
3 was the preferred alignment that Council had
4 approved, the previous Council had approved in
5 terms of where it would go and where the
6 stations would go. And that was used -- that
7 5 percent design was used, I think, to apply to
8 senior orders of government, including the
9 province and the federal government to obtain
10 support in a traditional cost share program.

11 So the budget was, I think,
12 1.7 billion plus some escalation and so on. So
13 I think it was understood to be 2.1 billion.
14 That was a really important thing to understand.

15 But let me just take a step back and
16 talk a little bit about how municipal and
17 provincial and federal finance work.

18 Municipal government doesn't have the
19 same kind of tax growth that the federal and
20 provincial governments do when things like the
21 current inflation spike is going on.

22 Actually federal and provincial
23 revenues go up, cities' costs go up. Their
24 (indiscernible) don't go up. So cities are --
25 have been, in this country, struggling to pay.

1 Now, the City of Ottawa is a very healthy
2 municipality in that they have a very tight debt
3 policy.

4 So they have a target of, I think,
5 7.5 percent of own source revenues for their own
6 debt. The province permits up to 25 percent of
7 own source revenues, but this municipality has
8 been very well managed over time and has a very
9 tight debt policy.

10 So once you get into a contribution
11 agreement with the federal and provincial
12 government, you -- the die is cast in terms of
13 what they are going to contribute. It's set
14 very early, a design that is very early. And it
15 generally doesn't move. Sometimes you can
16 appeal for a little bit of extra help in terms
17 of money.

18 But generally, the municipality is
19 paying for the overage, it's not how it works --
20 it doesn't work that way universally in the
21 Province of Ontario because Toronto is the
22 centre of economic -- kind of, it's the biggest
23 economy in the province, and it gets its own
24 approach that Ottawa and Waterloo, for example,
25 did not.

1 So that means that any dollar spent
2 over top of what the budget is, is the municipal
3 dollar coming from a tax base that doesn't grow
4 in line with the economy. So that budget number
5 was very important in the City to adhere to
6 because they only had so much money and they
7 needed, you know -- if it had been procured and
8 came in above 2.1, the City would have had to
9 have paid whatever that additional amount of
10 money was.

11 And if there were significant claims
12 that arose during the construction, the City
13 would have to pay 100 cent dollars for each of
14 those dollars that was spent in relation to a
15 claim, okay.

16 So budget was a really big priority.
17 And the new Council at the time had asked for a
18 review of, you know, of the budget, the
19 affordability, and the project just generally.
20 Now, the problem with -- am I giving you too
21 much here? Is this okay?

22 KATE MCGRANN: I don't want to affect
23 you answer at all. I will ask follow-up
24 questions as needed.

25 BRIAN GUEST: The cross-country

1 alignment was, I think, 47 metres deep, which is
2 just so you understand, 11 switchback
3 escalators, and there was a necessity to be that
4 deep because of the deep parking garages at the
5 World Exchange Plaza and other deep parking
6 garages that needed to be that deep.

7 And, of course, the land had to be
8 expropriated underneath those buildings in order
9 to follow that route. So it was not a great
10 solution because it would be quite a long time
11 to get down to platform, and all that affects
12 customer journey time, and customer journey time
13 and frequency are the two big drivers of whether
14 a transit system is successful, two of the
15 biggest.

16 So time down to platform was an issue.
17 It was an issue from a cost perspective, too.
18 And I don't have this exactly but I believe the
19 -- so moving forward into after EA and right
20 around when I started, the more serious designs
21 were starting to be completed for what they call
22 a reference concept design, which is basically a
23 much more advanced proof of concept and
24 functional, which is 5 percent, and usually it's
25 30 percent for a reference concept, although

1 certain risky elements you can go further than
2 30 percent just to make sure you understand
3 them.

4 And I think the estimated cost
5 internally at the time was 3.2 billion and
6 heading north. And it was really all driven by
7 property and depth. So there was an alternative
8 that was I believe explored in the EA, it
9 performed well. You'd have to go back and check
10 the EA. But it was to come -- to go down Queen
11 or Albert under the street and it had a number
12 of advantages.

13 First of all, you were free of those
14 deep parking garages, and so you could be
15 between 16 and 24 metres below the surface which
16 is, you know, a huge, huge advantage. And
17 second, the street already belongs to the
18 municipality so you didn't have to buy the land.

19 So when the review started, I mean
20 that was the problem, right? To put it plainly,
21 there was concern that the project wouldn't be
22 affordable given what we had on the table from
23 the federal and provincial government, and that
24 it wouldn't be as good as it should be.

25 And so Council asked for review of

1 those things. And the office was in the process
2 of grappling with that. And that's -- you know,
3 I was part of that process where we reviewed to
4 try to get the project into a position where it
5 could be delivered within the resources that
6 were available.

7 I'm having a hard time remember
8 exactly because it wasn't 2.1 at the beginning.
9 We did get a little bit more help from federal
10 and provincial governments somewhere along the
11 line. But it was a few hundred million extra
12 dollars I believe.

13 Anyway, so that -- we were engaged in
14 that. We were engaged in choosing the delivery
15 mechanism, like the type of contract that was
16 the best way to approach it.

17 Before I got there, a P3 was
18 definitely -- I think they focused on a P3. But
19 the species of P3, not all P3s are the same, was
20 something that people were reflecting on. The
21 previous project that was cancelled was a DB,
22 and that's a kind of P3, it's just it has -- it
23 doesn't have the F, it doesn't have the
24 financing and it doesn't have -- it disciplines
25 the contractor to deliver a fixed-price contract

1 in a slightly different fashion, usually with
2 LDs and other securities.

3 KATE MCGRANN: And LD is liquidated
4 damages, just so that somebody who's reading --

5 BRIAN GUEST: Yes.

6 KATE MCGRANN: -- the transcript can
7 understand what you're saying.

8 BRIAN GUEST: Yeah. You'll have to
9 bust me on my acronyms all over the place, I'm
10 sure.

11 KATE MCGRANN: I'll follow-up as best
12 as I can.

13 BRIAN GUEST: So you discipline with a
14 different thing -- the -- so that was
15 Mr. Chiarelli's north-south. It was basically a
16 big build onto the -- onto what became the
17 Trillium line, and what was, at the time, the
18 pilot, which had been made permanent, the pilot
19 had been made permanent.

20 And the idea was to go across to
21 Barrhaven at the bottom of the North-South line
22 and come through over the Mackenzie King Bridge.
23 And I thought it was really good project. I
24 didn't have anything -- I didn't participate in
25 that one that I can recall. But certainly not

1 in the way I participated in the next one.

2 Anyway, the market -- Mr. O'Brien was
3 elected mayor. He campaigned in no small
4 measure on cancelling Mr. Chiarelli's LRT, he
5 did so, and started basically all over again.
6 So the market had a little bit of a
7 who-are-these-guys, you know, kind of reaction.

8 When you cancel a project, it's bad.
9 The market spends a lot of time and energy
10 trying to bid it. There's a selected winner,
11 they had a contract, the contract was torn up,
12 compensation was paid, you know, it was -- it
13 wasn't easy to get people to come back to the
14 table and start doing something different.

15 So were preoccupied with how to do
16 that, like that we wanted to get -- make sure we
17 had very robust competition and a good market
18 response so that was one of the issues that we
19 were thinking about at the time.

20 And then we -- then we -- yeah, then
21 we had to make a selection of the type of
22 contract we were going to try to use. We had
23 to -- we made the decision -- we made decisions
24 around scope and put those forward to Council
25 with the revised alignment, briefed Council on

1 the revised alignment, and it did solve the
2 budget issue.

3 It seemed well within the
4 affordability limits that the City faced, and
5 could be -- we used quantity surveyors, we used
6 risk assessment, and you build up your base
7 budget for Council approval. And that was
8 done -- I don't have the dates, but I think it
9 was done somewhere in the mid-2011 or maybe
10 before that. I think it was mid-2011.

11 So those were the sorts of issues that
12 we were dealing with. There was a lot going --
13 you know, I can't really (inaudible) was, you
14 know, how to deal with utilities, how to deal
15 with the approvals that were required to do
16 (inaudible) you know, what was the best way to
17 make sure that we got a good market response.

18 (Reporter interjects due to audio
19 quality.)

20 BRIAN GUEST: I'm sorry about that.
21 It might be the internet. (Inaudible) all the
22 time. If you're having a hard time hearing me,
23 it will probably just pass.

24 KATE MCGRANN: Ms. Heckert, could you
25 just help Mr. Guest understand from which part

1 of his answer you need him to try to repeat what
2 he said.

3 (Readback provided.)

4 BRIAN GUEST: I think I said I can't
5 be encyclopedic about all different issues that
6 was faced. But there were -- in any project
7 there's a huge number of them, you know, tree
8 clearing, you know, material disposal, utility
9 interfaces. You know, just lots and lots of
10 issues that needed to be processed and briefed
11 up to senior management as appropriate.

12 And then there's all the market
13 interaction once we started the in-market
14 process, there's all the commercial confidential
15 meetings and the design presentation meetings
16 which are part of the process aimed at ensuring
17 compliance with the output specification.

18 And it's not an approval thing, it's
19 feedback. It's really the various teams that
20 are vying to provide you with the best proposal,
21 come in, they talk about commercial terms, they
22 want to see adjusted. They talk about their
23 solution for building and designing scope.

24 So in the end we settled on a DBFM,
25 "we" being the City's decision-makers, and the

1 office made that recommendation and that was
2 then brought to Council.

3 The other overlay of that, I should
4 point out, is that the Province effectively
5 directed that it be the DBFM. They at least had
6 a very strong perspective that it should be a
7 DBFM and that IO should be employed as the
8 procurement agent.

9 Mr. Chiarelli, by that time, was the
10 Minister of Infrastructure. And he was very
11 strongly of that view which wasn't a
12 determinative necessarily, but it was a
13 guidepost for sure.

14 I think the Federal Government was
15 very favourable to P3s at the time, including
16 financing. And so there was kind of, you know,
17 an overlay of senior orders of government who
18 were cofounding, that's where they were looking
19 to see the City do.

20 But the City did its value for money
21 analysis of those -- the various models. They
22 did a kind of procurement options analysis,
23 that's what we call it. Now back then, I think
24 it was called a P3 screen.

25 Those were required activities and

1 they were done. And, you know, I don't think
2 that the City manager would have recommended to
3 Council just on the basis of our preferences of
4 senior orders of Government. He needed to come
5 to that determination and recommend that on its
6 merits, which is what he did.

7 I don't think there was a lot of
8 consideration of doing anything, but at least
9 the design build. Some conversations about, you
10 know, what the base contractor start with was
11 whether to have financing.

12 There was never really a huge debate
13 about whether to include maintenance because
14 it's kind of good practice if you hold the
15 constructor to the performance of the asset once
16 they built it because, really, in a P3, even in
17 a design build, you're not telling them how to
18 build it, or exactly what to do in the design.

19 You're looking for an outcome, and so
20 you're very focused on giving them flexibility
21 to deliver it in the very best way that they
22 can, you know, without -- in a DBB, you design
23 the entire thing right down to the bolts, and
24 you hand it over to a contract and you say, Give
25 me a price to build this.

1 And there was never anyone who thought
2 that that was a good idea, that I encountered.
3 A, because the City didn't have the expertise
4 and wouldn't have known how to do that well, and
5 I think they recognized that.

6 And, yeah. So the idea was always
7 that the private sector should bring together
8 the skills of a consulting engineering,
9 world-class consulting engineering firms, and
10 combine it with the expertise of strong
11 construction firms that known means and methods
12 can interact with the designer, and get you to
13 the best overall solution.

14 And then you have three teams doing
15 that, and you select the best one based on
16 objective criteria and you award. So that was
17 the process that I was part of.

18 KATE MCGRANN: I noticed that you keep
19 looking down. Are you referring to a document
20 or notes?

21 BRIAN GUEST: No. I'm just -- that's
22 just how I move.

23 KATE MCGRANN: Couple quick questions
24 on some acronyms you used. So DB, that's Design
25 Build.

1 BRIAN GUEST: Design Build.

2 KATE MCGRANN: DBB. Design Bid Build.

3 BRIAN GUEST: Yes, correct.

4 KATE MCGRANN: And in describing the
5 work that you did, you kept referencing "we".
6 Is "we" the decision-makers?

7 BRIAN GUEST: Yes. Another thing I --
8 I'll try to temper. "We" means the project
9 team. "We" means the City. So I'll try to
10 distinguish between those two things. But the
11 project team itself was a team and we referred
12 to ourselves as "we." We've got to get this
13 done, this issue dealt with.

14 KATE MCGRANN: Anybody else from
15 Boxfish working on this project with you during
16 the pre-procurement and procurement phase?

17 BRIAN GUEST: Well, we were only very
18 small at that point and it was really mostly me.
19 I was pretty dedicated, like, I was 100 percent
20 dedicated to the project, in effect, once I
21 started.

22 There were others that were involved
23 in largely communications type activities when
24 the project team needed to engage stakeholders
25 or do public meetings or prepare for major

1 Council meetings.

2 There were a number of contractors
3 that worked with us, as subcontractors that
4 worked on various aspects of the writing and the
5 graphics and whatever else needed to be done.

6 And I did some measure of coordinating
7 that with my partner Jon Lomow, who is
8 basically -- has an advertising and
9 communications background, so he helped out with
10 some of that stuff. But principally it was me.

11 KATE MCGRANN: Who were you taking
12 directions from with the City?

13 BRIAN GUEST: John Jensen was my -- he
14 was the person who directed me. At times, I
15 interacted with Kent Kirkpatrick the City
16 manager who I knew from my past at the region
17 where he was deputy treasurer, when I was there.
18 So I knew Kent. And so often be in briefings
19 where Mr. Jensen was going to brief the City
20 manager on progress and so on.

21 I also spent quite a bit of time
22 interacting with Nancy Schepers who was the
23 deputy city manager of planning, and who
24 Mr. Jensen reported to so. It was Mr. Jensen,
25 and then to the extent I was helpful up the

1 reporting chain to the City manager.

2 KATE MCGRANN: Any interactions with
3 the mayor, any members of his staff?

4 BRIAN GUEST: On this project, it's
5 not really -- I'm sure, yes. We definitely
6 briefed the mayor on a number of occasions. The
7 Mayor's style, though, is not -- it's quite
8 different from Mr. Chiarelli's style.

9 He doesn't get into the weeds on
10 things. He very much is, kind of, chair of the
11 board and focuses on Council and the broad
12 issues set that a mayor has to grapple with and
13 events that occur and so on.

14 And so, no, I would not say that I had
15 a lot of interaction with him. I didn't really
16 have any interaction with him at all.

17 KATE MCGRANN: Other than the
18 briefings, any interactions with the mayor and
19 members of his staff?

20 BRIAN GUEST: I mean, I would have
21 interacted with them in the halls. But on this
22 project, not really outside of the briefings.

23 KATE MCGRANN: So you've described the
24 aspects of the project that you were involved
25 in. I'd like to understand what your role was.

1 What were you doing that other members
2 of the project team or City staff, more
3 generally, were not?

4 BRIAN GUEST: Well, I mean, at some
5 point, it all has to, kind of, come together
6 into -- into recommendations for senior
7 decision-makers, and there's, you know, puts and
8 takes in all of this stuff, technicals coming
9 into its ideas and concerns and thoughts.

10 The budget, is being developed,
11 reports need writing. I was really coordinating
12 a lot of stuff for Mr. Jensen and helping him
13 process issues which is what I said off the top
14 was basically what I spent my whole life doing.

15 It's about bringing together the
16 picture of all these disparate parts of the
17 project and trying to help bring them together
18 into plan to execute, so that's what I did.
19 Issue management, issue processing, that sort of
20 thing.

21 KATE MCGRANN: What form did that work
22 take?

23 BRIAN GUEST: Lots of meetings,
24 participating in lots of meetings, understanding
25 briefings. Sometimes making, you know, notes in

1 terms of reports that needed to go up to
2 Council, helping to write those reports for
3 Council and committee. You know, that's the
4 form.

5 I wasn't drafting schedules per se. I
6 was reviewing schedules, I was reviewing
7 contracts. I was heavily involved with
8 interacting in Infrastructure Ontario on the
9 same kinds of things.

10 But did I have, like, a discrete, you
11 know, specific responsibility? I guess it was
12 to make sure everything hung together, and make
13 sure that Mr. Jensen and City staff had the
14 right facts in order to progress the project
15 well.

16 KATE MCGRANN: What was your
17 understanding of the City's key priorities that
18 guided the trajectory of this project?

19 BRIAN GUEST: Well, okay. So the
20 first key priority, there was a big problem with
21 the downtown transit system. And in that
22 respect, I think, you know, Mr. O'Brien had the
23 right idea; and the staff, at the time, had the
24 right idea, which was basically, back then,
25 buses were lined up on Mackenzie King bridge and

1 through the downtown, like, literally nose --
2 nose to rear end, sort of thing.

3 You know, it wouldn't be unusual at
4 all to see 45, 50 buses put in through the
5 downtown. And it was like in a few minutes. It
6 had some dedicated transit priority lines --

7 KATE MCGRANN: Can I just interrupt
8 you for a second?

9 BRIAN GUEST: Yeah.

10 KATE MCGRANN: I realized that I
11 should have been more specific in my question.

12 In terms of the selection of the
13 design, build, finance, maintain model, what
14 were the key aspects of that model that led to
15 the City's selection of it?

16 BRIAN GUEST: Sure. I still go back
17 to why did we need to do the project because
18 it's is a key thing what we were trying -- we
19 wanted an outcome.

20 The outcome was the bus system was
21 reaching failure. There were 9300 people per
22 hour, per direction going through the downtown
23 core in the peak. It was at capacity.

24 Anything that went wrong, a snowstorm,
25 you know, a blocked lane, the bus system just

1 slowed right down to -- people were frustrated.
2 Is needed to get fixed.

3 So we wanted to deliver that outcome.
4 So what was the best way to deliver that
5 outcome? You know, aside and apart from the
6 senior orders the government wanted us to do P3,
7 we wanted to get an integrated team, "we" being
8 the project team, wanted to get an integrated
9 team that took all of the complicated parts that
10 are in an LRT.

11 And an LRT isn't like a hospital or a
12 jail, it's a big long machine, and everything
13 has to work together, and they are supplied by a
14 variety of vendors, the constituent parts are
15 supplied by a variety of vendors, and they need
16 to be knit together into an outcome.

17 And so one of the best ways to do
18 that, it's not the only way, but one of the best
19 ways to do that is to have the entities finance
20 put, what they call, skin in the game, air
21 quotes, which is basically at-risk monies that,
22 kind of, bond the project company together, and
23 makes sure that all the little bits that might
24 be provided by Thales or Alstom or Bombardier or
25 you know, the various construction firms that

1 would be part of it are, kind of, like in the
2 same crucible and they have to deliver against
3 the requirement.

4 So that was a big preoccupation of the
5 City. We definitely wanted to have it work
6 properly, and did not want to end up in the
7 middle of a group of companies that had any
8 incentive to finger-point at each other if there
9 were issues.

10 So that was a big preoccupation. And
11 then there was an attractiveness about the risk
12 transfer model that Infrastructure Ontario had
13 developed. And by risk model, I basically mean
14 the principle that -- the entity that's best
15 able to control a risk is the entity that must
16 manage that risk.

17 And so Infrastructure Ontario had a
18 very well-established project agreement which is
19 what they call the contract, and it has a
20 well-established template to it that has a lot
21 of clauses and elements to it that are tried and
22 true in the marketplace.

23 So that was attractive because in
24 contracting, if it's a brand-new contract,
25 you've got to pay a lot of good people like

1 yourself to review it and tell the firms why is
2 this one different than a CCDC -- or you know, a
3 standard construction form contract.

4 And the fact that IO had very
5 established template that they had evolved over
6 time was attractive in that you weren't starting
7 from round one, so that was in the project
8 team's mind.

9 The same skin in the game drives a
10 fixed price. The fixed price was important
11 because, as I explained earlier, the City had to
12 pay for overages. But it was -- it was the
13 first LRT that had used the Infrastructure
14 Ontario template.

15 It was not the first, you know, rail
16 transit system, certainly in the world, that
17 used this, sort of, approach. Canada Line, for
18 example, was a P3 and it was the -- it came in
19 before the Olympics which was the key driver
20 there.

21 And it came in actually ahead of time
22 and on budget. So that was something that the
23 City thought was, you know, noteworthy. Those
24 were a few of the things that were in the City's
25 priority basket.

1 KATE MCGRANN: It sounds like, just to
2 try to summarize what you said, the key
3 priorities driving the City's selection of the
4 DBFM, other than the interest of the province
5 and the federal government and the use of P3
6 model, and we'll come back to that in the
7 second, are risk transfer and budget control.
8 Is that fair?

9 BRIAN GUEST: Risk transfer inclusive
10 of performance. Get what you pay for. And
11 budget control can be achieved without
12 financing. But, in fact, financing costs the
13 City money because that capital is not as cheap
14 as City capital.

15 So there has to be a value for money
16 assessment of whether that makes sense. Is it
17 worth it to pay 10.25 percent on return on
18 equity. I can't remember what the debt rate
19 was, but it was probably in the lower fives for
20 the private capital.

21 And what types of risks are you facing
22 on the project that would be transferred to the
23 private sector for that additional cost of
24 adding finance into the project.

25 KATE MCGRANN: On that point, what is

1 your understanding of the role of private
2 financing as an incentive as a moderating
3 influence, what role does private financing play
4 in the DBFM model as far as delivering the
5 project on time and on budget?

6 BRIAN GUEST: Well, I mean, it's a
7 pretty deep subject. The equity, basically it's
8 a Special Purpose Vehicle, SPV, and equity is
9 injected into a company that didn't exist the
10 day before.

11 And it's driving the behaviours of the
12 constituent parts. In the case of Ottawa LRT,
13 that would have been EllisDon, SNC-Lavalin, and
14 ACS Dragados.

15 They each put in a portion, I believe
16 it was 40, 40, and 20 for EllisDon being the
17 minority. And that, kind of, motivates them to
18 perform -- you know, not to fight with one
19 another, but to focus on the job at hand and to
20 perform.

21 They also have lenders, short-term
22 lenders and long-term lenders associated with
23 the financing. I believe it's an 80/20 split.
24 But I don't know. I can't remember precisely
25 what it is. I've done a lot of these job since

1 and they become blurred at a certain point.

2 But I think it was 80/20. And the
3 lenders -- the short-term lenders lend against
4 what they call schedule substantial completion
5 so they get paid out when the job is done.

6 And then the long-term lenders, they
7 are like bondholders. So they expect to put
8 their bond on a shelf and, you know, just get
9 paid the ticket value of it.

10 So the lenders secure their lending
11 both shorts and longs, against parental
12 guarantees, and letters of credit that are
13 supplied by the owners of the Project Co, and
14 owners of the share capital Project Co through
15 their equity.

16 And the lenders' role is -- it lowers
17 the cost of financing so you're not doing it all
18 with equity. You know, you're trying to do it
19 with a WACC that makes financial sense, WACC
20 meaning weighted average cost of capital.

21 And so lenders help with that, the
22 long-term lenders help with that. Now, the
23 theory of a P3 - the theory, I'll say theory -
24 is that the lenders also provide oversight, and
25 they do during the proposal phase in the sense

1 that they do diligence and they decide if they
2 want to lend into the project.

3 So that's the proposal phase, like do
4 we want to go on this voyage? You know, they do
5 diligence, and to do that they customarily hire
6 lenders technical advisor, which will review the
7 proposals as they are being completed and advise
8 the lenders as to the appropriate -- you know,
9 the appropriate way to look at the project's
10 schedule.

11 Is it going to be deliverable? Is it
12 fanciful or is it realistic? The risk
13 registers, which they call QSRAs and QCRAAs,
14 which basically is Quantitative Schedule
15 Assessments and Quantitative Cost Assessments.

16 And those two things, basically, you
17 have a whole pile of risks that are some to do
18 with inherent nature of being a contractor, like
19 are the forces going to be as productive as I
20 expect them to be.

21 And then there are other risks that
22 are associated with specifically the project.
23 Is the utility company going to move that pipe
24 for me when I need them to in the schedule? And
25 those things are covered by a, sort of,

1 supervening events, what they call supervening
2 events which will either delay in compensation
3 or just delay and -- and that's a whole other
4 subject.

5 So anyway, lenders are looking at all
6 of that stuff and they're making assessment
7 about whether they want to lend into the project
8 in the same way that they would look at your
9 request for a mortgage, and decide whether you
10 are a good risk. And I do think they do that.
11 You know, it's a lot of money they're putting
12 into the project that you do it well.

13 So that kind of holds Project Co in a
14 proposal phase to account that their project is
15 realistic that they've dealt with the plan
16 properly, that they've got a good plan.

17 But again, they're only themselves
18 probably during a bid phase, you know, depends
19 on element. But some stuff, like a sidewalk,
20 you wouldn't design at all. Some stuff like
21 that tunnel, you might design to an 80 percent
22 level or 75 percent level just to make sure
23 you've got it nailed down.

24 So all that stuff happens, we don't
25 see it. It's all in the bid process and the

1 lenders are part of that. And then after that,
2 the lenders -- the lenders, I think really don't
3 do as much as the theory says they do.

4 They're so secured against those
5 parents that, like, you know, it's like the
6 Princess and the pea, you know, on 1000 beds
7 with no pea. There's no -- there's almost no
8 risk that, you know -- they've assessed these
9 companies as big, sophisticated companies with
10 strong balance sheets.

11 They've got joint and several, and by
12 that I mean if one of the project partners was
13 to fall over and go insolvent, the other two
14 would have to pick up where that partner isn't
15 able to anymore.

16 So when you look at the nature of the
17 guarantees, and guarantees, I believe, in
18 Ottawa's case that the lenders have up to
19 35 percent of construction costs are their
20 parental guarantees and their security package,
21 I think about 5 percent of that being liquid.

22 So their job after construction is,
23 you know, just to get paid basically, and to
24 take their long-term bond payments. They do
25 have lots of powers in the credit agreement that

1 the City doesn't enjoy. And that's just to
2 protect them as lenders into the project, the
3 way any banker protects themselves against a
4 credit -- of someone they are supplying a credit
5 to.

6 So, yeah. That's the role during the
7 proposal phase. And then after the proposal
8 phase, they are very, very unlikely -- so in
9 Ottawa what appears to have happened is the
10 parts of Project Co, the three constituent parts
11 of Project Co, they didn't -- they just didn't
12 get along.

13 And they become more focused on --
14 more focused on their own commercial positioning
15 vis-à-vis each other and vis-à-vis the designers
16 of the program than they were in fixing the
17 problem.

18 And so very disappointing performance
19 after substantial -- scheduled substantial
20 completion in that one would have expected with
21 this structure that they would do everything in
22 their power to get their annual service payments
23 going, get the system to be reliable, and focus
24 on that rather than who is accountable for it
25 being late and who is accountable for problems

1 within the Project Co. But that doesn't appear
2 to be what's happened.

3 So circling back to your question
4 about lenders. Lenders are not going to step
5 into that situation, right, because they're so
6 insulated and it's not what they do. They're
7 not going to take over and say, Hang on here,
8 you know, why are you guys -- that's not their
9 role.

10 Their role is simply to get paid and
11 while they have all these, kind of, superpowers
12 to be able to step in and do stuff, they don't
13 do it. They never have and they never will.

14 So that's, I think, one of the areas
15 where you can say, Does the theory match, you
16 know -- does the theory match the reality in
17 terms of the P3 model.

18 But they are at risk. Lenders are at
19 risk for -- they are at risk for -- because the
20 payments that they get for the bonds are
21 embodied in the annual service payment. And if
22 performance is low enough, poor enough, then
23 those payments don't get made to Project Co.

24 And then Project Co has to make those
25 payments to lenders notwithstanding that which

1 is why I kind of used the bed -- multiple bed
2 analogy. Like, Project Co has to pay. They are
3 bonds, right? They're going to default on
4 bonds, and it doesn't matter, lenders don't care
5 that Project Co is not getting paid at all.

6 Unless there's a risk that all three
7 of them are going to fall over, there's no way
8 they're stepping into anything or doing anything
9 about it.

10 KATE MCGRANN: Couple of follow-up
11 questions. First I wanted to clarify. You
12 talked about the lenders having lots of powers
13 and you said that the City didn't enjoy them.

14 I take that to mean that the City does
15 not also have those powers as private partner
16 and not the City didn't like that the lenders
17 have those powers. Is that fair?

18 BRIAN GUEST: No. I don't think it's
19 that they didn't like it. It's just the City --

20 KATE MCGRANN: I'm trying to clarify
21 your answer here.

22 BRIAN GUEST: Very well. The City has
23 a liability cap in its favour of \$50 million.
24 The lenders have security of 35 percent of
25 project costs. So that's going to be close to a

1 billion dollars, 800 million I guess at least.
2 Not going to do the math for you.

3 But 35 is just under 2.1. And that's
4 more, right? It's a lot more. They have step
5 in rights that occur earlier than the City. So,
6 for example, if there's a default occurring on
7 performance, there's a right to step in, I
8 believe it's three months in advance of the City
9 in order to protect themselves from a defaulting
10 Project Co, and to do something about it.

11 Again, unless everybody is falling
12 over, they're not going to do that, but they
13 have the power.

14 So those are very potent things that
15 the lenders have in order to protect themselves.
16 They have direct access to the security, the
17 City doesn't. The City doesn't have direct
18 access to the parental guarantees or to the
19 ability to draw that letter of credit, they
20 don't have it.

21 They have to count on lenders doing
22 it. And I presume in a really bad situation,
23 lenders would do it and they'd go hire somebody
24 else to either finish the project, if it's still
25 in construction, or fix the issues with the

1 project.

2 But that would be an extremeness.
3 Those powers are there, they're very potent, and
4 they are there to protect the lender from a
5 nonperforming Project Co.

6 And the way the model works is the
7 City basically counts on that structure, and
8 they don't need to have direct resort to the
9 parental guarantees or any of that stuff.

10 They -- they're happy to have the
11 capital risk and the lenders doing that. That's
12 the difference between the City's agreement and
13 the lender direct agreement.

14 KATE MCGRANN: And the lenders are
15 required to consent to any amendments to the
16 project agreement, right?

17 BRIAN GUEST: They are. That's --
18 that is correct, yes. Not any, but any material
19 ones. They also had to consent to things like
20 the extension of the project, for example.
21 Anything that materially alters the risk that
22 they signed up for in the beginning.

23 KATE MCGRANN: Given the limited
24 utility that you have identified that the
25 lenders bring to the project post-procurement

1 and the cost of the finance component and the
2 design, build, finance, maintain, why did the
3 City choose to include finance in the model that
4 it chose to deliver Stage I?

5 BRIAN GUEST: I mean, at the time, the
6 theory seemed to be practice. There was no
7 negative experience in terms -- that I was aware
8 of anyway. In terms of that kind of -- lenders
9 not being very active after scheduled
10 substantial completion because there weren't
11 very many -- there was no LRTs at all.

12 So, yeah. I mean, you can certainly
13 say now that -- I -- this is a personal opinion.
14 I don't know that IO would share this opinion.
15 But I don't think the lenders are likely to ever
16 step in unless the situation is very
17 catastrophic, and I think IO would agree to
18 that, and it's very rare that things get that
19 bad.

20 But it's not without downsides, Kate.
21 You have to get consent from every individual
22 lender to do something that materially modifies.
23 So when you talk about Stage II coming along,
24 that required lender consent and that became an
25 issue for sure.

1 Anyone of those lenders can simply go
2 No, not going to do it. I put my bond on my
3 shelf and I'm not opening it up and I don't want
4 to even -- so pay me a consent fee, maybe I'll
5 have somebody open it up and I'll think about
6 whether I want to give you consent.

7 And even to get to that point, you
8 have to provide them with no better, no worse
9 risk position from what they originally signed
10 up for for the bond. And no better, no worse is
11 expensive depending on how you do it. There's a
12 variety of ways you can do it. But they all
13 have issues.

14 They are not eligible for federal and
15 provincial cost, so again all City dollars.
16 They -- you know, you can do it by way of
17 sub-debt. The City puts a slug of subordinated
18 debt underneath the lenders that restore the
19 resiliencies and the debt coverage ratios, so
20 that the lender is kind of sitting on another
21 featherbed of a bunch of city money that is
22 cheap, cheaper than their money.

23 You can have equity and lenders inject
24 capital to restore the resiliences. Those are
25 the variety of options that are available to

1 you, but none of them are cheap, and even the
2 sub-debt one has downsides relative to what I
3 think was the right solution which was the one
4 that the City selected for the expansion.

5 KATE MCGRANN: Well, since we're here,
6 we'll jump around the timeline of the project a
7 little bit, and talk about your involvement in
8 the City's decision to execute a debt swap and
9 effectively step into the shoes of the lenders
10 part of the way through the construction phase.

11 So can you just -- for a bit of
12 background and context, I think you said you
13 stepped away from the project when construction
14 phase started.

15 How do you get involved in the project
16 again?

17 BRIAN GUEST: Oh, I did come back to
18 the City to advise on two principal things that
19 were going on. First of all, I stayed -- I
20 stepped away. I went to Toronto, and I started
21 working on Eglinton, which is very engrossing,
22 and then I did Finch Hurontario. So I was full
23 on busy.

24 But I did stay on their executive
25 steering committee to provide the City manager

1 with, you know, perspectives from, you know, a
2 broad base of experience in terms of actual
3 projects happening. So I came, I stayed
4 involved in that, but I didn't go to all the
5 meetings to be honest with you. If I can fit it
6 in, I went to be helpful.

7 I don't think I charged very much
8 money during that period of time, probably a
9 handful -- you know, a handful of hours just go
10 to the meeting. And I just stopped bothering
11 doing that at a certain point. I just did it
12 help.

13 So principally, I was then brought
14 back on in a paid capacity for two reasons. One
15 was the project was in distress in that it was
16 facing about an 18-month delay in substantial
17 completion, which means that those principal
18 companies inside Project Co are now starting to
19 pay liquidated damages to the lenders in the
20 amount of the payments that those lenders were
21 entitled to get and that's both short and long.

22 So there were a number of claims
23 advanced by Project Co that were without
24 foundation. You know, like you're in pain and
25 you're a company and you've got shareholders to

1 answer to, you know, you're going to go and try
2 to find out how you can shoehorn anything into
3 the supervening events, you're going to try.

4 So, you know, various quality of
5 notice under the project agreement within ten
6 days of knowing that they're going to occur.

7 And the City has an opportunity to
8 mitigate if it can, if it agrees or to -- or
9 sometimes they ask for variation confirmations
10 that basically say, The project agreement says I
11 need to do this, but you want that, so you need
12 to pay me and here's how much it costs, and then
13 often there are disputes around the quantum.

14 So anyway, long story short is that as
15 the City started to face the peril of a large
16 number of claims, not least of which was driven
17 by the sinkhole event that occurred, they wanted
18 advice about how to handle major claims, and
19 there wasn't a lot of experience in the City
20 about major claims, and I have a lot of
21 experience in major claims.

22 So I was there to help, at that time,
23 Mr. Manconi process how to look at and be ready
24 to meet Project Co's requests for relief under
25 the delay in compensation or their supervening

1 event that they had advanced. So I did that.

2 And then when Stage II came along, I
3 was called off the standing offer list, and I
4 started to help with the planning of Stage II,
5 not in a bigger way because I was super, super
6 busy in Toronto.

7 But by then, our firm was a little bit
8 bigger. We had a superstar named Raquel Gold
9 who had been involved in Finch and long -- long
10 career. And she took that role on on a
11 day-to-day basis for Stage II.

12 So that's when I, kind of, like, had
13 more contact with the project, but there was a
14 big interregnum there where I basically had
15 almost none.

16 KATE MCGRANN: When were you retained
17 to advise on Stage II?

18 BRIAN GUEST: I'd have to check. I
19 don't recall. It would have been -- I don't
20 recall.

21 KATE MCGRANN: And you can follow up,
22 and your counsel can let us know, if that works
23 for you, Mr. Mather.

24 U/T JOHN MATHER: Yes, we can look into
25 that and provide an answer.

1 KATE MCGRANN: And you outlined a
2 number of options that the City considered when
3 looking at how to deal with the lenders and the
4 need for lenders consent for the various impacts
5 of Stage II as they had on Stage I. I don't
6 think you mentioned termination for convenience
7 of the lenders.

8 Is that something that was considered?

9 BRIAN GUEST: Not for about two
10 seconds because it would have been absolutely
11 insane. So what do you do when you terminate
12 for convenience? You pay out the bondholders as
13 though they held the thirty-year risk, and what
14 they call a "make whole."

15 So you basically pay out all the
16 interest you were going to pay over the 30
17 years, and you just do it as an NPV bullet
18 payment now.

19 Like, it would have also smashed the
20 structure of the project agreement and all the
21 risk transfer over the long-term that had been
22 purchased by the City through the decision to
23 include the financing and to use the
24 Infrastructure Ontario template.

25 So you would have blown all that to

1 bits. Whereas what the City chose to do, which
2 was, you can call it a swap, basically stepped
3 into the shoes of the lenders direct agreement
4 and said, Lenders, we're going to pay you your
5 coupon price. So we're just going to take over
6 all your superpowers because those give us --
7 solve the first problem, lender consent, without
8 putting \$180 million on the table of City money.
9 So that was better.

10 The City got direct access to the
11 securities without having to go the circuitous
12 route of the lenders including the 35 percent
13 versus the 50 million bucks.

14 And it got earlier stepping rights and
15 you should read the -- I'm sure you will read
16 the lender's direct agreement, but it's got a
17 lot of features that don't come to the project
18 agreement.

19 So when you're looking at a range of
20 possibilities, terminate for convenience, you're
21 paying getting nothing and you are blowing
22 everything up that, you know, you build in terms
23 of the structure, and all the accountabilities
24 get washed away.

25 You can do sub-debt, but then

1 basically the lender just has another buffer and
2 then is even less likely to do anything because
3 the City has got a bunch of money between the
4 lenders and peril. You can -- but it's cheaper.

5 You can have -- Project can do an
6 injection of new capital, and new debt, which is
7 more expensive, but can work if necessary for
8 the lenders to have any interest in consenting.

9 And then you can do what the City did,
10 which is say to the lenders, Well, I'm not going
11 to refinance you and pay you your ticket value.
12 I'll just treat you as though you're City and,
13 you know, then now you don't care if we expand
14 the service. You no longer need to restore the
15 debt service coverage ratios to where they are,
16 where they were at the beginning of the project.

17 And we were in a position and as the
18 City to then move forward with the expansion of
19 the program which was really critical to the
20 original vision of having, kind of, people being
21 able to go east-west in the City in the same way
22 that the transit way had served the public well
23 since whenever the 80s when it was built.

24 It basically went end-to-end
25 east-west, and we were converting that transit

1 way infrastructure into a rail system with
2 higher capacity, better frequency, and so on.

3 So the idea of saying to lenders,
4 Okay, we're going to just take over your
5 superpowers, outperformed the other available
6 options in the opinion of the City manager at
7 the time, and in due course Council.

8 KATE MCGRANN: What role was IO
9 playing in the consideration of options the
10 ultimate determination of the recommendations to
11 make to the City, City Council?

12 BRIAN GUEST: IO was not involved in
13 Stage II.

14 KATE MCGRANN: From the perspective of
15 their involvement in Stage I and the impact that
16 this decision would have on Stage I, what
17 involvement did IO have in considering the
18 options and providing advice to the City?

19 BRIAN GUEST: None that I'm aware of.
20 I don't think that the City sought IO's advice.
21 IO was really the procurement lead. They ran
22 the procurement for Stage I. Gentleman by the
23 name of Rob Patterson was the chief interlocutor
24 on that, and he came to Ottawa quite a bit.
25 Very experienced guy, lots of social programs.

1 And then at the end of the procurement, I
2 believe they still maintained a role during the
3 construction, but it was more episodic and more
4 invitational.

5 IO is a very valuable organization and
6 has a lot of experience, but they are not cheap.
7 They don't have a base funding. They get funded
8 off projects. So I think the City had a view
9 that IO's role was really focused around the
10 procurement, making sure that the credibility
11 was there in the marketplace, making sure the
12 project agreement came together in an
13 appropriate fashion to help the City with advice
14 about tailoring risk transfer.

15 But, no, IO didn't have a continuing
16 role that I'm aware of and you would have to ask
17 decision-makers at the time where they came down
18 on that. I wasn't part of those decisions.

19 KATE MCGRANN: My understanding is
20 that IO had a role and a spot on the executive
21 steering committee for at least part of the way
22 through the construction of this project.

23 Is that consistent with your
24 experience?

25 BRIAN GUEST: I believe so, yeah. I

1 think at a certain point -- like, Rob would call
2 in to those meetings. Again, advisory. But I
3 think I would pose these questions to
4 Mr. Manconi who was, I think, at that time
5 trying -- deciding to what degree IO had on an
6 ongoing utility or not.

7 KATE MCGRANN: Right now I'm posing
8 them to you, and I would like to understand what
9 you were aware of at the time, IO's continuing
10 involvement in the project.

11 BRIAN GUEST: Fair enough, Kate. I've
12 given you what I know. I don't have direct
13 knowledge. Nobody said to me, We're not going
14 to use IO any further. Nobody said that to me.
15 I didn't get a rationale.

16 The only rationale I could give you is
17 speculative in that they are -- it comes with a
18 cost, they are not -- you know, they're not
19 cheap. And I can only presume that the
20 decision-makers at the time weren't saying
21 ongoing value, to continue that.

22 KATE MCGRANN: And in terms of where
23 that speculation is coming from, was it the case
24 that IO was involved up to a certain point in
25 the project and then they weren't anymore?

1 BRIAN GUEST: Well, until the
2 procurement was complete. And then they very
3 episodically for the executive steering
4 committee, they came in. I can't tell you
5 precisely when they stopped attending and why or
6 whether they stopped being invited. I just
7 don't know.

8 KATE MCGRANN: At some point, they did
9 stop attending executive steering committee
10 meetings, though?

11 BRIAN GUEST: Yes, that's my
12 recollection.

13 KATE MCGRANN: Did you see any
14 involvement from IO during substantial
15 completion considerations, trial running,
16 decisions made about the launch?

17 BRIAN GUEST: I wasn't -- I wasn't
18 part of any of those discussions. I don't have
19 anything to do with confirming substantial
20 performance and substantial completion.

21 I didn't have any role in the revenue
22 service demonstration process. That was
23 100 percent done by OC Transpo and Mr. Manconi's
24 team.

25 KATE MCGRANN: And did you remain on

1 the executive steering committee throughout that
2 time?

3 BRIAN GUEST: I believe I did, yeah.
4 But like I said, I don't -- I didn't universally
5 attend. I was really there for, you know, kind
6 of a broad experienced voice around -- around
7 multiple projects by that point.

8 KATE MCGRANN: When did your role on
9 the executive steering committee -- did your
10 role on the executive steering committee come to
11 an end at any point?

12 BRIAN GUEST: Did it come to an end at
13 any point? It kind of just petered out. I
14 wasn't attending, and then I stopped being
15 invited, I think -- I can't remember exactly
16 when.

17 KATE MCGRANN: Can you help me
18 generally when?

19 BRIAN GUEST: Again, I'll have to come
20 back to you on that.

21 KATE MCGRANN: Before or after the
22 launch of public service?

23 BRIAN GUEST: I wasn't regularly
24 attending for sure before public service. I
25 don't really recall if I was in meetings where

1 status checks were being done. I know what I
2 thought at the time about what the posture of
3 the City should be.

4 And to the extent I was giving any
5 advice at all, my feeling is that they should
6 have been as relaxed as they needed to be to
7 make sure that they got the system that they
8 paid for.

9 And the fact that they were 18 months
10 late while it was causing some strain around the
11 City, it was just really important that you get
12 what you pay for, and that you hold Project Co
13 to account.

14 Now, Project Co was screaming to get
15 out of -- screaming to get out of substantial
16 completion at the time. Like, they -- to
17 achieve substantial completion, to be more
18 precise.

19 So they made several attempts to
20 convince the City -- I do remember this, that
21 substantial completion and substantial
22 performance had been achieved because they
23 wanted to start the annual service payments.

24 And the independent certifier agreed
25 with the City that things that were being asked

1 for as -- what they call minor deficiencies were
2 not indeed minor and were material.

3 And so they took -- "they" being
4 Project Co, took several kicks of the can. I
5 can't remember how many. I think it was two
6 before they finally were granted substantial
7 completion. I do remember that part of it.

8 But the nitty-gritty of service
9 demonstration, I have no information for you on.

10 KATE MCGRANN: So in terms of when you
11 stopped attending ESC meetings, I think that
12 you'll take that away and come back to us?

13 BRIAN GUEST: I'll try. But you know
14 -- I'll try. The problem is, like, I was
15 really, really engaged in other projects then.
16 And so even if I have -- I think -- if I could
17 get access to something where I could review
18 what the agendas were the various ESC meetings,
19 I could probably tell you if I was there or not,
20 if attendance wasn't taken, which I expect it
21 would have been.

22 KATE MCGRANN: Were you charging for
23 your attendance at those meetings? Can you look
24 at your financial records and figure it out that
25 way?

1 BRIAN GUEST: Yes, I -- well, I can
2 try. I can look at my financial records and see
3 when I billed a couple of hours. But it won't
4 necessarily be clear evidence that I was there.

5 But the best evidence would be
6 attendance taken at those meetings, and it would
7 have shown if I was there I would suspect. And
8 those documents, I don't have, but I imagine
9 that the City has furnished them.

10 KATE MCGRANN: Just do your best, and
11 any caveats that you've got around what you
12 can -- what you're able to find, we'll take.

13 U/T JOHN MATHER: We'll make inquiries and
14 provide an answer.

15 KATE MCGRANN: Let's take the morning
16 break now. It's 10:27. We'll come back at
17 10:40 if that works for everybody.

18 -- RECESS TAKEN AT 10:27 A.M.

19 -- RESUME AT 10:38 A.M.

20 KATE MCGRANN: So in order to make use
21 the time that we've got left, I'm going to jump
22 around in the timeline of the project a little
23 bit. So if at any point you don't understand
24 what I'm asking about, please do just let me
25 know.

1 Before we leave the discussion that we
2 were having about the City's decision to step
3 into the lenders shoes on Stage I, can you help
4 me understand to the best of your recollection
5 when the consideration of how to address the
6 lender's consent requirement began?

7 BRIAN GUEST: Date-wise you mean?

8 KATE MCGRANN: Yes.

9 BRIAN GUEST: I can't. I'd have to
10 get back to you that on that, Kate.

11 KATE MCGRANN: Okay. We'll ask you to
12 do that. And then --

13 BRIAN GUEST: Temporally, it was just
14 before -- it was when Council was considering to
15 proceed with Stage II, and obviously a very
16 important issue was how we were going to
17 interact with the existing Project Co. How we
18 were going to get the lenders into the right
19 space, "we" being the project team.

20 And I certainly was involved in
21 helping to answer those questions with options
22 about how to do it. And so it would have been
23 temporarily just at the very beginning of the
24 planning of Stage II and there were two real
25 aspects of it. One was -- one was the aspect of

1 our interface with the existing Project Co
2 because it was on foot the BDFM, with all of the
3 interfaces that would need to be plugged in,
4 lack of a better term, to Stage II.

5 So, for example, one vital, and vital
6 means, you know, safe, signalling system that
7 has multiple levels of redundancy so you can see
8 where all the trains are, and all the trains get
9 controlled appropriately, and to the right
10 headways.

11 Well, Project Co owns -- Project Co
12 maintains that system, installed that system,
13 and has a service pattern in the base agreement
14 which is underlined by the payment mechanism
15 that dictates how those trains are meant to move
16 in the service levels that are contemplated in
17 the contract.

18 Those all had to be materially
19 changed. And that meant not only that the
20 lenders needed to be comfortable that those
21 changes were going to be done and that they were
22 going to be no better, no worse.

23 But also the Project Co itself needed
24 to participate. And the City wanted to maintain
25 the integrity of the long-term maintenance

1 obligations and expand them and be expanded to a
2 new service kilometres that were going to run on
3 Stage II didn't make sense to have two
4 maintainers, and one MSF, one maintenance
5 storage facility which Project Co also was their
6 home for all the maintenance activities.

7 So that interface needed, first, to be
8 dealt with. How we're going to do that, we
9 initially opened negotiations with RTG to talk
10 about how that would be done.

11 RTG took the view that the City should
12 just give them a great big sole source to build
13 Stage II. And the City didn't share that point
14 of view, and wanted it to have a competitive
15 procurement.

16 It didn't see the ability to give, I
17 guess what would have been about \$3 Billion
18 piece of public work to the Project Co.

19 So that's -- it was about limiting the
20 scope that Project Co was going to take on for
21 Stage II to maintenance, adjustment to the
22 payment mechanism. There was some discussion
23 about, we called at the time, ballast up, which
24 meant Project Co might be able to install the
25 rail systems, but not create the civil

1 infrastructure.

2 But that was of no interest to Project
3 Co because the owners of Project Co are largely
4 heavy civil constructors, and they weren't
5 interested in what was essentially work that
6 Thales and Alstom would need to do.

7 Some heavy civil in terms of putting
8 catenary up and rails. We looked at that, what
9 that scope would look like. But it wasn't
10 really of interest to the counterparty, to the
11 Project Co at the time, so that was quickly
12 abandoned.

13 A very good agreement with them to
14 extend the pricing that was received in Stage I
15 into Stage II including a recalibrated payment
16 mechanism, and then they assisted the City in
17 reviewing the payment, the PSOS, the Project
18 Specific Output Spec, in respect of the
19 maintainability of the resulting infrastructure.

20 So the arrangement was that Project Co
21 would give feedback into what the PSOS needed to
22 require and provided resulting infrastructure
23 was built to the output specification that was
24 agreed that they would be content to expand
25 their maintenance services to cover the entire

1 line and to maintain all the accountabilities
2 that they took on in Stage I.

3 KATE MCGRANN: With respect to the
4 affordability cap that was used in the
5 procurement process for this, my understanding
6 is that, at a high-level, the way that it worked
7 is if one bid came in under the affordability
8 cap, no bids that came in above the cap would be
9 considered. Is that fair?

10 BRIAN GUEST: Yes, it was gated. It
11 was called gated. But it would be a bit easy to
12 over egg that. So the way the evaluation worked
13 in IO procurement is geared, what they call
14 geared.

15 So the financial is 500 points and 500
16 points. Five hundred for technical, 500 for
17 price. And for every percent that the winning
18 bidder is -- basically, all the 500 points, 450
19 because there's some 50 for quality of the
20 financial offering.

21 But the 450 points go to the proponent
22 with the lowest price, and then for every
23 percentage, you are off that lowest price as a
24 bidder, you lose 30 points.

25 So you can see that if somebody is

1 3 percent off the lowest price, 3 percent is not
2 that much but, you know, you're 3 percent off,
3 you're losing 90 points against 500. And the
4 500 in the technical, you know, tend to cluster
5 around 70 percent of those points because people
6 try to exceed the output specification, but they
7 don't give you bells and whistles that you
8 didn't ask for in the output specification.

9 So everyone -- the scores can
10 de-cluster on the technical side, and the whole
11 evaluation mechanism in the standard contract,
12 standard P3 evaluation is geared with that 30 to
13 1 gear.

14 And that's an area where changing that
15 gearing from 30 to 1 to something else, like
16 five to one is something worth reviewing, in my
17 opinion, because what it does is it really does
18 drive everybody to be very price -- very focused
19 on price.

20 So, yes, we had a gate, we had
21 affordability cap. We thought that the cap was
22 ample. In doing of it, all three bidders came
23 in under that cap as I recall. And so the
24 gating never drove anything. But in addition to
25 the geared financial thing, the City wanted to

1 show a very clear signal to the marketplace that
2 it had only so much money, and that's the amount
3 of money it wanted to deploy on this project.

4 So that was a conscious decision that
5 the City manager took in terms of what he would
6 prepare to recommend to Council, and Council
7 also was equally focused on making sure that
8 affordability limits were respected.

9 That said, if it had turned out as it
10 did in Stage II that the market responded and
11 said, Look you've got 8 pounds of potatoes in a
12 5-pound bag here, then the City would have had a
13 choice to make, either in-market, reduce what
14 you are asking for, get rid of a station, for
15 example, like a deep station where there's like
16 serious money on the table, like 150,
17 200 million-dollar station.

18 So there would be descope in market
19 that you would have an option to do. The
20 bidders would tell you, usually they'd tell you
21 in these procurements, You've got an
22 affordability problem, you're asking for
23 something that can't be built for that. We did
24 not get that in Stage I. We did not get that,
25 that I recall.

1 So there was no pressure to descope
2 anything. There was always value engineering
3 that needed to go on, and there was sometimes
4 requests in market for us to consider
5 adjustments to the output specification which
6 bidders might view as overly onerous and
7 unnecessary, and probably that was done on a
8 number of occasions in terms of changes to the
9 output specification, changes to the risk
10 transfer.

11 I don't have a specific example of
12 that in my mind, but -- yeah, so that's the
13 story on gating is that it was an additional
14 market signal and it seemed to be fine. So it
15 was a thing that was in the -- certainly was in
16 the process as a way of communicating to the
17 marketplace that this was a really big issue for
18 the City.

19 And if anyone had had a problem with
20 that, they would have spoken up in the
21 commercial confidential meetings or in the
22 process to say, Look, this cap can't be
23 respected. And that's what happened in
24 Stage II. And I think Stage II came in
25 40 percent over the estimated budget, market

1 conditions had changed. And the City still
2 proceeded with the project.

3 So if everybody had come back and
4 said, We're over. But if one group, for
5 example, hadn't been able to, and the other two
6 had, it was very clear that the City was going
7 to want to go with a group that had solved the
8 value engineering problems necessary to bring
9 the project in the available resources.

10 KATE MCGRANN: Was it the case that
11 the affordability cap was it used again in
12 Stage II, and all of the bidders said, No, we
13 cannot do it?

14 BRIAN GUEST: I believe that all of
15 the bidders said that there were affordability
16 issues. I don't recall whether there was a
17 gated cap. But there definitely was signals in
18 advance of Stage II proposals that they -- there
19 was an affordability event, so to speak, that
20 was likely to result on the other side.

21 KATE MCGRANN: Has the affordability
22 cap been used on any of the projects that you've
23 worked on subsequent to Stage I?

24 BRIAN GUEST: Well, now you're getting
25 into Toronto projects. I believe affordability

1 caps had been put into place on other projects,
2 but I can't be specific about that.

3 KATE MCGRANN: With respect to the use
4 of milestones on this project -- let me start by
5 asking this.

6 Was there any -- you've mentioned
7 Canada Line before. Were there any precedent
8 projects that the City was looking to as it
9 built out the project agreement from the social
10 project phase to something that could be used
11 for the LRT?

12 BRIAN GUEST: Yes. Deloitte would
13 have done that. And Deloitte would have looked
14 at all kinds of different precedents. In the UK
15 and in Australia, there had been extensive use
16 of P3s to deliver rail.

17 So I don't know precisely those sorts
18 of granular issues about, are you going to go
19 milestone, are you going to go earn value, are
20 you going to go actual cost, these are your
21 methodologies for paying for progress.

22 I think that milestones was not
23 successful in Ottawa in terms of there were a
24 number of issues that they engendered that were
25 best avoided. And so on all other projects that

1 I've been part of going forward, we used earned
2 value.

3 I don't want to -- you know, that's
4 not true of GO Expansion, which is an actual
5 cost contract because it's a collaborative
6 contracting model, still a P3, but it's a
7 collaborative contracting model for GO
8 Expansion. But for Eglinton and Finch and
9 Hurontario, I think they went -- they were
10 earned value.

11 So let me just observe for you what
12 some of the problems with milestones are that
13 did occur. There are almost all to do with
14 definitions.

15 So every milestone becomes kind of
16 like, kind of, a mini substantial completion,
17 for lack of a better term, and arguments arise,
18 arguments, disputes arise when the contractor is
19 saying that a certain milestone has been
20 achieved and the City does not agree with that
21 assessment.

22 And they've got a little bit of a
23 financial incentive to push the envelope as the
24 Project Co, they want to get cash flow, they
25 want to get money in, if they're late in

1 establishing a milestone that has -- that can
2 have consequence in Project Co including the
3 parent companies have to do what they call a
4 cash call, and inject resources into the project
5 to keep the project in a good cash flow position
6 which they really loathe doing.

7 So in the case of the tunnel milestone
8 in Stage, I'll use that as an example. The
9 language, for whatever reason, wasn't
10 exceptionally clear about what progress in the
11 tunnel needed to be done in order to release
12 milestones.

13 So there was a bit of a debate as I
14 recall around -- around is that, like, half of
15 the tunnel on a linear basis? Is that half of
16 the tunnel on a volumetric basis? You know, I
17 don't think that was clearly spelled out.

18 So there are definition issues around
19 milestones. And milestones took on a --
20 probably a distracting aspect to the
21 administration of the contract. Again, I wasn't
22 day-to-day there, but I know that milestones
23 cause issues, and you sought to avoid them in
24 Toronto projects for that reason.

25 Earned value is, to me, the better.

1 Earned value basically pays on progress and
2 works in the ground and is assessed on a monthly
3 basis.

4 KATE MCGRANN: Do you know why the
5 City chose to use a milestone approach for
6 Stage I?

7 BRIAN GUEST: I do not. I think
8 Deloitte and IO really assessed the variety of
9 options that were available and made that
10 recommendation and it was accepted.

11 KATE MCGRANN: Do you have any
12 involvement in the determination of the trial
13 running requirements as they were set out the
14 project agreement?

15 BRIAN GUEST: I did not.

16 KATE MCGRANN: Do you know if any
17 precedents were used to draft that portion of
18 the project agreement?

19 BRIAN GUEST: I imagine they were.
20 Sorry. I shouldn't be so categorical. Did I
21 have any -- I'm sure I was in the meetings where
22 we talked about wanting to have a revenue
23 service demonstration. For sure, I was in those
24 discussions. I didn't have a view whether it
25 should be 12 days, it should be 30 days, it

1 should involve a threshold for failure or
2 success.

3 It's an area where -- it's an area
4 where the thinking in Ontario has evolved for
5 sure in terms of making sure that there are more
6 demanding. And as I said earlier, the reason
7 revenue service demonstration and substantial
8 completion is just so important is that you're
9 not telling them how to build it, you're just
10 telling them what it needs to do when it's
11 built.

12 So that phase of the program is the
13 stage at which you confirm that output
14 specification has been delivered. So it's
15 important and I think, you know, on other
16 projects that have come later, the term on which
17 the demonstration is going to happen and the
18 nature of that has become better than the Ottawa
19 version. But it's not perfect yet.

20 I think it still would be an area that
21 project teams have to be really focused on
22 carefully, in -- in setting forward. And I know
23 on subways, for example, that they are very much
24 improving that regime from what was kind of like
25 a 1.0 in Ottawa. I imagine that --

1 KATE MCGRANN: So would you say --
2 sorry. Go ahead.

3 BRIAN GUEST: I imagine Deloitte did
4 look at other systems and try to establish best
5 practice.

6 KATE MCGRANN: You say you imagine
7 that. Are you aware of them doing that?

8 BRIAN GUEST: Well, it would have been
9 their role to do that. I don't have a specific
10 memory of them, you know, issuing a report or
11 specific advice about it. But it certainly
12 would have been part of their role.

13 Remo Bucci would have been the lead on
14 that along with Infrastructure Ontario who did
15 have lots of experience with commissioning, but
16 not on LRT. Like, every time, they do a
17 hospital, they commission it.

18 So in that sense, Kate, that would be
19 what we were working with in terms of precedent,
20 and mindset was, you know -- are all the
21 operating rooms capable of doing what they need
22 to do, and the requisite number of them, and all
23 the rooms available, all the elevators and
24 escalators commissioned.

25 You know, it's not just this is a

1 train run, it's also all of the ancillary things
2 in the stations that need to be done properly.

3 KATE MCGRANN: When you say that
4 travelling requirements have gotten better since
5 Ottawa, what do you mean by that? How have they
6 gotten better?

7 BRIAN GUEST: Well, they've gotten
8 more precise in terms of -- in terms of what
9 pass and fail looks like. And they've gotten
10 longer.

11 KATE MCGRANN: Can you speak to what
12 the length change looks like?

13 BRIAN GUEST: We're starting to get
14 into the stuff where I might -- I'm not sure
15 what I can say and can't say because I've got a
16 client that I'm obliged to maintain
17 confidentiality for. But I think -- I think it
18 is public.

19 U/T JOHN MATHER: Brian, let me interject
20 there. Why don't we just confirm whether
21 there's any restrictions, and then we can answer
22 the question if we can. And if we cannot, we
23 can tell the basis on which we can't answer, and
24 we can follow up if we need to.

25 KATE MCGRANN: That's just fine. With

1 respect to the geotechnical risk transfer in
2 Stage I --

3 BRIAN GUEST: Yes.

4 KATE MCGRANN: -- the gated approach
5 that was used there, have you seen that approach
6 used on any project that you've worked on since
7 Stage I Ottawa?

8 BRIAN GUEST: No. Well, sorry. I
9 don't want to be -- I don't -- I don't recall,
10 and again I'm getting into stuff for -- in
11 another city and another client.

12 But I'm happy to talk about what we
13 faced in terms of geotechnical risk transfer and
14 why that system was adopted.

15 KATE MCGRANN: Well, let me ask you
16 this way. And if you don't feel you can answer
17 this question, you or your counsel will let me
18 know.

19 But in terms of where the market is at
20 now, would the gated risk transfer used in
21 Stage I be a viable approach for a procurement
22 of a project of this nature today?

23 BRIAN GUEST: I think so, yes.

24 KATE MCGRANN: Can you expand on that?

25 BRIAN GUEST: The approach -- it

1 wasn't really gated. It sort of was gated.
2 There was a strong preference that the principal
3 of the -- the entity most capable of dispatching
4 the risk or managing the risk, take the risk.

5 So on tunneling, as an example, there
6 was two dominant methodologies that one could
7 employ to build the tunnel.

8 We had pretty good conditions. So
9 most of the alignment at that depth was in
10 bedrock, which is what you want when you're
11 tunneling. There was a narrow band of about 200
12 metres right around Sussex by the Rideau Centre
13 that was what's called glacial till, which is
14 basically sand with a bunch of boulders in it.

15 We knew all about that. And had done
16 huge numbers of investigations and drills, core
17 samples. So the choice of means and methods
18 between a tunnel boring machine and a sequential
19 excavation was left in the hands of Project Co
20 and in the proposals, and in the City, in fact,
21 we got a variety of methods.

22 We got one group that had -- was going
23 to use a TBM, a tunnel boring machine, and they
24 had to contend with the potential issue that
25 there may be tiebacks, and tiebacks are kind of

1 rods that stick out from a form when you're
2 doing a base of a building.

3 Those tiebacks could still have been
4 in the right-of-way, and they are basically
5 rebar, metal. When they get into the teeth of a
6 tunnel boring machine, they can cause the tunnel
7 boring machine to have big problems and it was
8 pretty narrow for a TBM.

9 The group that ended being successful
10 went sequential excavation. And they used what
11 they call a rock header to, kind of, claw away
12 at the rock.

13 So I think given those ground
14 conditions, transferring the tunnel risk
15 completely was absolutely the right way to go.

16 The responsibility for doing the
17 tunnel would always have been Project Co, so we
18 just talked a little bit more precisely about
19 the transfer of risk issue that was done in the
20 risk ladder.

21 The first rung, if I'm not mistaken,
22 was Project Co takes all of the responsibility
23 for the tunnel, it's execution, without a delay
24 and compensation event or a supervening event of
25 any sort other than if the data turned out to be

1 wrong, and we knew it was wrong for some reason.

2 The data being the drill shafts, the
3 geotechnical investigations that the City had
4 done and gave to all the bidders in the bidder
5 agreement.

6 The second layer down was the City
7 would furnish from Golder & Associates a
8 geotechnical baseline report. And a baseline
9 report establishes that -- basically interprets
10 the data. So on the first level, you get just
11 the data, you do your own interpretation.

12 Second level is here's a report, this
13 is what Golders, which is a world-class
14 organization in geotechnical, thinks the data
15 tells you. And then the third rung down was
16 still get the baseline report, and the total
17 risk of that element was capped and the City was
18 on the hook for anything above that.

19 So there was never a lack of
20 enthusiasm by anybody on the project team for
21 transferring all of the risk and trying to do so
22 with as little access to supervening events as
23 possible. That was never controversial.

24 What was an issue was whether the
25 market would bid that and whether it would be an

1 issue that lender would get comfortable with.

2 And the only way to get to the bottom
3 of that was to put it to the market. And so if
4 the market felt that that level of risk transfer
5 was inappropriate, they would have selected --
6 they would have selected one of the other steps
7 on the ladder.

8 And I think largely it was financial,
9 financiers, the bankers, who were, like, worried
10 that just going -- bull ahead, were going to
11 transfer and we're not going to give anything
12 except coverage on the data quality would not
13 find favour in the marketplace and we could end
14 up with a failed procurement on that score.

15 And so the solution to that, which
16 everybody agreed with, was to create those steps
17 and let the market respond in the way that they
18 thought was appropriate, because they wanted the
19 baseline report and they wanted to have
20 supervening event coverage against the baseline
21 report, then the market would have responded in
22 that way and it would not have been an
23 un-biddable job, it would not have been a failed
24 procurement.

25 If they were even more risk-averse

1 than that and they wanted to have a cap on the
2 tunnel, they would have done that.

3 So we kind of give them the reign, you
4 choose, you know. In the doing of it, they all
5 took it. They all took the top rung. And it's
6 really worked out for the City that that's how
7 it ended up because we did have the sinkhole
8 event.

9 The sinkhole event was caused by
10 Project Co in the City's -- the City has
11 demonstrated, I think, satisfactory that. I
12 don't want to get into privilege, but --
13 privilege stuff and I see that nobody's here
14 from the City to discipline that.

15 But, certainly, I think there was an
16 insurance claim made. The insurers paid for
17 that sinkhole. Project Co wasn't just
18 carrying the bag, they insured themselves
19 against any such risk, and the sinkhole happened
20 precisely where everybody understood, sort of,
21 the place that you had to be most comfortable in
22 that glacial till area.

23 But when it did occur, pretty much
24 every cement truck within a hundred miles of
25 Ottawa was there and putting cement into that

1 hole and plugging it. And Project Co worked
2 very hard to recover, and did recover some
3 measure of schedule.

4 But the only thing that was in debate
5 was what level of supervening event did they
6 get, not whether they were going to be doing it,
7 whether they were responsible for it or not.
8 And I would just also say full tunnel risk is
9 transferred all over the place, like, you know,
10 it's not normal to cap it.

11 KATE MCGRANN: I'm going to show you a
12 CBC news article. Bear with me for a second and
13 then we will figure out sizing. This is a CBC
14 news article, dated November 9th, 2021, the
15 quote:

16 "The 'vitriolic' argument of a
17 judicial inquiry into Ottawa LRT
18 extends beyond Council."

19 Can you see this article okay?

20 BRIAN GUEST: I can, yes.

21 KATE MCGRANN: I'm going to take you
22 to page 4 of this article and a couple of
23 paragraphs in, this article describes an email
24 that you wrote to Bob Chiarelli on October 16th.
25 It describes it as a personal email. I don't

1 believe that you've produced a copy of this
2 email to the Commission. Is that right?

3 BRIAN GUEST: That's right. I don't
4 have it. I had to get it from Max who got it
5 off of a website.

6 KATE MCGRANN: Who is Max?

7 BRIAN GUEST: Max is John's colleague.

8 KATE MCGRANN: So you have a copy of
9 it?

10 BRIAN GUEST: I do somewhere. I don't
11 have it before me.

12 JOHN MATHER: We provided a copy of it
13 to Mr. Guest last week in preparation of the
14 interview.

15 BRIAN GUEST: But I recall the email,
16 yes.

17 KATE MCGRANN: Why don't you have a
18 copy of this email?

19 BRIAN GUEST: Like, it's not generally
20 my habit to keep emails. I think I deleted it
21 off of my phone, and I just don't.

22 KATE MCGRANN: And so I take it that
23 you deleted it then?

24 BRIAN GUEST: Yeah, I presume.

25 KATE MCGRANN: Did you read it from

1 this email from your personal email account,
2 from a Boxfish email account?

3 BRIAN GUEST: Same deal, yeah.

4 KATE MCGRANN: You use a single
5 account for personal and business?

6 BRIAN GUEST: Yeah.

7 KATE MCGRANN: With respect to the
8 portion of the email that's excerpted here, we
9 have you writing:

10 "You know who you are screwing
11 with this support for the judicial
12 inquiry right? Someone who has always
13 been your loyal friend and servant."
14 Is that "someone" that you are
15 referring to in the email yourself?

16 BRIAN GUEST: Yes.

17 KATE MCGRANN: Can you explain how
18 Mr. Chiarelli was screwing you with his support
19 for the judicial inquiry?

20 BRIAN GUEST: Sure. First of all, it
21 was meant out of a concern, and it was a
22 personal email from me to him as somebody who
23 really cares about him, his legacy. I consider
24 him a friend and mentor. He gave me my first
25 job in politics that was meaningful, and, you

1 know, I just -- I care for the guy. And so I
2 speak -- I thought I could be, you know, kind of
3 candid in terms of my expression of my opinion.

4 And, you know, in my esteem, I thought
5 the calls for judicial inquiry were 100 percent
6 politically motivated on two vectors. The first
7 being that the NDP in Ontario has had a long
8 running mischaracterization, in my opinion, of
9 the merits and strengths and weaknesses of the
10 P3 model.

11 So I didn't think it was well
12 motivated. I didn't think it was going to be
13 focused at all on the right things. And the
14 right things being fixing the system to be what
15 the City of Ottawa paid for, to be stable and to
16 be reliable.

17 And those things had nothing to do
18 with what would be reviewed in a judicial
19 inquiry, in my opinion. But also particularly
20 there were three councillors on Council who were
21 using this call for judicial inquiry to
22 effectively get at the mayor because as it's
23 turned out in due course, two of them planned to
24 run against the mayor, although the mayor is not
25 seeking reelection, but it was very

1 transparently what was happening was a lot of
2 politics.

3 So I thought that the last thing I
4 wanted was -- I'm a private guy, you know, I
5 don't run myself -- don't like to be in the
6 public eye. And I thought that Bob was going
7 along, Bob Chiarelli was going along with
8 something that was very poorly motivated, and
9 very unlikely to help. In fact, much more
10 likely to hurt. And hurt in a couple of
11 important ways.

12 For me personally, I'm hugely engaged
13 in all the transit projects in Toronto and this
14 has been really an unwelcome distraction. It
15 would have been an unwelcome distraction.

16 And I'm happy to be here with you
17 being as helpful as I can with my recollections.
18 I don't have any concerns about being completely
19 transparent about everything I did and remember.
20 It's nothing about that.

21 It's just that when you're going 12
22 hours a day on really important projects you're
23 passionate about, being a part of a process, at
24 that point, I was talking about a judicial
25 inquiry that was motivated entirely by small,

1 kind of, politics, I just thought, What the heck
2 are you talking about, Bob, going along with
3 that as a thing?

4 It's not without its financial
5 consequence. I had to pay, you know -- pay my
6 lawyer. I have to -- I have to -- you know, it
7 may shock you, but it's no fun, right? And I
8 know you have done a lot of these, so maybe it's
9 okay. But I'm not -- I don't necessarily enjoy
10 it.

11 It's just not what I want to try to do
12 with my time. So I was not welcoming of a
13 judicial inquiry. I also thought that for the
14 people who are retired from that time, people
15 like Kent and Nancy and John Jensen, that, you
16 know, was really, you know, thinking about
17 anybody else. I think he was just -- I don't
18 know what was in his mind.

19 But he was -- I heard him on the
20 radio. I heard him saying that a judicial
21 inquiry was something that he would do if he was
22 in the mayor's chair, and I thought he sounded
23 poorly informed and off-brand for him to be,
24 kind of, going into that spot.

25 The two really much more material, to

1 me personally, down sides are there's a very big
2 lawsuit going on around default right now. And
3 it's something that I think is going to -- a
4 judicial inquiry was, in my opinion, at that
5 time, would not have been consistent with the
6 City's best legal positioning in respect of
7 holding Project Co to account, and seeking
8 redress from SNC-Lavalin, Ellis-Don, and ACS
9 Dragados.

10 So there was that backdrop. And just
11 from a practical matter, I knew that a judicial
12 inquiry would not have access to the privileged
13 materials that would be necessary to actually
14 get to any type of meaningful outcome if you
15 were trying to do a root cause of why isn't the
16 system -- why did it derail? Why has it been
17 unreliable? What are the issues between the
18 maintainer and the constructor?

19 As you know, there's Project Co, but
20 then there's a construction company that has all
21 of the construction drop down to it including
22 the vehicles. And there's a maintainer, and all
23 that's dropped down.

24 All of that stuff inside Project Co,
25 that's where all the action is. The technical

1 reports that do root cause analysis, that's
2 where you're going to find, you know, the whys
3 and wherefores of what's going on here.

4 And none of that it's going to be
5 available to the judicial inquiry because it's
6 all going to be privileged and it's all going to
7 be focused around that court case.

8 And then I guess the other point I
9 would make is that there's only a finite number
10 of people at the City who do this work. But --
11 as in, try to fix the system so that it's
12 reliable for people, right? Try to administer
13 the contract.

14 It's Michael Morgan, it was John
15 Manconi, it's the city manager, you know, all
16 very focused on getting the transit system to be
17 reliable. And dropping a judicial inquiry on
18 them so that they had to spend their time
19 preparing and participating in such a process
20 was going to be a very unwelcome distraction, I
21 thought.

22 And for what purpose? I mean for what
23 purpose? The only purpose was gamesmanship on
24 Council. And I have always understood Bob to be
25 much more about ideas, Bob Chiarelli, I mean,

1 much more about ideas and principle. I also
2 understood that he was for, in no uncertain
3 terms, a P3. He may or may not remember, I
4 don't know.

5 But he definitely was. So the whole
6 thing struck me as something that a friend who
7 had been in service with him for years and was
8 very close to him when I was, and I feel like
9 he's still a friend and mentor, was saying on
10 the radio -- it was just so off for him.

11 So I sent a note to him, which he
12 appears to have been offended by. That's what I
13 meant.

14 KATE MCGRANN: So focusing on this
15 statement that I've drawn your attention to on
16 the screen here --

17 BRIAN GUEST: Yeah.

18 KATE MCGRANN: -- in which you inform
19 Mr. Chiarelli that he is screwing you. The
20 strong language that you have used to describe
21 the impact on you, your evidence is that the
22 impact is that, one, it would take some of your
23 time; and two --

24 BRIAN GUEST: My time, yes.

25 KATE MCGRANN: Two, if you chose to

1 retain a lawyer, it would cost you some money.

2 That's everything that you are
3 referring to in that statement?

4 BRIAN GUEST: Yes, pretty -- and --
5 and -- and, you know, I -- look, if I had a time
6 machine, I could go back and not include that
7 line. I was trying to jar -- I was trying to
8 jar Bob into, like, thinking about somebody else
9 but himself.

10 And I don't know. I wouldn't do it --
11 I wouldn't put that language in again. And if
12 you think that my being worried about how hard I
13 worked on my current projects and having a very
14 large distraction was over egged by saying screw
15 me, I'll take that criticism.

16 And, you know, I wouldn't do it again.
17 But, you know, pretty much my diagnosis in the
18 body of the email, the rest of the email is I
19 still agree with today. I think it was small
20 politics, I think it's unlikely.

21 I think this inquiry, as much as I
22 will help in any way I can, is going to face the
23 same barriers in respect of being able to access
24 privileged documentation and having to navigate
25 given the extremely short timelines that the

1 government has given the inquiry.

2 I think you're going to have some
3 challenges to try to develop answers that are
4 meaningful and impactful in terms of doing --
5 avoiding problems in the future, and actually
6 getting the system into a position where it's
7 performing the way the City wants.

8 But God love you, those are your
9 challenges. I'll help you in any way I can.
10 But, yes, that is what I was thinking was, God,
11 man, you know, think about all these people who
12 are retired, think about me, think about what
13 you're saying and how you brand yourself when
14 you talk on the radio.

15 KATE MCGRANN: Let's look at page 5 of
16 this article. It says that in your email you
17 blame:

18 "The problems of the
19 Confederation line on the 'failure of
20 the private sector partner to properly
21 design and construct and maintain the
22 system' and they should be held to
23 account."

24 Starting with "failure to properly
25 design," what design failures were you referring

1 to?

2 BRIAN GUEST: Well, I'll return to my
3 long machine analogy --

4 KATE MCGRANN: I would like to know
5 specifically what design failures you were
6 referring without reference to an analogy
7 please, only because we only have half an hour
8 left.

9 BRIAN GUEST: Oh, okay. Well,
10 everything has to work together. So there's,
11 like millions of design decisions that go into
12 making sure everything works together. So I'll
13 give you an example.

14 KATE MCGRANN: Are there any specific
15 design failures that you are aware of in this
16 project?

17 BRIAN GUEST: I will give you one that
18 pops into my mind. It's really clear. So you
19 may have been familiar with wheel flat issue
20 that wheels were running flat. Flat because the
21 way that the signalling system has integrated
22 into the train, which was a construction
23 responsibility under the DB construction
24 component, was too tightly wound.

25 And too tightly wound in the sense

1 that the machine signalling system was causing
2 the brakes to trigger in a way that caused the
3 train wheel to stop turning, and then the
4 tractive force basically wears a flat spot in
5 the wheel.

6 One hundred percent a design and
7 software failure on Project Co's doorstep.
8 People experienced that as the train has a
9 problem. It was a problem that arose because
10 there was no wheel lathe at substantial
11 completion which there should have been.

12 So addressing that problem was an
13 issue. And what couldn't be addressed as
14 quickly as, I think, everyone would have liked
15 to have seen addressed. But it arose because of
16 a failure of Project Co to make sure that
17 signalling system was tuned properly so those
18 wheels would not be stopped in a forced braking
19 situation.

20 I'll give you an example in relation
21 to construction if you want me to go there too,
22 but --

23 KATE MCGRANN: Just one thing at a
24 time. I'd like to know if there are any other
25 design failures that you were referring to in

1 this email to Mr. Chiarelli?

2 BRIAN GUEST: I was speaking
3 generally. Like, you know, I was speaking
4 generally. I don't have a -- if you get the
5 McDonald report, which I imagine is privileged,
6 you will get lots of information on where the
7 design errors.

8 Another one that comes to my mind is
9 there was meant to be low slip stairs going down
10 to the stations so that even in the presence of
11 slush and snow, people would not slip and fall
12 down the stairs. Pretty common sense.

13 Project Co did not apply the correct
14 design, and did not apply the correct materials,
15 and did not apply the correct coating on the
16 materials to achieve that outcome. And that had
17 come to light and had to be addressed
18 after-the-fact. Another --

19 KATE MCGRANN: Can I just stop you
20 because I think this will help focus our
21 conversation. The Commission, as I expect you
22 know, has been asked to look into the commercial
23 and technical circumstances that led to the
24 breakdowns and derailments on the system.

25 So with respect to the breakdowns and

1 derailments, were there any other design
2 failures that you were referring to in your
3 email to Mr. Chiarelli?

4 BRIAN GUEST: Focusing only on design?
5 I -- you know, whether that gearbox should have
6 been better secured than the present
7 configuration is a -- is a good question for a
8 technical expert.

9 As I understand what happened there
10 was there was shift change and the maintainer
11 didn't keep track of the fact that the gearbox
12 hadn't been properly remounted to the bottom of
13 the bogie, to the place near the bogie that it
14 sits, and that it came loose and caused the
15 derailment.

16 That's my understanding of what
17 happened. I'm not very close to it though, you
18 know, other design flaws.

19 There's lots of lawsuits going on, I
20 think, internally to Project Co around Project
21 Co's view of where the designer let them down.
22 I don't have transparency into that, but they
23 certainly do exist, you know, and you'll want to
24 inquire into those with the people that are
25 involved, and you'll find out more in terms of

1 depth.

2 There's some execution error as well
3 in terms of, like -- so on a catenary, which is
4 the wire above the train, there's tensioners
5 that are adjustable. And when they were
6 installed on this project, they were installed
7 to the maximum. But you're supposed to be able
8 to loosen and -- loosen and tighten them so you
9 get the right tension on the catenary.

10 And so as a result, which is kind of
11 unheard-of, the project broke the catenary, like
12 a brand-new catenary, kind of, early on and
13 caused the system to have to stop for, I think,
14 a couple of days while they remedied that
15 situation.

16 Again, that's workmanship, right? And
17 all this stuff you've entrusted Project Co to do
18 these things, you know. You're not -- yes, you
19 have boots on the ground. Yes, you do an
20 inspections, but really it's their
21 accountability to make these things work
22 properly and that's what I was referring to.

23 KATE MCGRANN: In order to make the
24 most use of the time that we have left, I'm
25 going to ask your counsel if you will provide to

1 us, by way of a written response, each of the
2 design failures, the construction failures, and
3 the maintenance failures that you are referring
4 to in this email to the extent that you haven't
5 described them already to us today.

6 BRIAN GUEST: Sure.

7 U/T JOHN MATHER: That's fine. We can --

8 BRIAN GUEST: To the extent that I'm
9 allowed to do that given the presence of the
10 lawsuit, I will do so.

11 JOHN MATHER: If there's any
12 limitations in our ability to answer, we'll set
13 that out.

14 KATE MCGRANN: Before I proceed any
15 further, I'm just going to check in with my
16 colleague. Mr. Imbesi, do you have any
17 follow-up questions on anything we've discussed
18 so far?

19 ANTHONY IMBESI: No, I don't.

20 KATE MCGRANN: It's not clear to me
21 what your level of involvement in the project
22 was when RTG began its submissions for
23 substantial completion.

24 Can you help me understand who you
25 were speaking with on this project at the City

1 around that time?

2 BRIAN GUEST: Well, my involvement
3 with substantial completion was very minimal. I
4 was more focused at that time on the two
5 dominant things I was back to help with, which
6 was the construction related claims, and the --
7 and the need to step on with Stage II.

8 So I was working with Mike Morgan
9 Mike -- Mike -- I think I've got his right name,
10 last name. Mike, who is currently in charge of
11 the program. And John Manconi, principally John
12 Manconi. And to some extent Steve Kanellakos.
13 And to some extent Stephen Box in Steve
14 Kanellakos' office.

15 In respect of what was the City's
16 legal position, and how did it best prepare
17 itself for major disputes. I also participated
18 with Mr. Manconi in without prejudice
19 discussions with Project Co in an attempt to
20 resolve any of those following the schedule 27
21 dispute resolution process which calls for the
22 escalation through steps from the closest to the
23 ground, so to speak, in terms of running the
24 project, all the way up to the City manager, and
25 if they can't be resolved, resort to the IC --

1 the IC is not valuing things, so we were at a
2 stage then without disclosing any of the
3 conversations that happen in a without prejudice
4 discussions where the City was bereft of the
5 requisite information that it would need in
6 order to properly process those construction
7 claims.

8 And that was, again, because the legal
9 positioning of RTG was such that they preferred
10 just to wait for a court action or an
11 arbitration. I don't think they were interested
12 in an arbitration in order to furnish the
13 information because they wanted to maintain
14 flexibility on being able to develop their
15 theories going forward.

16 So we weren't successful in dealing
17 with any of those, and I think they've all gone
18 to dispute, and were not wrong, all but a
19 handful had been found in favour of the City.

20 KATE MCGRANN: And what were you doing
21 with respect to the applications for substantial
22 completion?

23 BRIAN GUEST: Almost nothing. I mean,
24 I think I was -- I think I was aware at the
25 time, I think I still was attending executive

1 steering committee. So I would have been aware
2 of the same level that, you know, somebody in
3 those meetings would have been aware of where
4 things were at.

5 But, again, by that time, Council was
6 attending those meetings, and lots of legal
7 advice was going around, so I should steer clear
8 of talking about what happened in some those
9 meetings because I'm sure that those
10 conversations were privileged.

11 KATE MCGRANN: You said earlier that
12 your advice to the City was that they should be
13 as relaxed as they needed to be. I think that
14 I've gotten that right, but you can let me know
15 if I've got it wrong.

16 BRIAN GUEST: No. That's correct. I
17 thought that the City should emphasize one thing
18 alone, which is not time, not urgency to get the
19 service into play, but to get what they paid
20 for.

21 KATE MCGRANN: Can you help me
22 understand the context in which that discussion
23 or those discussions were taking place?

24 BRIAN GUEST: I mean, I think it was
25 just a general -- a general -- general kind of

1 view that I was -- that I held, that I didn't --
2 I didn't -- there was no time even in -- well,
3 there was no time in which I said, You shouldn't
4 take the system in this condition. That didn't
5 happen.

6 I wasn't aware that there were any
7 major problems. I was aware that the City was
8 trying to be as flexible with RTG as it could
9 because the City did want to get the temporary
10 transit way out of commission and start the
11 service. Everybody was anxious for the service
12 to start.

13 And the City had quite a bit of money
14 on the table because it was still running the
15 buses in a less efficient way than it could
16 before the transit way was repurposed.

17 So there was all those costs
18 associated with that. And I think that's partly
19 why the City chose to do, you know, the full
20 launch when it did after substantial completion
21 was achieved.

22 I did -- I did, at one point, I think
23 in a social hallway talk say that I was worried
24 about that at the Tunney's interface where
25 customers are going to have to -- customers were

1 going to have to get off their bus and get onto
2 the train, that doing that in too big a bang
3 would be tough for customers to learn the new
4 patterns of how they had to move, and put a lot
5 of pressure on the City to get that, you know,
6 you've got to have a whole bunch of buses staged
7 there. You've got to run them through that
8 loop. You've got to get people off, you know,
9 and keep the flows going.

10 And it's even harder on the way out.
11 Like, on the way in, it's one thing. But on the
12 way out, when you've got trains coming in
13 disgorging large numbers of people -- remember
14 we were 9300 people per hour, per direction even
15 before the system. We were -- our City was into
16 10,000 or 11,000 people per hour, per direction
17 so I was concerned about that.

18 I did express a concern about that and
19 I was reassured by the answer that they put a
20 lot of work into being ready, and they felt that
21 they would be ready to execute that. And it
22 wasn't a big -- it wasn't a big deal. I
23 didn't -- I didn't -- you know, I wasn't overly
24 colourful about it. I was just like, Are we
25 sure?

1 KATE MCGRANN: Staying focused on the
2 concept that the City should stay as relaxed as
3 it needed to be and take the time required to
4 get the system it paid for, this is a view that
5 you held at the time that substantial completion
6 is being applied for, right?

7 BRIAN GUEST: It is.

8 KATE MCGRANN: And --

9 BRIAN GUEST: I didn't understand why
10 people were taking the pressure to the extent
11 that they were as an issue for them. It was an
12 issue for RTG to deliver the system to the right
13 tolerance, and I thought the people would -- of
14 Ottawa would be okay to wait for as long as it
15 took to get what they paid for.

16 So that was kind of my general theme.
17 I don't remember specific conversations in that
18 respect. But it was a general theme of my
19 mindset at the time.

20 JOHN MATHER: Sorry, Kate. I hate to
21 interrupt. If you're not sharing the screen
22 anymore, can you take off the share screen? I'm
23 just finding it hard to see the little boxes.

24 KATE MCGRANN: No problem.

25 Who did you share that view with that

1 the City should wait until it was going to get
2 the system that it had paid for?

3 BRIAN GUEST: I don't have a specific
4 memory of doing it. But again, I don't want to
5 talk about privileged conversations. I don't
6 remember if I said it at the executive steering
7 committee. But it's just my general posture.

8 It's like there was worry. There was
9 anxiousness to get the system into play, and I
10 thought that that anxiousness was something that
11 should in no way be in any kind of person's mind
12 when they're going through the final steps like
13 that.

14 And so I felt the urgency should all
15 be with RTG in order to make sure we got as a
16 city what taxpayers paid for. I don't remember
17 specifically any conversations. I certainly
18 didn't make a big deal out of it. I was just,
19 like, it was a posture thing.

20 KATE MCGRANN: At any point prior to
21 the launch of public service, did you feel that
22 there was no longer a need to wait and that the
23 system was what the City had paid for?

24 BRIAN GUEST: I don't think I ever
25 really formed a view. Like, unless I had been

1 in the actual guts of the commissioning, I
2 wasn't aware of what compromises, if any, were
3 being made. I know some compromises were made.

4 There were fewer vehicles than were
5 meant to be, which put more pressure on the
6 operator from a spare perspective. Having the
7 right number of spares I think was important.

8 I'm not sure -- the City was trying to
9 be a good partner with RTG and not holding out
10 for every single vehicle. But maybe I'm a hawk
11 that I would have, I think.

12 The wheel lathe, I gave you an example
13 of that. Why it caused a problem down the road,
14 I think they agreed to go to substantial
15 completion without it.

16 But, you know, the test for whether
17 someone has reached substantial completion I
18 think is laid out in a law with the concept of
19 substantial performance. And you're not
20 actually entitled to just say, Well, look
21 there's a ding on that, you know, there's a ding
22 on that tile there, I want that tile fixed.

23 You have to use proper discretion in
24 terms of when substantial performance has been
25 achieved. The IC agreed with the City that

1 substantial performance had not been achieved
2 several times.

3 The City was trying to actively work
4 with RTG to make sure that they did get what
5 they paid for, and I think at a certain point,
6 you know, they made a call that they did, and I
7 didn't -- I didn't have a view whether that was
8 the right call or wrong call.

9 I wasn't involved in conversations
10 between the City manager and Mr. Manconi and RTG
11 about what would not be present for substantial
12 completion or for revenue service availability.

13 KATE MCGRANN: I'm not actually asking
14 you about substantial completion or revenue
15 service availability. I'm focusing on the view
16 that you are informed that the City should relax
17 and take the time it needed to get the system
18 that it had paid for.

19 And I'm wondering if at any point you
20 formed the view that the City didn't need to
21 wait any longer because the system it had paid
22 for was going to be delivered by RTG.

23 BRIAN GUEST: Yeah. And that's why I
24 answered the way I did, Kate. I didn't form a
25 view. I didn't take a view. I just counselled

1 that they should have that posture.

2 KATE MCGRANN: With respect to the
3 City's decisions to enter the term sheet and
4 otherwise proceed through revenue service
5 availability, were you involved in any
6 conversations with anybody at the City about
7 those decisions or considerations related to?

8 BRIAN GUEST: Not that I recall. I
9 certainly didn't have -- I was an outlier. I
10 wasn't party to the discussions around what you
11 call the term sheet. I'm not sure that I even
12 knew there was one at this point.

13 I guess there must have been some type
14 of agreement in respect of outstanding items.
15 There typically is in an IO project where you do
16 have this judgment call line about whether
17 substantial completion has been met and what
18 you're going to treat as a minor deficiency, and
19 then you can hold back up to, I believe,
20 200 percent of the value of the uncompleted
21 elements of the scope.

22 And it's not without legal jeopardy to
23 be too ridiculous about minor deficiencies
24 because you can be shown to have delayed
25 substantial completion later. So you've got be

1 careful, you've got to be thoughtful, you've got
2 to be, you know, trying to do your best to be
3 cooperative and so on because you don't want to
4 be in the position of having wrongfully held up
5 substantial completion over something.

6 But -- so that's why I was going into
7 that space in terms of answering your question.

8 KATE MCGRANN: Were you involved in
9 any discussions with anybody at the City about
10 whether the system was ready to perform at the
11 level that it ought to perform in accordance
12 with the project agreement?

13 BRIAN GUEST: Not that I recall, and
14 not -- if I was to the extent, I can go check.
15 It would have been in the context of privileged
16 discussions at the executive steering committee
17 meeting.

18 KATE MCGRANN: And if you were going
19 to check, what would you go check?

20 BRIAN GUEST: I don't know actually.
21 I guess I could check with others to see whether
22 they remember if I was at that meeting. I guess
23 I could request the City send me executive
24 steering committee minutes from that time, or
25 notes, I guess. I'm just trying to be helpful.

1 KATE MCGRANN: Were you involved in
2 any discussions with anybody at the City or who
3 was advising the City about the decision to
4 proceed to a full launch of the revenue service
5 for the system as opposed to something less than
6 full service?

7 BRIAN GUEST: Other than a casual
8 question to Mr. Manconi at one point that I'm
9 not even sure he would remember. It was very
10 much like I expressed a nervousness about the
11 hard cut over in respect of passengers and he
12 was very confident.

13 KATE MCGRANN: And do you remember
14 when that conversation took place?

15 BRIAN GUEST: It could have even have
16 been at the launch or maybe a few weeks before
17 the launch. I was just -- I remember saying to
18 my partner, you know, this is what has to happen
19 with the buses and, you know, that's going to be
20 an interesting day 1.

21 KATE MCGRANN: You think that this
22 conversation with Mr. Manconi may have happened
23 on the day of the launch?

24 BRIAN GUEST: I don't have a specific
25 memory of when it was. It could've been then,

1 it could've been a couple weeks before then in
2 the hallway around that.

3 KATE MCGRANN: I'm asking you if it
4 could have happened on the day of the launch
5 because it strikes me that that would be a
6 little bit late to be raising concerns --

7 BRIAN GUEST: It would.

8 KATE MCGRANN: -- (inaudible) --

9 BRIAN GUEST: It would.

10 KATE MCGRANN: -- the launch.

11 BRIAN GUEST: It would. It would.

12 Yeah.

13 (Overtalking)

14 (Reporter seeks clarification.)

15 BRIAN GUEST: Pardon me, Kate.

16 KATE MCGRANN: Go ahead.

17 BRIAN GUEST: I was going to say
18 you're absolutely right about that. Now, I
19 don't think went into service the next day. It
20 was really just, you know, everybody got a
21 chance to come see the system.

22 And I'm not 100 percent confident on
23 how hard their cut over was. I didn't have
24 visibility into that plan. I expressed an
25 anxiety and the right to say if it was in that

1 day, it's a bit late to express an anxiety. But
2 that's all I did was express an anxiety. I was
3 concerned about that.

4 And as it happened, they did a pretty
5 good job, other than when the system started to
6 have the problems, and the customers couldn't
7 get off the platform, and the buses kept dumping
8 new passengers into the station, you know,
9 you've got those kind of -- it wasn't a good --
10 it wasn't a good day for the system.

11 So there were hiccups, but it's not
12 like I was The Amazing Kreskin and I, you know,
13 foresaw all these problems. That's not how it
14 was at all.

15 KATE MCGRANN: With respect to the
16 trial running period, I think you said that you
17 had no role in trial running. Is that right?

18 BRIAN GUEST: I had no role in trial
19 running. I was very focused on Ottawa, sorry,
20 on Toronto. And I was very focused on, was
21 focused on -- well, I was focused on Toronto. I
22 wouldn't have had time, nor am I a commissioning
23 expert.

24 KATE MCGRANN: Were you receiving any
25 kind of updates on how the system was performing

1 during trial running? And part of the reason I
2 ask this is because of your membership of the
3 executive steering committee.

4 But the other part of the reason I ask
5 is that this is a system that you had been
6 heavily involved in at times and this is really
7 the last step before it can be launched.

8 So what kind of information are you
9 getting about how it's doing as it's proceeding
10 through that phase?

11 BRIAN GUEST: Yeah. I -- I'm not sure
12 what I could've contributed. I think I was
13 aware of some of the reports. I know I was
14 aware that Project Co was seeking substantial
15 completion when they were.

16 And I was aware that the independent
17 certifier was siding with the City in respect of
18 that. I definitely knew about that. But I knew
19 it, sort of, in the context of the claims stuff
20 that I was helping to advise on, as opposed to,
21 like, the commissioning itself, and whether that
22 was done to an appropriate standard or in an
23 appropriate way.

24 KATE MCGRANN: Well, let's just make
25 sure that we're talking about the same thing.

1 So substantial completion has to be achieved
2 before trial running begins, right?

3 BRIAN GUEST: That's correct.

4 KATE MCGRANN: And then the trial
5 running period goes for a period of time. It's
6 ultimately just over 20 days, I think. I don't
7 have the number handy.

8 But you're familiar with the period
9 that I'm referring to.

10 BRIAN GUEST: I am. I thought it was
11 12, but if you say 20, I'll...

12 KATE MCGRANN: I think that there's --
13 well, there's a number of questions about what
14 the trial running requirements were. But in
15 terms of how long trial running took place for,
16 it takes place for 20 some odd days through the
17 month of August.

18 So you know the period of time I'm
19 referring to?

20 BRIAN GUEST: Yes.

21 KATE MCGRANN: So I would like to
22 understand what kind of information you were
23 receiving about how the system was performing,
24 it's being evaluated every day.

25 So what kind of updates are you

1 receiving about its performance through the
2 trial running period?

3 BRIAN GUEST: I don't have specific
4 memories of that. They would have been
5 happening in those sessions where privilege does
6 prevail.

7 But I was at a high-level aware that
8 the initial goes at trial running were
9 manifesting issues. I didn't have a sense that
10 those issues were, like, severe or threatening
11 to the system's ability to run in a reliable
12 fashion. I didn't have that sense.

13 But I do recall knowing that it wasn't
14 perfect and that they were working through
15 issues which is kind of typical when you're
16 commissioning something new that there's going
17 to be some issues that need redress.

18 And I had the impression, generally,
19 that they were trying to redress things that
20 cropped up during trial running. I don't have
21 specific memories for you about what those
22 issues might have been.

23 But they weren't necessarily -- I do
24 think they weren't necessarily -- so they're
25 meant to run the service pattern that's going to

1 be running on service level 1, and they weren't
2 universally successful in being able to do that
3 right off the bat.

4 So I think it had been extended
5 several times, if I'm not incorrect. And some
6 type of restart criteria were agreed between
7 Project Co and the City, and they may have been
8 in that MOU you were referring to, I don't know.

9 But there was some type of agreement
10 on how to look at whether a date was successful
11 or not. I recall that there was a process which
12 they try to run every single day then there was
13 a meeting at the end of the day, any issues that
14 arose, they talked about, and they talked about
15 whatever those criteria were, which I don't
16 know, for success or failure of the day.

17 Now, this is something you should
18 probably ask to see is, if you don't have it
19 already, is what those criteria were.

20 If I could get in a time machine again
21 and go back, I think I would have really pushed
22 a lot harder to have objective criteria for
23 restart. I think -- I think an interval that's
24 longer is wise. And it has been an issue on
25 projects where the criteria for a restart, and

1 by "restart" I mean, you're meant to run it
2 uninterrupted and continuously for an interval.
3 And "run it" means run it to the service level
4 such that the kilometres for that service level
5 are being attained.

6 And I think the correct interpretation
7 of the contract in this respect is that it had
8 to be continuous. So if there was any
9 interruption, you had to start again.

10 I don't think that's how it has
11 been -- I don't think that's a shared view
12 between Project Co and the City. And so as a
13 result, there was some type of agreement made
14 between Project Co and the City in respect of
15 what those criteria would look like.

16 It was somewhat less than absolute
17 perfection in terms of running those
18 uninterrupted for consecutive days, and some
19 other, sort of, slightly more lenient approach
20 was taken.

21 Again, I'm taking a hazard here, but I
22 remember that the contract before payment
23 reductions kick in, it's something like
24 98.8 percent. And again, I'll have to check for
25 the -- if you want to rely on me.

1 And I think that was lowered for trial
2 running to a different number that was still in
3 the high to mid-nineties. But I want to say
4 96 percent was, I think, what they were
5 applying. But again I don't know how 96 was
6 selected. I don't know the rationale for why to
7 be honest. Can't speak to that.

8 Other than to say, you know, when a
9 system is brand-new, you can expect to have some
10 issues manifest, and I guess it was just a
11 practical recognition that some issues could
12 manifest and that they shouldn't be allowed to
13 be magnified by a contractual provision that was
14 unduly applied in a harsh way.

15 And also, I will fully admit it wasn't
16 an objective enough, it wasn't clear enough. It
17 should have been clearer than just the words
18 consecutive, which, you know, talented lawyers
19 have been able to undermine the plain English
20 meaning of "consecutive." I think it was
21 "consecutive."

22 And so there was room to be practical
23 commercially for the City, and my impression was
24 that they were trying to do that.

25 KATE MCGRANN: In terms of your

1 involvement in Stage I following the launch of
2 revenue service, have you been doing any work
3 that isn't subject to privilege?

4 BRIAN GUEST: I don't think so. It
5 was claims based. And then the other work that
6 I did was in respect of getting ready to do
7 Stage 2, which I've already talked about.

8 KATE MCGRANN: Coming back to what you
9 did know about trial running and the concern or
10 the idea that you formed earlier that the City
11 should be as relaxed as it needed to be to get
12 the system that it paid for, you shared that you
13 were aware that they were some -- the initial
14 goes had issues, the time frame had to be
15 expanded, restart criteria was engaged.

16 And I didn't get down to complete list
17 of everything you said, but based on all of
18 those things, did any of that trigger this worry
19 that the City should be waiting to get the
20 system that it paid for?

21 BRIAN GUEST: I mean, did it trigger a
22 worry? I understood what the City was doing
23 trying to be commercially reasonable and not
24 standing on ceremony around particular things.

25 But I do remember being kind of

1 uncomfortable that the desire to get the system
2 running would potentially make the City too
3 flexible bearing in mind that there was jeopardy
4 to being too inflexible as well that I've talked
5 about.

6 So they had to chart a middle course.
7 I was confident that they knew what was
8 happening on the ground way better than I did.
9 And so I didn't get into, you know, specific,
10 you know, strong intervention of any type in
11 respect of that because I just didn't know the
12 details.

13 I presumed that they were sweating the
14 details. I know Mr. Manconi and Michael were
15 living it day in, day out, and I was not.

16 KATE MCGRANN: In terms of what may
17 have influenced or pushed the City to be too
18 flexible, what factors were at play then?

19 BRIAN GUEST: I don't know if they
20 were too flexible or not. I think they were --
21 they thought, and probably still feel that they
22 were appropriately flexible.

23 I tended to be more in the space of,
24 well, the contract is the contract, and we
25 should apply the contract. But in this case it

1 was -- the contractual position wasn't, like,
2 Mount Olympus, right? It wasn't super strong in
3 terms of the objective criteria for restart, the
4 nature of what consecutive meant, the nature of
5 minor deficiencies and the nature of substantial
6 performance.

7 It's all in one, kind of, mental
8 picture, right? And you don't necessarily start
9 getting -- unless you're in it, living it,
10 you're not in a position to really give quality
11 advice, other than at a very high level just to
12 go, you know, be tough.

13 KATE MCGRANN: You said you had a
14 concern that the City may be too flexible. I
15 understand that you're not giving them advice.
16 But you had that concern, yes?

17 BRIAN GUEST: I was concerned that
18 they might be too flexible, yeah, sure. I think
19 there was a great deal of desire on everybody's
20 part to get the system into service to the
21 people.

22 And I wanted -- I thought that that
23 was important, but not such that an undue
24 flexibility should be shown. So I didn't do any
25 type of assessment of the level of flexibility

1 that should be offered.

2 I wasn't in the negotiations around
3 any discussion around what those flexibilities
4 would look like. And I don't think I was
5 briefed in any way on the nature of them, but I
6 don't have specific memories of that.

7 I probably was aware of where it
8 landed in our privileged conversations because
9 they did bear on claims.

10 KATE MCGRANN: I would just like to
11 understand your understanding of what pressures
12 there were of the City to open up the system at
13 that time?

14 BRIAN GUEST: Well, there was public
15 pressure. Like, public wanted to have it open.
16 And there was considerable media pressure. You
17 know, why is it 18 months late? Media were --
18 it was a story that the media were covering
19 quite frequently.

20 The why and wherefores. There was
21 pressure at Council because you had to keep
22 going back and briefing about why substantial
23 completion was initially late, and then why it
24 continued to be later and later. I can't say
25 that Council was overly pleased by the delay in

1 reaching it.

2 And I think staff felt that weight of,
3 you know, the media pounding away on the drum.
4 The need to be reasonable, commercially
5 reasonable in terms of getting through those
6 stages, and Council's discontent.

7 And then the other piece that I would
8 just -- I already mentioned it, but I'll just
9 mention it again is the cost of running the
10 alternated bus service which is not as efficient
11 and extended people's journey times, and if
12 that -- ridership which hits you in the fare box
13 and it hits you in the cost line.

14 KATE MCGRANN: Were there any
15 particular members of Council, or any members of
16 Council were particularly upset about the
17 timelines that were putting -- were more a
18 source of pressure to get the system open?

19 BRIAN GUEST: Not that I recall. I
20 don't remember there being, like, a leader in
21 the band in terms of, you know, when is this
22 going to get done? I don't -- I don't -- nobody
23 stuck it in my mind as doing that.

24 You know, Council has, in recent
25 years, become not as harmonious as it was back

1 then, 11 years ago. The vibe, I don't know
2 "vibe" probably the wrong word. The cultural
3 sense of how Council operated had more civility
4 to it.

5 So it's just -- it expresses itself
6 through questioning of staff, you know, and
7 comments about, you know, my residents really
8 want to see this construction come to an end,
9 and to get this service going.

10 And as they were reported back to,
11 there were questions that, to me at least,
12 conveyed discontent.

13 KATE MCGRANN: I have two final
14 questions for you, always a dangerous thing to
15 say, but I believe it to be true. But before I
16 do that, Mr. Imbesi, do you have any follow-up
17 questions on anything we've discussed?

18 ANTHONY IMBESI: No, thank you.

19 JOHN MATHER: And Brian, your timing
20 is okay?

21 BRIAN GUEST: Yes.

22 JOHN MATHER: Perfect.

23 KATE MCGRANN: The Commission, as you
24 know, has been tasked with investigating the
25 commercial and technical circumstances that led

1 to the breakdowns and derailments on Stage I.

2 Other than what we've discussed this
3 morning, any topics or areas that you think
4 should be included in that investigation?

5 BRIAN GUEST: Look, I think it was
6 a -- I say this respectfully. I think it was a
7 mistake to allow Project Co to represent itself
8 as a single entity because what's going on
9 inside Project Co should be of interest to the
10 inquiry, and those individual companies should
11 be asked about their internal mechanics, which
12 of course, I do not see.

13 They should be asked about disputes
14 that have arisen internally. They should be
15 asked, in my view, about why they didn't respond
16 given the financial incentives they had to be
17 able to respond as a group, and to really get to
18 root cause and to really address it.

19 So that's the only thing I would
20 nominate to you as something to reflect on as
21 you go about your work, is don't -- in my
22 opinion, it would be -- it will cut you off from
23 important information to treat them as a
24 monolith.

25 KATE MCGRANN: And explain to me the

1 basis for that view that there are disputes that
2 are there and that they are interfering with
3 delivery.

4 BRIAN GUEST: So just -- it's curious
5 why -- let me just take it a step back. I've
6 explained, sort of, the triangle, right? The
7 constructor, JV, the maintenance JV. When the
8 constructor -- and this you can call them flaw
9 in the model.

10 The company is owned by the
11 constructors, so the equity is put into Project
12 Co by the same entities that are in the
13 construction.

14 And the constructors want to finish
15 the job, and then they want to get out of town.
16 And they have two years of warranty that they
17 are responsible to the maintainer for.

18 And I'm aware that there's been a lot
19 of -- I'm aware through claims work, which will
20 be privileged, that there is a lack of alignment
21 between the maintenance, JV and the constructor.
22 And because the constructors own the company,
23 the maintainer is -- the maintainer is made up
24 of the same entities but with a drop-down to
25 Alstom. So they take about 90 percent of the

1 risks and they dropped them down onto Alstom in
2 a subcontract.

3 And I am aware, I think I have very
4 clear conversation with Angelo, the former CEO
5 of Alstom where he complained that --

6 JOHN MATHER: Brian, sorry. Was the
7 contents of that conversation with Angelo in the
8 context of the disputes in resolving the
9 disputes?

10 BRIAN GUEST: No, it was -- it wasn't.
11 It was --

12 JOHN MATHER: Okay.

13 BRIAN GUEST: It was on the side. He
14 basically was of the view that the constructor
15 was not coming to the table to fix design and
16 construction errors, and trying to make it the
17 maintainer's problem.

18 And the maintainer was, like, Look
19 man, I signed up to keep a system that was
20 properly built and designed and constructed
21 working, not to go fix, you know, errors or
22 problems like that over -- overstrung catenary,
23 for example.

24 And so I'm aware there was quite a bit
25 of tension between the maintainer, not the JV

1 per se because JV's controlled. But with
2 Alstom, and not in Alstom's capacity providing
3 the vehicles because that's a constructor
4 responsibility, so that gets confusing, right?
5 They're the maintainer, but it's not their --

6 If the vehicle was late or wrong, or
7 had any problems with it, that's the
8 constructor's problem. It's not the
9 maintainer's problem irrespective of the fact
10 that the maintainer actually built and furnished
11 the vehicle. Like, I know it sounds weird, but
12 structurally, that's the way it works.

13 And so just getting back to the flaw
14 that could be said to exist. Some people, I
15 think, believe that this is a flaw, is allowing
16 the constructor to have the equity box at the
17 top, to have those construction firms provide
18 that equity.

19 In the fullness of time, you're
20 creating a kind of a conflict between the owner
21 of Project Co and the constructor who just wants
22 to off risk, right, get their balance sheet shed
23 of risk and move onto the next project.

24 And so they're not at the top level.
25 If, say, Plenary or, you know, Macquarie was in

1 that top box, you can be absolutely certain that
2 that equity would be in there saying to the
3 various constituent parts of Project Co, You
4 better get your act together, right? Because
5 I'm taking it, I'm not getting my returns, and
6 I'm having to reach into my pocket and pay those
7 lenders. And I've got security against you and
8 I'm going to use it. So stop your infighting
9 and get going.

10 And I think you can make a compelling
11 case now that having constructors in the equity
12 box has downsides. Now, unfortunately, that's
13 the way it works in Ontario's marketplace right
14 now.

15 Constructors are -- they've created
16 their own capital arms, and they're almost
17 universally in the top box and the constructor
18 box. I'll go ahead and say universally in
19 Ontario.

20 And it seems to work fine on
21 hospitals. But in this case, I think it's
22 caused some perverse incentives within Project
23 Co.

24 KATE MCGRANN: Any other topics or
25 areas that we haven't discussed this morning

1 that you think the Commission should be looking
2 at?

3 BRIAN GUEST: No. Not that are
4 occurring to me now.

5 KATE MCGRANN: The Commissioner has
6 been asked to make recommendations to try to
7 prevent issues like this from going forward.

8 Other than what we've already
9 discussed this morning, any specific
10 recommendations or areas of recommendation that
11 you would suggest be considered in that work?

12 BRIAN GUEST: I think that's what I
13 meant in my last little intervention. I think
14 it would be interesting to have a review of
15 whether -- what that does to undermine full
16 accountability, which is supposed to be passed
17 down to Project Co.

18 But I think that more objective
19 criteria for restart and for revenue service
20 demonstration is something that I would hazard
21 the market should be expecting, and should be
22 required on a go-forward basis, deadly clarity,
23 like, real clarity about what those criteria
24 would need to be. And I would rewrite that in a
25 completely different way, if I have my time

1 machine.

2 So I think that's something you should
3 look at. Yeah, that's all that's coming to me
4 right now, but I will think about it. I'll
5 submit something to you.

6 KATE MCGRANN: Mr. Imbesi, any
7 follow-up questions on any of that?

8 ANTHONY IMBESI: (Inaudible.)

9 KATE MCGRANN: Mr. Mather, did you
10 want to ask any follow-up questions?

11 JOHN MATHER: I have no follow-up
12 questions at this time.

13 KATE MCGRANN: Okay. Then that brings
14 out questions for today to a close, and we can
15 go off the record.

16 (Whereupon this examination concludes
17 at 12:17 P.M.)

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1
2 REPORTER'S CERTIFICATE
3
4

5 I, LEILA HECKERT, CVR, Certified
6 Verbatim Reporter, certify;

7 That the foregoing proceedings were
8 taken before me at the time and place therein
9 set forth at which time the witness was put
10 under oath by me;

11 That the testimony of the witness and
12 all objections made at the time of the
13 examination were recorded digitally by me and
14 were thereafter transcribed;

15 That the foregoing is a true and
16 accurate transcript of my shorthand notes so
17 taken. Dated this 18th day of May 2022.
18

19
20 

21 PER: LEILA HECKERT
22 CERTIFIED VERBATIM REPORTER
23
24
25

WORD INDEX

< \$ >

\$16 9:14
\$180 57:8
\$3 69:17
\$50 47:23

< 1 >

1 3:3 7:6, 7
8:8 72:13, 15
117:20 123:1
1.0 80:25
1.7 17:12
10,000 110:16
10.25 39:17
10:27 66:16, 18
10:30 6:9
10:38 66:19
10:40 66:17
100 11:20
19:13 30:19
62:23 92:5
118:22
1000 44:6
105/10 3:18
11 14:13 20:2
131:1
11,000 110:16
12 9:17, 19
79:25 93:21
121:11
12:17 1:16
138:17
150 73:16
16 9:20 21:15
16th 89:24
18 64:9 129:17
18-month 53:16
18th 1:8, 15
139:17
1998 9:1

< 2 >

2 126:7
2.1 17:13 19:8
22:8 48:3
20 40:16 121:6,
11, 16
200 73:17
84:11 115:20
2005 7:11 10:16
2009 5:16
2011 7:12

2012 11:3

2021 89:14
2022 1:8, 16
139:17
24 21:15
25 18:6
27 106:20

< 3 >

3 72:1, 2
3.2 21:5
30 20:25 21:2
56:16 71:24
72:12, 15 79:25
33(6) 5:15
33(7) 6:4
35 44:19 47:24
48:3 57:12

< 4 >

4 89:22
40 40:16 74:25
45 35:4
450 71:18, 21
47 20:1

< 5 >

5 6:7 16:25
17:7 20:24
44:21 99:15
50 35:4 57:13
71:19
500 71:15, 16,
18 72:3, 4
55/25 3:17
5-pound 73:12

< 6 >

66/16 3:18

< 7 >

7 3:3
7.5 18:5
70 72:5
75 43:22

< 8 >

8 73:11
80 43:21
80/20 40:23
41:2
800 48:1
80s 58:23
82/22 3:18

< 9 >

9:00 1:16 4:1
90 72:3 133:25
9300 35:21
110:14
96 125:4, 5
98.8 124:24
9th 89:14

< A >

a.m 1:16 4:1
66:18, 19
abandoned
70:12
ability 48:19
69:16 105:12
122:11
absolute 124:16
absolutely
56:10 85:15
118:18 136:1
accepted 79:10
access 48:16,
18 57:10 65:17
86:22 95:12
98:23
account 43:14
64:13 91:1, 2, 5
95:7 99:23
accountabilities
57:23 71:1
accountability
104:21 137:16
accountable
45:24, 25
accurate 139:16
achieve 64:17
102:16
achieved 39:11
64:22 77:20
109:21 113:25
114:1 121:1
acquire 13:10
acronyms 23:9
29:24
ACS 40:14 95:8
Act 5:16 6:5, 7
136:4
action 95:25
107:10
active 50:9
actively 114:3
activism 7:19

activities 27:25
30:23 69:6
actual 53:2
76:20 77:4
113:1
adding 39:24
addition 72:24
additional 19:9
39:23 74:13
address 67:5
132:18
addressed
101:13, 15
102:17
addressing
101:12
adhere 19:5
adjustable 104:5
adjusted 26:22
adjustment
69:21
adjustments
74:5
administer
96:12
administration
78:21
admit 125:15
adopted 83:14
advance 6:14
48:8 75:18
advanced 20:23
53:23 55:1
advantage 21:16
advantages
21:12
advertising 31:8
advice 11:7
54:18 59:18, 20
60:13 64:5
81:11 108:7, 12
128:11, 15
advise 42:7
52:18 55:17
120:20
advised 6:5
adviser 12:21
advising 12:4
16:2 117:3
advisor 9:2
10:4, 5 42:6
advisory 61:2
Advocates 2:7
affect 19:22
AFFIRMED 4:2

affordability
19:19 25:4
71:4, 7 72:21
73:8, 22 75:11,
15, 19, 21, 25
affordable 21:22
after 5:2 7:17
10:2, 7 11:4
16:23 20:19
44:1, 22 45:7,
19 50:9 63:21
109:20
after-the-fact
102:18
agendas 65:18
agent 27:8
ago 131:1
agree 50:17
77:20 98:19
agreed 64:24
70:24 87:16
113:14, 25 123:6
agreement
15:16, 24 18:11
37:18 44:25
49:12, 13, 16
54:5, 10 56:20
57:3, 16, 18
60:12 68:13
70:13 76:9
79:14, 18 86:5
115:14 116:12
123:9 124:13
agrees 54:8
ahead 38:21
81:2 87:10
118:16 136:18
aimed 26:16
air 36:20
Albert 21:11
alignment 16:11,
13, 20, 23 17:3
20:1 24:25
25:1 84:9
133:20
allow 132:7
allowed 105:9
125:12
allowing 135:15
Alstom 36:24
70:6 133:25
134:1, 5 135:2
Alstom's 135:2
alternated

<p>130:10 alternative 21:7 alters 49:21 amalgamation 8:14 9:7 Amazing 119:12 amendments 49:15 amount 19:9 53:20 73:2 ample 72:22 analogy 47:2 100:3, 6 analysis 27:21, 22 96:1 ancillary 82:1 Angelo 134:4, 7 annual 45:22 46:21 64:23 answered 114:24 answering 116:7 answers 99:3 Anthony 2:3 4:7 105:19 131:18 138:8 anxiety 118:25 119:1, 2 anxious 109:11 anxiousness 112:9, 10 Anybody 30:14 86:20 94:17 115:6 116:9 117:2 anymore 10:19 44:15 61:25 111:22 Anyway 22:13 24:2 43:5 50:8 54:14 apart 36:5 appeal 18:16 appear 3:17 46:1 appears 7:11 45:9 97:12 appended 5:14 applications 107:21 applied 111:6 125:14 apply 17:7 102:13, 14, 15</p>	<p>127:25 applying 125:5 approach 18:24 22:16 38:17 79:5 83:4, 5, 21, 25 124:19 appropriate 26:11 42:8, 9 60:13 87:18 120:22, 23 appropriately 68:9 127:22 approval 25:7 26:18 approvals 25:15 approved 17:4 arbitration 107:11, 12 area 72:14 80:3, 20 88:22 areas 46:14 132:3 136:25 137:10 argument 89:16 arguments 77:17, 18 arisen 132:14 arms 136:16 arose 19:12 101:9, 15 123:14 arrangement 70:20 article 89:12, 14, 19, 22, 23 99:16 aside 36:5 asked 5:18 6:13 19:17 21:25 64:25 102:22 132:11, 13, 15 137:6 asking 66:24 73:14, 22 76:5 114:13 118:3 aspect 67:25 78:20 aspects 14:21 31:4 32:24 35:14 67:25 assessed 44:8 79:2, 8 assessment 16:12 25:6 39:16 43:6 77:21 128:25</p>	<p>Assessments 42:15 asset 28:15 assistance 16:9 assistant 8:16 assisted 8:20 70:16 associated 40:22 42:22 109:18 Associates 86:7 at-risk 36:21 attained 124:5 attempt 106:19 attempts 64:19 attend 63:5 attendance 65:20, 23 66:6 attending 1:15 62:5, 9 63:14, 24 65:11 107:25 108:6 attention 97:15 attractive 37:23 38:6 attractiveness 37:11 audio 25:18 August 121:17 Australia 76:15 availability 114:12, 15 115:5 available 22:6 51:25 59:5 75:9 79:9 81:23 96:5 average 41:20 avoid 78:23 avoided 76:25 avoiding 99:5 award 29:16 awarded 11:2 aware 15:1 50:7 59:19 60:16 61:9 81:7 100:15 107:24 108:1, 3 109:6, 7 113:2 120:13, 14, 16 122:7 126:13 129:7 133:18, 19 134:3, 24 < B ></p>	<p>back 9:13 14:15 17:15 21:9 24:13 27:23 34:24 35:16 39:6 46:3 52:17 53:14 63:20 65:12 66:16 67:10 75:3 98:6 106:5 115:19 123:21 126:8 129:22 130:25 131:10 133:5 135:13 backdrop 95:10 background 8:7 31:9 52:12 bad 24:8 48:22 50:19 bag 73:12 88:18 balance 44:10 135:22 ballast 69:23 band 84:11 130:21 bang 110:2 banker 45:3 bankers 87:9 Barrhaven 23:21 barriers 98:23 base 19:3 25:6 28:10 53:2 60:7 68:13 85:2 based 29:15 126:5, 17 baseline 86:8, 16 87:19, 20 basically 10:21, 23 12:3 16:4 20:22 23:15 24:5 31:8 33:14 34:24 36:21 37:13 40:7 42:14, 16 44:23 49:7 54:10 55:14 56:15 57:2 58:1, 24 71:18 79:1 84:14 85:4 86:9 101:4 134:14 basis 5:7 14:12 28:3 55:11 78:15, 16</p>	<p>79:3 82:23 133:1 137:22 basket 38:25 bat 123:3 BDFM 68:2 Bear 89:12 129:9 bearing 127:3 bed 47:1 bedrock 84:10 beds 44:6 began 67:6 105:22 beginning 22:8 49:22 58:16 67:23 begins 121:2 behalf 12:6 behaviours 40:11 believe 13:1 20:18 21:8 22:12 40:15, 23 44:17 48:8 60:2, 25 63:3 75:14, 25 90:1 115:19 131:15 135:15 bells 72:7 belongs 21:17 bereft 107:4 best 22:16 23:11 25:16 26:20 28:21 29:13, 15 36:4, 17, 18 37:14 66:5, 10 67:4 76:25 81:4 95:6 106:16 116:2 better 51:8, 10 57:9 59:2 68:4, 22 77:17 78:25 80:18 82:4, 6 103:6 127:8 136:4 bid 24:10 30:2 43:18, 25 71:7 86:25 bidder 71:18, 24 86:4 bidders 72:22 73:20 74:6 75:12, 15 86:4 bids 71:8</p>
---	---	--	--	--

big 7:18 10:13,
19 13:11 19:16
20:13 23:16
34:20 36:12
37:4, 10 44:9
55:14 69:12
74:17 85:7
95:1 110:2, 22
112:18
bigger 55:5, 8
biggest 18:22
20:15
billed 66:3
billion 11:20
17:12, 13 21:5
48:1 69:17
bit 9:23 17:16
18:16 22:9
24:6 31:21
52:7, 11 55:7
59:24 66:23
71:11 77:22
78:13 85:18
109:13 118:6
119:1 134:24
bits 36:23 57:1
blame 99:17
blocked 35:25
blowing 57:21
blown 56:25
blue 16:4
blurred 41:1
board 13:1
32:11
Bob 8:20 89:24
93:6, 7 94:2
96:24, 25 98:8
body 98:18
bogie 103:13
bolts 28:23
Bombardier
36:24
bond 36:22
41:8 44:24
51:2, 10
bondholders
41:7 56:12
bonds 46:20
47:3, 4
boots 104:19
boring 84:18,
23 85:6, 7
bothering 53:10

bottom 12:3
23:21 87:2
103:12
boulders 84:14
Box 106:13
130:12 135:16
136:1, 12, 17, 18
boxes 111:23
BOXFISH 1:7
2:6 30:15 91:2
brakes 101:2
braking 101:18
brand 99:13
brand-new
37:24 104:12
125:9
break 6:8, 9, 11
8:3 66:16
breakdowns
102:24, 25 132:1
BRIAN 1:7 2:6
3:3 4:2 6:12,
23 7:4, 8, 16
8:11 12:16
13:9 14:4 15:7,
13, 19 16:1
19:25 23:5, 8,
13 25:20 26:4
29:21 30:1, 3, 7,
17 31:13 32:4,
20 33:4, 23
34:19 35:9, 16
39:9 40:6
47:18, 22 49:17
50:5 52:17
55:18 56:9
59:12, 19 60:25
61:11 62:1, 11,
17 63:3, 12, 19,
23 65:13 66:1
67:7, 9, 13
71:10 75:14, 24
76:12 79:7, 15,
19 81:3, 8 82:7,
13, 19 83:3, 8,
23, 25 89:20
90:3, 7, 10, 15,
19, 24 91:3, 6,
16, 20 97:17, 24
98:4 100:2, 9,
17 102:2 103:4
105:6, 8 106:2
107:23 108:16,
24 111:7, 9
112:3, 24

114:23 115:8
116:13, 20
117:7, 15, 24
118:7, 9, 11, 15,
17 119:18
120:11 121:3,
10, 20 122:3
126:4, 21
127:19 128:17
129:14 130:19
131:19, 21
132:5 133:4
134:6, 10, 13
137:3, 12
Bridge 23:22
34:25
brief 8:6 31:19
briefed 24:25
26:10 32:6
129:5
briefing 129:22
briefings 31:18
32:18, 22 33:25
bring 29:7
33:17 49:25
75:8
bringing 33:15
brings 138:13
broad 32:11
53:2 63:6
broke 104:11
brought 27:2
53:13
Bucci 81:13
bucks 57:13
budget 9:15
13:19 17:11
19:2, 4, 16, 18
25:2, 7 33:10
38:22 39:7, 11
40:5 74:25
buffer 58:1
build 14:12
15:12 23:16
25:6 28:9, 17,
18, 25 29:25
30:1, 2 35:13
50:2 57:22
69:12 80:9 84:7
building 9:8
26:23 85:2
buildings 20:8
built 28:16
58:23 70:23
73:23 76:9

80:11 134:20
135:10
bull 87:10
bullet 56:17
bunch 51:21
58:3 84:14
110:6
bus 35:20, 25
110:1 130:10
buses 34:25
35:4 109:15
110:6 117:19
119:7
business 91:5
bust 23:9
busy 52:23
55:6
buy 21:18

< C >
Cabinet 10:10
call 12:21
16:12 20:21
27:23 36:20
37:19 41:4
42:13 43:1
56:14 57:2
61:1 65:1
71:13 78:3, 4
85:11 92:21
114:6, 8 115:11,
16 133:8
called 16:4
27:24 55:3
69:23 71:11
84:13
calls 92:5
106:21
campaign 8:25
campaigned
24:3
Canada 6:7
10:8 38:17 76:7
cancel 24:8
cancelled 22:21
cancelling 24:4
candid 92:3
cap 47:23 71:4,
8 72:21, 23
74:22 75:11, 17,
22 88:1 89:10
capable 81:21
84:3

capacity 35:23
53:14 59:2
135:2
capital 39:13,
14, 20 41:14, 20
49:11 51:24
58:6 136:16
capped 86:17
caps 76:1
care 47:4
58:13 92:1
career 8:12
12:4 55:10
careful 116:1
carefully 80:22
cares 91:23
carrying 88:18
case 40:12
44:18 61:23
75:10 78:7
96:7 127:25
136:11, 21
cash 77:24
78:4, 5
cast 18:12
casual 117:7
catastrophic
50:17
categorical
79:20
catenary 70:8
104:3, 9, 11, 12
134:22
caused 88:9
101:2 103:14
104:13 113:13
136:22
caveats 66:11
CBC 89:12, 13
CCDC 38:2
cement 88:24,
25
cent 19:13
centre 18:22
84:12
CEO 134:4
ceremony
126:24
certain 4:15
21:1 41:1
53:11 61:1, 24
77:19 114:5
136:1
certainly 23:25
38:16 50:12

67:20 74:15 81:11 88:15 103:23 112:17 115:9 CERTIFICATE 139:2 Certified 139:5, 22 certifier 64:24 120:17 certify 139:6 chain 32:1 chair 8:21, 23 32:10 94:22 challenges 99:3, 9 chance 118:21 Chandani 2:13 change 7:17, 18, 22, 25 10:12, 17 82:12 103:10 changed 68:19 75:1 changes 68:21 74:8, 9 changing 72:14 charge 106:10 charged 53:7 charging 65:22 chart 127:6 cheap 39:13 51:22 52:1 60:6 61:19 cheaper 51:22 58:4 check 21:9 55:18 105:15 116:14, 19, 21 124:24 checks 64:1 Chiarelli 8:20 27:9 89:24 91:18 93:7 96:25 97:19 102:1 103:3 Chiarelli's 9:12 23:15 24:4 32:8 chief 59:23 Children's 8:16 choice 73:13 84:17 choices 15:2 choose 50:3 88:4 choosing 22:14	chose 10:16 50:4 57:1 79:5 97:25 109:19 circling 46:3 circuitous 57:11 circumstances 102:23 131:25 cities 10:12 17:23, 24 city 8:15 9:6, 7 18:1 19:5, 8, 12 25:4 27:19, 20 28:2 29:3 30:9 31:12, 15, 19, 23 32:1 33:2 34:13 37:5 38:11, 23 39:13, 14 45:1 47:13, 14, 16, 19, 22 48:5, 8, 17 49:7 50:3 51:15, 17, 21 52:4, 18, 25 54:7, 15, 19 56:2, 22 57:1, 8, 10 58:3, 9, 12, 18, 21 59:6, 11, 18, 20 60:8, 13 64:3, 11, 20, 25 66:9 68:24 69:11, 13 70:16 72:25 73:5, 12 74:18 75:1, 6 76:8 77:20 79:5 83:11 84:20 86:3, 6, 17 88:6, 10, 14 92:15 96:10, 15 99:7 105:25 106:24 107:4, 19 108:12, 17 109:7, 9, 13, 19 110:5, 15 111:2 112:1, 16, 23 113:8, 25 114:3, 10, 16, 20 115:6 116:9, 23 117:2, 3 120:17 123:7 124:12, 14 125:23 126:10, 19, 22 127:2, 17 128:14 129:12 City's 26:25 34:17 35:15 38:24 39:3 49:12 52:8	67:2 88:10 95:6 106:15 115:3 civil 5:21 12:11 69:25 70:4, 7 civility 131:3 claim 19:15 88:16 claims 11:22 19:11 53:22 54:16, 18, 20, 21 106:6 107:7 120:19 126:5 129:9 133:19 clarification 118:14 clarify 47:11, 20 clarity 137:22, 23 Clark 8:24 clauses 37:21 claw 85:11 clear 8:9 66:4 73:1 75:6 78:10 100:18 105:20 108:7 125:16 134:4 clearer 125:17 clearing 26:8 clearly 78:17 clerk 10:9 client 82:16 83:11 climate 7:16, 18, 22, 24 10:12, 17 close 15:16, 24 47:25 97:8 103:17 138:14 closest 106:22 cluster 72:4 coating 102:15 co-counsel 4:14 cofounding 27:18 Co-Lead 2:2 4:4 collaborative 4:13 77:5, 7 colleague 4:6 90:7 105:16 colourful 110:24 combine 29:10 come 8:21 21:10 23:22 24:13 26:21	28:4 33:5 39:6 52:17 57:17 63:10, 12, 19 65:12 66:16 75:3 80:16 102:17 118:21 131:8 comes 61:17 102:8 comfortable 68:20 87:1 88:21 coming 16:16 19:3 33:8 50:23 61:23 110:12 126:8 134:15 138:3 commenced 4:24 commencing 4:1 comments 131:7 commercial 11:7 26:14, 21 45:14 74:21 102:22 131:25 commercially 125:23 126:23 130:4 COMMISSION 1:6 2:1 4:20 81:17 90:2 102:21 109:10 131:23 137:1 commissioned 81:24 Commissioner 137:5 commissioning 81:15 113:1 119:22 120:21 122:16 Commission's 4:7, 11, 21 5:1, 6 commitment 9:12 committee 34:3 52:25 60:21 62:4, 9 63:1, 9, 10 108:1 112:7 116:16, 24 120:3 common 102:12 communicating 74:16	communications 10:4 30:23 31:9 communities 10:13 companies 7:21 10:22 12:22 37:7 44:9 53:18 78:3 132:10 company 36:22 40:9 42:23 53:25 95:20 133:10, 22 compared 13:24 compelling 136:10 compensation 24:12 43:2 54:25 85:24 competition 24:17 competitive 69:14 complained 134:5 complete 62:2 126:16 completed 20:21 42:7 completely 85:15 93:18 137:25 completion 41:4 45:20 50:10 53:17 62:15, 20 64:16, 17, 21 65:7 77:16 80:8 101:11 105:23 106:3 107:22 109:20 111:5 113:15, 17 114:12, 14 115:17, 25 116:5 120:15 121:1 129:23 complex 12:7 compliance 26:17 complicated 36:9 component 50:1 100:24 compromises 113:2, 3
--	--	---	--	---

<p>concept 20:22, 23, 25 111:2 113:18</p> <p>concern 21:21 91:21 110:18 126:9 128:14, 16</p> <p>concerned 110:17 119:3 128:17</p> <p>concerns 13:17 33:9 93:18 118:6</p> <p>concludes 138:16</p> <p>condition 109:4</p> <p>conditions 75:1 84:8 85:14</p> <p>Confederation 99:19</p> <p>confident 117:12 118:22 127:7</p> <p>confidential 5:7 26:14 74:21</p> <p>confidentiality 82:17</p> <p>configuration 103:7</p> <p>confirm 16:25 80:13 82:20</p> <p>confirmations 54:9</p> <p>confirming 62:19</p> <p>conflict 135:20</p> <p>confusing 135:4</p> <p>conscious 73:4</p> <p>consecutive 124:18 125:18, 20, 21 128:4</p> <p>consent 49:15, 19 50:21, 24 51:4, 6 56:4 57:7 67:6</p> <p>consenting 58:8</p> <p>consequence 78:2 94:5</p> <p>consider 74:4 91:23</p> <p>considerable 129:16</p> <p>consideration 28:8 59:9 67:5</p> <p>considerations 62:15 115:7</p>	<p>considered 56:2, 8 71:9 137:11</p> <p>considering 59:17 67:14</p> <p>consistent 60:23 95:5</p> <p>consortium 12:22</p> <p>constituent 36:14 40:12 45:10 136:3</p> <p>construct 99:21</p> <p>constructed 134:20</p> <p>construction 11:8, 21, 23 19:12 29:11 36:25 38:3 44:19, 22 48:25 52:10, 13 60:3, 22 95:20, 21 100:22, 23 101:21 105:2 106:6 107:6 131:8 133:13 134:16 135:17</p> <p>constructor 28:15 95:18 133:7, 8, 21 134:14 135:3, 16, 21 136:17</p> <p>constructors 70:4 133:11, 14, 22 136:11, 15</p> <p>constructor's 135:8</p> <p>consulting 8:19 29:8, 9</p> <p>contact 55:13</p> <p>contemplated 68:16</p> <p>contend 84:24</p> <p>content 70:24</p> <p>contents 134:7</p> <p>context 52:12 108:22 116:15 120:19 134:8</p> <p>continue 61:21</p> <p>continued 11:16 129:24</p> <p>continuing 60:15 61:9</p> <p>continuous 124:8</p>	<p>continuously 124:2</p> <p>contract 22:15, 25 24:11, 22 28:24 37:19, 24 38:3 68:17 72:11 77:5 78:21 96:13 124:7, 22 127:24, 25</p> <p>contracting 37:24 77:6, 7</p> <p>contractor 22:25 28:10 42:18 77:18</p> <p>contractors 31:2</p> <p>contracts 34:7</p> <p>contractual 125:13 128:1</p> <p>contribute 18:13</p> <p>contributed 120:12</p> <p>contribution 18:10</p> <p>control 37:15 39:7, 11</p> <p>controlled 68:9 135:1</p> <p>controversial 86:23</p> <p>convenience 56:6, 12 57:20</p> <p>conversation 16:7 102:21 117:14, 22 134:4, 7</p> <p>conversations 28:9 107:3 108:10 111:17 112:5, 17 114:9 115:6 129:8</p> <p>converting 58:25</p> <p>conveyed 131:12</p> <p>convince 64:20</p> <p>cooperative 116:3</p> <p>coordinating 31:6 33:11</p> <p>copy 6:14 90:1, 8, 12, 18</p> <p>core 16:18 35:23 84:16</p>	<p>correct 5:10 30:3 49:18 102:13, 14, 15 108:16 121:3 124:6</p> <p>corrections 5:2, 5, 13</p> <p>corridor 9:24 13:10, 14</p> <p>Co's 54:24</p> <p>cost 17:10 20:17 21:4 39:23 41:17, 20 42:15 50:1 51:15 61:18 76:20 77:5 98:1 130:9, 13</p> <p>costs 17:23 39:12 44:19 47:25 54:12 109:17</p> <p>could've 117:25 118:1 120:12</p> <p>Council 9:16 10:10 13:20 17:3, 4 19:17 21:25 24:24, 25 25:7 27:2 28:3 31:1 32:11 34:2, 3 59:7, 11 67:14 73:6 89:18 92:20 96:24 108:5 129:21, 25 130:15, 16, 24 131:3</p> <p>councillors 92:20</p> <p>Council's 130:6</p> <p>COUNSEL 2:1, 2, 3 4:4, 8, 16 5:7 6:14 55:22 83:17 104:25</p> <p>counselled 114:25</p> <p>count 48:21</p> <p>counterparty 70:10</p> <p>counting 16:19</p> <p>country 17:25</p> <p>counts 49:7</p> <p>Couple 29:23 47:10 66:3</p>	<p>89:22 93:10 104:14 118:1</p> <p>coupon 57:5</p> <p>course 20:7 59:7 92:23 127:6 132:12</p> <p>court 96:7 107:10</p> <p>cover 7:11 70:25</p> <p>coverage 51:19 58:15 87:12, 20</p> <p>covered 42:25</p> <p>covering 129:18</p> <p>CP 13:11</p> <p>create 69:25 87:16</p> <p>created 136:15</p> <p>creating 135:20</p> <p>credibility 60:10</p> <p>credit 41:12 44:25 45:4 48:19</p> <p>criteria 29:16 123:6, 15, 19, 22, 25 124:15 126:15 128:3 137:19, 23</p> <p>critical 58:19</p> <p>criticism 98:15</p> <p>cropped 122:20</p> <p>cross-country 16:13 19:25</p> <p>Crosstown 11:15</p> <p>Crown 5:22</p> <p>crucible 37:2</p> <p>cultural 131:2</p> <p>curious 133:4</p> <p>current 17:21 98:13</p> <p>currently 106:10</p> <p>Curriculum 3:3 7:7</p> <p>customarily 42:5</p> <p>customer 20:12</p> <p>customers 109:25 110:3 119:6</p> <p>cut 117:11 118:23 132:22</p> <p>CV 6:14, 24, 25 7:2</p>
---	--	--	--	--

<p>CVR 139:5</p> <p>< D ></p> <p>damages 23:4 53:19</p> <p>dangerous 131:14</p> <p>data 16:15 85:25 86:2, 10, 11, 14 87:12</p> <p>date 123:10</p> <p>dated 89:14 139:17</p> <p>dates 25:8</p> <p>Date-wise 67:7</p> <p>day 1:15 10:11 40:10 93:22 117:20, 23 118:4, 19 119:1, 10 121:24 123:12, 13, 16 127:15 139:17</p> <p>days 11:13 54:6 79:25 104:14 121:6, 16 124:18</p> <p>day-to-day 15:18 55:11 78:22</p> <p>DB 22:21 29:24 100:23</p> <p>DBB 28:22 30:2</p> <p>DBFM 26:24 27:5, 7 39:4 40:4</p> <p>deadly 137:22</p> <p>deal 10:12 13:16 25:14 56:3 91:3 110:22 112:18 128:19</p> <p>dealing 12:7 25:12 107:16</p> <p>dealt 10:14 30:13 43:15 69:8</p> <p>debate 28:12 78:13 89:4</p> <p>debt 18:2, 6, 9 39:18 51:18, 19 52:8 58:6, 15</p> <p>December 11:2</p> <p>decide 42:1 43:9</p>	<p>decided 8:22</p> <p>deciding 61:5</p> <p>decision 24:23 52:8 56:22 59:16 67:2 73:4 117:3</p> <p>decision-makers 14:23 26:25 30:6 33:7 60:17 61:20</p> <p>decisions 12:5, 9 24:23 60:18 62:16 100:11 115:3, 7</p> <p>declaration 4:11</p> <p>de-cluster 72:10</p> <p>dedicated 11:17 30:19, 20 35:6</p> <p>deemed 5:17</p> <p>deep 20:1, 4, 5, 6 21:14 40:7 73:15</p> <p>default 47:3 48:6 95:2</p> <p>defaulting 48:9</p> <p>deficiencies 65:1 115:23 128:5</p> <p>deficiency 115:18</p> <p>definitely 22:18 32:5 37:5 75:17 97:5 120:18</p> <p>definition 78:18</p> <p>definitions 77:14</p> <p>degree 61:5</p> <p>delay 43:2, 3 53:16 54:25 85:23 129:25</p> <p>delayed 115:24</p> <p>deleted 90:20, 23</p> <p>deliver 9:19 22:25 28:21 36:3, 4 37:2 50:4 76:16 111:12</p> <p>deliverable 42:11</p> <p>delivered 9:18, 20 14:11 15:11 22:5 80:14 114:22</p>	<p>delivering 10:1 40:4</p> <p>delivery 11:14 22:14 133:3</p> <p>Deloitte 12:25 76:12, 13 79:8 81:3</p> <p>demanding 11:19 80:6</p> <p>demonstrated 88:11</p> <p>demonstration 62:22 65:9 79:23 80:7, 17 137:20</p> <p>depending 51:11</p> <p>depends 43:18</p> <p>deploy 73:3</p> <p>depth 21:7 84:9 104:1</p> <p>deputy 10:8, 10 31:17, 23</p> <p>derail 95:16</p> <p>derailment 103:15</p> <p>derailments 102:24 103:1 132:1</p> <p>derived 16:13</p> <p>descope 73:18 74:1</p> <p>describe 15:5, 17, 25 97:20</p> <p>described 32:23 105:5</p> <p>describes 89:23, 25</p> <p>describing 30:4</p> <p>DESCRIPTION 3:2 8:6</p> <p>design 14:12 15:11 16:22 17:7 18:14 20:22 26:15 28:9, 17, 18, 22 29:24 30:1, 2 35:13 43:20, 21 50:2 99:21, 25 100:5, 11, 15 101:6, 25 102:7, 14 103:1, 4, 18 105:2 134:15</p> <p>designed 134:20</p>	<p>designer 29:12 103:21</p> <p>designers 45:15</p> <p>designing 26:23</p> <p>designs 20:20</p> <p>desire 127:1 128:19</p> <p>destination 16:15</p> <p>detail 15:1, 2</p> <p>details 127:12, 14</p> <p>determination 28:5 59:10 79:12</p> <p>determinative 27:12</p> <p>develop 99:3 107:14</p> <p>developed 33:10 37:13</p> <p>diagnosis 98:17</p> <p>diagonally 16:18</p> <p>dictates 68:15</p> <p>die 18:12</p> <p>difference 7:22 10:19 49:12</p> <p>different 9:24 23:1, 14 24:14 26:5 32:8 38:2 76:14 125:2 137:25</p> <p>digitally 139:13</p> <p>diligence 42:1, 5</p> <p>ding 113:21</p> <p>direct 11:8 48:16, 17 49:8, 13 57:3, 10, 16 61:12</p> <p>directed 27:5 31:14</p> <p>direction 35:22 110:14, 16</p> <p>directions 31:12</p> <p>directive 10:4</p> <p>director 16:2</p> <p>disappointing 45:18</p> <p>discipline 23:13 88:14</p> <p>disciplines 22:24</p> <p>disclosing 107:2</p> <p>discontent</p>	<p>130:6 131:12</p> <p>discrete 34:10</p> <p>discretion 113:23</p> <p>discussed 105:17 131:17 132:2 136:25 137:9</p> <p>discussion 67:1 69:22 108:22 129:3</p> <p>discussions 62:18 79:24 106:19 107:4 108:23 115:10 116:9, 16 117:2</p> <p>disgorging 110:13</p> <p>disparate 33:16</p> <p>dispatching 84:3</p> <p>disposal 26:8</p> <p>dispute 106:21 107:18</p> <p>disputes 54:13 77:18 106:17 132:13 133:1 134:8, 9</p> <p>distinguish 30:10</p> <p>distracting 78:20</p> <p>distraction 93:14, 15 96:20 98:14</p> <p>distress 53:15</p> <p>DMG 2:7</p> <p>document 6:18, 22 29:19</p> <p>documentation 98:24</p> <p>documents 3:9, 16 66:8</p> <p>doing 11:13, 20, 24 12:1, 19, 24 24:14 28:8 29:14 33:1, 14 41:17 47:8 48:21 49:11 53:11 72:22 78:6 81:7, 21 85:2, 16 88:4 89:6 99:4 107:20 110:2</p>
--	--	--	---	---

112:4 120:9 126:2, 22 130:23 dollar 19:1, 3 dollars 11:20 19:13, 14 22:12 48:1 51:15 dominant 84:6 106:5 doorstep 101:7 downsides 50:20 52:2 136:12 downtown 16:18 34:21 35:1, 5, 22 draft 79:17 drafting 34:5 Dragados 40:14 95:9 draw 48:19 drawing 16:17 drawn 97:15 drill 86:2 drills 84:16 drive 72:18 driven 21:6 54:16 driver 38:19 drivers 20:13 drives 38:9 driving 39:3 40:11 drop 95:21 drop-down 133:24 dropped 95:23 134:1 dropping 96:17 drove 72:24 drum 130:3 due 25:18 59:7 92:23 dumping 119:7 < E > EA 20:19 21:8, 10 earlier 38:11 48:5 57:14 80:6 108:11 126:10 early 11:25 18:14 104:12 earn 76:19	earned 77:1, 10 78:25 79:1 Eastern 8:17 east-west 58:21, 25 easy 24:13 71:11 economic 18:22 economy 18:23 19:4 effect 30:20 effectively 11:12 27:4 52:9 92:22 efficient 109:15 130:10 egg 71:12 egged 98:14 Eglinton 11:15 52:21 77:8 elected 24:3 Electrical 9:22 electrification 12:2 element 43:19 86:17 elements 21:1 37:21 115:21 elevators 81:23 eligible 51:14 EllisDon 40:13, 16 Ellis-Don 95:8 email 89:23, 25 90:2, 15, 18 91:1, 2, 8, 15, 22 98:18 99:16 102:1 103:3 105:4 emails 90:20 embodied 46:21 emphasize 108:17 employ 84:7 employed 27:7 employment 16:15 EMU 9:22 encountered 29:2 encyclopedic 26:5 ended 85:9 88:7	end-to-end 58:24 energy 24:9 engage 30:24 engaged 22:13, 14 65:15 93:12 126:15 engendered 76:24 engineer 12:20 engineering 29:8, 9 74:2 75:8 English 125:19 engrossing 52:21 enjoy 45:1 47:13 94:9 ensuring 26:16 enter 4:20 115:3 entered 5:2, 8, 12 entering 11:25 enthusiasm 86:20 entire 12:2 28:23 70:25 entirely 93:25 entities 36:19 133:12, 24 entitled 53:21 113:20 entity 37:14, 15 84:3 132:8 entrusted 104:17 envelope 77:23 environmental 7:20 10:22 16:12 episodic 60:3 episodically 62:3 equally 73:7 equipping 14:17 equity 39:18 40:7, 8 41:15, 18 51:23 133:11 135:16, 18 136:2, 11 error 104:2 errors 5:11 102:7 134:16, 21 ESC 65:11, 18	escalation 17:12 106:22 escalators 20:3 81:24 essentially 70:5 establish 5:20 81:4 established 38:5 establishes 86:9 establishing 78:1 esteem 92:4 estimated 21:4 74:25 evaluated 121:24 evaluation 71:12 72:11, 12 event 54:17 55:1 75:19 85:24 87:20 88:8, 9 89:5 events 32:13 43:1, 2 54:3 86:22 everybody 48:11 66:17 72:18 75:3 87:16 88:20 109:11 118:20 everybody's 128:19 evidence 4:10, 21 5:3, 8, 12, 25 6:3, 7 66:4, 5 97:21 evolved 38:5 80:4 exactly 20:18 22:8 28:18 63:15 examination 138:16 139:13 example 18:24 38:18 48:6 49:20 68:5 73:15 74:11 75:5 78:8 80:23 84:5 100:13 101:20 113:12 134:23 excavation 84:19 85:10 exceed 72:6	exceptionally 78:10 excerpted 91:8 Exchange 20:5 execute 33:18 52:8 110:21 execution 85:23 104:2 executive 52:24 60:20 62:3, 9 63:1, 9, 10 107:25 112:6 116:16, 23 120:3 exercise 16:14 Exhibit 7:6, 7 EXHIBITS 3:1 exist 40:9 103:23 135:14 existing 67:17 68:1 expand 58:13 69:1 70:24 83:24 expanded 69:1 126:15 Expansion 12:1 52:4 58:18 77:4, 8 expect 41:7 42:20 65:20 102:21 125:9 expected 45:20 expecting 137:21 expensive 51:11 58:7 experience 8:7 11:9 12:14, 17 15:6, 7, 8 50:7 53:2 54:19, 21 60:6, 24 81:15 experienced 59:25 63:6 101:8 expert 103:8 119:23 expertise 29:3, 10 explain 91:17 132:25 explained 38:11 133:6 explored 21:8 express 110:18 119:1, 2
--	--	---	---	--

<p>expressed 117:10 118:24 expresses 131:5 expression 92:3 expropriated 20:8 extend 70:14 extended 123:4 130:11 extends 89:18 extension 49:20 extensive 9:9 76:15 extent 31:25 64:4 105:4, 8 106:12, 13 111:10 116:14 extra 18:16 22:11 extremely 98:25 extremeness 49:2 eye 93:6</p> <p>< F > face 54:15 98:22 faced 25:4 26:6 83:13 facility 14:17 69:5 facing 16:6 39:21 53:16 fact 38:4 39:12 64:9 84:20 93:9 103:11 135:9 factors 127:18 facts 34:14 fail 82:9 failed 87:14, 23 failure 35:21 80:1 99:19, 24 101:7, 16 123:16 failures 99:25 100:5, 15 101:25 103:2 105:2, 3 fair 39:8 47:17 61:11 71:9 fall 44:13 47:7 102:11 falling 48:11</p>	<p>familiar 9:25 14:8 100:19 121:8 fanciful 42:12 fare 130:12 fashion 23:1 60:13 122:12 fast-moving 12:7 favour 47:23 87:13 107:19 favourable 27:15 featherbed 51:21 features 57:17 federal 17:9, 17, 19, 22 18:11 21:23 22:9 27:14 39:5 fee 51:4 feedback 26:19 70:21 feel 10:18 83:16 97:8 112:21 127:21 feeling 64:5 felt 11:4 87:4 110:20 112:14 130:2 fewer 113:4 fight 40:18 figure 65:24 89:13 files 10:6 final 112:12 131:13 finally 65:6 Finance 10:3 15:12 17:17 35:13 36:19 39:24 50:1, 2, 3 financial 15:23 41:19 65:24 66:2 71:15, 20 72:25 77:23 87:8 94:4 132:16 financiers 87:9 financing 22:24 27:16 28:11 39:12 40:2, 3, 23 41:17 56:23</p>	<p>Finch 52:22 55:9 77:8 find 14:2 54:2 66:12 87:13 96:2 103:25 finding 111:23 fine 74:14 82:25 105:7 136:20 finger-point 37:8 finish 48:24 133:14 finite 96:9 firm 8:19 55:7 firms 29:9, 11 36:25 38:1 135:17 fit 53:5 fives 39:19 fix 48:25 96:11 134:15, 21 fixed 36:2 38:10 113:22 fixed-price 22:25 fixing 45:16 92:14 flat 100:19, 20 101:4 flaw 133:8 135:13, 15 flaws 103:18 flexibilities 129:3 flexibility 28:20 107:14 128:24, 25 flexible 109:8 127:3, 18, 20, 22 128:14, 18 flow 77:24 78:5 flows 11:23 110:9 focus 10:18 40:19 45:23 102:20 focused 16:14 22:18 28:20 45:13, 14 60:9 72:18 73:7 80:21 92:13 96:7, 16 106:4 111:1 119:19, 20, 21 focuses 32:11</p>	<p>focusing 97:14 103:4 114:15 follow 20:9 55:21 82:24 followed 3:10 following 3:9, 17 106:20 126:1 follow-up 4:17 19:23 23:11 47:10 105:17 131:16 138:7, 10, 11 foot 68:2 force 101:4 forced 101:18 forces 42:19 foregoing 139:7, 15 foresaw 119:13 form 33:21 34:4 38:3 85:1 114:24 formed 112:25 114:20 126:10 former 134:4 forth 14:15 139:9 forward 13:4 20:19 24:24 58:18 77:1 80:22 107:15 137:7 found 107:19 foundation 53:24 four-page 6:18 frame 126:14 framing 14:23 free 21:13 frequency 20:13 59:2 frequently 129:19 friend 91:13, 24 97:6, 9 frustrated 36:1 full 10:23 52:22 89:8 109:19 117:4, 6 137:15 fullness 135:19 fully 125:15 fun 94:7 functional</p>	<p>16:22 20:24 funded 60:7 funding 60:7 furnish 86:7 107:12 furnished 66:9 135:10 future 99:5</p> <p>< G > game 36:20 38:9 gamesmanship 96:23 garages 20:4, 6 21:14 gate 72:20 gated 71:10, 11 75:17 83:4, 20 84:1 gating 72:24 74:13 gear 72:13 gearbox 103:5, 11 geared 71:13, 14 72:12, 25 gearing 72:15 general 108:25 111:16, 18 112:7 generally 18:15, 18 19:19 33:3 63:18 90:19 102:3, 4 122:18 gentleman 8:24 59:22 geotechnical 83:1, 13 86:3, 8, 14 give 15:19 28:24 51:6 57:6 61:16 69:12, 16 70:21 72:7 87:11 88:3 100:13, 17 101:20 128:10 given 5:9, 23 21:22 49:23 61:12 85:13 98:25 99:1 105:9 132:16 giving 6:3 19:20 28:20 64:4 128:15</p>
---	--	---	---	--

<p>glacial 84:13 88:22 God 99:8, 10 go-forward 137:22 Gold 55:8 Golder 86:7 Golders 86:13 Good 4:3 8:2 14:22 16:7 21:24 23:23 24:17 25:17 28:14 29:2 37:25 43:10, 16 70:13 78:5 84:8 103:7 113:9 119:5, 9, 10 government 10:17 17:8, 9, 18 18:12 21:23 27:14, 17 28:4 36:6 39:5 99:1 governments 17:20 22:10 granted 65:6 granular 76:18 graphics 31:5 grapple 32:12 grappling 22:2 great 16:9 20:9 69:12 128:19 ground 5:19 79:2 85:13 104:19 106:23 127:8 GROUP 1:7 2:6 37:7 75:4, 7 84:22 85:9 132:17 grow 19:3 growth 17:19 guarantees 41:12 44:17, 20 48:18 49:9 guess 12:20 14:20 34:11 48:1 69:17 96:8 115:13 116:21, 22, 25 125:10 GUEST 1:7 2:6 3:3 4:2 6:12, 23 7:4, 8, 16 8:11 12:16</p>	<p>13:9 14:4 15:7, 13, 19 16:1 19:25 23:5, 8, 13 25:20, 25 26:4 29:21 30:1, 3, 7, 17 31:13 32:4, 20 33:4, 23 34:19 35:9, 16 39:9 40:6 47:18, 22 49:17 50:5 52:17 55:18 56:9 59:12, 19 60:25 61:11 62:1, 11, 17 63:3, 12, 19, 23 65:13 66:1 67:7, 9, 13 71:10 75:14, 24 76:12 79:7, 15, 19 81:3, 8 82:7, 13 83:3, 8, 23, 25 89:20 90:3, 7, 10, 13, 15, 19, 24 91:3, 6, 16, 20 97:17, 24 98:4 100:2, 9, 17 102:2 103:4 105:6, 8 106:2 107:23 108:16, 24 111:7, 9 112:3, 24 114:23 115:8 116:13, 20 117:7, 15, 24 118:7, 9, 11, 15, 17 119:18 120:11 121:3, 10, 20 122:3 126:4, 21 127:19 128:17 129:14 130:19 131:21 132:5 133:4 134:10, 13 137:3, 12 guided 34:18 guidepost 27:13 guts 113:1 guy 7:18 9:3 59:25 92:1 93:4 guys 46:8 < H > habit 90:20</p>	<p>half 78:14, 15 100:7 halls 32:21 hallway 109:23 118:2 hand 28:24 40:19 handful 53:9 107:19 handle 54:18 hands 84:19 handy 121:7 Hang 46:7 happen 80:17 107:3 109:5 117:18 happened 45:9 46:2 74:23 88:19 103:9, 17 108:8 117:22 118:4 119:4 happening 11:11 53:3 93:1 122:5 127:8 happens 43:24 Happy 6:18 49:10 83:12 93:16 hard 22:7 25:22 89:2 98:12 111:23 117:11 118:23 harder 110:10 123:22 harmonious 130:25 harsh 125:14 hate 111:20 hawk 113:10 hazard 124:21 137:20 header 85:11 heading 21:6 headways 68:10 healthy 18:1 heard 94:19, 20 hearing 4:23 25:22 hearings 4:12, 22 heavily 34:7 120:6 heavy 70:4, 7 heck 94:1</p>	<p>Heckert 2:12 25:24 139:5, 21 Held 1:14 56:13 99:22 109:1 111:5 116:4 help 11:6 13:2, 3 18:16 22:9 25:25 33:17 41:21, 22 53:12 54:22 55:4 60:13 63:17 67:3 93:9 98:22 99:9 102:20 105:24 106:5 108:21 helped 31:9 helpful 31:25 53:6 93:17 116:25 helping 12:8 33:12 34:2 67:21 120:20 Hershfield 12:23 hiccups 119:11 high 125:3 128:11 higher 59:2 high-level 71:6 122:7 hire 42:5 48:23 hits 130:12, 13 hold 28:14 64:12 115:19 holding 95:7 113:9 holds 43:13 hole 89:1 home 8:21 69:6 honest 53:5 125:7 hook 86:18 Hospital 8:17 36:11 81:17 hospitals 136:21 hour 35:22 100:7 110:14, 16 hours 53:9 66:3 93:22 huge 21:16 26:7 28:12 84:16 hugely 93:12</p>	<p>hundred 22:11 71:16 88:24 101:6 hundreds 14:6 hung 34:12 Hurontario 52:22 77:9 hurt 93:10 < I > IC 106:25 107:1 113:25 idea 23:20 29:2, 6 34:23, 24 59:3 126:10 ideas 33:9 96:25 97:1 identified 49:24 II 50:23 55:2, 4, 11, 17 56:5 59:13 67:15, 24 68:4 69:3, 13, 21 70:15 73:10 74:24 75:12, 18 106:7 imagine 66:8 79:19 80:25 81:3, 6 102:5 Imbesi 2:3 4:7, 14 105:16, 19 131:16, 18 138:6, 8 impact 59:15 97:21, 22 impactful 99:4 impacts 56:4 important 17:14 19:5 38:10 64:11 67:16 80:8, 15 93:11, 22 113:7 128:23 132:23 impression 122:18 125:23 improving 80:24 inappropriate 87:5 inaudible 25:13, 16, 21 118:8 138:8 incentive 37:8 40:2 77:23 incentives 132:16 136:22</p>
---	---	---	---	---

<p>include 28:13 50:3 56:23 98:6 included 132:4 including 11:22 17:8 27:15 57:12 70:15 78:2 95:21 inclusive 39:9 incorrect 123:5 incriminate 5:20 independent 64:24 120:16 INDEX 3:1, 15 indiscernible 17:24 individual 50:21 132:10 infighting 136:8 inflation 17:21 inflexible 127:4 influence 40:3 influenced 127:17 inform 97:18 information 65:9 102:6 107:5, 13 120:8 121:22 132:23 informed 94:23 114:16 INFRASTRUCTURE 1:7 2:6 11:21 27:10 34:8 37:12, 17 38:13 56:24 59:1 70:1, 19, 22 81:14 inherent 42:18 initial 122:8 126:13 initially 69:9 129:23 inject 51:23 78:4 injected 40:9 injection 58:6 in-market 26:13 73:13 inquire 103:24 inquires 66:13 Inquiries 5:16 Inquiry 4:6 5:17, 24 89:17 91:12, 19 92:5, 19, 21 93:25</p>	<p>94:13, 21 95:4, 12 96:5, 17 98:21 99:1 132:10 insane 56:11 inside 53:18 95:24 132:9 insolvent 44:13 inspections 104:20 install 69:24 installed 68:12 104:6 instance 5:22 insulated 46:6 insurance 88:16 insured 88:18 insurers 88:16 integrated 36:7, 8 100:21 integrity 68:25 intends 4:20 interact 29:12 67:17 interacted 31:15 32:21 interacting 31:22 34:8 interaction 26:13 32:15, 16 interactions 32:2, 18 interest 39:4 56:16 58:8 70:2, 10 132:9 interested 11:10 13:16 70:5 107:11 interesting 117:20 137:14 interests 9:4 interface 68:1 69:7 109:24 interfaces 26:9 68:3 interfering 133:2 interject 82:19 interjects 25:18 interlocutor 59:23 internal 132:11 internally 21:5 103:20 132:14 internet 25:21</p>	<p>interpretation 86:11 124:6 interprets 86:9 interregnum 55:14 interrupt 35:7 111:21 interruption 124:9 interval 123:23 124:2 intervene 4:15 intervention 127:10 137:13 interview 4:9, 14, 18, 19 6:15 7:6 90:14 introduced 7:6 investigating 131:24 investigation 132:4 investigations 84:16 86:3 invitational 60:4 invited 16:5 62:6 63:15 involve 80:1 involved 16:23 30:22 32:24 34:7 52:15 53:4 55:9 59:12 61:24 67:20 103:25 114:9 115:5 116:8 117:1 120:6 involvement 52:7 59:15, 17 61:10 62:14 79:12 105:21 106:2 126:1 IO 27:7 38:4 50:14, 17 59:8, 12, 17, 21 60:5, 15, 20 61:5, 14, 24 62:14 71:13 79:8 115:15 IO's 59:20 60:9 61:9 irrespective 135:9 issue 11:6 13:2, 7 20:16, 17 25:2 30:13</p>	<p>33:19 50:25 67:16 74:17 84:24 85:19 86:24 87:1 100:19 101:13 111:11, 12 123:24 issues 9:25 10:11, 14, 15 12:8 13:13, 22, 23 14:1, 5, 9, 16 16:6 24:18 25:11 26:5, 10 32:12 33:13 37:9 48:25 51:13 75:16 76:18, 24 78:18, 23 95:17 122:9, 10, 15, 17, 22 123:13 125:10, 11 126:14 137:7 issuing 81:10 items 3:10 115:14 < J > Jacobs 12:23 jail 36:12 jar 98:7, 8 Jensen 16:2, 4 31:13, 19, 24 33:12 34:13 94:15 jeopardy 115:22 127:3 job 8:18 40:19, 25 41:5 44:22 87:23 91:25 119:5 133:15 John 2:7 16:2 31:13 55:24 66:13 82:19 90:12 94:15 96:14 105:7, 11 106:11 111:20 131:19, 22 134:6, 12 138:11 John's 90:7 joined 4:6 10:2 joint 44:11 Jon 31:7 Joshi 2:13 journey 20:12 130:11</p>	<p>judgment 115:16 judicial 89:17 91:11, 19 92:5, 18, 21 93:24 94:13, 20 95:4, 11 96:5, 17 jump 52:6 66:21 JV 133:7, 21 134:25 JV's 135:1 < K > Kanellakos 106:12, 14 Kate 2:2 4:3, 4 6:13 7:1, 5, 9 8:5 12:12 13:5 14:1 15:3, 9, 14, 22 19:22 23:3, 6, 11 25:24 29:18, 23 30:2, 4, 14 31:11 32:2, 17, 23 33:21 34:16 35:7, 10 39:1, 25 47:10, 20 49:14, 23 50:20 52:5 55:16, 21 56:1 59:8, 14 60:19 61:7, 11, 22 62:8, 13, 25 63:8, 17, 21 65:10, 22 66:10, 15, 20 67:8, 10, 11 71:3 75:10, 21 76:3 79:4, 11, 16 81:1, 6, 18 82:3, 11, 25 83:4, 15, 24 89:11, 21 90:6, 8, 17, 22, 25 91:4, 7, 17 97:14, 18, 25 99:15 100:4, 14 101:23 102:19 104:23 105:14, 20 107:20 108:11, 21 111:1, 8, 20, 24 112:20 114:13, 24 115:2 116:8, 18 117:1, 13, 21 118:3, 8, 10, 15,</p>
---	---	---	---	--

<p>16 119:15, 24 120:24 121:4, 12, 21 125:25 126:8 127:16 128:13 129:10 130:14 131:13, 23 132:25 136:24 137:5 138:6, 9, 13 Kent 31:15, 18 94:15 kept 30:5 119:7 key 34:17, 20 35:14, 18 38:19 39:2 kick 124:23 kicks 65:4 kilometres 14:14 69:2 124:4 kind 7:19, 24 9:9, 21 13:18 14:5, 9 16:17 17:19 18:22 22:22 24:7 27:16, 22 28:14 32:10 33:5 36:22 37:1 40:17 43:13 46:11 47:1 50:8 51:20 55:12 58:20 63:5, 13 77:15, 16 80:24 84:25 85:11 88:3 92:2 94:1, 24 104:10, 12 108:25 111:16 112:11 119:9, 25 120:8 121:22, 25 122:15 126:25 128:7 135:20 kinds 34:9 76:14 King 23:22 34:25 Kirkpatrick 31:15 knew 9:21 31:16, 18 84:15 86:1 95:11 115:12 120:18 127:7 knit 36:16</p>	<p>knowing 54:6 122:13 knowledge 61:13 known 29:4, 11 Kreskin 119:12 < L > lack 68:4 77:17 86:19 133:20 ladder 85:20 87:7 laid 113:18 land 20:7 21:18 landed 129:8 lane 35:25 language 78:9 97:20 98:11 large 13:20 54:15 98:14 110:13 largely 30:23 70:3 87:8 late 45:25 64:10 77:25 118:6 119:1 129:17, 23 135:6 lathe 101:10 113:12 launch 62:16 63:22 109:20 112:21 117:4, 16, 17, 23 118:4, 10 126:1 launched 120:7 law 113:18 lawsuit 95:2 105:10 lawsuits 103:19 lawyer 94:6 98:1 lawyers 125:18 layer 86:6 LD 23:3 LDs 23:2 lead 12:24 59:21 81:13 leader 130:20 learn 110:3 leave 10:16 67:1 led 35:14 102:23 131:25</p>	<p>left 7:17 66:21 84:19 100:8 104:24 legacy 9:24 91:23 legal 95:6 106:16 107:8 108:6 115:22 Leila 2:12 139:5, 21 lend 41:3 42:2 43:7 lender 49:4, 13 50:22, 24 51:20 57:7 58:1 87:1 lenders 40:21, 22 41:3, 6, 10, 16, 21, 22, 24 42:6, 8 43:5 44:1, 2, 18 45:2 46:4, 18, 25 47:4, 12, 16, 24 48:15, 21, 23 49:11, 14, 25 50:8, 15 51:1, 18, 23 52:9 53:19, 20 56:3, 4, 7 57:3, 4, 12 58:4, 8, 10 59:3 67:3, 18 68:20 136:7 lender's 57:16 67:6 lending 41:10 lends 8:1 length 82:12 lenient 124:19 letter 48:19 letters 41:12 level 16:22, 25 43:22 86:10, 12 87:4 89:5 105:21 108:2 116:11 123:1 124:3, 4 128:11, 25 135:24 levels 68:7, 16 liability 5:21 47:23 Libman 2:7 life 33:14 LIGHT 1:6 4:5 8:8 9:13 12:13 13:6 15:4</p>	<p>102:17 liked 101:14 limitations 105:12 limited 9:16 49:23 limiting 69:19 limits 25:4 73:8 linear 78:15 lined 34:25 lines 35:6 liquid 44:21 liquidated 23:3 53:19 literally 35:1 Litigation 2:3 living 127:15 128:9 LLP 2:7 loathe 78:6 local 10:14 Lomow 31:7 long 14:14 20:10 36:12 53:21 54:14 55:9 92:7 100:3 111:14 121:15 longer 58:14 82:10 112:22 114:21 123:24 longs 41:11 long-term 40:22 41:6, 22 44:24 56:21 68:25 looked 15:17 70:8 76:13 looking 7:10 27:18 28:19 29:19 43:5 56:3 57:19 76:8 137:1 looks 6:23 82:9, 12 loop 110:8 loose 103:14 loosen 104:8 lose 71:24 losing 72:3 lot 8:1 10:6, 14 13:15, 17 24:9 25:12 28:7 32:15 33:12 37:20, 25 40:25 43:11 48:4</p>	<p>54:19, 20 57:17 60:6 93:1 94:8 110:4, 20 123:22 133:18 lots 12:16 13:13 26:9 33:23, 24 44:25 47:12 59:25 81:15 102:6 103:19 108:6 love 99:8 low 46:22 102:9 lower 8:14 39:19 lowered 125:1 lowers 41:16 lowest 71:22, 23 72:1 loyal 91:13 LRT 10:25 12:18 13:10 24:4 36:10, 11 38:13 40:12 76:11 81:16 89:17 LRTs 11:21 12:18 50:11 < M > machine 36:12 84:18, 23 85:6, 7 98:6 100:3 101:1 123:20 138:1 Mackenzie 23:22 34:25 Macquarie 135:25 made 5:2, 5, 13 23:18, 19 24:23 27:1 46:23 62:16 64:19 79:9 88:16 113:3 114:6 124:13 133:23 139:12 magnified 125:13 maintain 15:12 35:13 50:2 68:24 71:1 82:16 99:21 107:13 maintainability</p>
--	--	--	--	---

<p>70:19 maintained 60:2 maintainer 95:18, 22 103:10 133:17, 23 134:18, 25 135:5, 10 maintainers 69:4 maintainer's 134:17 135:9 maintains 68:12 maintenance 14:17 28:13 68:25 69:4, 6, 21 70:25 105:3 133:7, 21 major 8:18 30:25 54:18, 20, 21 106:17 109:7 making 10:19 33:25 43:6 60:10, 11 73:7 80:5 100:12 man 99:11 134:19 manage 37:16 managed 18:8 management 11:23 26:11 33:19 manager 28:2 31:16, 20, 23 32:1 52:25 59:6 73:5 96:15 106:24 114:10 managing 84:4 Manconi 54:23 61:4 96:15 106:11, 12, 18 114:10 117:8, 22 127:14 Manconi's 62:23 manifest 125:10, 12 manifesting 122:9 market 24:2, 6, 9, 17 25:17 26:12 73:10, 18 74:4, 14, 25 83:19 86:25 87:3, 4, 17, 21 137:21</p>	<p>marketplace 37:22 60:11 73:1 74:17 87:13 136:13 Martin 10:3, 7 match 46:15, 16 material 26:8 49:18 65:2 94:25 materially 49:21 50:22 68:18 materials 95:13 102:14, 16 math 48:2 Mather 2:7 55:23, 24 66:13 82:19 90:12 105:7, 11 111:20 131:19, 22 134:6, 12 138:9, 11 matter 47:4 95:11 Max 2:7 90:4, 6, 7 maximum 104:7 mayor 24:3 32:3, 6, 12, 18 92:22, 24 Mayor's 32:7 94:22 McDonald 102:5 McGrann 2:2 4:3, 4 6:13 7:1, 5, 9 8:5 12:12 13:5 14:1 15:3, 9, 14, 22 19:22 23:3, 6, 11 25:24 29:18, 23 30:2, 4, 14 31:11 32:2, 17, 23 33:21 34:16 35:7, 10 39:1, 25 47:10, 20 49:14, 23 52:5 55:16, 21 56:1 59:8, 14 60:19 61:7, 22 62:8, 13, 25 63:8, 17, 21 65:10, 22 66:10, 15, 20 67:8, 11 71:3 75:10, 21 76:3 79:4, 11, 16 81:1, 6 82:3, 11,</p>	<p>25 83:4, 15, 24 89:11, 21 90:6, 8, 17, 22, 25 91:4, 7, 17 97:14, 18, 25 99:15 100:4, 14 101:23 102:19 104:23 105:14, 20 107:20 108:11, 21 111:1, 8, 24 112:20 114:13 115:2 116:8, 18 117:1, 13, 21 118:3, 8, 10, 16 119:15, 24 120:24 121:4, 12, 21 125:25 126:8 127:16 128:13 129:10 130:14 131:13, 23 132:25 136:24 137:5 138:6, 9, 13 meaning 41:20 125:20 meaningful 91:25 95:14 99:4 means 19:1 29:11 30:8, 9 53:17 68:6 84:17 124:3 meant 68:15, 19 69:24 91:21 97:13 102:9 113:5 122:25 124:1 128:4 137:13 measure 24:4 31:6 89:3 Mechanical 9:23 mechanics 132:11 mechanism 22:15 68:14 69:22 70:16 72:11 media 129:16, 17, 18 130:3 meet 54:24 meeting 53:10 116:17, 22 123:13</p>	<p>meetings 26:15 30:25 31:1 33:23, 24 53:5 61:2 62:10 63:25 65:11, 18, 23 66:6 74:21 79:21 108:3, 6, 9 Member 2:2, 3 4:7 members 32:3, 19 33:1 130:15 membership 120:2 memories 122:4, 21 129:6 memory 81:10 112:4 117:25 mental 128:7 mention 130:9 mentioned 56:6 76:6 130:8 mentor 91:24 97:9 merits 28:6 92:9 met 115:17 metal 85:5 methodologies 76:21 84:6 methods 29:11 84:17, 21 metres 20:1 21:15 84:12 Metrolinx 11:14, 16 Michael 96:14 127:14 mid-2011 25:9, 10 middle 37:7 127:6 mid-nineties 125:3 Mike 106:8, 9, 10 miles 88:24 milestone 76:19 77:15, 19 78:1, 7 79:5 milestones 76:4, 22 77:12 78:12, 19, 22 million 9:14 22:11 47:23 48:1 57:8, 13</p>	<p>million-dollar 73:17 millions 100:11 mind 38:8 74:12 94:18 100:18 102:8 112:11 127:3 130:23 mindset 81:20 111:19 mini 77:16 minimal 106:3 Minister 10:8 27:10 ministers 10:11 Minister's 7:17 Ministry 10:2 minor 65:1, 2 115:18, 23 128:5 minority 40:17 minutes 35:5 116:24 mischaracterizati on 92:8 missed 7:15 mistake 132:7 mistaken 85:21 mitigate 54:8 model 35:13, 14 37:12, 13 39:6 40:4 46:17 49:6 50:3 77:6, 7 92:10 133:9 models 27:21 moderating 40:2 modestly 14:22 modifies 50:22 money 18:17 19:6, 10 27:20 39:13, 15 43:11 51:21, 22 53:8 57:8 58:3 73:2, 3, 16 77:25 98:1 109:13 monies 36:21 monolith 132:24 month 121:17 monthly 79:2 months 48:8 64:9 129:17 Morgan 96:14 106:8 morning 4:3, 6 66:15 132:3</p>
---	---	---	---	--

<p>136:25 137:9 Morrison 12:22 mortgage 43:9 motivated 92:6, 12 93:8, 25 motivates 40:17 MOU 123:8 Mount 128:2 move 18:15 29:22 42:23 58:18 68:15 110:4 135:23 moved 11:12 moving 20:19 MSF 69:4 muddled 15:20 multiple 47:1 63:7 68:7 municipal 17:16, 18 19:2 municipalities 8:14 municipality 8:12 18:2, 7, 18 21:18</p> <p>< N > nailed 43:23 named 8:24 55:8 Nancy 31:22 94:15 narrow 84:11 85:8 nature 42:18 44:16 80:18 83:22 128:4, 5 129:5 navigate 98:24 NDP 92:7 near 103:13 necessarily 27:12 66:4 94:9 122:23, 24 128:8 necessary 58:7 75:8 95:13 necessity 20:3 needed 19:7, 24 20:6 26:10 28:4 30:24 31:5 34:1 36:2 64:6 68:20, 23 69:7 70:21 74:3 78:11</p>	<p>108:13 111:3 114:17 126:11 needs 80:10 negative 50:7 negotiation 13:11 negotiations 69:9 129:2 nervousness 117:10 network 12:2 new 7:21 10:12 19:17 58:6 69:2 110:3 119:8 122:16 news 89:12, 14 nitty-gritty 65:8 nobody's 88:13 nominate 132:20 nonperforming 49:5 non- typographical 5:13 normal 89:10 north 21:6 north-south 23:15, 21 nose 35:1, 2 note 97:11 noted 3:16 notes 29:20 33:25 116:25 139:16 noteworthy 38:23 notice 54:5 noticed 7:10 29:18 notwithstanding 46:25 November 89:14 NPV 56:17 number 16:19 19:4 21:11 26:7 31:2 32:6 53:22 54:16 56:2 74:8 76:24 81:22 96:9 113:7 121:7, 13 125:2 numbers 84:16 110:13 nursing 8:16</p>	<p>< O > object 6:6 objected 5:17 objections 139:12 objective 29:16 123:22 125:16 128:3 137:18 obligations 69:1 obliged 82:16 O'Brien 24:2 34:22 observe 77:11 obtain 4:10 17:9 OC 62:23 occasions 32:6 74:8 occur 32:13 48:5 54:6 77:13 88:23 occurred 54:17 occurring 48:6 137:4 October 89:24 odd 121:16 off-brand 94:23 offended 97:12 offer 55:3 offered 129:1 offering 71:20 office 7:18 9:1 13:3 16:5 22:1 27:1 106:14 Olympics 38:19 Olympus 128:2 onerous 74:6 ones 49:19 ongoing 61:6, 21 Ontario 8:17 12:18 18:21 34:8 37:12, 17 38:14 56:24 80:4 81:14 92:7 136:19 Ontario's 136:13 open 51:5 129:12, 15 130:18 opened 69:9 opening 51:3 operated 131:3</p>	<p>operating 81:21 operator 113:6 opinion 50:13, 14 59:6 72:17 92:3, 8, 19 95:4 132:22 opportunity 5:9 54:7 opposed 117:5 120:20 option 73:19 options 27:22 51:25 56:2 59:6, 9, 18 67:21 79:9 order 4:23 14:18 15:2 20:8 34:14 48:9, 15 66:20 78:11 104:23 107:6, 12 112:15 orders 17:8 27:17 28:4 36:6 organization 60:5 86:14 origin 16:14 original 58:20 originally 9:17 51:9 OTTAWA 1:6 4:5 12:18 13:7 18:1, 24 40:12 45:9 59:24 76:23 80:18, 25 82:5 83:7 88:25 89:17 92:15 111:14 119:19 Ottawa-Carleton 8:13 Ottawa's 8:8 12:13 15:4 44:18 ought 116:11 outcome 28:19 35:19, 20 36:3, 5, 16 95:14 102:16 outlier 115:9 outlined 56:1 outperformed 59:5 output 26:17 70:18, 23 72:6,</p>	<p>8 74:5, 9 80:13 outside 32:22 outstanding 115:14 overage 18:19 overages 38:12 overall 11:19 29:13 overlay 27:3, 17 overly 74:6 110:23 129:25 oversight 11:8 41:24 overstrung 134:22 Overtalking 118:13 owned 133:10 owner 135:20 owners 41:13, 14 70:3 owner's 12:20 owns 68:11</p> <p>< P > p.m 1:16 138:17 P3 15:5, 7, 8 22:17, 18, 19, 22 27:24 28:16 36:6 38:18 39:5 41:23 46:17 72:12 77:6 92:10 97:3 P3s 22:19 27:15 76:16 package 44:20 page/line 3:17 paid 19:9 24:12 41:5, 9 44:23 46:10 47:5 53:14 64:8 88:16 92:15 108:19 111:4, 15 112:2, 16, 23 114:5, 18, 21 126:12, 20 pain 53:24 paragraphs 89:23 Pardon 118:15 parent 78:3 parental 41:11 44:20 48:18</p>
--	--	--	--	---

<p>49:9 parents 44:5 parking 20:4, 5 21:14 part 10:13 22:3 25:25 26:16 29:17 37:1 44:1 52:10 60:18, 21 62:18 65:7 77:1 81:12 93:23 120:1, 4 128:20 participants 1:15 2:5 5:6, 12 participate 23:24 68:24 participated 24:1 106:17 participating 33:24 96:19 particular 126:24 130:15 particularly 92:19 130:16 partly 109:18 partner 31:7 44:14 47:15 99:20 113:9 117:18 partners 44:12 parts 33:16 36:9, 14 40:12 45:10 136:3 party 115:10 pass 25:23 82:9 passed 8:22 137:16 passengers 117:11 119:8 passionate 11:18 93:23 pattern 68:13 122:25 patterns 110:4 Patterson 59:23 Paul 10:3 pause 6:10 pay 17:25 19:13 37:25 38:12 39:10, 17 47:2 51:4 53:19 54:12 56:12, 15, 16 57:4 58:11</p>	<p>64:12 94:5 136:6 paying 18:19 57:21 76:21 payment 46:21 56:18 68:14 69:22 70:15, 17 124:22 payments 44:24 45:22 46:20, 23, 25 53:20 64:23 pays 79:1 pea 44:6, 7 peak 35:23 people 9:8 12:5 16:16, 19 22:20 24:13 35:21 36:1 37:25 58:20 72:5 94:14 96:10, 12 99:11 101:8 102:11 103:24 110:8, 13, 14, 16 111:10, 13 128:21 135:14 people's 130:11 percent 16:25 17:7 18:5, 6 20:24, 25 21:2 30:19 39:17 43:21, 22 44:19, 21 47:24 57:12 62:23 71:17 72:1, 2, 5 74:25 92:5 101:6 115:20 118:22 124:24 125:4 133:25 percentage 71:23 perfect 80:19 122:14 131:22 perfection 124:17 perform 13:4 40:18, 20 116:10, 11 performance 28:15 39:10 45:18 46:22 48:7 62:20 64:22 113:19, 24 114:1 122:1</p>	<p>128:6 performed 21:9 performing 99:7 119:25 121:23 peril 54:15 58:4 period 7:14 53:8 119:16 121:5, 8, 18 122:2 perjury 6:3 permanent 23:18, 19 permits 4:16 18:6 person 5:22 31:14 personal 50:13 89:25 91:1, 5, 22 personally 93:12 95:1 person's 112:11 perspective 20:17 27:6 59:14 113:6 perspectives 53:1 perverse 136:22 Peter 8:24 petered 63:13 phase 10:24, 25 30:16 41:25 42:3 43:14, 18 45:7, 8 52:10, 14 76:10 80:12 120:10 phases 12:1 phone 90:21 pick 7:12 44:14 picture 33:16 128:8 piece 69:18 130:7 pile 42:17 pilot 9:13, 15 23:18 pipe 42:23 place 6:2 23:9 76:1 88:21 89:9 103:13 108:23 117:14 121:15, 16 139:8 plain 125:19 plainly 21:20 plan 6:8 33:18</p>	<p>43:15, 16 118:24 planned 92:23 planning 16:14 31:23 55:4 67:24 platform 20:11, 16 119:7 play 40:3 108:19 112:9 127:18 playing 59:9 Plaza 20:5 pleased 129:25 Plenary 135:25 plugged 68:3 plugging 89:1 plus 17:12 pocket 136:6 point 6:9, 20 8:10 11:4 27:4 30:18 33:5 39:25 41:1 51:7 53:11 61:1, 24 62:8 63:7, 11, 13 66:23 69:13 93:24 96:8 109:22 112:20 114:5, 19 115:12 117:8 points 71:15, 16, 18, 21, 24 72:3, 5 policy 9:2, 3 10:5 12:17 14:5 18:3, 9 political 8:19 politically 92:6 politicians 12:11 politics 8:3 91:25 93:2 94:1 98:20 poor 46:22 poorly 93:8 94:23 pops 100:18 portion 40:15 79:17 91:8 pose 61:3 posing 61:7 position 22:4 51:9 58:17 78:5 99:6 106:16 116:4 128:1, 10</p>	<p>positioning 45:14 95:6 107:9 possibilities 57:20 possible 9:19 86:23 posted 4:25 post- procurement 49:25 posture 64:2 112:7, 19 115:1 potatoes 73:11 potent 48:14 49:3 potential 84:24 potentially 127:2 pounding 130:3 pounds 73:11 power 45:22 48:13 powers 44:25 47:12, 15, 17 49:3 practical 95:11 125:11, 22 practice 28:14 50:6 81:5 precedent 76:7 81:19 precedents 76:14 79:17 precise 64:18 82:8 precisely 40:24 62:5 76:17 85:18 88:20 preference 84:2 preferences 28:3 preferred 17:3 107:9 prejudice 106:18 107:3 preoccupation 37:4, 10 preoccupied 24:15 preparation 90:13 prepare 30:25 73:6 106:16 preparing 96:19</p>
---	---	---	--	---

<p>pre-procurement 10:24 15:15, 23 16:10 30:16</p> <p>presence 102:10 105:9</p> <p>PRESENT 2:11 103:6 114:11</p> <p>presentation 26:15</p> <p>pressure 74:1 110:5 111:10 113:5 129:15, 16, 21 130:18</p> <p>pressures 129:11</p> <p>presume 48:22 61:19 90:24</p> <p>presumed 127:13</p> <p>pretty 11:16, 18 30:19 40:7 84:8 85:8 88:23 98:4, 17 102:12 119:4</p> <p>prevail 122:6</p> <p>prevent 137:7</p> <p>previous 17:4 22:21</p> <p>price 28:25 38:10 57:5 71:17, 22, 23 72:1, 18, 19</p> <p>pricing 70:14</p> <p>Prime 7:17 10:7</p> <p>Princess 44:6</p> <p>principal 9:1 10:4, 9 52:18 53:17 84:2</p> <p>principally 16:1 31:10 53:13 106:11</p> <p>principle 37:14 97:1</p> <p>Prior 12:12 15:3 112:20</p> <p>priorities 14:25 34:17 39:3</p> <p>priority 19:16 34:20 35:6 38:25</p> <p>private 7:20 29:7 39:20, 23 40:1, 3 47:15 93:4 99:20</p>	<p>privilege 88:12, 13 122:5 126:3</p> <p>privileged 95:12 96:6 98:24 102:5 108:10 112:5 116:15 129:8 133:20</p> <p>Privy 10:10</p> <p>problem 19:20 21:20 34:20 45:17 57:7 65:14 73:22 74:19 101:9, 12 111:24 113:13 134:17 135:8, 9</p> <p>problems 45:25 75:8 77:12 85:7 99:5, 18 109:7 119:6, 13 134:22 135:7</p> <p>procedural 4:23</p> <p>proceed 67:15 105:14 115:4 117:4</p> <p>proceeded 75:2</p> <p>proceeding 120:9</p> <p>proceedings 5:21 6:1 139:7</p> <p>process 22:1, 3 26:14, 16 29:17 33:13 43:25 54:23 62:22 71:5 74:16, 22 93:23 96:19 106:21 107:6 123:11</p> <p>processed 26:10</p> <p>processing 11:6 13:3, 7 33:19</p> <p>procured 19:7</p> <p>procurement 11:5, 15, 25 13:4 27:8, 22 30:16 59:21, 22 60:1, 10 62:2 69:15 71:5, 13 83:21 87:14, 24</p> <p>procurements 73:21</p> <p>produced 3:10, 16 90:1</p> <p>productive</p>	<p>42:19</p> <p>professional 8:6</p> <p>program 11:19 17:10 45:16 58:19 80:12 106:11</p> <p>programs 59:25</p> <p>progress 31:20 34:14 76:21 78:10 79:1</p> <p>project 8:10 9:15 10:1 11:1 13:16 14:2 15:10, 16, 24 16:3, 6, 9 19:19 21:21 22:4, 21 23:23 24:8 26:6 30:8, 11, 15, 20, 24 32:4, 22, 24 33:2, 17 34:14, 18 35:17 36:8, 22 37:18 38:7 39:22, 24 40:5 41:13, 14 42:2, 22 43:7, 12, 13, 14 44:12 45:2, 10, 11 46:1, 23, 24 47:2, 5, 25 48:10, 24 49:1, 5, 16, 20, 25 52:6, 13, 15 53:15, 18, 23 54:5, 10, 24 55:13 56:20 57:17 58:5, 16 60:12, 22 61:10, 25 64:12, 14 65:4 66:22 67:17, 19 68:1, 11, 23 69:5, 18, 20, 24 70:2, 3, 11, 17, 20 73:3 75:2, 9 76:4, 9, 10 77:24 78:2, 4, 5 79:14, 18 80:21 83:6, 22 84:19 85:17, 22 86:20 88:10, 17 89:1 95:7, 19, 24 100:16 101:7, 16 102:13 103:20 104:6, 11, 17 105:21, 25</p>	<p>106:19, 24 115:15 116:12 120:14 123:7 124:12, 14 132:7, 9 133:11 135:21, 23 136:3, 22 137:17</p> <p>projects 13:25 53:3 60:8 63:7 65:15 75:22, 25 76:1, 8, 25 78:24 80:16 93:13, 22 98:13 123:25</p> <p>project's 42:9</p> <p>proof 20:23</p> <p>proper 113:23</p> <p>properly 37:6 43:16 82:2 99:20, 24 101:17 103:12 104:22 107:6 134:20</p> <p>property 21:7</p> <p>proponent 71:21</p> <p>proposal 26:20 41:25 42:3 43:14 45:7</p> <p>proposals 42:7 75:18 84:20</p> <p>prosecution 6:2</p> <p>protect 45:2 48:9, 15 49:4</p> <p>protects 45:3</p> <p>provide 6:14 8:5 26:20 41:24 51:8 52:25 55:25 66:14 104:25 135:17</p> <p>provided 26:3 36:24 70:22 90:12</p> <p>providing 59:18 135:2</p> <p>province 17:9 18:6, 21, 23 27:4 39:4</p> <p>provincial 17:17, 20, 22 18:11 21:23 22:10 51:15</p> <p>provision 125:13</p> <p>PSOS 70:17, 21</p>	<p>Public 4:5, 11, 22 5:1, 16 12:4, 17 14:4 30:25 58:22 63:22, 24 69:18 82:18 93:6 112:21 129:14, 15</p> <p>purchased 56:22</p> <p>purpose 4:9 40:8 96:22, 23</p> <p>Pursuant 5:15</p> <p>pursuing 7:21 11:11</p> <p>push 77:23</p> <p>pushed 123:21 127:17</p> <p>put 21:20 24:24 35:4 36:20 40:15 41:7 51:2 76:1 87:3 98:11 110:4, 19 113:5 133:11 139:9</p> <p>puts 33:7 51:17</p> <p>putting 15:10 43:11 57:8 70:7 88:25 130:17</p> <p>< Q ></p> <p>QCRAs 42:13</p> <p>QSRAs 42:13</p> <p>quality 25:19 54:4 71:19 87:12 128:10</p> <p>Quantitative 42:14, 15</p> <p>quantity 25:5</p> <p>quantum 54:13</p> <p>Queen 21:10</p> <p>question 5:18 6:21 7:9 15:20 35:11 46:3 82:22 83:17 103:7 116:7 117:8</p> <p>questioning 131:6</p> <p>questions 3:11 4:15, 17 6:6 14:9 19:24 29:23 47:11 61:3 67:21 105:17 121:13</p>
---	--	---	---	---

131:11, 14, 17 138:7, 10, 12, 14 quick 7:9 29:23 quickly 14:23 70:11 101:14 quite 20:10 31:21 32:7 59:24 109:13 129:19 134:24 quote 89:15 quotes 36:21 < R > radio 94:20 97:10 99:14 RAIL 1:6 4:5 8:8 9:13, 15, 24 12:13, 14 13:6, 11 15:4 38:15 59:1 69:25 76:16 rails 70:8 raising 118:6 ran 59:21 range 57:19 Raquel 55:8 rare 50:18 rate 39:18 rationale 61:15, 16 125:6 ratios 51:19 58:15 reach 136:6 reached 113:17 reaching 35:21 130:1 reaction 24:7 read 57:15 90:25 Readback 26:3 reading 23:4 ready 54:23 110:20, 21 116:10 126:6 real 8:18 67:24 137:23 realistic 42:12 43:15 reality 46:16 realized 35:10 really 10:14 17:14 19:16 21:6 23:23 25:13 26:19 28:12, 16 30:18	32:5, 15, 22 33:11 44:2 48:22 58:19 59:21 60:9 63:5, 25 64:11 65:15 70:10 72:17 74:17 78:6 79:8 80:21 84:1 88:6 91:23 93:14, 22 94:16, 25 100:18 104:20 112:25 118:20 120:6 123:21 128:10 131:7 132:17, 18 rear 35:2 reason 78:9, 24 80:6 86:1 120:1, 4 reasonable 126:23 130:4, 5 reasons 53:14 reassured 110:19 rebar 85:5 recalibrated 70:15 recall 23:25 55:19, 20 63:25 72:23 73:25 75:16 78:14 83:9 90:15 115:8 116:13 122:13 123:11 130:19 receivable 5:24 received 70:14 receiving 119:24 121:23 122:1 RECESS 66:18 recognition 125:11 recognize 6:22 recognized 29:5 recollection 62:12 67:4 recollections 93:17 recommend 28:5 73:6 recommendation 27:1 79:10 137:10	recommendation s 33:6 59:10 137:6, 10 recommended 28:2 record 138:15 recorded 139:13 records 65:24 66:2 recover 89:2 redress 95:8 122:17, 19 reduce 73:13 reductions 124:23 redundancy 68:7 reelection 92:25 reference 20:22, 25 100:6 referencing 30:5 referred 30:11 referring 29:19 91:15 98:3 99:25 100:6 101:25 103:2 104:22 105:3 121:9, 19 123:8 refinance 58:11 reflect 132:20 reflecting 22:20 refused 3:11 regime 80:24 Region 9:6 31:16 regional 8:12, 21, 23 registers 42:13 regularly 63:23 reign 88:3 related 106:6 115:7 relates 8:7 relation 13:14 19:14 101:20 relative 52:2 relax 114:16 relaxed 64:6 108:13 111:2 126:11 release 78:11 reliable 45:23 92:16 96:12, 17 122:11	relief 54:24 rely 124:25 remain 62:25 remedied 104:14 remember 22:7 39:18 40:24 63:15 64:20 65:5, 7 93:19 97:3 110:13 111:17 112:6, 16 116:22 117:9, 13, 17 124:22 126:25 130:20 Remo 81:13 remotely 1:15 remounted 103:12 repeat 26:1 report 81:10 86:8, 9, 12, 16 87:19, 21 102:5 reported 31:24 131:10 Reporter 25:18 118:14 139:6, 22 REPORTER'S 139:2 reporting 32:1 reports 33:11 34:1, 2 96:1 120:13 represent 132:7 repurposed 109:16 request 43:9 116:23 requests 54:24 74:4 require 70:22 required 6:4 25:15 27:25 49:15 50:24 111:3 137:22 requirement 37:3 67:6 requirements 79:13 82:4 121:14 requisite 81:22 107:5 residents 131:7 resiliences 51:24	resiliencies 51:19 resolution 106:21 resolve 106:20 resolved 106:25 resolving 134:8 resort 49:8 106:25 resources 22:5 75:9 78:4 respect 13:5 15:14 34:22 70:18 71:3 76:3 83:1 91:7 95:6 98:23 102:25 106:15 107:21 111:18 115:2, 14 117:11 119:15 120:17 124:7, 14 126:6 127:11 respected 73:8 74:23 respectfully 132:6 respond 87:17 132:15, 17 responded 73:10 87:21 response 24:18 25:17 105:1 responsibility 34:11 85:16, 22 100:23 135:4 responsible 9:10 89:7 133:17 rest 98:18 restart 123:6, 23, 25 124:1 126:15 128:3 137:19 restore 51:18, 24 58:14 restrictions 82:21 result 75:20 104:10 124:13 resulting 70:19, 22 resume 8:2 66:19 retain 98:1 retained 55:16
---	---	--	---	---

<p>retired 94:14 99:12 return 39:17 100:2 returns 136:5 revenue 62:21 79:22 80:7 114:12, 14 115:4 117:4 126:2 137:19 revenues 17:23 18:5, 7 review 5:10 19:18 21:19, 25 38:1 42:6 65:17 137:14 reviewed 22:3 92:18 reviewing 34:6 70:17 72:16 revised 24:25 25:1 rewrite 137:24 rid 73:14 Rideau 84:12 ridership 130:12 ridiculous 115:23 right-of-way 85:4 rights 48:5 57:14 risk 25:6 37:11, 13, 15, 16 39:7, 9 42:12 43:10 44:8 46:18, 19 47:6 49:11, 21 51:9 56:13, 21 60:14 74:9 83:1, 13, 20 84:4 85:14, 19, 20 86:17, 21 87:4 88:19 89:8 135:22, 23 risk-averse 87:25 risks 39:21 42:17, 21 134:1 risky 21:1 road 113:13 Rob 59:23 61:1 robust 24:17 rock 85:11, 12 rods 85:1</p>	<p>role 13:7 15:17, 25 32:25 40:1, 3 41:16 45:6 46:9, 10 55:10 59:8 60:2, 9, 16, 20 62:21 63:8, 10 81:9, 12 119:17, 18 room 125:22 rooms 81:21, 23 root 95:15 96:1 132:18 round 38:7 route 20:9 57:12 RTG 69:9, 11 105:22 107:9 109:8 111:12 112:15 113:9 114:4, 10, 22 run 8:23, 25 69:2 82:1 92:24 93:5 110:7 122:11, 25 123:12 124:1, 3 rung 85:21 86:15 88:5 running 8:20 14:14, 19 62:15 79:13 92:8 100:20 106:23 109:14 119:16, 17, 19 120:1 121:2, 5, 14, 15 122:2, 8, 20 123:1 124:17 125:2 126:9 127:2 130:9</p> <p>< S > safe 68:6 safety 13:22 samples 84:17 sand 84:14 satisfactory 88:11 schedule 41:4 42:10, 14, 24 89:3 106:20 scheduled 45:19 50:9 schedules 34:5, 6 Schepers 31:22</p>	<p>scope 24:24 26:23 69:20 70:9 115:21 score 87:14 scores 72:9 screaming 64:14, 15 screen 6:16 27:24 97:16 111:21, 22 screw 98:14 screwing 91:10, 18 97:19 scroll 6:19 se 34:5 135:1 seconds 56:10 secretary 10:9 section 5:15 6:4, 7 sector 29:7 39:23 99:20 secure 41:10 secured 44:4 103:6 securities 23:2 57:11 security 44:20 47:24 48:16 136:7 seeking 92:25 95:7 120:14 seeks 118:14 select 29:15 selected 16:11, 23 24:10 52:4 87:5, 6 125:6 selection 13:23 24:21 35:12, 15 39:3 send 116:23 senior 10:5 12:10 17:8 26:11 27:17 28:4 33:6 36:6 sense 39:16 41:19, 25 69:3 81:18 100:25 102:12 122:9, 12 131:3 sequential 84:18 85:10 serious 20:20 73:16 servant 91:13</p>	<p>servants 12:11 served 58:22 service 9:22 12:4 45:22 46:21 58:14, 15 62:22 63:22, 24 64:23 65:8 68:13, 16 69:2 79:23 80:7 97:7 108:19 109:11 112:21 114:12, 15 115:4 117:4, 6 118:19 122:25 123:1 124:3, 4 126:2 128:20 130:10 131:9 137:19 services 70:25 sessions 122:5 set 18:13 32:12 79:13 105:12 139:9 setting 80:22 settled 26:24 severe 122:10 shafts 86:2 share 17:10 41:14 50:14 69:13 111:22, 25 shared 5:5, 11 124:11 126:12 shareholders 53:25 sharing 6:16 111:21 shed 135:22 sheet 115:3, 11 135:22 sheets 44:10 shelf 41:8 51:3 shift 103:10 shock 94:7 shoehorn 54:2 shoes 52:9 57:3 67:3 short 53:21 54:14 98:25 shortest 16:20 shorthand 139:16 shorts 41:11 short-term 40:21 41:3</p>	<p>show 6:15 73:1 89:11 showing 6:17 shown 66:7 115:24 128:24 side 72:10 75:20 134:13 sides 95:1 sidewalk 43:19 siding 120:17 signal 73:1 74:14 signalling 13:23 68:6 100:21 101:1, 17 signals 75:17 signed 49:22 51:9 134:19 significant 19:11 simple 14:15 simply 46:10 51:1 single 91:4 113:10 123:12 132:8 sinkhole 54:17 88:7, 9, 17, 19 sits 103:14 sitting 51:20 situation 46:5 48:22 50:16 101:19 104:15 sizing 89:13 skills 29:8 skin 36:20 38:9 slightly 23:1 124:19 slip 102:9, 11 slow 6:20 slowed 36:1 slug 51:17 slush 102:11 small 24:3 30:18 93:25 98:19 smashed 56:19 SNC-Lavalin 40:13 95:8 snow 102:11 snowstorm 35:24 social 59:25 76:9 109:23 software 101:7</p>
---	---	---	--	--

<p>sole 69:12 solemn 4:10 solution 20:10 26:23 29:13 52:3 87:15 solve 25:1 57:7 solved 75:7 somebody 23:4 48:23 51:5 71:25 91:22 98:8 108:2 somewhat 124:16 sophisticated 44:9 Sorry 15:19 25:20 79:20 81:2 83:8 111:20 119:19 134:6 sort 10:1 11:7 16:18 33:19 35:2 38:17 42:25 84:1 85:25 88:20 120:19 124:19 133:6 sorts 25:11 76:17 sought 59:20 78:23 sounded 94:22 sounds 39:1 135:11 source 18:5, 7 69:12 130:18 space 7:23 8:19 67:19 116:7 127:23 spare 113:6 spares 113:7 speak 75:19 82:11 92:2 106:23 125:7 speaking 102:2, 3 105:25 Spec 70:18 Special 40:8 species 14:5 22:19 specific 34:11 35:11 70:18 74:11 76:2 81:9, 11 100:14 111:17 112:3</p>	<p>117:24 122:3, 21 127:9 129:6 137:9 specifically 15:9 42:22 100:5 112:17 specification 26:17 70:23 72:6, 8 74:5, 9 80:14 specifications 12:25 speculation 61:23 speculative 61:17 spelled 78:17 spend 96:18 spends 24:9 spent 12:4 19:1, 14 31:21 33:14 spike 17:21 split 40:23 spoken 74:20 spot 60:20 94:24 101:4 SPV 40:8 stable 92:15 staff 32:3, 19 33:2 34:13, 23 130:2 131:6 Stage 8:8 10:25 12:13 14:3 15:4, 16, 24 50:4, 23 55:2, 4, 11, 17 56:5 59:13, 15, 16, 22 67:3, 15, 24 68:4 69:3, 13, 21 70:14, 15 71:2 73:10, 24 74:24 75:12, 18, 23 78:8 79:6 80:13 83:2, 7, 21 106:7 107:2 126:1, 7 132:1 staged 110:6 stages 130:6 stairs 102:9, 12 stakeholders 13:15, 17 30:24 standard 38:3 72:11, 12 120:22</p>	<p>standing 55:3 126:24 stands 9:22 start 24:14 28:10 64:23 76:4 109:10, 12 124:9 128:8 started 8:11 10:21 11:13 20:20 21:19 24:5 26:13 30:21 52:14, 20 54:15 55:4 119:5 starting 13:14 20:21 38:6 53:18 82:13 99:24 statement 97:15 98:3 station 73:14, 15, 17 119:8 stations 13:18 17:6 82:2 102:10 status 64:1 stay 52:24 111:2 stayed 11:1 52:19 53:3 Staying 111:1 steer 108:7 steering 52:25 60:21 62:3, 9 63:1, 9, 10 108:1 112:6 116:16, 24 120:3 Stenographer/Tra nscriptionist 2:12 step 17:15 46:4, 12 48:4, 7 50:16 52:9 67:2 106:7 120:7 133:5 Stephen 106:13 stepped 52:13, 20 57:2 stepping 47:8 57:14 steps 87:6, 16 106:22 112:12 Steve 106:12, 13 stick 85:1</p>	<p>stop 62:9 101:3 102:19 104:13 136:8 stopped 53:10 62:5, 6 63:14 65:11 101:18 storage 14:17 69:5 story 54:14 74:13 129:18 strain 64:10 street 21:11, 17 strengths 92:9 strikes 118:5 strong 27:6 29:10 44:10 84:2 97:20 127:10 128:2 strongly 27:11 struck 97:6 structurally 135:12 structure 45:21 49:7 56:20 57:23 struggling 17:25 stuck 130:23 stuff 31:10 33:8, 12 43:6, 19, 20, 24 46:12 49:9 82:14 83:10 88:13 95:24 104:17 120:19 STV 12:23, 24 style 32:7, 8 subcontract 134:2 subcontractors 31:3 sub-debt 51:17 52:2 57:25 subject 40:7 43:4 126:3 submissions 105:22 submit 138:5 subordinated 51:17 subsequent 75:23 substantial 41:4 45:19 50:10 53:16 62:14, 19, 20 64:15, 17, 21</p>	<p>65:6 77:16 80:7 101:10 105:23 106:3 107:21 109:20 111:5 113:14, 17, 19, 24 114:1, 11, 14 115:17, 25 116:5 120:14 121:1 128:5 129:22 subways 11:24 80:23 succeeded 8:25 success 80:2 123:16 successful 9:21 20:14 76:23 85:9 107:16 123:2, 10 suggest 137:11 summarize 39:2 super 55:5 128:2 superpowers 46:11 57:6 59:5 superstar 55:8 supervening 43:1 54:3, 25 85:24 86:22 87:20 89:5 supplied 36:13, 15 41:13 supplying 45:4 support 13:21 17:10 91:11, 18 supposed 104:7 137:16 surface 21:15 surveyors 25:5 suspect 66:7 Sussex 84:12 swap 52:8 57:2 sweating 127:13 switchback 20:2 system 8:9 12:13 14:19 15:5 20:14 34:21 35:20, 25 38:16 45:23 59:1 64:7 68:6, 12 83:14 92:14 95:16 96:11, 16 99:6, 22 100:21 101:1, 17 102:24 104:13</p>
--	---	--	---	---

109:4 110:15 111:4, 12 112:2, 9, 23 114:17, 21 116:10 117:5 118:21 119:5, 10, 25 120:5 121:23 125:9 126:12, 20 127:1 128:20 129:12 130:18 134:19 systems 69:25 81:4 system's 122:11 < T > table 14:25 21:22 24:14 57:8 73:16 109:14 134:15 tailoring 60:14 takes 33:8 85:22 121:16 talented 125:18 talk 16:5 17:16 26:21, 22 50:23 52:7 69:9 83:12 99:14 109:23 112:5 talked 47:12 79:22 85:18 123:14 126:7 127:4 talking 14:24 93:24 94:2 108:8 120:25 target 18:4 tasked 131:24 tax 13:13 17:19 19:3 tax-based 10:15 taxpayer 12:6 taxpayers 112:16 TBM 84:23 85:8 team 4:8 30:9, 11, 24 33:2 36:7, 8, 9 62:24 67:19 86:20 teams 26:19 29:14 80:21 team's 38:8 technical 12:19, 21, 25 14:8, 9 42:6 71:16	72:4, 10 95:25 102:23 103:8 131:25 technicals 33:8 Technician 2:13 technologies 7:21 teeth 85:5 tells 86:15 temper 30:8 template 37:20 38:5, 14 56:24 Temporally 67:13 temporarily 67:23 temporary 109:9 tend 5:19, 20 72:4 tended 127:23 tension 104:9 134:25 tensioners 104:4 term 68:4 77:17 80:16 115:3, 11 terminate 56:11 57:20 termination 56:6 terms 9:2, 25 11:6 12:6 15:18 17:5 18:12, 16 26:21 34:1 35:12 46:17 50:7, 8 53:2 57:22 61:22 65:10 70:7 73:5 74:8 76:23 80:5 81:19 82:8 83:13, 19 92:3 97:3 99:4 103:25 104:3 106:23 113:24 116:7 121:15 124:17 125:25 127:16 128:3 130:5, 21 test 113:16 testimony 139:11 Thales 36:24 70:6	theme 111:16, 18 theories 107:15 theory 41:23 44:3 46:15, 16 50:6 thing 17:14 23:14 26:18 28:23 30:7 33:20 35:2, 18 72:25 74:15 89:4 93:3 94:3 97:6 101:23 108:17 110:11 112:19 120:25 131:14 132:19 things 14:22 15:1 17:20 22:1 30:10 32:10 34:9 38:24 42:16, 25 48:14 49:19 50:18 52:18 64:25 82:1 92:13, 14, 17 104:18, 21 106:5 107:1 108:4 122:19 126:18, 24 thinking 14:10 24:19 80:4 94:16 98:8 99:10 thinks 86:14 third 86:15 thirty-year 56:13 thought 9:17 16:8 23:23 29:1 38:23 64:2 72:21 87:18 92:2, 4 93:3, 6 94:1, 13, 22 96:21 108:17 111:13 112:10 121:10 127:21 128:22 thoughtful 116:1 thoughts 33:9 threatening 122:10 threshold 80:1 ticket 41:9 58:11 tiebacks 84:25	85:3 tight 18:2, 9 tighten 104:8 tightly 100:24, 25 tile 113:22 till 84:13 88:22 time 4:16 6:10 7:14 8:13, 15 9:10, 12 10:23 11:9, 16, 22 13:1 16:6, 8, 10 17:2 18:8 19:17 20:10, 12, 16 21:5 22:7 23:17 24:9, 19 25:22 27:9, 15 31:21 34:23 38:6, 21 40:5 50:5 53:8 54:22 59:7 60:17 61:4, 9, 20 63:2 64:2, 16 66:21 69:23 70:11 81:16 94:12, 14 95:5 96:18 97:23, 24 98:5 101:24 104:24 106:1, 4 107:25 108:5, 18 109:2, 3 111:3, 5, 19 114:17 116:24 119:22 121:5, 18 123:20 126:14 129:13 135:19 137:25 138:12 139:8, 9, 12 timeline 52:6 66:22 timelines 98:25 130:17 times 31:14 114:2 120:6 123:5 130:11 timing 131:19 today 83:22 98:19 105:5 138:14 today's 4:9 tolerance 111:13 top 19:2 33:13 88:5 135:17, 24 136:1, 17	topics 132:3 136:24 torn 24:11 Toronto 11:11, 12, 13 18:21 52:20 55:6 75:25 78:24 93:13 119:20, 21 total 86:16 tough 110:3 128:12 town 133:15 track 103:11 tractive 101:4 traditional 17:10 train 82:1 100:22 101:3, 8 104:4 110:2 trains 14:14 68:8, 15 110:12 trajectory 34:18 transcribed 4:19 139:14 transcript 4:21, 25 5:4, 10, 11, 14 23:6 139:16 transfer 37:12 39:7, 9 56:21 60:14 74:10 83:1, 13, 20 85:19 87:4, 11 transferred 39:22 89:9 transferring 85:14 86:21 Transit 4:5 8:9 12:13 15:4 20:14 34:21 35:6 38:16 58:22, 25 93:13 96:16 109:10, 16 transparency 103:22 transparent 93:19 transparently 93:1 Transpo 62:23 travelling 82:4 treasurer 31:17 treat 58:12 115:18 132:23 tree 26:7 trial 5:25 62:15 79:12 119:16,
--	---	--	--	---

<p>17, 18 120:1 121:2, 4, 14, 15 122:2, 8, 20 125:1 126:9 triangle 133:6 trigger 101:2 126:18, 21 Trillium 9:11 12:15 23:17 trinket 13:24 truck 88:24 true 37:22 77:4 131:15 139:15 trying 24:10 33:17 35:18 41:18 47:20 61:5 86:21 95:15 98:7 109:8 113:8 114:3 116:2, 25 122:19 125:24 126:23 134:16 tuned 101:17 tunnel 43:21 78:7, 11, 15, 16 84:7, 18, 23 85:6, 14, 17, 23 88:2 89:8 tunneling 84:5, 11 Tunney's 109:24 turned 73:9 85:25 92:23 turning 101:3 turnkey 14:12 type 22:15 24:21 30:23 95:14 115:13 123:6, 9 124:13 127:10 128:25 types 14:7 39:21 typical 122:15 typically 115:15 typos 5:10</p> <p>< U > U/T 3:16 55:24 66:13 82:19 105:7 UK 76:14 ultimate 59:10 ultimately 121:6 un-biddable</p>	<p>87:23 uncertain 97:2 uncomfortable 127:1 uncompleted 115:20 underlined 68:14 undermine 125:19 137:15 underneath 20:8 51:18 understand 12:9 17:14 20:2 21:2 23:7 25:25 32:25 61:8 66:23 67:4 103:9 105:24 108:22 111:9 121:22 128:15 129:11 understanding 12:8 14:22 33:24 34:17 40:1 60:19 71:5 103:16 129:11 understood 17:13 88:20 96:24 97:2 126:22 undertaken 3:10 UNDERTAKINGS 3:15 undue 128:23 unduly 125:14 unfortunately 136:12 unheard-of 104:11 uninterrupted 124:2, 18 Unit 9:23 universally 18:20 63:4 123:2 136:17, 18 unnecessary 74:7 unreliable 95:17 unusual 35:3 unwelcome 93:14, 15 96:20 updates 119:25 121:25 upset 130:16</p>	<p>urgency 108:18 112:14 URS 12:23 utilities 25:14 utility 26:8 42:23 49:24 61:6</p> <p>< V > valuable 60:5 value 11:5 27:20 39:15 41:9 58:11 61:21 74:2 75:8 76:19 77:2, 10 78:25 79:1 115:20 valuing 107:1 variation 54:9 variety 36:14, 15 51:12, 25 79:8 84:21 various 26:19 27:21 31:4 36:25 54:4 56:4 65:18 136:3 vectors 92:6 vehicle 13:23 40:8 113:10 135:6, 11 vehicles 95:22 113:4 135:3 vendors 36:14, 15 Verbatim 139:6, 22 version 80:19 versus 57:13 viable 83:21 vibe 131:1, 2 Videoconferenci ng 1:14 view 27:11 60:8 69:11, 14 74:6 79:24 103:21 109:1 111:4, 25 112:25 114:7, 15, 20, 25 124:11 132:15 133:1 134:14 Virtual 2:13 vis-à-vis 45:15</p>	<p>visibility 118:24 vision 58:20 Vitae 3:3 7:7 vital 68:5 vitriolic 89:16 voice 63:6 volumetric 78:16 voyage 42:4 vyng 26:20</p> <p>< W > WACC 41:19 wait 107:10 111:14 112:1, 22 114:21 waiting 126:19 walk 16:20 wanted 8:23 13:18 24:16 35:19 36:3, 6, 7, 8 37:5 47:11 54:17 64:23 68:24 69:14 72:25 73:3 87:18, 19 88:1 93:4 107:13 128:22 129:15 wanting 79:22 wants 99:7 135:21 warranty 133:16 washed 57:24 Waterloo 18:24 ways 36:17, 19 51:12 93:11 weaknesses 92:9 wears 101:4 website 5:1 90:5 weeds 32:9 week 11:13 90:13 weeks 117:16 118:1 weight 130:2 weighted 41:20 weird 135:11 welcoming 94:12 well-established 37:18, 20</p>	<p>wheel 100:19 101:3, 5, 10 113:12 wheels 100:20 101:18 wherefores 96:3 129:20 whistles 72:7 who-are-these- guys 24:7 whys 96:2 wife 8:22 winner 24:10 winning 71:17 wire 104:4 wise 123:24 witness 5:16, 20, 23 139:9, 11 wondering 114:19 won't 66:3 word 131:2 words 125:17 work 6:17 7:11, 20 8:1, 8 9:9 10:9 11:25 12:12, 15 13:6 15:3, 15, 18, 22 17:17 18:20 30:5 33:21 36:13 37:5 58:7 69:18 70:5 96:10 100:10 104:21 110:20 114:3 126:2, 5 132:21 133:19 136:20 137:11 worked 13:25 14:3 15:10 31:3, 4 71:6, 12 75:23 83:6 88:6 89:1 98:13 working 7:13, 16 8:10, 18 10:3, 21 11:14 30:15 52:21 81:19 106:8 122:14 134:21 workmanship 104:16 works 18:19 49:6 55:22 66:17 79:2</p>
---	---	--	--	---

100:12 135:12
136:13
World 20:5
38:16
world-class
29:9 86:13
worried 87:9
98:12 109:23
worry 112:8
126:18, 22
worse 51:8, 10
68:22
worth 11:20
39:17 72:16
wound 100:24,
25
write 34:2
writing 31:4
33:11 91:9
written 105:1
wrong 35:24
86:1 107:18
108:15 114:8
131:2 135:6
wrongfully
116:4
wrote 89:24

< Y >
Yeah 6:23, 25
14:20 23:8
24:20 29:6
35:9 45:6
50:12 60:25
63:3 74:12
90:24 91:3, 6
97:17 114:23
118:12 120:11
128:18 138:3
years 9:5
56:17 97:7
130:25 131:1
133:16

< Z >
zone 7:25
Zoom 1:14