

# Ottawa Light Rail Commission

Lorne Gray  
on Thursday, May 12, 2022



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5	OTTAWA LIGHT RAIL COMMISSION
6	CITY OF OTTAWA - LORNE GRAY
7	MAY 12, 2022
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13	--- Held via Zoom Videoconferencing, with all
14	participants attending remotely, on the 12th day
15	of May, 2022, 2:01 p.m. to 5:05 p.m.
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1 COMMISSION COUNSEL:

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4 Christine Mainville, Co-Lead Counsel Member

5 Anthony Imbesi, Litigation Counsel Member

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8 PARTICIPANTS:

9

10 Lorne Gray, City of Ottawa

11

12 Jesse Gardner and Catherine Gleason-Mercier,

13 Singleton, Urquhart, Reynolds, Vogel LLP

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17

18 ALSO PRESENT:

19

20 Judith Caputo, Stenographer/Transcriptionist

21 Chandani Joshi, Virtual Technician

22

23

24

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INDEX OF EXHIBITS

NUMBER/DESCRIPTION	PAGE NO.
1: Curriculum Vitae of Lorne Gray, B.Eng. PMP.	12

\* \* The following is a list of documents undertaken  
to be produced or other items to be followed up \* \*

INDEX OF UNDERTAKINGS

The documents to be produced are noted by U/T and  
appear on the following pages: (None).

1 -- Upon commencing at 2:01 p.m.

2

3 LORNE GRAY: AFFIRMED.

4 ANTHONY IMBESI: Good afternoon,

5 Mr. Gray. My name is Anthony Imbesi. I'll start

6 just by reading into the transcript the parameters

7 of today's interview and then we can begin.

8 The purpose of today's interview is to

9 obtain your evidence under oath or solemn

10 declaration for use at the Commission's Public

11 Hearings.

12 This will be a collaborative interview,

13 such that my co-counsel, Ms. Mainville, may

14 intervene to ask certain questions. If time

15 permits, your counsel may also ask follow-up

16 questions at the end of this interview.

17 This interview is being transcribed,

18 and the Commission intends to enter this transcript

19 into evidence at the Commission's Public Hearings,

20 either at the hearings or by way of procedural

21 order before the hearings commence.

22 The transcript will be posted to the

23 Commission's public website, along with any

24 corrections made to it after it is entered into

25 evidence.

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

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

12                   Pursuant to Section 33 (6) of the  
13 Public Inquiries Act 2009: A witness at an inquiry  
14 shall be deemed to have objected to answer any  
15 question asked of him or her upon the ground that  
16 his or her answer may tend to incriminate the  
17 witness, or may tend to establish his or her  
18 liability to civil proceedings at the instance of  
19 the Crown or of any person, and no answer given by  
20 a witness at an inquiry shall be used or be  
21 receivable in evidence against him or her in any  
22 trial or other proceedings against him or her  
23 thereafter taking place, other than a prosecution  
24 for perjury, in giving such evidence.

25                   As required by Section 33 (7) of that

1 Act, you are hereby advised that you have the right  
2 to object to answer any question under Section 5 of  
3 the Canada Evidence Act.

4 So, with that now in the record, we can  
5 begin. Perhaps if I can just get you to briefly  
6 describe your involvement in Stage 1 of Ottawa's  
7 LRT Project.

8 LORNE GRAY: My involvement began in  
9 around about spring of 2012, where I was initially  
10 brought on to support the work that was going into  
11 the bid fees, and help through with selecting the  
12 preferred proponent.

13 During that time, I realized that the  
14 team itself was lacking some contract management  
15 and commercial management skills, which is  
16 something that I have. So I put together a draft  
17 proposal for the project director at that time on  
18 the -- how essential it was to have that position  
19 in place, what it would do, what benefits it would  
20 bring to the project; and how it would keep the  
21 City of Ottawa straight, in terms of its  
22 obligations under the Project Agreement.

23 And he liked what he saw, and from the  
24 point of project execution, PA execution, we agreed  
25 that I would be the contract manager for Stage 1.

1                   From then on, I performed the functions  
2 of contract manager, which had various functions.  
3 The basic functions were really to look after the  
4 commercial aspects, like change control, you know,  
5 variations as described in the project agreement,  
6 correspondence, any things in disputes.

7                   But the main role I found myself in was  
8 being able to help with disagreements between the  
9 City of Ottawa and the Rideau Transit Group and  
10 OLRT Constructor. I managed to develop very strong  
11 working relationships with RTG and to OLRT-C and I  
12 found I was able to get to the right people to try  
13 and dissolve arguments and disagreements before it  
14 became bigger problems.

15                   I did practically all the letter  
16 writing. Most of the letters were from my own, you  
17 know, initiative; and other letters was where I was  
18 asked to write letters on various subjects.

19                   ANTHONY IMBESI: And I will share my  
20 screen with you here in a moment. Can you see what  
21 I have up on the screen?

22                   LORNE GRAY: Yes.

23                   ANTHONY IMBESI: Do you recognize this?  
24 Is this a copy of your CV that was provided to us?

25                   LORNE GRAY: It is, yes.



1                   ANTHONY IMBESI: So as you've  
2 indicated, you became involved with the City in  
3 2012. You're not an employee of the City; is that  
4 correct?

5                   LORNE GRAY: I'm not. No, I'm a  
6 consultant.

7                   ANTHONY IMBESI: And that's through  
8 NDL Consulting Inc.?

9                   LORNE GRAY: It's through a company  
10 called Tiree Facilities Solutions. When I first  
11 came to Canada they were my employer, I was a  
12 senior project manager for Tiree. But just under  
13 two years ago, I started my own company called  
14 NDL Consulting, but I'm still contracted as an  
15 independent contractor to Tiree, so that they still  
16 have the contract with the City of Ottawa.

17                   I just wanted to go, start my own  
18 company so that I could build a bigger portfolio of  
19 clients to take advantage of other opportunities.

20                   ANTHONY IMBESI: And you had mentioned  
21 you started, I believe, in the spring of 2012. Do  
22 you recall what month that would have been?

23                   LORNE GRAY: I think it was, it was  
24 either March or April, it could be late March,  
25 early April.

1                   ANTHONY IMBESI: And do I also  
2 understand you've had involvement in both Stage 1  
3 and Stage 2?

4                   LORNE GRAY: Yes, I continue to be the  
5 contract manager for both Stage 1 and Stage 2;  
6 there's still remnants of Stage 1 that aren't  
7 closed out yet. So I still have a kind of  
8 oversight role in those, and I do help out from  
9 time to time on the maintenance contract.

10                  But largely, my role is focused on the  
11 Stage 2 contracts, the east-west expansions for the  
12 Confederation Line, and the Trillium Line  
13 extension.

14                  ANTHONY IMBESI: Before we move on from  
15 that point, what would be the few items then that  
16 you're still involved in Stage 1?

17                  LORNE GRAY: It's less and less. No,  
18 to begin with, when the maintenance period started,  
19 OC Transpo, the operator, weren't as familiar with  
20 the Project Agreement as I was. So I kind of, you  
21 know, held their hand to begin with at the start of  
22 the maintenance period. And I helped them with any  
23 disagreements they were having with RTG and RTM,  
24 the maintenance contractor over interpretation of  
25 the performance, maintenance performance metrics.

1                   Of course, we also had the -- some  
2 issues with performance that required us exercising  
3 these rights and remedies under the Project  
4 Agreement.

5                   ANTHONY IMBESI: So you would have been  
6 involved in that to the extent -- dealing with  
7 failure points or anything of that nature during  
8 operations, did you have involvement in that?

9                   LORNE GRAY: Not direct involvement. I  
10 was more like on an advisory capacity with the  
11 operator. Just to help them through the terms of  
12 the Project Agreement and where we could exercise  
13 various rights around this.

14                  ANTHONY IMBESI: Turning back to your  
15 CV then. Can you give us a high level summary of  
16 your background as it relates to transit and rail  
17 in particular?

18                  LORNE GRAY: Yes. The company I used  
19 to work for, I think it was Tarmac Construction at  
20 that time in the UK. It became Carillion in 1999.  
21 But before then, Tarmac Construction, we wanted to  
22 get into the rail industry, just to broaden our  
23 portfolio of construction projects.

24                  And it was at the same time as the UK  
25 government decided to privatize British Rail. So

1 they, in advance of privatization, had packaged up  
2 the entire British Rail organization into packages  
3 that could be bought or bid for by private  
4 contractors.

5           So we decided to buy a track renewal  
6 company called Centrac, Central Track Renewals.  
7 And we also bought into a maintenance company. So  
8 when we had done that, the company kind of  
9 handpicked, kind of key individuals within the  
10 organization that they felt could go into this  
11 brand new venture and make a success, make money.

12           So that was my introduction into  
13 railway projects, so that would be back in, I think  
14 1997. Yeah, 1997. And from that point, with this  
15 railway company, we felt confident in bidding for  
16 large, complex railway projects. So that's where I  
17 helped.

18           I helped prepare bids for, and then  
19 ultimately deliver major rail projects. So that  
20 was my first introduction into transit. But  
21 really, it was by no accident, because from a small  
22 child I've been interested in railways. I'm a  
23 railway enthusiast, I like the real thing and I  
24 like models. So this was like a dream for me to  
25 get into this part of the industry. Because it's

1 something I was very passionate about anyway. And  
2 I believe I was reasonably successful in helping  
3 the company achieve its objectives.

4 ANTHONY IMBESI: I'll stop sharing my  
5 screen, if we can enter the CV as Exhibit No. 1.

6 CATHERINE GLEASON-MERCIER: No objections.

7 EXHIBIT NO. 1: Curriculum Vitae of  
8 Lorne Gray, B.Eng. PMP.

9 ANTHONY IMBESI: Just turning to then  
10 your involvement in this project.

11 As I understand it, this is a P3  
12 agreement, correct.

13 LORNE GRAY: Yes.

14 ANTHONY IMBESI: And some of the  
15 projects that you have listed in your CV, those  
16 were under an alliance project model?

17 LORNE GRAY: Yeah.

18 ANTHONY IMBESI: So could you just  
19 explain for us the key differences, in your view,  
20 between the P3 delivery model and the alliance  
21 delivery model?

22 LORNE GRAY: I think the biggest  
23 difference really is the alliance model, by its  
24 name, it's a true alliance between the owner and  
25 the contractor. To the extent that it is a single

1 team whereby if it's successful, you wouldn't know  
2 who worked for which part.

3           The organizational structure is filled  
4 with the best person for the job, rather than the  
5 organization they represent. It was that kind of  
6 arrangement. So for example, I would be like the  
7 project manager, and below me, I would have a  
8 management team that was made up of both my own  
9 company's employees, and the owner's employees.  
10 And that kind of filtered its way throughout the  
11 entire organization.

12           And what an absolute treat. Those are  
13 probably some of the best contracts I've ever  
14 worked on. The basis is to jointly develop a  
15 solution. You have the -- like the project  
16 charter, if you'd like; you have the mandate. But  
17 what is it that you're trying to do?

18           And from there, both parties in a  
19 seamless organization, jointly develop the  
20 solution. We price it, and the -- what my company  
21 gets out of it is, is a fixed fee, it is a fixed  
22 profit. So there's no incentive really to try and  
23 screw the owner at all, it's really about trying to  
24 get best value for the owner. To get the best  
25 final outcome at the end of the project, and you

1 get your fee for doing that. So you're guaranteed  
2 to get a healthy profit. So it takes away some of  
3 the bad behaviors, if you'd like, in construction.  
4 And if it works, it really works.

5 But I think what killed it for the UK  
6 is, some owners started to believe that they  
7 probably weren't getting best value. And why would  
8 we not just take this to the market and get a fixed  
9 price lump sum?

10 Yeah, okay, you might think you're  
11 going to save a few dollars that way, but  
12 ultimately the final outcome, I would say  
13 alliancing is the way to go. But anyway, that's  
14 just my personal opinion.

15 ANTHONY IMBESI: And so if you could  
16 just then take us briefly through your first --  
17 your first involvement in the project was in the  
18 procurement phase as you've mentioned.

19 LORNE GRAY: Yeah.

20 ANTHONY IMBESI: What were your roles  
21 and responsibilities during that time?

22 LORNE GRAY: Well, the part of the  
23 organization I first worked with was project  
24 controls. And they were kind of like  
25 quarterbacking the processes involved, and the bid

1 fees. I also had the -- the skill and experience  
2 to look at the construction management, project  
3 management parts of the bids. So I was able to be  
4 someone who could review those bids and provide an  
5 opinion on them, so it was kind of a dual role. It  
6 was partly looking at process to get us through the  
7 bid phase, but also a practical role and doing bid  
8 evaluation.

9 ANTHONY IMBESI: And then when that  
10 transitioned into your role as the contract  
11 manager, did you start that in February of 2013?

12 LORNE GRAY: Yes.

13 ANTHONY IMBESI: And that was following  
14 financial close?

15 LORNE GRAY: Financial close, yeah.

16 ANTHONY IMBESI: Okay. And could you  
17 just explain then what your roles and  
18 responsibilities became in your role as contract  
19 manager?

20 LORNE GRAY: Yeah. There was no --  
21 like a fixed part of my role which was looking  
22 after the change control variations as I've  
23 described in the Project Agreement. I was  
24 responsible for all contractual correspondence,  
25 making sure that when they were received, the



1 people who really needed to review those letters,  
2 got those letters and we got responses.

3 I was mostly the person who did the  
4 letter writing in response to those letters, but  
5 sometimes people would ask me to write a letter on  
6 a subject that they felt we needed to write on.

7 I also was heavily involved in the risk  
8 management, schedule management, what else now?  
9 Yeah, I think I've covered the base functions. But  
10 where I was most used was in Project Agreement  
11 interpretation, and enforcing the Project  
12 Agreement. Because every day you would have small  
13 or large disagreements between the owner and the  
14 contractor, and I helped out a lot in trying to  
15 take the heat out a lot of those things, look for  
16 areas where we could compromise. Or look for areas  
17 where we have to, you know, stick to our principles  
18 and enforce the Project Agreement.

19 I think it was largely successful for  
20 the first few years of the project, yeah.

21 ANTHONY IMBESI: In your CV that we had  
22 just looked at, it references that you've developed  
23 the mandate for the contract manager.

24 LORNE GRAY: Yes, that's correct.

25 ANTHONY IMBESI: And could you just

1 explain what you mean by that?

2 LORNE GRAY: Well, it seemed to me that  
3 that's the -- I think, I recall that there was an  
4 organization structure that was drafted. I don't  
5 know who it was by, but I got a look at it and I  
6 thought, they're not seeing the role of a  
7 commercial manager or contract manager, and perhaps  
8 they don't understand the value that that person  
9 could bring.

10 So I took it upon myself to draft a  
11 short memo to the project director, just to outline  
12 what a contract manager, commercial manager could  
13 do, what benefits it would bring. And also  
14 provided some other advice on how the project  
15 structure should be organized, so that we are not  
16 strictly hands-off.

17 I know it's a P3 and we're one of the  
18 partners, but really the contractors got all the  
19 risk. But we can't be truly hands-off, we still  
20 need to have people in the field with eyes and ears  
21 that can help us on the contract and commercial  
22 side. Because as things happen, if we're not there  
23 and witnessing it, they would give us difficulties  
24 if we were trying to defend claims or disputes.

25 ANTHONY IMBESI: Right. So all of the

1 areas that you felt would be covered off by someone  
2 in this role, those are along the lines of what  
3 you've mentioned to us previously in terms of what  
4 role you actually fulfilled on the project?

5 LORNE GRAY: Yes.

6 ANTHONY IMBESI: So once the City  
7 agreed to implement that position, were you  
8 involved -- were there any contract management  
9 plans, or any other high-level plans prepared that  
10 would govern the role that you'd be fulfilling?

11 LORNE GRAY: No, I don't believe there  
12 was. What I did do with a colleague, Craig Killin,  
13 was to start preparing the essential processes and  
14 procedures that we would need for the contract  
15 management and scheduling management to function  
16 properly.

17 A good example of that was, how do we  
18 manage change control? So it was myself and Craig  
19 Killin that dreamt up the change control boards.  
20 And we set about drafting terms of reference for  
21 that, and how we would work it.

22 So basically we set out the process  
23 for, if we want to make a change to the contract,  
24 how do we go about making that change? And how is  
25 it governed?

1                   So that's an example of the kinds of  
2 things that the contract manager does, but it's not  
3 in a manual as such, it's there in the previous  
4 different procedures that we created.

5                   ANTHONY IMBESI: Are there any other --  
6 so you've mentioned change control, change  
7 management.

8                   Are there any other, what you see as  
9 sort of the key processes and procedures that you  
10 were involved in preparing or assisting with at the  
11 outset?

12                  LORNE GRAY: The risk management is  
13 another big one, where I think we were very well  
14 disciplined on Stage 1. The same as is happening  
15 on Stage 2.

16                  It was to be absolutely clear that the  
17 owner has captured every single risk that it could  
18 potentially face. And it was getting the  
19 discipline for all the different departments within  
20 the organization to create the new risks, and not  
21 to be scared of coming up with something dumb.

22                  It was a completely safe space where  
23 you can create anything that you think is going to  
24 be a risk, and there will be a review board that  
25 would look at all these new risks that were coming

1 in. And we would decide, is this is a real risk?  
2 Is this something we should be recording in our  
3 risk log? Is it something that needs a response  
4 plan? Should we put money aside to, you know, if  
5 that risk is realized. So that was another big  
6 one.

7 I think of all the procedures that we  
8 created, I think the Change Control Board and the  
9 Risk Review Board were probably the two biggest  
10 that we did.

11 ANTHONY IMBESI: So you've mentioned, I  
12 believe you called it a "risk log"; I think people  
13 also refer to it as a "risk register".

14 Is that the location where you would  
15 record all the material risks that the City has  
16 identified as being --

17 LORNE GRAY: That is correct.

18 ANTHONY IMBESI: And so once risks are  
19 recorded in the risk log or the risk register, are  
20 there plans that are developed in order to deal  
21 with any of the risks as they arise?

22 What is the purpose from the City's  
23 perspective of the risk log?

24 LORNE GRAY: Yes, there are. I mean,  
25 the department that some organizations deal with

1 is, what do you do once you've got that risk  
2 identified? You know, you've done the hard work in  
3 identifying the risk, and you've given a  
4 probability, you've got some money against it, but  
5 how are you managing it? What are you doing to  
6 make sure that that risk is either mitigated or is  
7 avoided? And that's the plan. But the individuals  
8 who raised the risks, or it could be that the risk  
9 has been given to another owner of that risk, it  
10 was their responsibility to present to the Risk  
11 Review Board, their plan for how they were going to  
12 mitigate or eliminate that risk.

13 ANTHONY IMBESI: And so is that done at  
14 the outset then for every risk that's identified  
15 and added to the risk log?

16 LORNE GRAY: Yes, yes. And we were  
17 hugely disciplined in doing that. It takes time,  
18 you know, I'm sure people don't treat it as their  
19 number one priority, but you've got to keep at it.  
20 It's a great discipline to have.

21 ANTHONY IMBESI: Since we're talking  
22 about risk then, I may as well ask you about the  
23 geotechnical risk and the sinkhole in particular.

24 LORNE GRAY: Yup.

25 ANTHONY IMBESI: So in terms of

1 geotechnical risk then, what was set out in the  
2 risk log in respect of any geotechnical risk?

3 LORNE GRAY: Well, the City, they had  
4 the risk up until the point during the bid phase  
5 where we all vote to transfer the risk over to the  
6 proponents. And it was either the full risk or it  
7 was partial risk.

8 The successful proponent RTG, they  
9 decided to assume the full risk for the  
10 geotechnical. And it was the GBR, the Geotechnical  
11 Baseline Report, and I think it might have been  
12 Schedule 40 to the Project Agreement originally.

13 As soon as RTG, who were successful,  
14 confirmed that they were going to take the  
15 additional -- this risk on, that schedule was  
16 removed from the Project Agreement.

17 So, therefore, all geotechnical risk  
18 was transferred over to the proponents and the City  
19 didn't have any risk. For pure geotechnical.  
20 There was still a risk for other environmental  
21 conditions like, you know, contamination and  
22 finding bones in the ground and things like that.  
23 But for geotechnical, everything was transferred  
24 over to RTG.

25 ANTHONY IMBESI: So in terms of

1 geotechnical risk specifically then, that's  
2 something that was recognized and recorded by the  
3 City early on as you've indicated.

4           Were any steps taken at the outset to  
5 try to quantify that risk? Or how was that  
6 approached from the City's end?

7           LORNE GRAY: I wasn't really involved  
8 in that, if there was indeed any quantification  
9 done. And I don't know how the City ultimately  
10 measured the value of the RTG's price to cover off  
11 the risk. I wasn't involved in that at all. So I  
12 couldn't really say if the City did any kind of  
13 real number crunching on the value of that risk  
14 transfer.

15           ANTHONY IMBESI: And then once, as you  
16 say, the geotechnical risk was transferred over to  
17 RTG, is there still any monitoring or oversight  
18 that the City does in respect of that risk, once  
19 the risk has been transferred?

20           LORNE GRAY: Yeah, I wouldn't just now  
21 limit it to, you know, the oversight on managing a  
22 geotechnical risk. I think there was oversight on  
23 management of the entire project.

24           So it's not -- we didn't specifically  
25 put people in the field just to monitor what was



1 happening. And, for example, the tunnel  
2 construction, we had monitoring on almost every  
3 aspect of the project delivery.

4 ANTHONY IMBESI: When you speak about  
5 monitoring the project delivery then, can you give  
6 us a high-level explanation of the City's approach  
7 to monitoring of the construction for the project?

8 LORNE GRAY: Yeah. I think you can  
9 probably summarize it as just having eyes and ears  
10 on the ground and taking notes on what they see and  
11 what they hear.

12 And they do -- and it's human nature,  
13 they will engage with the workforce. And there is  
14 always that risk that people will go native as  
15 well, and they get too close to the contractor.  
16 But I think generally people from the City were in  
17 the field, feeling that they could help. You know,  
18 and it became a conduit, if you'd like, from the  
19 contractor. If the contractor was having  
20 difficulties, they would use our person in the  
21 field as a conduit back to the owner to try and  
22 resolve small issues.

23 But generally, the function was to be  
24 there, take notes of what they see, and what they  
25 hear, and if there's anything that is, you know,

1 raising a concern, escalate it and we'll see if we  
2 can resolve these things before they become big  
3 issues.

4 ANTHONY IMBESI: Was that approach  
5 consistent throughout the construction for Phase 1?

6 LORNE GRAY: Absolutely, yeah, yeah.  
7 Always from day one, we were out there. And I --  
8 you know, it was different for RTG and the  
9 constructor, they didn't think that the owner on a  
10 P3 would have that much visibility out in the  
11 field. But to be honest, you could do it no other  
12 way. We are still the stewards of the contract,  
13 we're spending the taxpayer's money, we need to be  
14 there. You know, we need to be -- our finger needs  
15 to be on the pulse of exactly everything that's  
16 happening out in the field.

17 ANTHONY IMBESI: And so you've spoken  
18 that the field monitoring -- if I can call it  
19 that -- that the City was doing. In terms of the  
20 review of information or documentation on a regular  
21 basis, was the City receiving anything from RTG  
22 that it was reviewing to monitor the overall  
23 construction of the project? Was there another  
24 component in addition to the field monitoring?

25 LORNE GRAY: Yes, there was. I mean,

1 you're probably aware of the monthly watch report,  
2 which was like the overall big document that the  
3 City used to measure RTG's performance in design  
4 and construction.

5 But there was also the, like working  
6 groups that we created, and they were intended to  
7 be collaborative between the City and RTG and the  
8 constructor. And one in particular was the  
9 designing construction working group, where they  
10 would use that forum to discuss any issues, any  
11 concerns that were hampering progress. And  
12 obviously minutes would be produced, actions would  
13 be taken, and then all of a sudden you've drawn  
14 this little industry of documents going back and  
15 forth, purely just to try and keep design and  
16 construction on the straight and level, and, you  
17 know, resolve issues.

18 ANTHONY IMBESI: So was there any  
19 formalized process on the City's side of things for  
20 tracking the project, you know, in terms of using  
21 key performance indicators or different indexes to  
22 track various different components of the  
23 construction, was there anything in that nature?

24 LORNE GRAY: Yeah. I mentioned Craig  
25 Killin. Craig Killin was -- he was the head of

1 project controls, and he would be in the seat of  
2 principally the schedule update. And he would,  
3 with that schedule update, using the native files,  
4 he would be able to create performance metrics that  
5 were separate from what was being delivered in the  
6 watch report.

7 And it was, okay, RTG is saying this in  
8 the watch report. We have the native files, we've  
9 created other metrics that may present an opposing  
10 position on where things were going in the field.

11 So it would give us some information to  
12 challenge RTG or the constructor where we thought  
13 performance was lacking.

14 ANTHONY IMBESI: Did you feel, or did  
15 the City feel that they were able to do that  
16 throughout the project? Did they feel they had the  
17 sufficient information to undertake the analysis as  
18 you've just mentioned?

19 LORNE GRAY: Yes.

20 ANTHONY IMBESI: And in terms of  
21 quality oversight, did the City exercise any  
22 functions with respect to quality oversight in  
23 particular, during the project?

24 LORNE GRAY: Yes, we did. We conducted  
25 audits. I think we were -- we approached the

1 audits in a very, like, collaborative way. It  
2 wasn't a case of, we're going to audit you on this,  
3 and you need to be right here.

4 It was more of a joint thing, where the  
5 City and RTG agreed to a -- I think it might have  
6 been an annual audit schedule, or it could have  
7 been more frequent than that. Anyway, let's call  
8 it an annual audit schedule.

9 So it was done through almost like a  
10 little working group on quality. Where the focus  
11 would be on critical aspects of the project,  
12 depending on where we were in the project  
13 lifecycle.

14 You know, it could be that we are  
15 particularly interested in vehicles, for example,  
16 where the vehicle production was advancing quite  
17 quickly. Or it could be concrete quality, where  
18 the station construction was commencing. So we  
19 would audit before they got too far down the line,  
20 we'd go and audit their processes for ensuring that  
21 the concrete was the right strength, that it was  
22 the right slump. The rebar was in accordance with  
23 the drawings; the formwork was stable, it was clean  
24 and all of that.

25 So that's something that we would do,

1 which we thought would be helpful, so that you are  
2 kind of preventing any ongoing issues. So  
3 strategic in a way, the auditing.

4 And then also, NCRs, which you're  
5 probably aware of, "Nonconformance Reports".

6 We were -- let me get my words right.  
7 The quality was self-policing. So that's one of  
8 the things about P3s, and also alliancing as well.  
9 Where you put the responsibility on quality on the  
10 constructor. And they should be mature enough to  
11 have their own quality procedures, quality  
12 management class, ISO 9001 Accreditation, all that.

13 And these should be mature enough to  
14 identify where they've done something wrong  
15 themselves, and they tell us about it, say, look,  
16 we did this wrong. But guess what? This is what  
17 we're doing to fix it.

18 So that I think worked okay. But there  
19 were instances where it was us that identified the  
20 problems, which I don't really like. I felt that  
21 it shouldn't be us to identify the problems, they  
22 should be picking that up themselves.

23 I think it was probably more the  
24 exception than the rule, that we were raising all  
25 the nonconformance reports. I think a lot of them

1 came from the contractor side, which was okay.

2 ANTHONY IMBESI: Was there anything  
3 that stood out to you as being more so out of the  
4 ordinary than you would expect?

5 LORNE GRAY: In terms of quality?

6 ANTHONY IMBESI: Well, in terms of  
7 issues that you were raising that you would have  
8 expected the contractor to be dealing with on their  
9 own.

10 LORNE GRAY: Well, I think the quality  
11 side is probably the best example of that, where  
12 they are trusted to be self-policing, self-certifying.

13 And I would say they were largely  
14 compliant in that regard. There was just the odd  
15 times where we felt that there was a problem, that  
16 they should have been able to identify themselves  
17 without us telling them.

18 And then you start to think, you know,  
19 are they deliberately hiding things? And to be  
20 honest, I don't believe that for one second. I  
21 think everybody in that organization still had  
22 pride in their work. So I don't think it was an  
23 issue but -- yeah, so I didn't have many occasions  
24 where I would be concerned. But for every NCR that  
25 the City raises, that's something that they missed.

1 And I would like to think that they learned from  
2 that, rather than complained about the City issuing  
3 NCRs.

4 ANTHONY IMBESI: Is that something that  
5 occurred, that they were complaining about the City  
6 issuing NCRs?

7 LORNE GRAY: They didn't agree with  
8 every single NCR that we raised. I recall, I think  
9 one dispute on an NCR. I can't remember what it  
10 was about now, it's such a long time ago. But  
11 those again were exceptions rather than the rules.

12 I mean, when you've got two people who  
13 are both quality managers, one is a quality manager  
14 for the constructor, and one is a quality manager  
15 for the owner, you know, there will be tensions,  
16 there will be clashes, there will be disagreements.

17 And that was kind of normal, you know.  
18 So not everything that the City raises in NCR was  
19 automatically accepted by the quality manager on  
20 the constructor side, so there would be, you know,  
21 debates. But I think issues like that got resolved  
22 very, very quickly.

23 I don't think I could have a single  
24 real complaint about the overall quality of the  
25 Stage 1 LRT, I think the quality is exceptional.



1                   ANTHONY IMBESI: In terms of the audits  
2 that you had mentioned. Who was performing those  
3 audits? Was it someone from the City, or a team  
4 from the City, or was it a third party?

5                   LORNE GRAY: It was from the City. It  
6 was mostly run by the respective quality managers.  
7 But depending on the subject of the audit, we would  
8 draft in various subject matter experts who were  
9 part of the City's team.

10                  We had Capital Transit Partners who  
11 were like our technical advisors, or the owner's  
12 engineer, if you want to use that term. And they  
13 had various experts in certain disciplines within  
14 the project. So they would be drafted in to help  
15 out in some of those audits. And RTG and the  
16 constructor did the same thing, they would bring in  
17 their experts depending on what they were auditing.

18                  ANTHONY IMBESI: Sorry go ahead.

19                  LORNE GRAY: No, I was just going to  
20 say, I don't recall us ever using a third party to  
21 do a routine audit.

22                  ANTHONY IMBESI: Okay. In terms of  
23 Capital Transit Partners, what was their role? I  
24 know you had just mentioned a function that they  
25 did perform, but what was their role during the

1 construction of Stage 1?

2 LORNE GRAY: Well, they were largely  
3 the owner's engineer, the technical advisors.

4 So one of the large parts of the  
5 owner's obligations was to review the design. So  
6 that was a big part of Capital Transit Partners  
7 involvement.

8 ANTHONY IMBESI: And so who would they  
9 report to then, in what format? If they're dealing  
10 with design, would they be dealing with the City's  
11 engineers?

12 LORNE GRAY: Yes, yes. The  
13 organization was split into different disciplines.  
14 There will be a discipline for, like, civil  
15 engineering, and that would be bridges, and track,  
16 and drainage.

17 You would have a department that looked  
18 after vehicles; you'd have one that looked after  
19 the overhead catenary system; you would have one  
20 that looked after the signalling system, like the  
21 CBTC. So it was split into kind of manageable  
22 chunks, if you'd like, you know, of the various  
23 engineering disciplines. And we would have like a  
24 City lead on each of those, and under that City  
25 lead would be the SMEs, or subject matter experts

1 from Capital Transit Partners.

2 ANTHONY IMBESI: Were they fairly  
3 involved throughout the entire duration of Stage 1?

4 LORNE GRAY: Yes, yes. And they still  
5 are. They were involved well in advance of the bid  
6 phase. They were doing the -- what would you call  
7 it? The concept design.

8 When you go to bid, you need something  
9 for the bidders to bid on. And that's generally  
10 like the owner's idea of what the system would look  
11 like. So that would compliment the Project  
12 Agreement and the PSOS within the Project  
13 Agreement. They would have what the owner  
14 visualized as what the system would look like. For  
15 the likes of the station, and the alignment, the --  
16 yeah, so that was Capital Transit Partners. They  
17 did a lot of that work to prepare the concept  
18 design. And I think they were also involved and  
19 doing the ground investigations, and quarterbacking  
20 the compilation of all these various environmental  
21 reports, and such like, that were part of the  
22 background information that went with the Project  
23 Agreement at bid phase.

24 ANTHONY IMBESI: I'll ask you more  
25 about the concept design in a few moments. But in

1 terms of other consultants or advisors that the  
2 City had during construction, did Deloitte and  
3 Boxfish have an active role during the construction  
4 phase of the project?

5 LORNE GRAY: Not really during the  
6 construction phase, no. I think they were more  
7 involved -- I mean, especially Deloitte. I think  
8 Deloitte was helping Infrastructure Ontario a lot,  
9 and the City, for the bid evaluation on the finance  
10 side. To be honest, I didn't really have any  
11 involvement with Deloitte during that time.

12 Boxfish, I think Boxfish were around.  
13 They did help during the bid phase, I think they  
14 may have been advising at the General Manager, City  
15 Manager level. Not really a lot of direct, you  
16 know -- they didn't really have -- they weren't in  
17 the project organization chart, in other words.

18 You would see Boxfish around on the  
19 day-to-day and playing a part on the team. They  
20 were just, you know, floating around at a high  
21 level, providing high-level advice.

22 But that was more to do, in the  
23 beginning -- or during the bid. Rarely did we see  
24 Deloitte or Boxfish during construction until  
25 perhaps towards the end, or in or about 2018 when

1 we received all the Notices of Dispute. We kind of  
2 got together a small team to look at the strategy  
3 for how to respond to all those disputes.

4 So Boxfish helped out with that, and to  
5 an extent, I think Deloitte did as well.

6 ANTHONY IMBESI: In terms of your role  
7 with the City, who did you report to?

8 LORNE GRAY: Right. I had a couple of  
9 bosses, actually. Dan was my first boss there, and  
10 I'm going to shoot myself now, I'm trying to  
11 remember Dan's second name. That's terrible.  
12 Anyway, if it comes back to me, I'll let you know.

13 And then after Dan left, it was Claudio  
14 Colaiacovo.

15 Dan Farrell, there you go. Got it.

16 ANTHONY IMBESI: Dan, what? Sorry.

17 LORNE GRAY: Farrell.

18 ANTHONY IMBESI: In terms of governance  
19 and oversight of the project generally, so I'm  
20 talking about FEDCO. What was the level of  
21 oversight and direction of FEDCO over your role in  
22 particular?

23 LORNE GRAY: I didn't really have any  
24 involvement with FEDCO at all. My only kind of  
25 exposure to FEDCO would be to review some of the

1 slide decks that we would be preparing to present  
2 to FEDCO.

3 In my role, I don't believe I had any  
4 influence from FEDCO. Unless the direction I was  
5 getting from the project director or Claudio was  
6 coming through FEDCO.

7 ANTHONY IMBESI: What about the  
8 Executive Steering Committee?

9 LORNE GRAY: I would say similar. I  
10 never attended an Executive Steering Committee  
11 meeting.

12 My involvement would be, again, looking  
13 at what we were presenting to the Executive  
14 Steering Committee, and what decisions we needed  
15 them to make. But there was no kind of direct  
16 relationship between me and the Executive Steering  
17 Committee.

18 ANTHONY IMBESI: So turning back to --  
19 you had talked about the initial concept design  
20 that was prepared by Capital Transit Partners.

21 Did the City initially plan to design  
22 the system before a transition to a P3 approach?

23 LORNE GRAY: I wasn't involved in any  
24 of that. I mean, I do have some knowledge that  
25 the -- it was intended to be a P3 for, I don't

1 know, maybe 12 months before I even joined the  
2 project. And I'm not sure how much of the design  
3 would have been done by that time.

4 So I don't know if the City ever  
5 intended to prepare a design and do it, just as a  
6 design-build or design-bid-build, I don't think  
7 they were considering any other option seriously  
8 than using the P3 model.

9 ANTHONY IMBESI: And so when you talk  
10 about the concept design, what is it that you're  
11 referring to? I mean, what was prepared, what  
12 comprises a concept design in your view?

13 LORNE GRAY: The concept design would  
14 show the proposed alignment from end to end, so  
15 Tunney's Pasture to Blair, and what route it's  
16 going to follow, and roughly where the tunnel would  
17 be.

18 I do recall that there was a section  
19 that came out of the tunnel and went underneath the  
20 War Memorial, and where we wanted a station under  
21 the Rideau -- you know, the Rideau Mall. We called  
22 it the "innovation zone". It was like a big patch  
23 that said, "you can design it somewhere in between  
24 here" kind of thing. So that kind of covered the  
25 alignment.

1 I think there was stuff done the  
2 stations which generally showed what we wanted the  
3 stations to look like. Those designs weren't, you  
4 know, developed any more than about 30 percent. I  
5 think what the biggest thing was, was the  
6 renderings that kind of showed what these stations  
7 could look like. And I'm pretty sure they used  
8 those for public, you know, getting people excited  
9 about the LRT, and what it could look like, you  
10 know, world class system, futuristic, blah, blah,  
11 blah.

12 You know, I think that was probably as  
13 far advanced as we got with station design. But  
14 generally, that's what it is. It's just -- it only  
15 goes to about 30 percent, which is nowhere close to  
16 full development. It's just a fancy sketch, if  
17 you'd like, it's just, this is roughly what we  
18 want. And then we hand it over to the experts who  
19 will produce a full design and following our  
20 initial template on our PSOS to give us what we  
21 want.

22 ANTHONY IMBESI: When you say "the  
23 expert", you're referring to the concessionaire?

24 LORNE GRAY: Yes.

25 ANTHONY IMBESI: And coming at it from



1 the concept design stage, I mean, how was it that  
2 the output specifications for the project were  
3 developed? Were they developed during the concept  
4 design phase?

5 How did it evolve from the concept  
6 design through to the requirements and output  
7 specifications that go into the bid documents?

8 LORNE GRAY: I'm not really qualified  
9 to even comment on that. I had no involvement in  
10 the creation of the PSOS at all. I mean, by the  
11 time I started, we had already gone through the  
12 pre-qual stage. So the PSOS in the Project  
13 Agreement itself was pretty well advanced at that  
14 time.

15 So, you know, I wasn't involved in the  
16 PSOS. And then what process was followed to get  
17 from the concept to the PSOS, indeed did the PSOS  
18 become the fuller concept, which I think probably  
19 logically it would. But, no, I'm not the right  
20 person to ask about that.

21 ANTHONY IMBESI: Did you view any  
22 components of the concept design, or the PSOS, as  
23 being fairly prescriptive when you compare it with  
24 your prior experience in rail?

25 LORNE GRAY: No, no. I think -- I

1 mean, what you could say was prescriptive was the  
2 rail links. We liked the concepts that we did, so  
3 we wanted the stations to look something like this.  
4 That's about as strict as we got.

5 Other than that -- and we weren't  
6 strict on alignment, either, you know, but there  
7 was going to be limitations on where the alignment  
8 could go, because we had already set about getting  
9 the lands to do the work. But there was still, had  
10 to move things around within the land boundary.

11 No, I don't think we were overly  
12 prescriptive in the concept design.

13 ANTHONY IMBESI: So there would be  
14 nothing overly prescriptive, in your view, in terms  
15 of the rolling stock requirements, the signalling  
16 system?

17 LORNE GRAY: Well, we definitely wanted  
18 a CBTC. So some of it really is just  
19 state-of-the-art, communication-based train  
20 control, that was something that was like  
21 nonnegotiable. I wouldn't say that would be part  
22 of the concept design, that's more of a requirement  
23 of the PSOS.

24 The rolling stock, the vehicles, we  
25 created a PSOS for vehicles, but bearing in mind,

1 we did that before we knew what the bidders were  
2 going to offer in terms of vehicles. And every  
3 vehicle is slightly different between Bombardier  
4 and Alstom, you know, Stadler or other train  
5 manufacturers.

6 So you kind of -- I suppose not -- I  
7 was going to say, "taking a bit of a chance" but  
8 you're not.

9 You create a PSOS which broadly  
10 describes the vehicle that you want, but on the  
11 understanding that when you select the vehicle,  
12 there's probably going to have to be some changes  
13 to that, because you know -- I'll give you a good  
14 example.

15 If we were to build the Alstom Citadis  
16 Spirit trains using our PSOS from the very  
17 beginning, it would look like an Alstom Citadis  
18 train when it was finished. So you have to make  
19 sure that when you selected your vehicle, and it  
20 does all the things that you want it to do, then  
21 you need to make sure that the Project Agreement  
22 mirrors that in all respects as well. So there was  
23 a number of things that we had to change in the  
24 PSOS to make that work.

25 ANTHONY IMBESI: Does anything come to

1 mind in terms of the changes that you had to make?

2 LORNE GRAY: Yeah, there's some  
3 examples like the Alstom Citadis Spirit is  
4 100 percent low floor. For good reasons, for  
5 disability, AODA compliance, we wanted low-level  
6 platforms, and low-floor boarding -- level  
7 boarding.

8 But if you read our PSOS, it was only  
9 like low floor at the platform, but when you got  
10 into the train itself, or the body of the train,  
11 you would go up a step. Which is like, hang on,  
12 that's not really what we wanted. But that's a  
13 good example of, that was the idea back when we  
14 were creating the PSOS, but then when we saw the  
15 Alstom Citadis Spirit vehicle, with 100 percent low  
16 floor, we said, okay, that's what we want. So we  
17 have to amend the Project Agreement to suit that.

18 There was other things in there as  
19 well, like our PSOS required a certain type of  
20 steel for the train body. Its industry name is  
21 "COR-TEN steel", but we gave it its proper code in  
22 the PSOS, but everybody knows it as COR-TEN steel.

23 If you've ever been to the U.S. and  
24 down a highway, you see the barriers at the side,  
25 or the bridges, they all look rusty. Well, they're

1 COR-TEN steel. And what it is, when those things  
2 are new, they immediately form a light film of  
3 rust, and that's it, they don't rust anymore.

4 For some reason we specified this for  
5 our trains. It was going to give you difficulties  
6 applying a paint to those, because if the steel  
7 starts to up its chemical reaction with the  
8 elements, you're going to have paint blistering and  
9 peeling off. In fact, we did some experiments on  
10 it just to see if our own suspicions were correct.  
11 And indeed, it was a problem with this type of  
12 steel and applying a paint to it.

13 So we allowed Alstom to use their own  
14 alloys that they have used for many years, that  
15 developed them themselves, and that was an easy  
16 change to make.

17 I think those kind of things jump out.

18 There was small things like, because  
19 they are light rail, and people were just to hop on  
20 and hop off, you wouldn't expect for a person in a  
21 wheelchair to come on and be tied down with straps  
22 into the train. It's not a commuter train, it's  
23 like you're on and you're off. And the trains were  
24 going to be designed to be AODA compliant, so you  
25 can get a chair on, not a problem, and there were

1 special wheelchair areas. So that was an easy  
2 change to make as well. We took out all the  
3 requirements for strapping down wheelchairs.

4 I'm sure there's lots of other smaller  
5 examples, but in general, we allowed quite a number  
6 of changes to the PSOS related to vehicles to  
7 ensure that the PSOS matched the vehicle that we  
8 chose.

9 ANTHONY IMBESI: Is it fair to say that  
10 one of the City's requirements, or their underlying  
11 motivation, I suppose, would be that they were  
12 looking to obtain a proven vehicle for the system?

13 LORNE GRAY: Yeah, it would have to be  
14 service proven, yeah, and I believe the Alstom  
15 Citadis Spirit fits that bill. It's been used in  
16 many other jurisdictions, and not so much in North  
17 America, but certainly in Europe and Asia.

18 ANTHONY IMBESI: Right, that's the  
19 Citadis model, right?

20 LORNE GRAY: Yes.

21 ANTHONY IMBESI: The Citadis Spirit was  
22 a new model for the North American market?

23 LORNE GRAY: No, I believe the Citadis  
24 Spirit had been used in other jurisdictions as well  
25 before North America.

1                   ANTHONY IMBESI: In terms of the  
2 Citadis Spirit then being the vehicle that was  
3 ultimately selected to be used in Ottawa, as I  
4 understand it, there were a number of adaptations  
5 that needed to be made to the existing Citadis  
6 vehicle in order to meet the City's PSOS  
7 requirements?

8                   LORNE GRAY: Yeah, that's a fair point.  
9 I mean, it's just like you ordering a car, but you  
10 want it customized to fit your own specific  
11 requirements. So you would have a base model and  
12 you can have optional extras, things that slightly  
13 vary from the base model.

14                   I'm probably oversimplifying that, but  
15 that's basically what we did with the Alstom  
16 Citadis. The base model is what we wanted but we  
17 made certain adjustments and adaptations to fit with  
18 our own CBTC system.

19                   Not every Alstom Citadis Spirit  
20 operates under a communication-based train control.  
21 It may be a different control system, but it  
22 required a different wiring or different console  
23 or, you know, it could be any number of small  
24 changes that you would have to make depending on  
25 the environment and the operational conditions it

1 was working under.

2 ANTHONY IMBESI: Did it also require a  
3 new bogie system as well?

4 LORNE GRAY: New bogie system? I don't  
5 recall requiring a new bogie system. I do recall  
6 there had to be an adjustment to the bogies to make  
7 sure that we're getting 100 percent low floor.

8 I think there might have been a problem  
9 with the gearbox; the height of the gearbox was  
10 making the floor be higher. But we managed to get  
11 it to push the floor down as much as possible and  
12 then we had a very slight ramp up from there. But  
13 that's the only thing I can recall about the  
14 bogies.

15 ANTHONY IMBESI: You mentioned the  
16 gearbox in terms of a change that was made? That  
17 was due to it being a low-floor vehicle.

18 LORNE GRAY: Correct.

19 ANTHONY IMBESI: You mentioned some  
20 modifications that needed to be made to accommodate  
21 the CBTC system?

22 LORNE GRAY: Yeah, well, I imagine that  
23 some of the changes would be because we're using a  
24 CBTC system. What those changes are would be  
25 beyond my technical abilities. But, I mean, I



1 would imagine that every vehicle would have to be  
2 adapted in one way or another to put it to work  
3 under the signalling system it was working under.

4 ANTHONY IMBESI: Are you aware whether  
5 this was the first, whether the Citadis Spirit that  
6 was used in Ottawa was the first low-floor LRV to  
7 be integrated with a CBTC system?

8 LORNE GRAY: Oh, I don't know the  
9 answer to that question.

10 ANTHONY IMBESI: Were there any  
11 modifications that needed to be made to the vehicle  
12 to your knowledge to deal with North American train  
13 specifications?

14 LORNE GRAY: No, I'm sure there must  
15 have been, because those trains were principally  
16 designed and built in Europe under what would be  
17 the European normal standards.

18 I don't know if there's a huge  
19 difference between there and North America. I  
20 think a lot of things are the same. But you got to  
21 think that there would have been some changes that  
22 would have been made to fit a North American  
23 standard.

24 In some cases, we kind of applied a  
25 North American standard and European standard and

1 we'd say, if there was a conflict between them, the  
2 more stringent would apply. There were many  
3 instances like that.

4 I couldn't really tell you the details  
5 of anything that had to be changed because of  
6 complying with the new standard, or a North  
7 American standard.

8 ANTHONY IMBESI: So in light of some of  
9 these modifications that we just spoke about, was  
10 there ever any discussion within the City about  
11 these adaptations, and in particular, whether this  
12 vehicle would still be considered to be service  
13 proven in light of the adaptations that had been  
14 made?

15 LORNE GRAY: I don't know if there was  
16 discussions or not. I was not aware of any  
17 concerns that we were making so many adaptations to  
18 our vehicle you wouldn't recognize it as the Alstom  
19 Citadis Spirit that's been service proven. I don't  
20 think that was a concern at all.

21 I think largely it was the same vehicle  
22 that had been used in other jurisdictions  
23 successfully.

24 ANTHONY IMBESI: In terms of the  
25 Canadian content requirements for the train

1 vehicles, was there any concern or discussion  
2 within the City about the Canadian content  
3 requirements and any potential implications on the  
4 production or the assembly?

5 LORNE GRAY: Yeah, we did try to  
6 persuade the province to relax the Canadian  
7 requirements because everybody knew that these  
8 vehicles were coming from Europe.

9 They were designed in France, they were  
10 largely built in France and maybe other countries.  
11 And I think we were just looking for a break, you  
12 know, to help us out.

13 But the province rejected our request  
14 to relax Canadian content, which, you know what, it  
15 did present issues that I think you probably -- at  
16 the time it was considered like oh, well, we need  
17 to comply with Canadian content. How do we get  
18 around that?

19 Okay, this is what we need to do.  
20 Let's train the Canadians to build these trains.  
21 So that takes a large chunk of the requirements for  
22 Canadian content out and those are things as well  
23 we would have parts manufactured in Canada from  
24 Canadian suppliers.

25 I think at the time we knew we had to

1 comply with the Canadian content, there wasn't  
2 going to be any relaxation on that.

3           It wasn't seen as such a huge deal to  
4 the schedule, but in hindsight, we would have loved  
5 to have that extra time back, you know -- because  
6 it did cause a lot of where you had to hire people  
7 to build the trains, and you had to go through a  
8 huge learning curve and how to build a complex  
9 piece of machinery.

10           And then once it learned that, it was  
11 then about doing it to a schedule. So it was quite  
12 tough for Alstom and the constructor; I did have  
13 some sympathy with them.

14           Again, the contract never changed in  
15 that regard. It was always us who had to comply  
16 with the Canadian content. I think maybe Alstom  
17 the constructor thought they would try and persuade  
18 the City to relax some of those requirements. And  
19 we did have some sympathy, and we did try and get  
20 those requirements relaxed, but it didn't work out.

21           So you know, at that time, it just  
22 seemed as a blip when, you know, train fabrication  
23 actually started.

24           ANTHONY IMBESI: So in terms of some of  
25 those, you know, initial concerns or I suppose the

1 basis for City trying to have the province relax  
2 those requirements, I mean, were those logistical  
3 or scheduling concerns, or were there any quality  
4 concerns associated with that?

5 LORNE GRAY: I don't think there was  
6 strictly quality concerns. I think we were looking  
7 to preserve the schedule more than anything else.  
8 You know, we had Alstom and the constructor  
9 lobbying us, and, you know, describing that, to  
10 relax the Canadian content requirements would help  
11 ease any schedule pressures that we'd have.

12 This was at a time where the vehicles  
13 were not delayed. But it was seen as a measure  
14 that we could take to build more schedule  
15 insurance.

16 So it was a good idea, we thought at  
17 the time and we thought maybe the province would,  
18 you know, be sympathetic and help us out. But no,  
19 they decided that no they wanted full compliance  
20 with Canadian content so we, you know, accepted  
21 that challenge and got on with it.

22 Just like I say, in hindsight when you  
23 look at how the vehicle schedule went, you wish you  
24 had that extra time back at the beginning where you  
25 would have to train a brand new workforce to build

1 a train.

2 But certainly there was no quality  
3 concerns. They were very well managed on the  
4 production side.

5 I've done some work with Alstom in a  
6 previous, back in the UK and they are very strong  
7 in their management. So there were no concerns.  
8 And we used to visit the production plant, the MSF  
9 in Ottawa, and it was always well run, well  
10 managed. And, you know, no complaints.

11 ANTHONY IMBESI: And so if the City  
12 would have been able to get the province to relax  
13 the Canadian content requirements, is it -- the  
14 City would have been looking to relax those in  
15 order to have the assembly or have the production  
16 take place in a preexisting plant; is that what  
17 you're saying?

18 LORNE GRAY: Yes, the other plant in  
19 New York State, which was well established, and  
20 that's where the work assembling the prototype, I  
21 mean, I can't say this for sure, but I believe that  
22 had we not enforced the Canadian content, then  
23 perhaps all assembly would have been done at the  
24 plant in New York.

25 I believe that the converting the MSF

1 into -- the maintenance and storage facility, if  
2 you're not familiar with that in Ottawa --  
3 converting that into a vehicle assembly plant, I  
4 don't think that was ever contemplated at the  
5 beginning. It was something that was very quickly  
6 decided upon, I think, when Canadian content was  
7 going to be enforced.

8 ANTHONY IMBESI: When you're saying it  
9 was not contemplated at the beginning, you're  
10 talking about pre-contract award?

11 LORNE GRAY: Correct, yes.

12 ANTHONY IMBESI: The plant, that's the  
13 plant in Hornell, New York?

14 LORNE GRAY: Hornell, that's correct,  
15 yeah.

16 ANTHONY IMBESI: Are you aware of the  
17 City, alone or in conjunction with Infrastructure  
18 Ontario, rejecting RTG's first choice of vehicle  
19 supplier, CAF?

20 LORNE GRAY: No, that's news to me. I  
21 didn't know that at all. I always thought it was  
22 Alstom from the beginning, but anyway.

23 CHRISTINE MAINVILLE: Before you follow  
24 up on that, Anthony, I just wanted to clarify.  
25 When you said when you knew Canadian content was

1 going to be enforced was precontract award.

2 Were the discussions with the province,  
3 what timeframe would that have been about  
4 potentially alleviating them?

5 LORNE GRAY: Well, we requested a  
6 relaxation after contract award. We were well into  
7 the contract by then, maybe a year into it. So it  
8 would be pre-bid, or sorry, pre-award.

9 The contract agreement required full  
10 compliance with Canadian content. There's no  
11 argument that's what the contract intended. It's  
12 just when we got into the contract, Alstom and the  
13 constructor were lobbying us to see if there was  
14 anything we could do to relax the Canadian content  
15 requirements.

16 We were trying to be helpful. We asked  
17 the province not expecting them to say yes, to be  
18 honest, and they said "no". At that time we just  
19 had to adapt.

20 I say "we". It was the constructor  
21 Alstom that had to adapt and figure out a way of  
22 still complying with Canadian content and not  
23 affecting the schedule.

24 CHRISTINE MAINVILLE: Who at the  
25 province would those discussions have been with?



1                   LORNE GRAY: I don't know. I don't  
2 know the answer to that question. I wasn't  
3 involved.

4                   CHRISTINE MAINVILLE: Okay. Thank you.  
5 Sorry, Anthony, you can continue.

6                   ANTHONY IMBESI: Thank you.

7                   So just as you indicated, so you have  
8 no knowledge as to any other vehicle suppliers that  
9 were put forward, the reasons that the City  
10 ultimately decided not to go with any other  
11 supplier?

12                  LORNE GRAY: No I'm not aware of any  
13 other vehicle suppliers. One other bidder was  
14 proposing Bombardier; I'm pretty sure of that. And  
15 there was the Alstom Citadis Spirit from RTG.

16                  ANTHONY IMBESI: And in terms of the  
17 signalling system, was Thales the City's preferred  
18 choice for signalling system?

19                  LORNE GRAY: It was RTG's preferred  
20 choice for -- it was RTG that chose Thales to do  
21 the CBTC.

22                  ANTHONY IMBESI: The City didn't have  
23 any preference in terms of what supplier it was  
24 looking for for the signalling system?

25                  LORNE GRAY: No, the PSOS did not say

1 "Thou shalt provide the Thales CBTC system". It  
2 was just, we want the CBTC system. I'm sure there  
3 was other suppliers that could provide it, and RTG,  
4 I could say, partnered with Thales to do that work.

5 ANTHONY IMBESI: You believe there are  
6 other suppliers that are able to supply a  
7 signalling system based on the PSOS that the City  
8 issued?

9 LORNE GRAY: Yeah. I would say so,  
10 yeah.

11 ANTHONY IMBESI: In terms of the  
12 rolling stock, we had spoken about Hornell and  
13 you'd mentioned the prototype vehicles, so I'm  
14 talking about LRVs 1 and 2.

15 Was the City aware of the change in the  
16 location of the manufacturing and assembly of those  
17 first two LRVs from Hornell to the MSF?

18 LORNE GRAY: Yes, yes. We were aware  
19 of Alstom's plans at all times. To be honest, I  
20 think -- I might be wrong here, my memory might be  
21 failing me -- but I thought the prototype was going  
22 to be built in France. Part of it may have been  
23 assembled in France and it was shipped across to  
24 Hornell and then assembled in New York.

25 But, yeah, we always knew that at least

1 the first two vehicles were going to be assembled  
2 in Hornell. I believe there was some test track  
3 issues as well, where they didn't really know they  
4 were going to test those vehicles.

5 At one point they thought they were  
6 going out to Colorado, I think there may have been  
7 a problem with the size of the cage, and the trains  
8 wouldn't fit.

9 But, yeah, we always knew that the  
10 vehicles 1 and 2 would be in Hornell. And when the  
11 Canadian content was enforced, the assembly for the  
12 remaining vehicles was going to be the MSF in  
13 Ottawa.

14 ANTHONY IMBESI: Did you understand  
15 then that the first two vehicles were actually  
16 assembled in Hornell, New York?

17 LORNE GRAY: Yeah.

18 ANTHONY IMBESI: So you wouldn't have  
19 had any knowledge of the transfer then of the  
20 manufacturing of those to Ottawa? It was the  
21 vehicles that would have followed those first two  
22 prototypes is your understanding?

23 LORNE GRAY: Yeah, that's my  
24 understanding, yeah.

25 ANTHONY IMBESI: And in terms of the

1 design and some changes that were made to the  
2 rolling stock, was the City ever late in making any  
3 design selections in respect of the rolling stock?

4 LORNE GRAY: Just let me think. Well,  
5 I could make a reference to Alstom's claim or their  
6 dispute with the City, where they claimed that the  
7 City was late in signing off the design book, I  
8 think it's referred to, the design book.

9 Which largely covers vehicle aesthetics  
10 and fabric for seats, seat colours, livery colours,  
11 things like that, which really had no direct link  
12 to production. They were just purely aesthetics.  
13 So if we were going to be accused of being late on  
14 anything, that would be it.

15 But at that time it wasn't seen as a  
16 critical delay. We had some problems getting  
17 various stakeholders within the City to review and  
18 then make up their minds on what colour schemes  
19 they wanted, such like that while we were doing  
20 that nobody was aware that this could be a  
21 potential delay.

22 Other than that, no, I don't believe  
23 the City was the cause of any delays to making any  
24 decisions on the design of the vehicles.

25 ANTHONY IMBESI: I see. So what you're

1 saying then is, you know, if it was delayed, any  
2 delays to decisions made to finalize the design  
3 book didn't have any implications in terms of the  
4 LRV production and assembly?

5 LORNE GRAY: It did not. That's how we  
6 defended that claim, and we maintain our position.  
7 We do not believe -- and, in fact, the constructor  
8 agreed with us, that this was not a claim that had  
9 any merit.

10 It did not prevent any production of  
11 the trains, and it was 2014 when we were first made  
12 aware of this potential claim. And I think at that  
13 time, asked for a \$35 million price tag on it.

14 But we were assured by the constructor  
15 RTG that that claim would be fully mitigated and  
16 the City would not be -- at that time they were  
17 taking it away from the City and we would not be  
18 liable for that claim. In fact, we shook hands on  
19 it. I remember I was in the meeting when it  
20 happened; they told us not to worry. That claim is  
21 going away.

22 ANTHONY IMBESI: Who told you that?

23 LORNE GRAY: There was -- am I allowed  
24 to name names, Jesse and Catherine, I'm okay?

25 Paul Tetreault, who was the chief

1 financial officer of the OLRT Constructor. He was  
2 in a meeting with me, I think Antonio Estrada, was  
3 there, I think Nancy Schepers, who was like acting  
4 director for the City at the time was in the room.

5 And we were talking about one of the  
6 milestone payments for I think it was milestone  
7 two. And we were helping them get that milestone  
8 and Paul was like, by the way, that claim from  
9 Alstom is gone, consider it gone.

10 And I don't think we quite shook hands  
11 but we, in that room, understood that the City  
12 would no longer have to defend that claim. It  
13 would be taken away by the constructor and settled.

14 ANTHONY IMBESI: I'm sorry.

15 LORNE GRAY: And we left it at that.  
16 It wasn't until four years later that that same  
17 claim resurrected itself as a dispute.

18 ANTHONY IMBESI: Right. And just so I  
19 understand then. Was it your understanding that  
20 any late decision making to finalize the design  
21 book didn't have any implications in terms of  
22 schedule, or that any implications that it did  
23 have, had or would be mitigated?

24 LORNE GRAY: If it had any effect I  
25 believe it would be mitigated quite easily. These

1 were nontechnical decisions that were being made.  
2 It didn't affect the design of the structure of the  
3 train or any of the components that went with it.

4 We're talking about generally  
5 aesthetics. What the train would look like when  
6 it's built and it's finished off, you know. I  
7 think Alstom tried to make that connection, and I  
8 don't think they were successful. And that  
9 particular dispute was before the independent  
10 certifier, who agreed with the City.

11 ANTHONY IMBESI: Was the City aware of  
12 the timelines that were in Alstom's subcontract  
13 with OLRT-C in terms of various design decisions  
14 that needed to be made?

15 LORNE GRAY: No, no. In fact the  
16 design book is not even in the Project Agreement.  
17 There is no reference to design book anywhere in  
18 the Project Agreement, and I don't know if anybody  
19 could actually pinpoint an item in RTG's schedule  
20 that said, "Design Book Approvals". You just can't  
21 find it.

22 It's just something that gets done for  
23 vehicles where the constructor and the owner need  
24 to agree on what the trains look like in terms of  
25 colour schemes and that.

1                   So Alstom called it the design book,  
2 and we just went along with that. The owner has to  
3 make some decisions on what colour they wanted and  
4 that was one of them.

5                   It was not seen as a big deal until  
6 Alstom tried to make a claim of it. I'm sure they  
7 were using that to cover up challenges they would  
8 have in the schedule themselves.

9                   ANTHONY IMBESI: What about the  
10 selection of the radio supplier, P25? Did you feel  
11 that the City was delayed in selecting the radio  
12 supplier that was ultimately used?

13                  LORNE GRAY: We were late on appointing  
14 the supplier -- it was always going to be Bell that  
15 were doing the P25 radios. But the specific radio  
16 that would be installed within the trains took  
17 longer than expected to agree on. I don't know the  
18 technical details behind the challenges to agree on  
19 what the, like a cross-section of that radio would  
20 look like and what size it was.

21                  And to ensure that the train  
22 fabrication was not really going to be delayed, we  
23 gave the constructor a size of a hole to leave in  
24 the console. So you can go ahead and design your  
25 console, just leave a hole of this size.



1                   And then the P25 radios can be  
2 retrofitted, if you'd like. Rather than fitting  
3 them as you go, we were leaving the hole for it to  
4 be fitted later, when we knew the exact size of the  
5 radio, and what the various connections were,  
6 electrical connections and data connections and  
7 such like.

8                   ANTHONY IMBESI: And so those could be  
9 retrofitted --

10                  LORNE GRAY: Yeah.

11                  ANTHONY IMBESI: -- down the line once  
12 the decision was made?

13                  LORNE GRAY: Yes.

14                  ANTHONY IMBESI: Are you aware of  
15 whether a later retrofit with respect to the radio  
16 itself led to any issues or delays in the  
17 production --

18                  LORNE GRAY: No.

19                  ANTHONY IMBESI: -- of the LRVs?

20                  LORNE GRAY: No, no. It did feature in  
21 part of Alstom's claim for delay and disruption.  
22 But I believe they were just stubbornly holding  
23 onto that, even though we had issued a variation to  
24 compensate them for any additional work they would  
25 have to do to retrofit those vehicles.

1                   So because they weren't fitting as they  
2 went they were having to come back, so it's a  
3 revisit a vehicle to do something that should have  
4 been done earlier, so there's a cost there.

5                   And we recognized immediately that,  
6 yeah, we are late in providing you with the size of  
7 that radio. We will pay you for any additional  
8 cost in having to go back to that train to retrofit  
9 the radio.

10                  So there was never any issue about  
11 delays. There was just a cost for somebody to go  
12 back and revisit a piece of work that should have  
13 been done earlier.

14                  ANTHONY IMBESI: Right. So I mean  
15 obviously there is a time component associated with  
16 doing any work. But you didn't feel it was of any  
17 sufficiency that it would impact the project  
18 schedule.

19                  LORNE GRAY: No, it wasn't one of those  
20 activities that you would say would be on the  
21 longest path of a vehicle assembly schedule. It  
22 was something that could be done while other parts  
23 were being done at the same time, if you'd like.

24                  So it wasn't, everything stopped to  
25 wait for the radio and nothing else could happen

1 until that radio was fitted. That wasn't the case  
2 here. It was something you can go back to and fit  
3 but it doesn't stop the on board schedule for the  
4 vehicles that way.

5 ANTHONY IMBESI: And the variation that  
6 you had mentioned for the retrofit, was that  
7 dealing solely with the radio retrofit, or did that  
8 compass any other retrofits that needed to be done?

9 LORNE GRAY: No, it was just the radio,  
10 the P25 radio. All the other retrofits were the  
11 outcome of the various testing that Alstom would do  
12 with their trains after they came off the  
13 production line. They would run them through  
14 various static and dynamic testing. In some cases,  
15 things didn't work, so it would be a program of  
16 retrofits.

17 ANTHONY IMBESI: So in terms of the  
18 selections that needed to be made by the City for  
19 the design book, the radio or really for any  
20 component, do you have any knowledge as to the  
21 City's process in going about those selections?  
22 Who needs to be consulted? Who needs to approve  
23 those types of decisions?

24 LORNE GRAY: Yeah, I'm sure we did. I  
25 wasn't personally involved in any of those

1 decision-making processes.

2 But if you talk to somebody like Gareth  
3 Jones or Richard Holder, they would talk you  
4 through the process that they followed to get  
5 stakeholder approvals of the colour scheme or the  
6 seat fabric, whatever. They knew who to go to get  
7 those decisions, but that's the kind of thing I  
8 would not be involved in.

9 ANTHONY IMBESI: Did you have any  
10 feeling as to whether that procedure, whatever it  
11 was that needed to be followed, was that, you know,  
12 overly burdensome and potentially contributed to  
13 any delays?

14 LORNE GRAY: Like I said, I don't  
15 believe -- while that decision-making process may  
16 have been slower than anticipated, I don't believe  
17 it had any impact on the overall schedule at all.

18 It may have been frustrating to Alstom  
19 and it may have frustrated the constructor that  
20 some of these decisions were not made. To be  
21 honest, when you look into the lateness of these  
22 decisions some of it was due to Alstom, and the  
23 constructor, their influence in the process, which  
24 was preventing the City making decisions.

25 So it wasn't -- there was no single

1 party that was squeaky clean on that subject. But  
2 at all times the understanding was that this was  
3 not something that was going to delay overall  
4 design and fabrication of the trains.

5 ANTHONY IMBESI: In terms of the Stage  
6 2 work, and I'm speaking primarily about the  
7 rolling stock that's being produced and assembled  
8 for Stage 2, but also with respect to any component  
9 of the Stage 2 work.

10 Did the commencement of the Stage 2  
11 works impact the Stage 1 works in any way in terms  
12 of, you know, were any resources or anything  
13 diverted to the Stage 2 works from the Stage 1  
14 project?

15 LORNE GRAY: No, no. The only kind of  
16 link between Stage 1 and the Trillium Line  
17 extension is SNC-Lavalin, but SNC-Lavalin didn't  
18 steal people from Stage 1 to go to do that project  
19 on the Trillium Line.

20 The Confederation Line expansion is  
21 like a brand new team from Kiewit, Vinci, Eurovia.

22 ANTHONY IMBESI: Is Alstom not involved  
23 in Stage 2 as well in producing the LRV?

24 LORNE GRAY: Well, that's a step --  
25 well, it still comes under the Stage 1 Project

1 Agreement. The trains for Stage 2 was done as a  
2 new schedule to the original Project Agreement  
3 Schedule 44, yeah.

4 And the reason we did it was to try and  
5 get a good deal out of Alstom because it had  
6 already gone through the pain of assembly in  
7 Ottawa, the plant was already fully developed and  
8 working well and there was some opportunity for the  
9 City there to get a significant discount on any  
10 further trains.

11 We could have went to other suppliers.  
12 I don't know to what extent we took those options  
13 seriously. But I think the opportunity to get  
14 Alstom and their discount was too good to miss.

15 ANTHONY IMBESI: You didn't perceive  
16 any reduction in Alstom's performance on Stage 1 in  
17 producing those additional vehicles that you had  
18 mentioned that the Project Agreement was amended to  
19 incorporate?

20 LORNE GRAY: I would say that the deal  
21 was done on the Stage 2 vehicles before we really  
22 hit the kind of major scheduling issues with the  
23 Stage 1 vehicles.

24 So we had already made the decision to  
25 expand the fleet of the Alstom Citadis Spirit

1 vehicles before we got into the real delays that  
2 ultimately caused a delay to revenue service on  
3 Stage 1.

4 ANTHONY IMBESI: And in terms of the  
5 interfacing front, I'm talking primarily between  
6 the interface between the vehicles and the  
7 signalling system.

8 Is there any planning that goes on the  
9 City side of things, or does the City have any  
10 discussions with respect to systems integration?  
11 Or is that left entirely to RTG?

12 LORNE GRAY: It's left to RTG and the  
13 constructor; they're the experts. We do have our  
14 own experts through the Capital Transit Partners,  
15 our technical advisors, who can provide oversight  
16 of that work. Really, the experts were within  
17 Alstom and Thales and others working for the  
18 constructor.

19 ANTHONY IMBESI: What oversight would  
20 Capital Transit Partners have exercised on that  
21 component?

22 LORNE GRAY: There would be working  
23 groups where the parties would work together on any  
24 potential issues. There would be presence on site  
25 when necessary. There would be presence when

1 testing was being performed.

2 And, again, the City person would be  
3 used as a conduit as well, where, you know, Alstom  
4 and Thales or the constructor were looking for the  
5 City's help for something, you know.

6 ANTHONY IMBESI: And over the course of  
7 the project, did either the City or Capital Transit  
8 Partners perceive any issues with the progression  
9 of the interfacing over the course of the project?

10 LORNE GRAY: The integration is  
11 probably the largest risk that the project would  
12 have. So the concerns would be on that from  
13 practically day one. It was always going to be a  
14 tough challenge to integrate a very, very complex  
15 system with a vehicle and a CBTC system.

16 So I don't think the City  
17 underestimated the challenge they were going to be  
18 facing to get this thing to work. And I'm pretty  
19 sure RTG didn't underestimate that either.

20 So, yeah, we put a lot of focus into  
21 the -- of the project to make sure that it was  
22 getting done properly and it was meeting the PSOS  
23 requirements.

24 ANTHONY IMBESI: I'm just trying to  
25 understand how the City exercised that. Would that



1 have been primarily through the working groups?

2 LORNE GRAY: Yeah. And if need be,  
3 issues that would be, were not getting resolved  
4 could be escalated out of the working group, into,  
5 say, the works committee.

6 You know, sometimes I got involved in  
7 any disagreements we would have. I'd try and get  
8 those resolved without entering into to any formal  
9 disagreement letters.

10 We always did our best to try and  
11 ensure that, you know, disagreements were quickly  
12 resolved and didn't impact the schedule.

13 ANTHONY IMBESI: Okay. Did anything  
14 critical stand out to you at any point in the  
15 project in terms of issues that arose on the  
16 integration or interfacing aspect?

17 LORNE GRAY: No, not that I was aware  
18 of. I mean it's not something that I would have  
19 been tracking very, very closely. I really only  
20 get involved, you know, when things are going wrong  
21 and I need to get involved in enforcing the Project  
22 Agreement or the PSOS. But no, I didn't really  
23 have any kind of direct or day-to-day interest in  
24 the integration piece.

25 And to be frank, I don't know if there

1 was a lot of real problems with the systems  
2 integration.

3 ANTHONY IMBESI: So there were no real  
4 problems then that certainly you observed at your  
5 level?

6 LORNE GRAY: No.

7 ANTHONY IMBESI: Okay. We've gone  
8 about halfway through our time. Perhaps we can  
9 take a short break now and come back, take  
10 15 minutes if that works for you.

11 LORNE GRAY: Yup.

12 ANTHONY IMBESI: Mr. Gray, and so if we  
13 can come back at 12 minutes to 4, we can get going  
14 and get this done quickly.

15 LORNE GRAY: Okay.

16 -- RECESS TAKEN AT 3:33 --

17 -- UPON RESUMING AT 3:47 --

18 ANTHONY IMBESI: Mr. Gray, I'd like  
19 just to speak to you now about the City's dealings  
20 with RTG.

21 So just generally, could you just  
22 explain for me, from the outset of the project, how  
23 did the City approach the P3 in terms of how it was  
24 going to deal with RTG?

25 LORNE GRAY: I don't know if the City

1 actually approached it much differently from how  
2 they would approach any other design-build project.

3 And to be honest, that's exactly what I  
4 would have expected. I mean, P3, you know, you do  
5 transfer a lot of risk over to the proponents. You  
6 know, they -- what I used to say was, we're paying  
7 \$175 million cost of finance to make all of our  
8 problems go away.

9 And you get the influence from the  
10 lenders, you get the oversight from the lenders  
11 that should take away most of your problems.

12 But, as I've referenced before, we're  
13 still the stewards of the project. There is an  
14 expectation, I believe, from the residents of  
15 Ottawa for the City to be in control. And be aware  
16 of what's happening. And be able to answer  
17 difficult questions on what's happening.

18 So I believe we approached it in the  
19 right way, to provide proper oversight in all  
20 aspects of the project. I think we set ourselves  
21 up to do it in that way from the beginning.

22 I know that RTG, maybe with their  
23 experience on other P3 projects, may have had the  
24 impression that the City was, you know, maybe  
25 stepping beyond what you would -- a normal owner

1 would do in such a contractual relationship.

2 But I think they understood, again,  
3 that the City needed to do it this way because they  
4 would still be held accountable for the performance  
5 of the project from the public, the taxpayers.

6 ANTHONY IMBESI: In terms of the  
7 potentially the perceived overstepping of the role,  
8 was that communicated to the City by RTG?

9 LORNE GRAY: Not in any formal way, I  
10 don't believe. I don't know of any formal  
11 complaints. There might have been the odd word  
12 said at the works committee, or privately between  
13 individuals. No, there was nothing formal about  
14 it.

15 To be honest, I don't believe it became  
16 an issue, an ongoing issue. It was what it was.  
17 We provided people in every part of the  
18 organization, almost like man-marking, as we used  
19 to call it in the UK, but they accepted that.

20 I'm pretty sure they found it useful as  
21 well, especially as I referenced before about  
22 having our people in the field, they could be used  
23 as conduits as well to get, you know, help from the  
24 owner's organization, rather than them being out on  
25 their own and not seeing the owner anywhere.

1 I think it was more of a help than a  
2 hindrance to the constructor.

3 ANTHONY IMBESI: Did the City's  
4 relationship with RTG change at all over the course  
5 of the project?

6 LORNE GRAY: It did, to an extent. I  
7 think the change came around perhaps in 2017, where  
8 I think if anything it probably dropped within  
9 RTG's organization that revenue service  
10 availability, achieving that on time was going to  
11 be a significant challenge.

12 And they started behaving in a  
13 different way. They gave us an obscure notice, the  
14 180-day notice for -- the contract required them to  
15 deliver a notice 180 days in advance of revenue  
16 service availability to confirm that they were  
17 going to achieve revenue service availability in  
18 180 days.

19 The notice was less than clear. It was  
20 like, yes, we're doing it, but only if we get the  
21 extension of time that we are owed through delays  
22 caused by you.

23 They didn't use that many words but  
24 that's what you could imply from the way they  
25 structured the notice, which caused a bit of a

1 problem.

2                   And really from that point onwards, it  
3 became, you know, quite a tense relationship  
4 because we were looking for certainty on the  
5 revenue service availability date. And you know  
6 what? If you're going to be late, you're going to  
7 be late. Just tell us.

8                   Don't tell us you're going to finish on  
9 May 2nd of 2018 and not do that. Tell us when  
10 you're actually going to make it. And it got, you  
11 know a little bit silly at times.

12                   We were generally wanting to get a  
13 schedule out of them that showed the best they  
14 could do to meet revenue service availability. We  
15 didn't set them any specific targets, or you must  
16 do it by that date. We just wanted a schedule that  
17 we could rely on, that was achievable.

18                   So they started playing some games with  
19 the contract. They would give us a schedule that  
20 quite obviously wasn't going to be achieved.

21                   And they would also give us a schedule  
22 that they called an unmitigated schedule, which  
23 they believed as if they didn't mitigate any of the  
24 delays that they believed the City caused them we  
25 would finish by this date, which was like a year

1 after the date that they updated in the work  
2 schedule.

3 So it was a little bit of a tense time,  
4 but I think eventually we started to be a little  
5 bit more reasonable with each other.

6 And I think genuinely the schedule  
7 updates that we got, after that point, when we were  
8 heading into 2018 and beyond, they were genuinely  
9 what RTG believed they could achieve.

10 But I think they might have been let  
11 down by their own suppliers and subcontractors and  
12 the information they were getting about how  
13 possible it was to achieve certain aspects of the  
14 schedule.

15 So I don't think they were deliberately  
16 giving us schedule updates, I mean you are setting  
17 dates deliberately to fail. They genuinely thought  
18 they could achieve those dates, but they were  
19 basing it on the information that they were being  
20 provided by their own suppliers, which I think was  
21 prone to be bad information, or over-optimistic, if  
22 you like.

23 I wouldn't say that the change in the  
24 relationship at that time is how the relationship  
25 carried on until the end of the job. I think it

1 was just about that particular time, roundabout  
2 late 2017, early 2018 it got a little bit tense  
3 between us.

4 And we understood that it was huge  
5 things at stake here and the dollars that were at  
6 stake as well were phenomenal. And it's human  
7 nature, when it comes to the face of perhaps  
8 staggering losses, then people do change naturally.  
9 You know, they behave slightly differently.

10 But I don't believe that that was the  
11 way the parties conducted themselves for the  
12 remainder of the project. It was just that kind  
13 of, that particular period.

14 Then when we got towards the end of  
15 2018, we got the full kind of understanding of  
16 where they were going with trying to resolve the  
17 commercial problems when they just bombarded us  
18 with numerous disputes that -- I pride myself on  
19 the fact that up until that point, I had avoided  
20 disputes for best part of five years, by just  
21 working through the issues and coming up with  
22 solutions and, you know, compromises from either  
23 side where necessary, and generally reach  
24 agreements on various claims and disagreements.

25 But then it was just bam, August of



1 2018 I think it was, we got a whole lot of disputes  
2 dumped on our desk over issues we barely had any  
3 knowledge of. And some issues which we thought  
4 were resolved four years earlier. That was a bit  
5 of a tense time when that happened. But again, the  
6 parties still behaved professionally with each  
7 other throughout.

8 I don't think you can say that the  
9 relationship between the City and RTG could be in  
10 some way a cause of the whole project being  
11 delivered late, I don't think that's the case at  
12 all. I think we just had some tense times when,  
13 you know, there was big things at stake.

14 ANTHONY IMBESI: Right. Speaking about  
15 the RSA dates then. So following the sinkhole,  
16 what was the City communicating to RTG in terms of  
17 RSA dates?

18 Was the City communicating that the  
19 May 2018 date had to be met and RTG was to  
20 undertake all the mitigation measures that it  
21 could? Or was it taking an approach of tell us  
22 where you're at and we can go from there?

23 LORNE GRAY: It was more the latter. I  
24 don't think we, at any time said "You will make  
25 May 24, 2018 ".

1                   It was catastrophic, the sinkhole. And  
2 we weren't in the game of pointing fingers or  
3 blame. We genuinely wanted to help RTG fix this  
4 problem and get back on track.

5                   And we asked them, how this was going  
6 to impact the schedule? And they genuinely told us  
7 that given it was only June 2016, they still  
8 believed there was sufficient time left to recover  
9 from this.

10                  And we took them to their word and at  
11 that point in time, they made no forecast that  
12 May 24, 2018 was not going to be achievable. I  
13 mean, at that time as well I believe they  
14 understood this wasn't a legitimate delay event.

15                  They had the risk of the geotechnical  
16 conditions. They did subsequently try another  
17 approach to the cause of, potential cause of the  
18 sinkhole, which that's all gone away now. We've  
19 done with that claim.

20                  But at the time I figure it was a  
21 general understanding that this was not a matter  
22 that we would be seeking a delay event. They may  
23 very well have issued a notice, an initial notice  
24 but we felt it was more -- it was more important  
25 that the parties not chuck rocks at each other and

1 fight over this.

2 We had a schedule to meet and the focus  
3 really had to be solutions, what were we going to  
4 do.

5 We deliberately entered into a tolling  
6 agreement, so the focus went away from the  
7 commercial aspects and more about what we're going  
8 to do technically to get this problem resolved  
9 technically and get back on track.

10 I think that was a great decision. So  
11 the focus was in the right area. And we circled  
12 back to the commercial aspects some time down the  
13 line. I think probably August 2018 would be the  
14 time where we had to go back to the original claim  
15 for potentially the City being the cause of the  
16 sinkhole.

17 But up until that point, the focus was  
18 just on getting the work done.

19 ANTHONY IMBESI: It wasn't until the  
20 summer of 2018 then that the City made any kind of  
21 formal decision as to whether the sinkhole  
22 constituted a relief event?

23 LORNE GRAY: Yeah, that would be  
24 correct. The tolling agreement was enforced all  
25 the way through until that time. So the City, for

1 the first time since the sinkhole happened,  
2 formally set out its position on what we believed  
3 was the cause of the sinkhole, and then what we  
4 believed was RTG's entitlement under the contract.

5 They knew what our position was anyway,  
6 but this was the first time that we had actually  
7 put it down in black and white.

8 ANTHONY IMBESI: Right. And were you  
9 involved in that process?

10 LORNE GRAY: I was, yes.

11 ANTHONY IMBESI: Okay. And so what was  
12 then your reasoning as to why this didn't  
13 constitute a relief event?

14 LORNE GRAY: Because --

15 CATHERINE GLEASON-MERCIER: Sorry,  
16 Counsel. I'm just going to interject. I think  
17 this goes into the City's legal strategy with  
18 regards to the claim which was formalized in  
19 litigation.

20 So I want to be careful and give the  
21 witness some caution that he can't give an answer  
22 that discloses the City's legal strategy with  
23 regards to the assessment of this claim.

24 ANTHONY IMBESI: Right. And I don't  
25 know what's gone back and forth with the witness.

1 Presumably if he put something in writing outlining  
2 the position, he would be free to communicate that  
3 here today. Simply I was looking for his basis as  
4 to what was communicated to RTG in terms of the  
5 decision that was made, and I'll leave it at that.

6 CATHERINE GLEASON-MERCIER: Right. Why  
7 don't I direct you to I believe there were  
8 IC submissions on this and there's the formal  
9 pleadings for the claim. And Mr. Gray can speak to  
10 those documents and what was in those documents. I  
11 just want to caution the witness about the  
12 privileged communications in developing the City's  
13 legal strategy.

14 ANTHONY IMBESI: Well we'll take a look  
15 at those as his answer then to the question. I  
16 don't want to spend too much time on this. There's  
17 some other items I'd like to cover.

18 CATHERINE GLEASON-MERCIER: Okay, thank  
19 you.

20 ANTHONY IMBESI: So turning back then,  
21 so we were talking about the RSA date and I believe  
22 you've indicated to me that, you know, the City was  
23 open to taking more of a collaborative approach in  
24 terms of what that end date would be, in the sense  
25 that you provide us with what you are saying is

1 realistic in terms of scheduling and then we can  
2 have a discussion.

3           What was the City's view then as to how  
4 it intended to exercise its rights under the  
5 Project Agreement in the sense of, did the City  
6 have to consider an extension to the time for other  
7 substantial completion or the RSA date in light of  
8 what you're telling me?

9           LORNE GRAY: We never intended it on  
10 providing an extension of time up to that point.  
11 We believed there was no valid claims for a delay  
12 event. And no point did we consider awarding an  
13 extension of time.

14           So RTG knew that we intended to apply  
15 the liquidated damages that we were allowed to  
16 apply if the revenue service availability date was  
17 missed. But really that wasn't our focus. The  
18 liquidated damages were very small.

19           What was really at stake for RTG was  
20 the loss of maintenance period. So they were  
21 already getting penalized quite heavily. Really,  
22 it was in both of our interest to come up with a  
23 date that could be achieved.

24           There was no intent on the City to  
25 contractually provide them extra time, but we just

1 wanted them to provide us with a date that they  
2 could achieve, and then we could have some  
3 certainty to make our plans for the system opening.

4 ANTHONY IMBESI: It was more from a  
5 scheduling perspective on the part of the City  
6 making sure all the logistics were in place to turn  
7 to revenue service?

8 LORNE GRAY: Yeah, yeah. I mean there  
9 was notices to issue, because people were going to  
10 be swapping from buses to trains, so, you know, the  
11 public had to appreciate how that was going to work  
12 and when that was going to happen and, you know,  
13 you got to give these people a lot of advance  
14 notice for that.

15 You don't want to be doing it more than  
16 once. You don't want to be telling people it's  
17 happening on that date and then changing your mind.

18 So it was important for the City to  
19 have certainty on a date rather than, you know,  
20 somebody's guess on when it was going to happen.  
21 Or being too optimistic, you know. We were looking  
22 for realism rather than optimism.

23 ANTHONY IMBESI: You spoke about what  
24 was communicated by RTG. When would it have been  
25 that the City first understood that the May 2018

1 RSA date would not be met?

2 LORNE GRAY: When they issued the  
3 180-day notice. That's when we felt something was  
4 wrong there. Because the way they worded the  
5 notice, I think they used the definition in the  
6 Project Agreement for the definition of the revenue  
7 service availability date.

8 And in that definition it makes  
9 reference to Section 40 of the Project Agreement,  
10 which deals with delay events.

11 And it was like, why are you  
12 referencing that?

13 So, reading between the lines, you can  
14 tell they weren't saying for certain it was going  
15 to be May 24th, it was going to be May 24th,  
16 subject to schedule 40, or Section 40 and an award  
17 for extension of time.

18 So they were saying to us, we can make  
19 it as long as you give us the time that we think  
20 we're entitled to. They didn't say that in so many  
21 words, but that's what you read. That's what the  
22 notice implied.

23 So we knew then, something is up. That  
24 May 24th is not likely to happen unless something  
25 changes.



1                   ANTHONY IMBESI: I appreciate you've  
2 been calling it the 180-day notice. Was that  
3 actually delivered 180 days or thereabouts prior to  
4 the May 24th RSA date?

5                   LORNE GRAY: Yes.

6                   ANTHONY IMBESI: -- so it would have  
7 been in and around November 2017 approximately.

8                   LORNE GRAY: I think it may have been  
9 exactly 180 days, or a day before, but it was very  
10 close to 180 days.

11                   ANTHONY IMBESI: I believe, did you  
12 also indicate that following this period of these  
13 communications from RTG that you described, that  
14 the situation ultimately became, clear, and more  
15 realistic timelines were being provided and  
16 discussed?

17                   LORNE GRAY: Not initially, no. There  
18 was lots of -- I mean I did say that it started to  
19 get a little bit silly.

20                   We were asking them to provide us with  
21 the recovery schedule.

22                   So that's, okay, you're not going to  
23 make revenue service availability on time, so we  
24 are allowed to exercise our right under the Project  
25 Agreement. I think it comes under "failure to

1 maintain schedule".

2           Where we believe they're not going to  
3 make it on time, we can cause them to come up with  
4 a plan and how they intend to recover schedule, and  
5 bring the project back on track.

6           Now, that doesn't mean they have to  
7 make the May 24, 2018. I think ultimately you've  
8 to make a long stop date, which is 12 months after  
9 that. But they've got to show us that they have a  
10 reasonable recovery plan, to minimize the delay to  
11 revenue service availability.

12           So in other words, what's the best you  
13 can do, and what date do you think you can achieve?  
14 So we exercised those rights. And the responses  
15 were not what we'd hoped for, not what we expected.

16           That's when they started to play some  
17 contractual games with us and gave us two versions  
18 of a schedule, one which showed a date for RSA,  
19 which I think it may have been actually May 24,  
20 2018, and another one that they called the  
21 "unmitigated schedule" which was a date almost a  
22 year later. Come on? What do you want us to do  
23 with this?

24           That was kind of a blip in time where  
25 things got a little bit tense and a little bit

1 silly. But after that, we generally started  
2 working together to come up with an achievable  
3 schedule.

4 It's just unfortunate that that former  
5 RSA dates were missed. And I think that was more  
6 down to information that RTG was getting from its  
7 suppliers, rather than any kind of failure to  
8 perform.

9 ANTHONY IMBESI: And so I understand  
10 there was a circumstance in which the City took on  
11 RTG's debt? And I understand this was pursuant to  
12 a debt swap. Are you familiar with this?

13 LORNE GRAY: No, that's not my thing at  
14 all.

15 ANTHONY IMBESI: So do you have any  
16 knowledge then of the City becoming involved in the  
17 project in a lender capacity in addition to it  
18 being an owner under the P3?

19 LORNE GRAY: Oh, yes, yes.

20 Now what was the reasoning behind that?  
21 I think it had something to do with Stage 2, didn't  
22 it?

23 ANTHONY IMBESI: That was going to be  
24 one of my questions for you.

25 Firstly, if you recall when that first

1 arose? And second, if you have an understanding as  
2 to why that was done?

3 LORNE GRAY: Yeah, to be honest, I'm a  
4 little more than just like -- in fact it would be  
5 wrong for me to say that I was involved in it. I  
6 was not. I was not involved in that at all.

7 But I think at the time I understood  
8 the reasoning behind it; it made sense. But in the  
9 moment, I can't quite recall.

10 I'm pretty sure it had something to do  
11 with Stage 2, where the City wanted to do something  
12 on Stage 2, which would not have been something  
13 that the lenders in Stage 1 would have been  
14 interested in, and it seemed like the best thing  
15 for the City to do would to become the lender, if  
16 you'd like.

17 It's difficult for me to try and  
18 remember what that was. But it wasn't something I  
19 was involved in at all in the decision-making  
20 process. But I do recall at the time I thought  
21 that was a sensible thing to do.

22 ANTHONY IMBESI: Do you recall any  
23 discussion or consideration at the City level as to  
24 any effect that that decision would have on  
25 information sharing between RTG and the City?

1                   LORNE GRAY: Well I think when you  
2 become the lender, if you'd like, you get access to  
3 other reports, like the lender's technical advisor  
4 would do a report for the lenders. So now we would  
5 have access to all of those reports, and it was a  
6 good way for us to make sure that that reporting is  
7 being consistent.

8                   So we would be getting the works  
9 report, which the contractor is obliged to provide  
10 us on a monthly basis, and we would be looking to  
11 see if the lender's technical agent was finding  
12 something different from what we were learning from  
13 either the works report or from our own  
14 observations out in the field.

15                   It was good intelligence, if you'd  
16 like, to have access to those other reports.

17                   ANTHONY IMBESI: Do you know whether  
18 the ability to obtain those other reports was one  
19 of the factors that led the City to take the  
20 decision to take on the debt in the way that it  
21 did?

22                   LORNE GRAY: No, no. You know. I  
23 don't know what the -- no, it would be wrong for me  
24 to comment on that, because I wasn't involved in  
25 the decision-making process.

1                   But from what I understood, the reasons  
2 for becoming the lender, if you'd like, they were  
3 for sound sensible reasons and I think it was  
4 related to the bringing in Stage 2 rather than to  
5 try and get some other intelligence, if you'd like.

6                   ANTHONY IMBESI: Do you recall whether  
7 once the City took on that role, whether that had  
8 any impact on the relationship as between the City  
9 and RTG?

10                  LORNE GRAY: No, I didn't see any  
11 measurable difference between the relationship.  
12 Certainly not at my working level.

13                  ANTHONY IMBESI: Were you privy to any  
14 concerns that were raised by RTG or anyone else as  
15 to any concerns they had with the relationship in  
16 that new light?

17                  LORNE GRAY: No, I used to spend a lot  
18 of time with the CEO of RTG, it was Antonio  
19 Estrada, and it became Peter Lauch; we had a very  
20 strong working relationship. And I never heard  
21 them talk about concerns. And I think they  
22 understood the reasons why the City did what it  
23 did.

24                  I don't believe there was anything  
25 sinister -- or they believed there was anything

1 sinister in the City's intentions for doing that.

2 ANTHONY IMBESI: Are you aware of a  
3 proposal on the part of RTG to reduce the  
4 liquidated damages that were payable to it from  
5 OLRT-C?

6 LORNE GRAY: Yes, yes. RTG waived  
7 their part of the liquidated damages, I understand.  
8 I think from memory the damages were \$125,000 a  
9 day. And part of that was an RTG portion which  
10 amounted to something like 18 or \$20,000 a day.

11 So RTG waived that part, so the  
12 constructor only paid through RTG to the lenders,  
13 or whatever. But to be honest, that was none of  
14 our concern. This was something that RTG chose to  
15 do through the terms of their contract with the  
16 constructor.

17 ANTHONY IMBESI: Do you have any  
18 knowledge as to whether RTG and/or OLRT-C  
19 approached the City to request consent for a  
20 reduction in the liquidated damages which was  
21 refused on the part of the City?

22 LORNE GRAY: No, I don't recall that.  
23 I don't know if RTG would require the City's  
24 consent to waive their part of the liquidated  
25 damages because the damages weren't coming to the

1 City.

2 ANTHONY IMBESI: What about in the  
3 City's context as a lender, if we can call it that?

4 LORNE GRAY: That's information I'm not  
5 really a party to, you know. I'm not -- finances  
6 and financial mechanisms are not my strongest suit.  
7 So I don't know.

8 ANTHONY IMBESI: And so changing gears  
9 here, I'd like to speak to you about trial running.

10 Did you have any involvement in either  
11 the planning or execution of trial running?

12 LORNE GRAY: I had some involvement  
13 pretty early on in the project. And deliberately  
14 early, because I felt it was -- I mean, I had gone  
15 through that kind of testing and commissioning in  
16 my previous experience, but from the contractor  
17 side. So it's important and these kind of things  
18 tend to get forgotten about as something that  
19 doesn't happen until much later on.

20 When I read through the provisions and  
21 I think it's schedule 14 of Project Agreement for  
22 test and commissioning. The trial running part, it  
23 wasn't like a great big heading, "Trial Running"  
24 and here is a step by step set of instructions on  
25 what to do. It was a mixed bag of stuff and not



1 really coherent, to be honest.

2 So I got together with Richard Holder  
3 and we thought, you know what? It's probably best  
4 that we get together with RTG and the constructor  
5 just to measure everybody's understanding of what  
6 the requirements are for trial running.

7 And if there's anything that's unclear,  
8 or if there's anything that we think we can do  
9 differently or better, let's do that.

10 So we set up a small working group with  
11 myself, and Richard and a chap called Joel North, I  
12 think he was with Capital Transit Partners at the  
13 time. I think we had Antonio Estrada was involved,  
14 Peter Lauch and Roger Schmidt. Roger Schmidt was  
15 the technical director for the constructor.

16 So we started to throw around some  
17 ideas on how trial running would go. And then I  
18 think we evolved that into drafts of trial running  
19 procedures, and I think we had a go at preparing  
20 like a pass-fail criteria for trial running.

21 I think we recognized very early on  
22 that, to have a mixed bag, it's kind of full-time  
23 table running, but introducing failure modes was  
24 not -- it was going to be disruptive.

25 I think we felt that to introduce the

1 failure modes when you're really trying to see if  
2 you can run a proper timetable wasn't going to  
3 help.

4 So we thought about trying to get the  
5 failure modes testing out of the way before trial  
6 running and when you get to trial running, why  
7 don't we run a full-time table for trial phase?

8 And I think largely the group was in  
9 agreement with that. And then I felt like I've  
10 done my piece, it was one of the things that I was  
11 generally concerned about, and it was off and  
12 running. And I just kind of stepped back from  
13 that.

14 And I think maybe a year or so later  
15 there was a chap that came across from Calgary who  
16 did trial running from the Calgary LRT and he  
17 further developed what we started and created a  
18 proper procedure, and pass-fail criteria, which I  
19 reviewed and I thought it was okay. But the intent  
20 that we had when we first looked at this maybe a  
21 year or so earlier, I believe that RTG and the  
22 constructor were also involved in that, too.

23 And, yeah, I think that's what we went  
24 into trial running ultimately with. But I know  
25 there was issues with the number of failures that

1 were occurring during trial running, but me,  
2 personally, I think that perhaps both parties --  
3 because both parties went into this in full  
4 agreement of what the targets were, and what the  
5 pass-fail criteria was.

6 But I think perhaps the parties were in  
7 the pursuit of, like, perfection or excellence. It  
8 was never going to be a perfect system on day one,  
9 it's almost impossible. These things take time to  
10 properly bed in until you fine tune and you solve  
11 the little bugs that will jump up everywhere.

12 So I think we were probably aiming too  
13 high for trial running, and I think the decision to  
14 relax some of the requirements in trial running and  
15 reduce the pass mark to a lower level was  
16 absolutely the right thing to do.

17 Because we'd still be at trial running  
18 -- well, no, I over exaggerate. But it would have  
19 went on for a lot longer than necessary.

20 Because where we dropped it down to, it  
21 was still a perfectly serviceable system. You  
22 would maybe lose a couple of minutes on a journey  
23 time, or you know your pick up time at a station  
24 would be 40 seconds later than planned. But it's a  
25 brand new system, you know. And there's always

1 going to be bugs and teething issues. So yeah,  
2 well, we had the best of intentions, I think we did  
3 the right thing.

4 So I was involved in the very beginning  
5 of trial running and then I kind of stepped back.  
6 I did do a review of the proposals that we took  
7 into trial running.

8 I wasn't involved in any of the  
9 decision making when we decide to change the  
10 targets in trial running, but I understand why we  
11 did was definitely the right thing to have done at  
12 that time, and it wasn't a case that we were trying  
13 to make it easy. No, we were not.

14 What we ended up having at trial  
15 running was still a higher standard than what the  
16 original project even had. The original Project  
17 Agreement didn't require full-time daily running  
18 for trial dates. They only required it for a few  
19 days and with a bunch of failure mode tests, which  
20 really wouldn't have given you the confidence that  
21 you're ready to open up the system.

22 That was really my involvement with  
23 trial running from start to finish.

24 ANTHONY IMBESI: Okay. So I'd just  
25 like to unpack that a little bit and ask you a few

1 more questions.

2           You had indicated you were involved  
3 from the outset of the planning side. Were you  
4 involved in the planning of what ultimately came to  
5 be the trial running plan that was issued in 2017?

6           LORNE GRAY: Well, my involvement would  
7 have been the cut off -- precursor to that. What  
8 was developed in 2017 was probably built on what we  
9 had started, I think maybe in 2016. I forget the  
10 dates when we started that little working group.

11           But it certainly built on what we  
12 started, and it met the intent of what we started  
13 out with back in the working group.

14           So I reviewed what the chap from  
15 Calgary -- whose my name escapes me -- I had  
16 reviewed what he had done, and I thought, yeah,  
17 that's fine, that's really where we wanted to go  
18 with this.

19           ANTHONY IMBESI: How did the City and  
20 the working group satisfy themselves of the  
21 sufficiency of what ultimately became the trial  
22 running plan?

23           I appreciate what you said in terms of  
24 the Project Agreement doesn't require too many  
25 standards. How were these criteria devised and how

1 was the City satisfied as to their contents?

2 LORNE GRAY: I believe the safety was  
3 the number one concern there. So anything that was  
4 going to cause, or have the potential to cause a  
5 safety issue on opening, so if there was an event  
6 that we thought, had we been in revenue service  
7 this would have been a significant safety event,  
8 those kind of things were an instance fail for  
9 trial running; it was an instance repeat or reset.  
10 Which was absolutely right thing, and everybody  
11 agreed to that.

12 And then there was about coming up with  
13 percentages for vehicle availability of journey  
14 time and we looked at what level would we consider  
15 to be acceptable? And the levels that we chose  
16 were ambitiously too high.

17 We were at like 90-plus percent, which  
18 I know, and in the Project Agreement that's the  
19 kind of performance target we should be aiming for.  
20 But in, you know, of a fully bedded-in working  
21 system. But when you're introducing a brand new  
22 system to set your target so high, it's very  
23 ambitious but not that practical in reality.

24 So we started off with the intent of  
25 making the targets tough, but in hindsight we were

1 seeking perfection where perfection wasn't  
2 required.

3           You know, there was obviously going to  
4 be some acceptance that it's a brand new system and  
5 there's going to be issues. When you come to terms  
6 with that, then you can start to look at, okay,  
7 what would be good enough, if you'd like. And I  
8 think we still did better than "good enough" to  
9 open.

10           And even the good enough position that  
11 we took was better than what the Project Agreement  
12 required. So all times we were always striving for  
13 something higher than -- and we did this completely  
14 jointly with RTG. It's not something like the City  
15 said, "We're going to do this and enforce it." No.  
16 We did this together, you know, and there's  
17 certainly no objections from, you know, either  
18 party on what we decided to do.

19           ANTHONY IMBESI: I'd like to show you a  
20 document. I'll put it on my screen here. Do you  
21 see what I have here on my screen?

22           LORNE GRAY: Yup.

23           ANTHONY IMBESI: Do you recognize this  
24 e-mail?

25           LORNE GRAY: October 23, 2018, this is

1 definitely my e-mail, yes.

2 ANTHONY IMBESI: For the record, this  
3 is identified as document COW0437194. And so I can  
4 give you a second to take a look at, take a read  
5 through the e-mail, but you're talking about a  
6 softer approach to the rules for a full restart.

7 Do you see that?

8 LORNE GRAY: Yup.

9 ANTHONY IMBESI: And so, what was your  
10 concern then at the time when you wrote this  
11 e-mail?

12 CATHERINE GLEASON-MERCIER: Counsel,  
13 maybe we can let Mr. Gray read the entire e-mail.  
14 This looks like it's the top of the chain.

15 ANTHONY IMBESI: This is the entire  
16 chain.

17 LORNE GRAY: Yes, I've read that.

18 ANTHONY IMBESI: So did you have any  
19 concerns about the compression of testing and  
20 commissioning to the ultimate reliability of the  
21 system?

22 LORNE GRAY: Yes, I did. Yes, I did.  
23 I'm not sure what more I can say on that. Testing  
24 commissioning is not one of those parts of the  
25 schedule that you can afford to compress or



1 accelerate. It's probably the most important part  
2 of a system type project.

3 So, yes, anybody who had the experience  
4 would be concerned if you were compressing testing  
5 and commissioning.

6 ANTHONY IMBESI: Was it your  
7 understanding that that was in fact the case on  
8 this project, that that had been ongoing that the  
9 testing and commissioning was being compressed?

10 LORNE GRAY: I wasn't really close to  
11 the schedule on a day-to-day basis. I probably  
12 wouldn't have made that statement with having  
13 reviewed the schedule myself. I think I would have  
14 used that based on what I had learned from  
15 discussion with others who were involved in testing  
16 and commissioning.

17 So testing and commissioning schedule  
18 would not be an area of the project that I would  
19 have any responsibility for. But given that I'm  
20 very passionate about these projects I would have  
21 had an interest in how that was going.

22 ANTHONY IMBESI: Do you recall then  
23 what you're referring to in the second sentence  
24 where you're saying: "I'm wondering if we're doing  
25 ourselves and RTG a disservice by applying a softer

1 approach to the rules for a full restart of trial  
2 running"?

3 LORNE GRAY: Yeah, because I mean I  
4 have safety about the pass-fail. But what I wasn't  
5 very keen on and never, never was, was not having  
6 the 12 consecutive days.

7 If the performance was so poor, then we  
8 would be doing a disservice by having a good day,  
9 bad day, good day, bad day. That's not how the  
10 system is going to operate. It would be a disaster.

11 So the 12 consecutive days for me was  
12 one of the most important aspects of the trial  
13 running. And the 12 consecutive days of full-time  
14 table running was the enhancement that we had made  
15 to the trial running procedures and targets. And I  
16 don't think that to relax that part would have done  
17 us any good whatsoever.

18 But it depends on the nature of the  
19 failure. But me personally, I would expect to see  
20 good performance for 12 days in a row, and then you  
21 know that the next day that should continue.  
22 Because you've proven it for 12 days uninterrupted,  
23 if you'd like.

24 So I wasn't a fan of any sort of  
25 approaches for allowing repeat days, but you can

1 still count that towards the 12.

2 ANTHONY IMBESI: Just so I understand  
3 then. Did you still hold this view in the summer  
4 of 2019 with the plan that trial running commenced  
5 with? Or had this been addressed in the ultimate  
6 plan that the parties had agreed to in 2019 to  
7 start trial running?

8 LORNE GRAY: I didn't have any  
9 involvement in what was agreed to take into trial,  
10 the process to take into trial running in 2012  
11 [sic]. But I didn't believe that at that time we  
12 were being soft, or too soft.

13 ANTHONY IMBESI: Sorry, at the time  
14 trial running actually occurred in the summer of  
15 2019 you no longer shared this concern; is that  
16 what you're saying?

17 LORNE GRAY: That's correct. Because,  
18 I mean, I'd be giving an opinion in this e-mail  
19 here, but when I fully understood how the process  
20 was going to work, my opinion changed. I felt less  
21 concerned about being too soft. I believe that the  
22 City and RTG got the right balance for reasons for  
23 why things could be repeated or when there ought to  
24 be a reset.

25 ANTHONY IMBESI: We had spoken about

1 the trial running requirements and I had mentioned  
2 the trial running plan in 2017.

3 Were you aware then that another trial  
4 -- subsequent trial running plan was developed in  
5 2019 prior to trial running commencing that had an  
6 elevated level of requirements over the 2017 trial  
7 running plan?

8 LORNE GRAY: My awareness was only of  
9 the existence of an alternative trial running plan.  
10 I had no involvement in putting that plan together  
11 or what the details were.

12 ANTHONY IMBESI: Okay. So you didn't  
13 have a high level familiarity then with the level  
14 of detail or the requirements that the parties were  
15 using going into trial running in the summer of  
16 2019?

17 LORNE GRAY: I just know that the  
18 targets were stronger or more difficult, if you'd  
19 like, from the 2017 version.

20 ANTHONY IMBESI: Okay. I see.

21 And you had mentioned -- well I  
22 suppose, just to clarify then. Are you aware then  
23 changes were made during the course of trial  
24 running to reduce the criteria in certain respects?

25 LORNE GRAY: I was aware, yeah, yeah.

1 And I had no concerns about the City and RTG  
2 agreeing to that.

3 Like I said, I think the original  
4 intentions were good. But I think they were  
5 seeking perfection, rather than something that was  
6 through that 12-day trial running period was proven  
7 to be a serviceable system that is ready for public  
8 use.

9 ANTHONY IMBESI: And I understand that  
10 as part of these changes that were made during  
11 trial running, the parties agreed on a term sheet;  
12 do you have any familiarity with that?

13 LORNE GRAY: A term sheet around trial  
14 running?

15 ANTHONY IMBESI: At the time these  
16 changes were made in trial running, had the parties  
17 entered into a term sheet setting out the changes  
18 that were to be implemented in the criteria for  
19 trial running and also incorporating a minor  
20 deficiency list in respect of the vehicles?

21 LORNE GRAY: Yes I'm aware of a term  
22 sheet but it might help -- I thought we had  
23 executed that term sheet after revenue service  
24 availability.

25 It just recorded decisions that had

1 been made on certain aspects and it recorded  
2 decisions on how many vehicles would be operating  
3 on day one of service.

4 And it had terms in there about monies  
5 that would be withheld until certain deficiencies  
6 were corrected related to software, I think, PACIS  
7 software.

8 I can't remember every single term in  
9 there, but, yeah, I remember the term sheet. I  
10 don't remember the exact date when it was executed.

11 ANTHONY IMBESI: In terms of the term  
12 sheet, you've mentioned some setoffs in terms of  
13 the withholding of monies?

14 In essence, did this term sheet, or at  
15 least a component of it, set out certain  
16 deficiencies or retrofits with respect to the light  
17 rail vehicles that were being deferred until post  
18 revenue service to be dealt with at a later point  
19 in time?

20 LORNE GRAY: Yeah, the PACIS software  
21 was one of those. I'm trying to recall one --  
22 there might be one related to train door function.

23 CATHERINE GLEASON-MERCIER: It may be  
24 helpful, Counsel, if you're going to ask detailed  
25 questions about the contents of the term sheet to

1 let Mr. Gray review it if you have it so he can  
2 look at the contents and the terms.

3 ANTHONY IMBESI: I don't have it handy.  
4 I won't ask him specifics about the content of it,  
5 but were you involved at all in this term sheet?

6 LORNE GRAY: Yes, I did have an  
7 involvement in it. I really didn't have any  
8 involvement in the decision making on what the  
9 terms were. But I did have more of like  
10 administrative involvement in the creation of this  
11 term sheet. And I was involved in some meetings  
12 and discussions on it.

13 But there may very well have been terms  
14 in that term sheet that related to minor  
15 deficiencies. But we need to be clear that they  
16 are minor deficiencies, which by definition did not  
17 affect the safe use and enjoyment of whatever it is  
18 that you're dealing with.

19 ANTHONY IMBESI: Right. And so that  
20 was going to be my next question then.

21 Did you have any knowledge at the time  
22 as to what the threshold was for something that  
23 could be included on that list? I think you just  
24 mentioned safety and enjoyment of the system?

25 LORNE GRAY: Yeah, yeah, and that was

1 like the Parliament. Like by not having this thing  
2 fixed it was going to affect the safe operation,  
3 principally the safe operation of the system, then  
4 it was a hard no.

5 I know the contract uses the term "use  
6 and enjoyment" but we did consider passenger  
7 experience as some of those decisions as well.  
8 Where some things that RTG wanted to defer until  
9 after revenue service availability, which on the  
10 face of it looked fairly minor, but we thought  
11 that, you know what?

12 This is going to confuse passengers.  
13 They're not going to enjoy this new system. No,  
14 we're rejecting that.

15 So that was the kind of things that we  
16 used to -- in any decision, make on what was termed  
17 a minor deficiency or a material deficiency. And  
18 certainly safety was the first concern.

19 ANTHONY IMBESI: And so stepping beyond  
20 safety, I guess to a certain extent. Were there  
21 any concerns that any of the items that made their  
22 way on to the minor deficiency list might impact  
23 the reliability of the system in any way?

24 LORNE GRAY: No, no. I mean the  
25 reliability of the system would also be a key



1 factor. And to be honest, I don't recall any  
2 requests for deficiencies if they were going to  
3 have an impact on reliability.

4 Because the maintainer had a vested  
5 interest in this process as well. And they were  
6 the people who were going to have to take the  
7 system on and keep it running.

8 So, you know, I don't recall a single  
9 deficiency that we would have let go if it was  
10 going to have an impact on reliability.

11 ANTHONY IMBESI: So the maintainer, are  
12 you referring to Rideau Transit maintenance?

13 LORNE GRAY: Yes.

14 ANTHONY IMBESI: Are you saying they  
15 were involved in the decision making about what  
16 would find its way on to this term sheet?

17 LORNE GRAY: They would have been  
18 involved at the RTG constructor level, where when  
19 they were putting their punch lists together and  
20 going through what was going to be getting done and  
21 not going to be getting done.

22 And without knowing for sure they did  
23 that, I would imagine they would have a vested  
24 interest on what was not going to be finished  
25 properly, when the work to commence mean to the

1 services. And that would be kind of a bone of  
2 contention between RTM to RTG, and RTG to the  
3 constructor. Because RTM would not want to be  
4 taking on something that would cost them more to  
5 maintain that's been left behind by the  
6 constructor.

7 So we knew that dynamic was happening  
8 in the background. We didn't witness it ourselves,  
9 but we knew it was going on.

10 ANTHONY IMBESI: Were any concerns  
11 expressed either by RTM, the maintainer, or Alstom  
12 in terms of the ability to deal with these deferred  
13 items in retrofits to the LRVs during the course of  
14 service operations?

15 LORNE GRAY: No. No. There was no  
16 concerns from them that they couldn't -- you know,  
17 when we did the term sheet there was, I think there  
18 was some commitments on time for getting these  
19 items completed.

20 So I don't believe when we set out,  
21 there was any concerns the deficiency was not going  
22 to get corrected in a reasonable time.

23 ANTHONY IMBESI: And in terms of system  
24 readiness, was it your view that the system was  
25 ready for revenue service at the time that it went

1 into revenue service?

2 LORNE GRAY: Yes, I believe it was,  
3 yeah.

4 ANTHONY IMBESI: Were there any  
5 concerns expressed at the City level as to whether  
6 it was ready for revenue service?

7 LORNE GRAY: No, I don't believe there  
8 was. Bearing in mind that we have another party  
9 who is a signatory on the sign off, the independent  
10 certifier was satisfied.

11 We had an independent safety auditor,  
12 who did an audit function for us. It just wasn't  
13 one audit. It was a continuous involvement for  
14 more than a year on the project to make sure that  
15 all the safety assurance and safety cases and  
16 systems engineering were all done right.

17 But, you know, all the hazards had been  
18 identified and properly mitigated through the  
19 design or through procedures. So that was a big  
20 comfort to us, that this experienced independent  
21 safety auditor was able to verify that this system  
22 is ready.

23 So that was just one of the parts of  
24 the puzzle of revenue service availability: The  
25 safety auditor to sign off, the independent

1 certifier to be satisfied, trial running had to be  
2 successful so we had no doubts that when it came to  
3 certify filing revenue service availability, we  
4 could do so with confidence that it was going to be  
5 okay.

6 I think maybe a concern we could have  
7 had is how quickly we were going to enter service.  
8 It's not just the system itself that comes live.  
9 You've got all the people who are working on the  
10 system, the new staff. So they need a little bit  
11 of time to get used to the new environment and the  
12 their new jobs.

13 And we agreed to do a soft opening, if  
14 you'd like, so we got revenue service availability,  
15 I think, the 31st of August, 2019. And for the  
16 first two weeks, I think maybe up to  
17 September 14th, we ran the system through its paces  
18 and got the staff, you know, to build their  
19 confidence that they were ready to start bringing  
20 passengers on.

21 So you know what, there's an argument  
22 that says that we could have gone longer than that.  
23 Maybe we should have done. Two weeks at that time  
24 felt reasonable. But in hindsight maybe a little  
25 bit more time would have helped more, another

1 couple of weeks, but I don't think that opening  
2 after two weeks as really that detrimental. I  
3 think we were still ready.

4 ANTHONY IMBESI: So you've just  
5 referred to that as a soft opening. So what was  
6 the City doing during those first two weeks?

7 LORNE GRAY: Just basically running the  
8 system through its paces. Running trains empty,  
9 running a timetable with no passengers on board.

10 But crucially having all the staff who  
11 would be, you know, going to stations and cleaning  
12 stations, and attending to faults, and just  
13 everybody who's part of the maintenance and  
14 operations organization, just to be match ready, if  
15 you'd like, at the time when we would allow  
16 passengers on to the trains.

17 ANTHONY IMBESI: Was it running at full  
18 schedule during those two weeks?

19 LORNE GRAY: Yeah, we run a full-time  
20 table through those weeks, yeah, yeah. It was as  
21 if we were carrying passengers.

22 ANTHONY IMBESI: Was there ever any  
23 discussion -- so you've referred to those two weeks  
24 as a soft opening. Was there ever any discussion  
25 to having a reduced start so when revenue service

1 became live, you know, reduced passenger loads,  
2 reduced travel times, that type of thing? Was  
3 there any discussion of that on the City's part?

4 LORNE GRAY: Not that I recall, I  
5 certainly wasn't involved in any discussions in  
6 that.

7 I know in the term sheet you referred  
8 to earlier we had an agreement to start with less  
9 vehicles, or less trains. I think we originally  
10 wanted to run 15 trains at peak time but we allowed  
11 them to start with 13 trains at peak time.

12 And that was -- did not make any kind  
13 of significant difference to being able to cope  
14 with the number of passengers that wanted to use  
15 the system or the demand.

16 So we felt that running with 13 was  
17 probably sensible. And then we build on that  
18 further down the line.

19 ANTHONY IMBESI: Was there ever any  
20 discussion or consideration on the City's end about  
21 bringing in a shadow operator, a more experienced  
22 operator to run the system for a period of time  
23 until everything was up to speed on OC Transpo and  
24 the operator's end?

25 LORNE GRAY: I don't recall that. I

1 certainly wasn't involved if those discussions did  
2 happen.

3 ANTHONY IMBESI: And going back to  
4 revenue service. You mentioned the role of the  
5 independent certifier in that process.

6 What was your understanding of the  
7 parameters of the role of the independent certifier  
8 in that context?

9 LORNE GRAY: Their role was to observe,  
10 review all documentation, attend testing and  
11 commissioning. Yeah I don't know if there's a lot  
12 more than that. But they certainly had to have the  
13 confidence that that, through their witnessing and  
14 through the documentation that they received and  
15 procured, that in their opinion the system was fit  
16 for certification and ready for revenue service.  
17 It met all the criteria.

18 ANTHONY IMBESI: Was the independent  
19 certifier just stating whether the criteria that  
20 were established between RTG and the City were  
21 complied with?

22 LORNE GRAY: Yes.

23 ANTHONY IMBESI: And with that, are you  
24 referring to the trial management plan or what  
25 specifically are you referring to?

1                   LORNE GRAY: The trial running was one  
2 aspect, one kind of building block to achieve  
3 revenue service availability. There were a number  
4 of other requirements that had to be met in  
5 addition to trial running.

6                   One of which was substantial  
7 completion, so the independent certifier had  
8 already certified substantial completion, I believe  
9 two months earlier. I think there was maybe July,  
10 July 2019. So that was one major building block.

11                   So we knew that the system was, you  
12 know, save and except for trial running, if you  
13 didn't have trial running, it was if you achieve  
14 substantial completion, you're ready to go.

15                   Because anything that is not complete  
16 is deemed to be minor in nature and will not affect  
17 the safe use and enjoyment.

18                   That was one of the main building  
19 blocks. In addition to substantial completion,  
20 there was about, you, know maintenance readiness.  
21 Trial running, has everybody been trained? Has the  
22 number of drivers been trained, and operators and  
23 all that. And has the safety auditor confirmed all  
24 the, through audit, all the safety requirements  
25 have been met?



1                   So with all those different pieces the  
2 independent certifier would be able to confidently  
3 certify the system.

4                   ANTHONY IMBESI: Is the independent  
5 certifier then going through the contractual  
6 requirements and saying, yay or nay whether those  
7 have been met?

8                   LORNE GRAY: Correct.

9                   ANTHONY IMBESI: Right. So they're not  
10 evaluating the contractual requirements and  
11 determining what's set out in the contract is  
12 sufficient, right?

13                   LORNE GRAY: No. No.

14                   ANTHONY IMBESI: It's just stating  
15 whether the terms have been complied with?

16                   LORNE GRAY: Correct, yeah. I mean, a  
17 good example of that is design. They don't review  
18 design. They just get copies of a design and they  
19 are free to look at those designs, but they never  
20 have any influence over the design as comment on  
21 the design. They just understand when the City has  
22 deemed their design to be complete.

23                   ANTHONY IMBESI: Christine, I can turn  
24 it over to you. I know you wanted to follow up on  
25 a few points while we still have time.

1 CHRISTINE MAINVILLE: Just on the two  
2 weeks where the trains were run right before  
3 operations began.

4 First of all your understanding was  
5 that there were some issues with the performance of  
6 the trains during trial running, fair to say?

7 LORNE GRAY: Yeah, I believe there was  
8 some failures during trial running. I think mostly  
9 that was due to the targets that were set in the  
10 plan.

11 I think they reverted to the 2017 plan  
12 which had slightly, I hate using the term, easier  
13 targets because even the easy target was still more  
14 than what the contract required. But yeah, there  
15 would have been some problems during trial running.

16 I don't think there was any safety  
17 concerns at all during trial running. I think they  
18 were more of a mechanical nature with the vehicles.  
19 But nothing really major just things that, yup,  
20 okay, that's happened. We'll fix that and we'll  
21 get going the next day kind of thing.

22 I don't think they developed any kind  
23 of major faults during trial running. It was more  
24 just your minor tweaks that the guys in the watch  
25 shop could fix in the next day. That's my

1 understanding.

2 I didn't attend trial running, and I  
3 know it was an expected ingredient of the project.  
4 I just kind of got word of mouth and hearsay of  
5 what was going on there.

6 CHRISTINE MAINVILLE: When you say the  
7 failures were mostly due to the targets that were  
8 set -- not the failures to the vehicle, but the  
9 failed days?

10 LORNE GRAY: Yeah, yeah, they had  
11 managed to achieve the pass criteria set for the  
12 particular measure, if you like, the performance  
13 measure.

14 CHRISTINE MAINVILLE: How did that  
15 compare to how the trains were running in the  
16 subsequent two weeks before entering service? Are  
17 you aware of whether there were performance issues  
18 then?

19 LORNE GRAY: There was performance  
20 issues. You know, they started to monitor  
21 performance as if it was in full passenger carrying  
22 mode.

23 So the maintenance schedule, Schedule  
24 15-3, there is a payment mechanism as well that  
25 sets out performance criteria that has to be met.

1                   And they have to issue daily operating  
2 reports, and in those daily operating reports,  
3 they're supposed to record their failures during  
4 that day on vehicle availability and the likes.

5                   So yeah, I don't think it was smooth  
6 performance during those two weeks. I think there  
7 were some failures there, but not to any extent  
8 where we didn't think it was wise to open it to the  
9 public. I think performance was still good enough  
10 to open up properly.

11                   CHRISTINE MAINVILLE: Were you involved  
12 in some later disputes about the work orders and  
13 the performance measures being applied and how many  
14 work orders were going in?

15                   LORNE GRAY: Yeah. I got the  
16 information both from our people at OC Transpo, I  
17 think as I referenced before, I have a good working  
18 relationship with RTG, so I knew some of the guys  
19 who were working with RTM and RTG just to get, you  
20 know, an understanding from their perspective what  
21 was going on.

22                   I believe there was some issues on both  
23 sides, you know. It was like we had this new toy  
24 and not everybody knew how to play with it  
25 properly.

1                   And I think some of the decisions on  
2 the City's side perhaps weren't the right decisions  
3 at that time, and you know to capture -- to raise a  
4 work order for every single small issue that arose,  
5 and there must have been hundreds. And that's  
6 normal for something as complex as this in these  
7 early stages of service. There's going to be bugs  
8 that need to be fixed.

9                   But there was like this strict  
10 application of the Project Agreement and raising  
11 work orders to the point where it became  
12 unmanageable. There were just so many work orders  
13 out there.

14                   But it was almost taking people's focus  
15 on what really matters. Because of at the end of  
16 the day, it's all about trains carrying passengers  
17 safely and that was still happening. You know  
18 there was still a service there, they were still  
19 achieving reasonable journey times. Yet there were  
20 hundreds of thousands of work orders, which would  
21 give the impression that it was a diaster and it  
22 was far from it.

23                   So I think we managed to get through  
24 that. A lot of that was just being familiar with  
25 how this process should work properly and sensibly.

1 And the other parts I got involved in were just  
2 interpretation of the performance measures.

3 Some of the drafting for those wasn't,  
4 it wasn't a particularly easy read and could be  
5 interpreted in different ways so it's really about  
6 reaching like a sensible agreement on what the  
7 intent of this performance measure is.

8 So it's lots of things like that in the  
9 beginning of the maintenance term, which I helped  
10 out with.

11 CHRISTINE MAINVILLE: Were these two  
12 issues resolved, as you say, at the beginning of  
13 the term? How far into service?

14 LORNE GRAY: We had the bids on the  
15 application of payment deductions. That went on  
16 for a number of months. But I mean, that's not to  
17 say that I was involved in it for all those months.  
18 I was just aware of the reasons why we were having  
19 disagreements and a lot of that was about the  
20 interpretation of some of these performance  
21 measures.

22 And there was an interpretation of the  
23 cap on how much you were allowed to deduct and  
24 deduct carryover and such like. So I had like an  
25 in and out involvement and that it was really a

1 process involving OC Transpo and RTM largely.

2 I was asked for advice every now and  
3 then and got involved to help with some letters and  
4 such like.

5 CHRISTINE MAINVILLE: Okay. Did you  
6 understand, though, that the discussions about the  
7 work orders and their volume that those discussions  
8 got sidetracked at some point or didn't conclude?

9 CATHERINE GLEASON-MERCIER: Sorry,  
10 Ms. Mainville, I'm going to jump in.

11 My understanding these discussions were  
12 without prejudice between the parties. So I just  
13 want to caution the witness that this might be  
14 entering into a realm of privilege between RTG, RTM  
15 and the City with regards to settlement privilege  
16 and without prejudice discussions.

17 CHRISTINE MAINVILLE: Let's leave that  
18 issue for now.

19 CATHERINE GLEASON-MERCIER: Thank you.

20 CHRISTINE MAINVILLE: Were you aware of  
21 a concept of operations document to -- or do you  
22 know what that is?

23 LORNE GRAY: Concept of operations?

24 CHRISTINE MAINVILLE: About basically  
25 what the operator's concept of how operations will

1 work and how operations are intended to be  
2 performed to inform the design?

3 LORNE GRAY: Yeah, I'm not aware of  
4 that document. It's certainly nothing that anybody  
5 has sought my advice on.

6 CHRISTINE MAINVILLE: I just want to be  
7 clear on, you spoke about the Citadis here being  
8 service proven and meeting that requirement in the  
9 Project Agreement.

10 Let me first ask you. Do you have any  
11 knowledge of the Citadis Dualis being what was put  
12 forward as a vehicle --

13 LORNE GRAY: No.

14 CHRISTINE MAINVILLE: -- and a  
15 subsequent change being made?

16 LORNE GRAY: No, no, not something I  
17 would have been involved in.

18 CHRISTINE MAINVILLE: Are you confident  
19 that there was no change -- was there any kind of  
20 variation made to the Project Agreement or some  
21 change made to allow for that Project Agreement  
22 being -- that specification being met the service  
23 proven specification?

24 Sorry. I think that question was  
25 jumbled. It's late in the day.



1 Are you aware of any change --

2 LORNE GRAY: Any changes we made to the  
3 specification for the vehicles?

4 CHRISTINE MAINVILLE: To allow, or  
5 qualifications made to the service proven  
6 requirement, to allow for this vehicle to either  
7 meet that requirement, or a waiver?

8 LORNE GRAY: There was a number of  
9 minor changes made to the PSOS. Almost like a  
10 clean-up exercise.

11 So when Alstom would go through the  
12 PSOS and they would do like a, you know, they  
13 shall, they will, and pick out certain requirements  
14 that they felt were not applicable to the Alstom  
15 Citadis vehicle, it would be more applicable to  
16 another type of train, commuter train or something  
17 like that.

18 So it was like a one-off clean-up. It  
19 started at Alstom. They went through all the  
20 requirements they felt were not necessary to be met  
21 for their Citadis Spirit. They would present that  
22 to the City, the City would go through that and  
23 decide if they wanted to uphold the PSOS or relax  
24 the PSOS, depending on the nature of what the  
25 change was.

1                   So that was probably the bulk of the  
2 changes that were made in respect to the PSOS.

3                   In terms of changing the vehicle  
4 itself, I would say minor. We introduced tri-poles  
5 for people to hold onto in the carriages. We  
6 introduced more straps that come down for people to  
7 hold onto.

8                   We introduced a dead man's function  
9 that -- I'm sure there's a more elegant way of  
10 describing that. But it's called the dead man's  
11 wheel, where the driver holds a handle, and they  
12 take the open position, and as long as that handle  
13 is in the open position, we know that the driver is  
14 alive and is still in control of the train.

15                  If all of a sudden his hand comes off  
16 it, then there's -- that's why they call it the  
17 dead man's -- anyway.

18                  We introduced an enhancement to that,  
19 where we wanted to make sure drivers were remaining  
20 alert. So we came up with like a button that would  
21 be pressed every, I don't know, 30 seconds or a  
22 minute, just to make sure that the driver was  
23 staying alert. So he would hold his hand on the  
24 dead man's handle and then press this button to  
25 make sure he was still awake and alert. That was

1 probably out of all the changes --

2 CHRISTINE MAINVILLE: So you don't  
3 recall any change to the service proven  
4 requirement?

5 LORNE GRAY: No, no.

6 CHRISTINE MAINVILLE: Or any waiver?

7 LORNE GRAY: No, no. It was just small  
8 concessions that were necessary because the PSOS  
9 didn't apply in all respects to the Alstom Citadis  
10 Spirit. But none of these things were material in  
11 any way.

12 CHRISTINE MAINVILLE: You would have  
13 been aware, you would have been involved if there  
14 had been --

15 LORNE GRAY: For sure, I would have  
16 been involved if there was -- yeah.

17 CHRISTINE MAINVILLE: And this clean-up  
18 exercise that you described, would that happen very  
19 early on then before the assembly or manufacturing,  
20 or would that...

21 LORNE GRAY: I'm trying to think of the  
22 timing. I've got to think of somewhere around 2016  
23 where we went through that exercise. So that would  
24 have been just in the wake of early stages of full  
25 production in 2016.

1 CHRISTINE MAINVILLE: Okay. Those are  
2 my questions.

3 Is there anything, Catherine or Jesse,  
4 on your end?

5 CATHERINE GLEASON-MERCIER: No  
6 questions from us.

7 CHRISTINE MAINVILLE: Okay, we can go  
8 off record.

9  
10 -- Concluded at 5:05 p.m.

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1 REPORTER'S CERTIFICATE

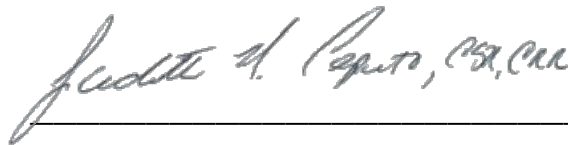
2  
3 I, JUDITH M. CAPUTO, RPR, CSR, CRR,  
4 Certified Shorthand Reporter, certify;

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

9 That the statements of the presenters  
10 and all comments made at the time of the meeting  
11 were recorded stenographically by me and  
12 transcribed at my direction;

13 That the foregoing is a Certified  
14 Transcript of my shorthand notes so taken.

15  
16 Dated this 13th day of May, 2022.

17   
18 \_\_\_\_\_

19 NEESONS, A VERITEXT COMPANY

20 PER: JUDITH M. CAPUTO, RPR, CSR, CRR  
21  
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