

Ottawa Light Rail Commission

Nicolas Truchon
on Monday, May 9, 2022



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OTTAWA LIGHT RAIL COMMISSION

NICOLAS TRUCHON

May 9, 2022

--- Held via Zoom Videoconferencing, with all
participants attending remotely, on the 9th day of
May, 2022, 2:00 p.m. to 5:00 p.m.

1 COMMISSION COUNSEL:

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3 Kate McGrann, Counsel Member

4 Fraser Harland, Commission Counsel Member

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6 PARTICIPANTS:

7

8 Jesse Wright, Esq., Paliare Roland Rosenberg

9 Rothstein LLP

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12 ALSO PRESENT:

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14 Eveliene Symonds, Stenographer/Transcriptionist

15 Laila Butt, Virtual Technician

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3	WITNESS: NICOLAS TRUCHON	
4	EXAMINATION BY MS. McGRANN	4
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8	EXHIBITS	
9	None .	
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1 -- Upon commencing at 2:00 p.m.

2 NICOLAS TRUCHON: AFFIRMED.

3 BY MS. MCGRANN:

4 1 Q. Good Afternoon, Mr. Truchon. My
5 name is Kate McGrann. I'm one of the public
6 counsel for Ottawa's Light Rail Transit public
7 inquiry. I'm joined today by my colleague,
8 Fraser Harland. He's a member of the Commission
9 counsel team.

10 The purpose of today's interview is to
11 obtain your evidence and your solemn declaration
12 for use at the Commission's public hearings. This
13 will be a collaborative interview such that my
14 co-counsel, Mr. Harland, may intervene to ask
15 certain questions.

16 If time permits, your counsel may also
17 ask follow-up questions at the end of this
18 interview. The interview is being transcribed and
19 the Commission intends to enter this transcript
20 into evidence at the Commission's public hearings,
21 either at the hearings or by way of procedural
22 order before the hearings commence. The transcript
23 will be posted to the Commission's public website
24 along with any corrections made to it, after it is
25 entered into evidence.

1 The transcript, along with corrections
2 later made to it, will be shared with the
3 Commission's participants and their counsel on a
4 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 participants or entered into evidence. Any non
10 typographical corrections made will be appended to
11 the transcript.

12 Pursuant to the Section 33(6) of the
13 Public Inquiries Act, 2009: (As read)

14 "A witness at an inquiry shall
15 be deemed to have objected to answer
16 any question asked him or her upon
17 the ground that his or her answer
18 may intend to criminate the witness
19 or may tend to establish his or her
20 liability of the civil proceedings,
21 at the instance of the Crown or of
22 any person, and no answer given by a
23 witness at an inquiry shall be used
24 or be receivable in evidence against
25 him or her in any trial or other

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

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

9 If at any point you'd like to take a
10 break during the interview just let us know, we'll
11 pause the reporting. We'll plan to take a
12 10-minute break approximately halfway through.
13 To begin, would you just provide us with a brief
14 description of your professional background as it
15 relates to the work that you have been doing on
16 Stage 1 of Ottawa's Light Rail Transit system?

17 A. Sure. So I joined the CEO of RTG
18 in July of 2020. Prior to that, I was -- I was
19 chief financial officer for another one of -- one
20 of the sponsors's project, which is the Champlain
21 Bridge of Montreal. I had been in this capacity
22 starting 2015 all the way to the end of
23 construction and the start of operation.

24 Prior to that -- prior to 2015, I was a
25 partner in financial advisory in P3 advisory with

1 the accounting firm Grant Thornton. I was
2 essentially involved in their P3 advisory practice,
3 working with provincial, federal, and municipal
4 government on the delivery of P3 projects.

5 2 Q. Did you have any prior rail
6 experience on your work on Stage 1 in Ottawa?

7 A. No. Not specifically.

8 3 Q. And in any of the prior roles that
9 you've described, did you do any work with projects
10 delivered by way of design-build finance maintain
11 model?

12 A. Yes. Most -- most of my practice
13 over at Grant Thornton was specifically oriented
14 towards what we would refer to as DBFM or DBFOM
15 projects across a wide range of infrastructure
16 categories. So although not specifically rail, I
17 was involved in social infrastructure in terms of
18 P3 -- sorry, in terms of hospitals, in terms of
19 courthouses, detention centres, was also involved
20 in the water waste water as well as -- as well as
21 in transportation.

22 4 Q. You mentioned that you became the
23 CEO of RTG July of 2020. Would you give us an
24 overview of your responsibilities in that role?

25 A. RTG is structured as in -- into a

1 standard corporate structure for P3 projects or
2 what we refer to as project companies. So I'll do
3 it as the umbrella -- the all-inclusive -- it is
4 the counterparty -- contractual counterparty to the
5 City of Ottawa. It is structured as a general
6 partnership with a number of main subcontracts with
7 the -- overlooking different types and different
8 kinds of activities.

9 In the case of RTG, there are two main
10 subcontracts: the main subcontract with the OLRTC
11 for the design, and construction, and testing, and
12 commissioning of the system and the major
13 subcontract with the -- with the Rideau Transit
14 Maintenance for the operation, maintenance, and
15 life cycle scope over the next 30 years.

16 RTG is also the financing vehicle for
17 the project, so it is the entity that went to the
18 capital markets to secure third-party financing,
19 both short term and longer-term to facilitate -- to
20 fund the delivery of the project, as well as --
21 as -- as part of the construction program.

22 So as CEO, my role is essentially the
23 interface between the RTG parties, which would be
24 the various subcontractors that I referred to, and
25 the City in terms of managing the day-to-day

1 commercial and contractual relationship with the
2 City of Ottawa, on behalf of the consortium as well
3 as in the -- being involved with the day-to-day
4 operation and delivery of service as it is with
5 RTM.

6 5 Q. And other than you, who else is
7 working for or at RTG right now?

8 A. So RTG is structured as a -- as a
9 very small organization, because most of our scope
10 is effectively subcontracted to affiliated third
11 parties. So specifically at RTG, there are two
12 senior officers. There's myself, acting as CEO. I
13 have a CFO that is a -- essentially more of a
14 finance function, that's provided by one of the
15 partners. We have a -- that CFO is part-time to
16 look at the financial affairs, but also is
17 supported by a controller that -- that -- that has
18 shared the -- the -- the -- the -- the service
19 delivery with respect to financial services.

20 We have a full-time office manager that
21 is an employee of RTG, office manager/document
22 controller. And we also have a director of
23 communications that was onboarded, I think, in
24 September of 2020 on full-time basis.

25 Aside from that, we have two other key

1 roles that are filled on a part-time basis by
2 designates from the sponsors. We have a quality
3 director role and we also have an environmental and
4 sustainability director role, which are, you know,
5 essentially project agreement roles that -- that --
6 that need to be provided by RTG in front of the
7 City, but effectively, that interface on a
8 day-to-day basis with equivalent senior
9 representatives from RTM.

10 So the bulk of the work is effectively
11 done by RTM, but there is a level of oversight that
12 is effectively carried out by RTG in those two
13 roles.

14 6 Q. And is it the quality director?
15 Did I get that right?

16 A. Yes.

17 7 Q. What is that person's role?

18 A. That person's role is to -- is --
19 is a transitional role from the -- from the
20 construction phase through operation. The quality
21 function is one that's effectively performed at
22 OLRT -- was performed under OLRTC during the
23 construction but also at the -- at the RTM level
24 throughout the operation. That quality director is
25 essentially just an oversight mechanism. Not of

1 the actual quality of the work that's done by RTM,
2 but it's an oversight of the quality function at
3 RTM. So just one additional layer of quality
4 review.

5 8 Q. So what is it that they are
6 looking at in the day-to-day course of their -- I
7 understand it's part-time, but --

8 A. Yeah, they would look at NCRs
9 being raised by -- by RTM, as well as how those
10 NCRs are getting closed, ensuring the timely
11 delivery of quality reports to the City of the --
12 for the PA on a monthly basis. And the auditing --
13 the quality side of the RTM and how they apply
14 their own quality program.

15 And they were there -- they would
16 mostly be there in a support or observer role into
17 some of the quality audits that would be done by
18 RTM from time to time.

19 9 Q. I was going to ask you, do they
20 have an audit function or...

21 A. On select scope, but the audit are
22 effectively done by RTM per their procedure, but
23 effectively the quality director is selective in
24 assisting to a portion on the audits that are
25 taking place at RTM, specifically. So she has full

1 visibility on all the audits that will be taking
2 place and she is selective on which ones she would
3 like to attend to.

4 10 Q. You mentioned that this person
5 looks at NCR. What are those?

6 A. Non conformance report. Whenever
7 there's a non conformance with respect to -- to
8 portion of the scope that isn't performed the way
9 it should be performed in the -- into a -- it's --
10 into a quality system. If there is a discrepancy,
11 there's usually a non conformance report that gets
12 generated, and that non conformance report is going
13 to make sure, number one, that whatever is non
14 conformant is rectified.

15 But also there's an ability to take a
16 look at what was the source and the reason for that
17 non conformance and put together corrective action
18 plans, when and where those are required.

19 11 Q. At a high level, how are those non
20 conformance reports generated?

21 A. It's mostly a self-reporting
22 mechanism. So RTM would self-report those non
23 conformances. They would also report non
24 conformances they would have identified through
25 some of their subcontractors. It's the official

1 mechanism which they document whether or not
2 there's -- you know, some of the time -- most of
3 the time, it's documents related, or process from a
4 quality perspective.

5 Because, keep in mind, you know, it's a
6 self- -- selfish -- self-performance quality
7 system, so self-assurance. But there is, you know,
8 from time to time when the quality people within
9 the organization identify -- identity discrepancy
10 in the mechanism that's used to track those
11 discrepancy, and ensure they're corrected, is what
12 we refer to as the NCR mechanism.

13 12 Q. So are these manually generated,
14 then, within the organization?

15 A. Yes.

16 13 Q. Do you report to anybody on any
17 aspect of your role on the work that you're doing?

18 A. I report on the -- into the RTG
19 board of directors, which consists of
20 representatives from the three equity investors,
21 namely: ACS, SNC-Lavalin, and EllisDon.

22 14 Q. And other than that reporting
23 line, do you report to anybody else?

24 A. I'm -- I'm -- I'm sorry. Maybe I
25 missed the question. I'm an employee of ACS

1 Infrastructure. I've been an employee of ACS since
2 2015. And I'm effectively seconded to RTG to act
3 as the CEO of RTG. So I do have a reporting line
4 into the ACS Infrastructure organization.

5 15 Q. And would you be reporting on the
6 functioning of RTG in that reporting line to ACS?

7 A. It would be -- obviously I'm
8 accountable to ACS on the day-to-day performance of
9 RTG. I would be getting some questions from time
10 to time from ACS management or leadership. Mostly,
11 the board members that are involved with whom I
12 work on a day-to-day basis with respect to the --
13 the ongoing affairs of RTG and the various files
14 that we have on the way.

15 16 Q. You mentioned, I think, working
16 with the board members on a day-to-day basis. What
17 is the interaction of the board like with RTG?

18 A. The board, at a minimum, we have a
19 quarterly meeting with the board of directors.
20 Some of our board members are more involved than
21 others in the affairs just because they -- you
22 know, some of them culturally have closer proximity
23 or monitor the -- the investment on an ongoing
24 basis. And also some of our board members do
25 cumulative functions. So two of my board members

1 are board members of RTM. So obviously they would
2 be closer to -- closer to the operations.

3 On the -- we -- we operate with --
4 with -- with what we refer to as a delegation of
5 authority, that's given to me and my CFO on behalf
6 of the board of directors to manage the day-to-day
7 affairs. But whenever there's, you know, issues or
8 situations that require to be escalated to the
9 board for consideration, or for information, or for
10 action, it's up to my CFO and myself just to make
11 sure that we keep the board in the loop on some of
12 the key decision points and decision-making.

13 Again, keep in mind that my board is
14 focusing on the RTG side of the business, so we are
15 mindful about the client relationship. But some of
16 operational decisions or actions by some the
17 subsidiaries -- sorry, not subsidiaries, but my
18 contractual counterparts with OLRTC and RTM, some
19 of those actions do have an impact on the client
20 relationships. So I do try to make sure that my
21 board is up to speed on developments and situations
22 as they evolve.

23 17 Q. So and you've spoken to this a
24 little bit but I just want to make sure I
25 understand properly. During the maintenance term,

1 which RTG is now in for Stage 1, what is RTG's role
2 with respect to the maintenance?

3 A. So RTG is mostly responsible for
4 the long-term financing. That is our primary
5 responsibility, making sure that we service the
6 debt and that we support the -- the -- the returns
7 to the equity investors. Also at the same time we
8 are the -- we are responsible for inter -- well,
9 the management of the RTM subcontract with the --
10 what we refer to as the maintenance subcontract or
11 the maintenance contract.

12 And I'll do that contract is with a --
13 a group of affiliated entities, it's still -- we
14 still try to manage this on an arm's-length basis.
15 But, you know, considering the nature of that
16 contract with RTM, we do have what we refer to as
17 equivalent project relief provisions. So most of
18 the relief that's provided to RTG and the project
19 agreement with the City is effectively pushed down
20 or made available to the RTM. That's what we refer
21 to as a back-to-back agreement in terms of
22 responsibilities for operation, maintenance, and to
23 some extent rehabilitation.

24 So there's the day-to-day management of
25 that interface between RTM and the City and service

1 delivery, which RTM is primarily responsible for,
2 but as -- as RTG, we still have a vested interest
3 and we stay involved. Even though that service is
4 provided by an affiliated entity.

5 18 Q. So when you speak about relief
6 from the City being passed down, could you help me
7 understand what you're referring to there?

8 A. So the project agreement does have
9 a number of -- a number of provisions with respect
10 to relief event, excusing causes, all the -- all
11 the key provisions of the project agreement are
12 effectively dropped down to RTM through the
13 maintenance contract. So the maintenance contract
14 does mirror many of the provisions of the project
15 agreement as they relate to operation maintenance.

16 So whatever relief is available to RTG
17 under the project agreement, there's an equivalent
18 relief that's into the maintenance contract. Which
19 means that, you know, if a situation happens that
20 RTM believes RTG is allowed some relief under the
21 project agreement, they have the ability to request
22 this relief from RTG. And RTG -- RTG -- RTG makes
23 that request on behalf of RTM to the City under the
24 project agreement. I don't know if I clarified the
25 question.

1 19 Q. You did. Thank you. And does
2 that -- does that continuation of requests for
3 relief and response to relief requests continue
4 down from RTM to Alstom, for example? So if Alstom
5 believes that it's entitled to relief, does it pass
6 the request up to RTM, to RTG, through the City,
7 and a --

8 A. I'm -- I'm not intimate with the
9 details of the maintenance subcontract with Alstom
10 maintenance, but I understand that most of the
11 relief -- but I can't confirm that, if all the
12 relief is effectively transferred back to Alstom as
13 it relates to their scope. But there is -- I
14 understand that there is most of the relief
15 provisions are effectively made available to Alstom
16 under the subcontract.

17 20 Q. Okay. And then just continuing to
18 think about the contract that RTG has with the City
19 with respect to maintenance, and the aspects of
20 that are transferred down to RTM. With respect to
21 penalties and deductions, are those also
22 transferred down to RTM?

23 A. All deductions are transferred
24 down to RTM.

25 21 Q. Is it fair to say if there are any

1 disputes between RTM and the City arising during
2 the maintenance term, RTG is advised of those, and
3 would be involved in them, to the extent it deems
4 necessary?

5 A. Yes, because, no, RTM wouldn't be
6 able to trigger a dispute on its own, and progress
7 that dispute separately from RTG, because the
8 dispute -- the dispute needs to flow through RTG.
9 And its effectively, under RTM disputes with RTG
10 and RTG disputes with the City, but effectively RTG
11 just facilitates the RTM dispute with the City.

12 22 Q. And what about any disputes that
13 may arise between RTM and its subcontractors? Does
14 RTG play any role in those?

15 A. Not specifically.

16 23 Q. Are there any interface agreements
17 that you're aware of that are in place for Stage 1
18 maintenance?

19 A. Yes, there is an interface
20 agreement that is part of the core documentation
21 for the project. I understand that interface
22 agreement was put in place in 2013, as of financial
23 close. That is way before my time. However, that
24 interface agreement is -- is the -- is the document
25 that's -- that's available and is -- effectively

1 governs the relationship or the interface between
2 OLRTC as it relates to the scope of design
3 construction, testing and commissioning, as well as
4 the -- RTM as it related to the scope of
5 maintenance.

6 And it effectively dictates the
7 mechanism, how the two should work together to
8 address issues that may result from the other scope
9 and how it impacts their respective operation.

10 24 Q. To your knowledge, has that
11 interface agreement been an effective agreement
12 with respect to the relationship between OLRTC and
13 RTM?

14 A. Not sure I understand the
15 question. What exactly --

16 25 Q. Has it been effective as a --

17 A. Effective?

18 26 Q. -- yes.

19 A. It is a mechanism that is used to
20 address some of the -- most of the time, it has --
21 it deals specific to legacy issues or transitional
22 issues as -- as we transition from the construction
23 phase into the operations phase. It's usually the
24 mechanism that's used to also address warranty
25 claims that would be done under the construction

1 contract.

2 And that mechanism is there to
3 facilitate discussions directly between RTM and the
4 OLRTC specific -- instead of having to --
5 everything to just go all the way up to RTG and
6 then down to OLRTC, the interface agreement does
7 allow the -- the -- the handling of situations or
8 claims directly between the two entities.

9 27 Q. And so given that the interface
10 agreement is there to avoid OLRTC and/or RTM having
11 to come up and go through RTG, has RTG become
12 involved in issues under the interface agreement at
13 Alstom's --

14 A. We've had a couple of instances
15 before my time when -- when RTG had to get
16 involved, especially from memory around the -- the
17 first -- the time of the first City claim event,
18 that default, and the remedial plan that was put
19 together during the -- during the period of spring
20 2020. There were quite a bit of work that was
21 identified as -- as needed to be done with respect
22 to the infrastructure, with respect to the OCS, and
23 the parafil, the power infrastructure, the track.

24 So some of that work was carried, out,
25 but we've had -- we had a couple cases between

1 OLRTC and RTM, they couldn't agree on who was
2 responsible for that work. Whether or not that was
3 a CC defect, or a construction defect or just a
4 lack of issue with respect to maintenance.

5 And those specific cases, RTG had to
6 step forward and make sure that the work would get
7 done to be -- to be further detailed and discussed
8 between the OLRTC and RTM at a latter stage. So
9 there -- there is a mechanism to -- you know, if
10 the parties can't agree, that there's always the
11 option for RTG to step forward and just to make
12 sure, again, that the work gets done.

13 28 Q. And has that mechanism been useful
14 and effective in this project?

15 A. Yes. When required -- when --
16 whether there is work that needs to happen and
17 neither party has -- is moving forward to -- to --
18 and it's only been the few exceptions, not the vast
19 majority. In all fairness, RTM and OLRTC have
20 always stepped forward to address the issues that
21 they felt were specific to their organization, but
22 there's always a bit of a grey area between who
23 is -- it's not always entirely black or white.
24 Sometimes it's a little more complicated issues.

25 So if -- if to make sure that the work

1 takes place, RTG has to step forward, we certainly
2 did. And then we applied contractual mechanism to
3 recover the funds from other two partners, from
4 whoever we felt were responsible for the wrong.

5 29 Q. Have any other the interface
6 agreements been proposed or considered on this
7 project with respect to the maintenance term?

8 A. I'm sorry, I missed the first part
9 of the question.

10 30 Q. Have any other interface
11 agreements been proposed or considered on this
12 project?

13 A. It's an open question. As far as
14 I'm concerned, the key counter-parties that I deal
15 with are RTM and OLRTC, and the interface agreement
16 is the only interface agreement I'm aware of.
17 Whether there are other interface agreement between
18 subcontractors of RTM or OLRTC, I wouldn't be privy
19 to those.

20 31 Q. At any point, was an interface
21 agreement ever considered between RTM and OC
22 Transpo, for example?

23 A. What kind of interface agreement
24 would you -- I just want to make sure that...

25 32 Q. Any kind. Just wondering if

1 anything has been considered?

2 A. It wouldn't be -- not that I'm
3 aware of, because by definition, if there was a
4 contractual or -- or a -- you know, I'm thinking
5 about testing and commissioning, but, again,
6 testing and commissioning, RTG was at the table.
7 We were participants.

8 My predecessor Peter Lauch was in the
9 room, so, you know, most of the interface, there
10 may have been direct dealings between the City and
11 some of our -- some of the RTG subcontractors but
12 most of time, RTG would have been involved and
13 would have been, you know, physically attending or
14 at least kept in the loop with respect to those
15 developments. I'm not aware of any of those
16 situations, but I could be corrected, you know.
17 It's a long time since 2013, so.

18 33 Q. Fair enough. OLRTC, is it still a
19 functioning entity? Does it have people within it,
20 things like that?

21 A. It does still have a couple of
22 employees. Whether or not those are direct
23 employees of OLRTC, or their delegates, or seconded
24 personnel from the parent company. But it is still
25 a valid entity. It is ongoing as it is correcting

1 some deficiencies, continuous to correct and
2 address deficiencies from the construction phase
3 and addressing warranty issues. As well as
4 delivering scope specific to the Stage 2 vehicle.
5 So is it still an operating entity, but not on the
6 same scale and magnitude as it used to be when it
7 was an active construction entity.

8 34 Q. And I understand that at least
9 some people used to work for OLRTC, have now gone
10 to work for RTM. Is that correct?

11 A. That is correct.

12 35 Q. In terms of the --

13 A. And, I'm sorry. It wouldn't be
14 completely unprecedented. There is a good
15 rationale to transition people with knowledge of
16 construction into the day-to-day operations, as it
17 relates to the maintenance, but also the planning
18 of infrastructure repairs over the -- the life
19 cycle. So it -- you know, it is normal to have
20 some of those employees transition into the
21 operating organization.

22 36 Q. What were the main challenges that
23 you faced when you began working on Stage 1 of
24 Ottawa's Light Rail Transit project?

25 A. The -- the -- the main issue is

1 one of trust. You know, we have been going from
2 one crisis to the other. We -- the project has had
3 the -- a -- a rough start in terms of transition.
4 You know, September of 2019 was -- was a difficult
5 month from an operations perspective. I think, you
6 know, performance for October, November, December
7 was probably okay, you know, still had a few
8 issues.

9 But the winter was -- was very
10 difficult as it relate to the -- from what I
11 understand, you know, the -- the weather component
12 on the vehicle did create a number of issues, which
13 kind of led us to, you know, take -- take a very
14 deep dive on the system condition and put together
15 a -- a plan to address the issues that were
16 encountered during the winter. So some of -- most
17 of these issues were effectively addressed as part
18 of the -- as part of the remedial plan in the
19 spring of 2020.

20 I think we -- we did -- you know,
21 performance -- the improvements we did after -- as
22 part of the spring 2020 remedial plan where --
23 were -- were solid, because notwithstanding the --
24 the issue we had with the -- with the -- the wheels
25 that showed crack -- the cracked wheels, we

1 referred to that issue. Other than that, you know,
2 the -- the performance through the remainder of
3 2021 was fairly -- fairly solid, because, you know,
4 most of the issues we incurred in the first winter
5 didn't repeat in the second winter. So I think we
6 got into better preparation, better planning,
7 certainly improved -- improved staffing, better
8 working relationship.

9 So, you know, a number of improvements
10 were made to make sure that the -- the events that
11 we had in the winter of 2020 would not repeat
12 themselves in the winter of 2021.

13 As any new system, there's always going
14 to be some things that need to be tweaked along the
15 way as you start -- as you start getting
16 comfortable with what's being delivered, and that's
17 both on the RTM side, the Alstom side, and also the
18 City side.

19 I'll give you one example. During the
20 winter of 2020, we started having an issue with
21 flat wheels. Flat wheels are created when trains
22 enter into a braking system, emergency braking
23 system quicker. And, you know, if it's done at
24 a -- a specific speed, then it does create a flat
25 spot.

1 We -- I think we were having trains
2 displaying unusual level of emergency braking in
3 the winter, so that created flat -- wheel flats.
4 We obviously addressed a number of the system
5 issues, but another thing that was addressed is the
6 City does have, as part of the system
7 configuration, the ability to implement what we
8 refer to as Type 1 and Type 2 braking.

9 And the best analogy I can give is you
10 don't drive the same in winter as you do in
11 summertime when you drive a car. It's about the
12 same thing with respect to -- as -- as you go about
13 braking. It's the same thing with the train. So
14 when you get into Type 1 or Type 2 braking, it's
15 more preventative measure. It's adjusting the
16 behaviour of the train to speed at which it -- it
17 does -- you know, the speed at which you enter the
18 station so that you minimize, you know, shorter
19 distance braking and you emphasize more, you
20 know -- a more cautious way of -- of approaching
21 the braking system.

22 While Type 1 and Type 2 wasn't
23 specifically applied proactively by the City in the
24 winter of 2020, but when we got into the winter of
25 2021, obviously, proactively part of the remedial

1 measure was to turn on Type 1 braking whenever we
2 were having weather conditions that would be prone
3 to some of the sliding, to effectively mitigate the
4 risk of having emergency brake. So just by
5 implements Type 1 and Type 2 braking, we were able,
6 effectively, protect the fleet.

7 So it's that type of environment that
8 some of the fixes were more from the -- the -- from
9 the physical work to address potential defects or
10 warranty issues, but others were more about how we
11 respond and how we adapt to the Ottawa climate. So
12 Type 1, Type 2 is an example.

13 Another approach we've done is we --
14 and I'm sure the Commission probably, if it has
15 not, should be discussing this with my counterparts
16 over at RTM -- is moving away from this approach
17 where we try to troubleshoot trains on the line, as
18 opposed to just get the train -- you know, get the
19 train moving, put in the location, improve the way
20 we respond to incidents.

21 As opposed to -- as opposed to
22 troubleshooting it on the line and taking 45
23 minutes with a stranded train, trying to get it
24 working, as opposed to maybe just moving it and
25 getting a replacement train. So one of the things

1 over which, operationally, there's been a lot of
2 improvements, is getting better at responding to
3 incidents.

4 So those are maybe two of the -- two of
5 the, you know, original challenges, which we were
6 effectively able to -- you know, it's an ongoing
7 thing that we continue to work on to try to get
8 better at, but certainly places where we've had
9 some improvements.

10 37 Q. With respect to the wheel flats,
11 so you mentioned that there was some systems issues
12 that were addressed. Can you speak to those in a
13 little bit more detail?

14 A. I'm going to try, but keep in mind
15 I'm not a technical person. I'm -- I'm a finance
16 person. So I'll speak with it from a finance
17 person's perspective.

18 When the train is having traction
19 issues, so what we refer to as some measure of
20 sliding, it does trigger an emergency brake cycle.
21 And that emergency brake does -- does create some
22 wear and tear on the wheels and effectively can --
23 can lose some of the roundness of the wheel and
24 create a bit of a flat spot. Which means that when
25 the -- when the wheel keeps turning at higher

1 speed, you can feel a vibration.

2 And over time, if that's not corrected,
3 then it creates more vibration, and it does -- it
4 can have an impact on the reliability of the
5 vehicle as well as the comfort to the users.

6 So usually when you start having wheel
7 flats, you need to take the -- you need to take
8 the train out of service and put it through a wheel
9 re-profiling piece of equipment, which we refer to
10 as a wheel lathe, which is a specialised piece of
11 equipment and, you know, to re-profile the wheel to
12 give it the shape that it needs to have so that you
13 deal away with the wheel flat.

14 But because of the volume of emergency
15 braking we were getting -- and I'm not saying it's
16 a system issue. Don't get me wrong. There's a
17 number of factors that can trigger the -- the
18 emergency braking. But because we've -- we were
19 having many of those trains braking at the last
20 minute, there were not getting the friction it was
21 supposed to get, that created a higher volume of
22 wheel flats and the repair equipment couldn't keep
23 up in terms of addressing those wheel flats, the
24 volume that it had in bringing trains back in
25 service. I understand this did impact the fleet

1 availability.

2 38 Q. So in terms of the system -- the
3 system adjustments or system changes, they were
4 aimed at reducing the emergency braking; is that
5 right?

6 A. Yes, but there were -- you know,
7 we had a remedial plan with 20 -- 20 categories of
8 places of improvements we would need to do. We
9 were having issues with respect to our CBS. We
10 have issuing with respect to arcing. Some issues
11 with respect to the OCS. So it was a wide range of
12 issues in places where we needed to do some
13 improvements.

14 And, you know, we had experts
15 consultant to support us in terms of identifying
16 number one, what was the problem? What was the
17 root cause? What is it the fix? What needed to
18 happen? So all of this took place in the months
19 of, you know, February, March, April, May, and we
20 got -- we got the shutdowns in the spring of 2020
21 to effectively carry out most of the work we were
22 looking at.

23 But it was -- it wasn't just a single
24 thing. It were a number of smaller things, all of
25 them that needed to be managed and corrected during

1 that period of time.

2 39 Q. Just I'm going to stay focussed on
3 the wheel flats for a moment longer here.

4 A. M-hm.

5 40 Q. So there's some systems issues
6 that were addressed. And were they addressed
7 during that spring shutdown of 2020 that you just
8 described?

9 A. I'm not sure I pointed
10 specifically to system issues with respect to the
11 wheel flats. There's a number of -- the wheel flat
12 is a consequence. It's not -- it's a consequence
13 of emergency braking that I am -- from what I
14 understand. And a number of factors can result --
15 can be attributable to emergency braking. Train
16 overshooting at a station and the braking system
17 not giving you the speed at which the train needs
18 to -- to avoid overshooting, is going to increase
19 the pressure on the brakes so the train doesn't
20 overshoot.

21 So those are -- I think to a certain
22 extent, it's system, but it's also at the same time
23 sanding bracket, whether or not there's enough sand
24 that's being thrown on the rail to facilitate
25 friction. So it's a number -- it's not just the

1 system, it's the performance that -- where a number
2 of probable parameters were not performing the way
3 they should have. And the consequence was --
4 was -- was additional -- well, the large number of
5 wheel flats that needed to be addressed. And that
6 was higher than the capacity we were having of the
7 equipment to address the wheel flat.

8 And that's why it became -- that's why
9 people became aware of wheel flats. Just because
10 we couldn't repair them quick enough, we couldn't
11 re-profile the wheels quick enough not the disrupt
12 the event of vehicle availability.

13 41 Q. So the wheel flats result from
14 emergency brakes, and fair to say that the cause of
15 emergency brakes is a multi-faceted sort of issue?

16 A. I would be much more comfortable
17 if you addressed that with a vehicle expert,
18 because I'm not -- I'm way outside of my -- way
19 outside of my core expertise.

20 42 Q. All I can ask you talk about is
21 your understanding, and so that is all I'll ask you
22 to do.

23 With respect to the Type 1 and Type 2
24 braking that you spoke about, to the extent that
25 you can answer this question, is it within the

1 City's power to choose to apply Type 1 and --

2 A. Yes.

3 43 Q. -- Type 2 braking?

4 A. Yes.

5 44 Q. Okay. And at what level is that
6 decision made? Is it made by the driver in the
7 moment, or is it made at the beginning of the day?
8 Just help me understand how that happens in --

9 A. Okay. The -- the -- in the first
10 winter, I was not around. But I understand that
11 Type 1/Type 2 had to be requested as a braking
12 parameter for -- from, I think, RTM to the City. I
13 was not around, but this is what I understand.
14 Whereas, you know, getting into the winter of 2021,
15 you know, it was no longer a question of asking for
16 Type 1, Type 2. It was driven by environmental
17 conditions.

18 So if the City is looking at the
19 weather forecast, they would proactively implement
20 Type 1 or Type 2 just to address with environmental
21 parameters. So whether or not there was:
22 Precipitation, moisture, humidity level, colder
23 temperature. Anything that would impact the -- the
24 friction would just, you know, the City would just
25 go ahead and apply Type 1, Type 2. And then they

1 decided to applying it proactively, is the day that
2 we minimized quite a number of wheel flats.

3 We're still getting wheel flats. Don't
4 get me wrong. It's part of the business. And
5 some -- depending on wear and tear on the wheel,
6 some braking is going to generate the wheel flat,
7 some won't, but nowhere near the kind of volumes we
8 were getting in the first winter.

9 So it's more of, you know, getting to
10 grow and understand the system that -- that you use
11 and your operational decisions, how they impact the
12 day-to-day operations, you know. Many people were
13 focusing about the lost kilometres from doing
14 Type 1, because you wouldn't be running the trains
15 as quickly as they could under normal circumstances
16 but at the end of the day, you do protect the asset
17 when you do it this way.

18 So it's getting the -- getting the City
19 to that point of understanding was -- was, as far
20 as I'm concerned, a big win for everybody
21 collectively, because we ended up protecting the
22 asset by going down that road as a preventive
23 measure.

24 (DISCUSSION OFF THE RECORD)

25

1 BY MS. MCGRANN:

2 45 Q. What changed, to your knowledge,
3 between the approach taken in the winter of 2019
4 heading into 2020, and the winter of 2020 heading
5 into 2021 where the City was proactively engaging
6 the Type 1 braking?

7 A. I think the -- the City accepted
8 that, you know, there were a number of operational
9 decisions that would impact the -- the performance
10 of the vehicle and the performance of the system.
11 And they realize that -- I hope they realize that,
12 you know, implementing Type 1 was better to protect
13 the asset.

14 46 Q. Were you involved in any
15 discussions about that particular issue?

16 A. Not specifically, because those
17 would have been handled directly by RTM as part of
18 the day-to-day operations but I'm -- I do sit into
19 the maintenance monthly committee where, you know,
20 the issue of Type 1/Type 2 braking was discussed on
21 a couple of occasions.

22 47 Q. Were there any -- other than the
23 fact that the demand outstripped the capacity of
24 the wheel lathe; have I got that right?

25 A. Yes, but there was also the wheel

1 lathe is a very specialised piece of equipment, so,
2 you know, keep in mind, that requires technicians
3 from outside of Ottawa and outside of Canada,
4 sometimes. So when you have a wheel lathe that's
5 breaking in the middle of Covid shutdown where
6 travel is -- international travel is quite limited,
7 that does create quite a bit of service
8 interruption. So in some cases, the wheel lathe
9 was offline for a couple of days, just because it
10 was awaiting availability of a technician to come
11 to Canada to fix it.

12 48 Q. And has that -- has the
13 availability of the wheel lathe continued to pose
14 issues for service reliability?

15 A. It does go offline from time to
16 time, don't get me wrong, but it -- but given that
17 we're dealing with limited volume of incidents,
18 it's -- it's much more manageable. And I also
19 understand that there is a variation right now for
20 a second wheel lathe to be installed. It's under
21 construction just to, again, to minimize the
22 dependency on the single unit.

23 49 Q. Other than the proactive use of
24 Type 1 braking, were there any other operational
25 decisions that the City made that have contributed

1 to the reliability of the service on Stage 1?

2 A. Yes. The City, you know, took
3 advantage of this reality of Covid and reduced
4 ridership to, you know, I think realized that
5 running the full service like it was supposed --
6 like it would have been the case, had there been no
7 Covid. You know, running more empty trains on the
8 five-minute headway versus running empty trains on
9 an eight-minute headway, the impact on ridership
10 was probably limited.

11 So they did agree to reduce on -- on
12 discussion with RTG, and RTM, and Alstom to reduce
13 the number of trains that would be provided for
14 daily service. So we had a couple of what we refer
15 to as term sheets for service reduction. We had
16 one that was significant in 2021 from March to, I'd
17 say, probably end of July, where we were
18 effectively running service at 11 trains, which
19 was -- you know, 11 trains is about 93 percent of
20 the full service. So with the 7 percent reduction
21 is -- is generally, you know, when -- when people
22 refer to 15 trains, it's only 15 trains for two
23 hours in the day, because then it goes down to 11,
24 and then it's 13 during peak hour of weeks -- on
25 weekday service.

1 So if we remove the peak trains and we
2 just run on the basis of 11, I think it gives us a
3 seven-minute headway and 93 percent of the total
4 kilometres. So the City did implement a couple of
5 variations to reduce the number of trains required,
6 and on that basis, did provide, you know, lower
7 stress on operation, maybe allow us to maybe focus
8 on working on the reliability of some of the
9 vehicles, addressing the -- the cracked wheels.
10 Some of the challenges that came with that, and
11 more recently some of the axle-bearing issues that
12 we have been encountering, so...

13 So if you asked me, you know, the Type
14 1/Type 2, yes. Reduced service, that's also a City
15 decision. It came with a cost, because RTG had to
16 agree to pricing concessions to implement that term
17 sheet, considering that the City wasn't getting the
18 full service. And we agreed on the reduction in
19 fees. But overall, I think it was for the best of
20 the project.

21 50 Q. And any other operational
22 decisions that the City made that contributed
23 significantly to the reliability of the service?

24 A. I'm sure there's others, but none
25 that come to mind right at this point.

1 51 Q. In talking about the main
2 challenges that you faced when you first started
3 up -- when you first started in this, your current
4 role, you mentioned that there had been
5 improvements in staffing. What were you referring
6 to there?

7 A. Improvements in staffing?

8 52 Q. Yes.

9 A. I don't...

10 53 Q. I'm just looking at my notes to
11 see if I can help you in context.

12 A. Yeah.

13 54 Q. You had started out talking about
14 "trust being a main challenge."

15 A. M-hm.

16 55 Q. You mentioned at the outset, you
17 "were moving from one crisis to another"?

18 A. M-hm.

19 56 Q. "It was a rough start in terms of
20 trains." You talked about September 2019 being
21 rough versus performance October, November,
22 December being okay and then the winter being
23 difficult. And then you talked about the deep dive
24 this was done in the spring with remedial plan, and
25 I've got notes reflecting that you said that there

1 was "improvements in staffing and a better working
2 relationship." And I wanted to follow-up with you
3 on both of those statements, so I wanted --

4 A. I think what I meant with
5 improvements and staffing, I probably meant about
6 improvement in response and how we responded to
7 incidents. There was -- there's been, you know, a
8 fairly -- a fairly stable working team on both RTM
9 and RTG. We have had a couple changes within RTM,
10 but specifically, you know, when Mario Guerra and
11 myself took over from Peter Lauch, we tried to
12 create different working environment with the City.
13 And we tried to improve that relationship, rebuild
14 the relationship. We've had -- we've had some good
15 progress.

16 We unfortunately had a couple of --
17 couple of incidents that had put more on -- you
18 know, brought back the tensions with the City at
19 the working level. But at the end of the day, I
20 don't think the -- I'm not sure I was referring to
21 staffing, per se, it was more about the interface
22 with the members of the City staff and the City
23 team on the day-to-day issues.

24 57 Q. Okay. From where you're sitting
25 in your role in RTG, when you joined in July of

1 2020, did RTM and its subcontractors have
2 sufficient number of trained staff to meet the
3 maintenance obligations under the performance
4 agreement?

5 A. I think -- I think the -- it's --
6 it's all about the expectation of performance
7 and -- and some of the -- what this means on the
8 day-to-day working relationship. Let me explain.
9 I probably think that everyone was sufficiently
10 staffed to -- to address the 20-year mature LRT
11 system that was fully troubleshooted. But when you
12 combine some of the initial -- you know, some of
13 the initial ramping-up issues that we encountered,
14 that did create quite a bit of pressure.

15 I think, you know, that pressure
16 quickly became -- I would probably say scrambling.
17 So when you're dealing with this volume of issues,
18 you probably start losing perspective and you focus
19 on fixing the immediate short-term problems, and
20 you lose a bit of planning capabilities, because
21 you're more into a responsive mode than you are
22 into a preventative mode.

23 And some of those short-term issues did
24 certainly create that kind of distraction. More
25 resources and help came from the sponsors to help

1 address that as part of the remedial plan, because,
2 you know, when the remedial plan was put together,
3 there was -- it was put together by RTM and their
4 resources but it did also leverage resources from
5 the parent companies that came on board to help.
6 So that kind of provided a fresh perspective and
7 allowed the operating teams to elevate themselves
8 and start thinking, as opposed to just reacting.

9 It does -- it did create -- it did
10 emphasize the need for RTM, maybe to create a
11 couple additional positions, and rethink in the way
12 they would be managing their subcontract. And that
13 got them to, you know, invest in a bit more
14 expertise internally, in terms of subject-matter
15 experts and creating key positions.

16 So from that perspective, I -- I think
17 that's -- that -- that's where RTM was -- is going.
18 There -- the derailments got RTM to seriously
19 consider some of the oversight that it was
20 effecting on their -- the performance of one of
21 their major subcontractors, as it relate to vehicle
22 maintenance, but also infrastructure maintenance.
23 So that drove quite a bit of -- quite a bit of, you
24 know, thinking on the part of RTM as to how they
25 could restructure themselves to better ensure the

1 alignment and performance. Yeah.

2 58 Q. When you speak about when you and
3 Mr. Guerra joined, trying to create a different
4 working environment and rebuild the relationship
5 with the City, I understand that the derailments
6 may have had an effect on the progress that you
7 were making there. But what efforts did you take
8 that were successful in trying to create a
9 different working environment?

10 A. It's all about being
11 straightforward and not overpromising and -- and
12 effectively being really pragmatic about what the
13 issues are. And being also -- you know, there are
14 places that we acknowledge that we could do better.
15 We're not -- it's not about hiding. It's about
16 addressing and facing the music.

17 You know, some of the issues that we
18 had with respect to the cracked wheels was a
19 significant issue. But at the end of the day, the
20 information was made available, we addressed it, we
21 corrected it, we fixed it. We had a short-term fix
22 while we were waiting for the long-term fix. Then
23 the long-term fix got deployed. Yes, it did take
24 more time, but at the end of the day, it's not as
25 if people deliberately decided not to pursue the

1 longer-term fix.

2 In, you know, the world environment
3 that we're in, try and -- try the get -- I think I
4 covered that with you before, try ordering a
5 dishwasher during Covid and see what kind of lead
6 times you'll be getting. Now try to apply that to
7 specialised pieces of mechanical equipment for a
8 train that you don't buy into a usual -- a usual
9 store, and you can -- you can appreciate the kind
10 of supply chain disruptions you have to deal with.

11 So when you mix all this into the
12 environment, it's all about doing -- you know,
13 making sure that the client understands that there
14 is someone at the other line of the phone that is
15 listening and, you know, working hard to improve.
16 I think some of the derailments did overshadow some
17 of the good things we were doing. I think we are
18 generally significantly better at responding to
19 incidents than we were.

20 We have certainly stepped up on -- on
21 the vehicles side, on the infrastructure side to --
22 to address the issues. Yes, we've had our
23 problems, don't get me wrong. I'm not trying to
24 walk away and shy away from those. But the kind of
25 problems we have are the same problems that make

1 any CEOs not sleep at night. The kind of faulty
2 workmanship is -- is not something you -- you --
3 you fix through training, you mitigate through
4 training, but you can never completely take away
5 that risk. And that is -- you know, that is the
6 story.

7 So, you know, yes, we want to improve.
8 We want -- we will continue to improve. We want to
9 get -- we want to be better at engaging, try be
10 better aligned. But our biggest challenge, Mario
11 and I, was to remove all the background noise, and
12 all the posturing and just try to focus on what the
13 issue is. And the issue is getting a safe,
14 reliable train and providing that service
15 consistently to the city of Ottawa.

16 But, you know, obviously we had quite a
17 bit of legacy issues that we inherited. By the
18 time Mario and I joined, the damage had been done,
19 so it was just about trying to recover and
20 rebuilding that trust with the City.

21 59 Q. With respect to the legacy issues
22 that you and Mr. Guerra inherited, you were talking
23 about comparing the performance from 2020 to the
24 performance of 2021, and you mentioned that, I
25 think, many of the issues that were seen at the

1 beginning of the service didn't repeat. Were there
2 any significant repeat issues that had an effect on
3 the reliability of the service?

4 A. The -- not specifically. You
5 know, the issues we were having in the winter, they
6 were about switch heaters. Switch heaters which --
7 which were electric switch heaters, probably not
8 as -- probably good and compliant and they would
9 have done the job, but they probably required where
10 it didn't give us enough level of -- you know,
11 margin of comfort, compared to the kind of pass it
12 would need to do. So we essentially decided to --
13 even though it wasn't required, we upgraded the
14 switch heaters to gas switch heaters in the most
15 problematic areas. That's a CapEx that was paid by
16 RTG specifically, not by the construction contract,
17 but just to, you know, address a lingering issue
18 that the client was very, very vocal about, and we
19 addressed that.

20 You previously asked me what else could
21 the City -- could do on a preventative basis in
22 terms of operational decision. One of the
23 operational decision that I'm -- I don't know if
24 that was the case in 2020, but in 2021 during, the
25 winter, those switch heaters, we started -- kept

1 them running all night just ahead of an event to
2 make sure that we wouldn't have to deal with cold
3 or frost accumulating quicker, that we could get
4 rid of it. So if we just kept the switch heaters
5 running on a preventative basis, then we would have
6 been able to protect the integrity of the system.
7 So we nowhere near had the same level of switch
8 issues in 2021.

9 2022, this last winter, we had some
10 issues, but nowhere near the kind of issues we had
11 in the year prior. And certainly not linked to
12 switch heater but more about some of the -- some of
13 the stability and the switch going disturb. But
14 we're addressing that right now. But there will
15 always be smaller issues. But as we move forward,
16 we narrow that -- this down to a handful of
17 components. Some of them we have permanent fix,
18 some others we deal with them through maintenance,
19 and -- and that's what we need to do on a
20 day-to-day basis. So we get better with planning.

21 You know, we talk about winter, we
22 since the first winter, we implemented dedicated
23 crews on snow. We have more shift coverage during
24 stations. We've clarified, you know, the
25 application of abrasives. Some of the finishes at

1 the station to address how we respond to weather
2 incidents. So, you know, again, we call those
3 growing pains. You know, what I like about it,
4 some of the issues we had in the first winter, we
5 have been able to mitigate those and they have not
6 become issue in the second winter.

7 With ridership coming back, are we
8 going to be getting some other issues? I'm sure we
9 will. But at least, you know, if we only have one
10 or two that pop up, then you can deal with them
11 proactively. If you have 20 popping up at the same
12 time, we need to prioritize and you go to the low
13 hanging fruit. But I think we are today in a much
14 better situation than we were, and, you know, we've
15 made the most of the time.

16 So weather, I think we controlled the
17 weather part significantly better than we did in
18 2020. Now we need to focus on the summer part,
19 which I think we're also going to get better at
20 controlling some of the -- the -- the swings in
21 temperature in Ottawa and how -- how it impacts the
22 rail. We're going to be addressing that for this
23 winter.

24 So, you know, again, we just -- it's
25 not as if we have 20 years to prepare and a 20-year

1 history of running a rail into Ottawa. You started
2 from scratch, you get the best people around the
3 table, you come up with a system. But effectively
4 there's still going to be some unknowns, and you
5 need to address those.

6 60 Q. I think you mentioned the word
7 "cap ex." Did I get that right?

8 A. Yes.

9 61 Q. What's that?

10 A. Capital expenditure. We invested
11 over and above what was initially expected to be
12 delivered, so we -- we -- you know, the -- the
13 switch heaters that were installed by our
14 contractor were probably perfectly functioning
15 switch heaters, but they were switch heaters that
16 the City did not like. And because of the
17 shortcoming in performance, we just didn't want to
18 go through another winter of potentially fixing the
19 issue. We just went ahead and upgraded that.

20 62 Q. And then with respect to the
21 issues that were encountered in 2021, you mentioned
22 it was a question of instability with the switches
23 being disturbed. Do I have that right?

24 A. Yes.

25 63 Q. You mentioned that the fixes being

1 implemented for that, what's the solution to that
2 problem?

3 A. I think it has to do with
4 foundation and how the switch is -- you know,
5 it's -- it's a fairly -- I wouldn't say delicate,
6 because it's still designed to handle heavy rail,
7 but -- but it's -- it is -- if it's not perfectly
8 level, then it goes disturb, and it's -- it's
9 essentially just one switch that's creating the
10 issue. So -- and it's a switch that's also heavily
11 used, so it's one -- so, you know, we're getting
12 the right people to come in, take a look at it.
13 Because it's only during a specific period of
14 winter that we were having issues with it. But
15 it's not a -- it's not a switch heater. It's just,
16 you know, how the system is aging right now.

17 64 Q. When you were talking about how
18 things were playing out before you joined, you were
19 speaking about a build-up of a volume of issues,
20 and how that may affect perspective of people
21 working on a project, and have them focusing on
22 short-term fixes. To your knowledge, what were the
23 problems that were causing the most serious
24 distractions?

25 A. The -- you know, the winter and

1 New Year's Eve was -- was -- was a disaster. You
2 know, we -- we had train failures and people
3 stranded or even during -- just during the winter
4 before the shutdown for Covid, we had, you know,
5 problems with switches or trains going out of
6 service and people -- people lining up in stations.
7 You know, there's extensive press coverage.
8 Certainly not our -- not the kind of press coverage
9 we were looking for. And it was always back to
10 scrambling.

11 You know, we had people commuting to
12 downtown, and we took away buses, we replaced with
13 a train. That train in winter was -- was having
14 issues. So people lining up on stations. And what
15 should have been a 25-minute commute, ending up
16 being an hour and a half. You know, there's a lot
17 of personal drama, and we have the utmost sympathy
18 for that. So it's that kind of -- that kind of
19 environment that created quite a bit of -- quite a
20 bit of pressure and anxiety and client demanding --
21 demanding solutions, and you know, stepping up.

22 But the issues were -- some of them
23 were driven by the vehicles, some were driven by
24 the infrastructure. There was unfortunately no
25 quick fix, so it was not the kind of -- we were --

1 we weren't certainly planning for that. But --
2 but -- and in trying to, you know, get -- get
3 service to improve, you know, you focus on -- on
4 what are the low-hanging fruits. And everybody has
5 an idea. That's the other thing is everybody has a
6 solution.

7 And respectfully, you don't want to
8 disregard what interested parties have to say, but
9 at one point, you need to give the people -- you
10 need to give the people that run it, the ability to
11 come in and fix it. So and that's the kind of
12 environment. And it got into a very tough
13 situation in January, February, and to a certain
14 extent, March, as we were in dealing with the
15 weather in -- and the cold. It's one thing to
16 be -- to have a stranded train when it's 20
17 degrees. It's another when it's minus 20 degrees,
18 and you have people sitting on platforms, waiting
19 to -- and piling it up and being late to pick up
20 the kids on daycare.

21 So that's issues that Mario and I
22 inherited. Obviously we had a good -- I was
23 fortunate, because I had -- by the time I joined
24 the project, we had a -- we had a strategy, we had
25 identified what the issues were. Those issues were

1 being corrected, and thank God they did not -- you
2 know, those problems, you know, never came back in
3 the same magnitude that they used to.

4 We still have the odd problem, don't
5 get me wrong. It's still a mechanical system, and
6 it's going to have some -- some issues, but nowhere
7 nearly as widespread as we have dealt with in the
8 first winter.

9 65 Q. What was the relationship like
10 with RTG and Alstom when you joined in July 2020?

11 A. I'm -- I'm --

12 66 Q. To the extent you can speak to
13 it --

14 A. -- I'm not in all the meetings.
15 I'm not in all the meetings. Just to be clear,
16 we're talking about the subcontractor of my
17 subcontractors, so I understand it is -- it is --
18 it is a difficult relationship. There's -- the
19 kind of issues we had with the system, especially
20 such a young system, does raise a number of
21 questions about, you know, is it an issue with the
22 maintenance, or an issue with the initial
23 construction? So -- and that debate is still -- is
24 still ongoing.

25 But I know that, you know, there's --

1 there's probably quite -- you know, nobody expected
2 the kind of volume of issues we've had with the
3 infrastructure, most of which were dealt with
4 afterwards. But there's a point where, you know,
5 at one point you need to transition away from
6 construction and into operation, and you kind of
7 expect the relevant party to take ownership of the
8 issues.

9 And, you know, back then in 2020, and
10 2021, wasn't quite the case. As we move forward
11 now into 2022, we certainly would expect that
12 because the warranty period from the contractor is
13 over. So the -- whoever is responsible for
14 maintenance now effectively needs to carry the
15 thing.

16 67 Q. And just to understand who you're
17 speaking about in that incident you gave, is the
18 relevant party that would take on the issues, would
19 that be Alstom?

20 A. Well, first and foremost, it would
21 be RTM, okay, because it's now -- it moves away
22 from the construction to the operation side. And
23 then RTM, through their contract with Alstom, they
24 have subcontracted -- some activities with respect
25 to the system maintenance. So to the extent those

1 are responsibilities for RTM or subcontracted to
2 Alstom maintenance. You know, at one point, they
3 will have to assume -- assume that -- you know,
4 provide that service.

5 68 Q. And were there challenges in the
6 transition and following the transition over who
7 should be dealing with the issues that arose during
8 revenue service as between OLRTC, RTM, and then
9 ultimately Alstom?

10 A. Yeah, it's always -- you know, the
11 issue that we have is, you know, a contractor is
12 there -- they're doing an amazing job when they're
13 on their own, and they have full ownership of the
14 site. When you get into an environment where, you
15 know, you're running 24 -- you're running a service
16 seven days a week, probably 20 -- 22 hours a day,
17 then that correction of issues does become a bit of
18 a problem, because it's -- the constraint -- the
19 main constraint becomes access.

20 So everything needs to be planned,
21 everything needs to be integrated. On one point,
22 you like the contractor to come in and correct
23 deficiencies. On the other, you don't want that to
24 impede on your ability to carry out maintenance.
25 So suddenly, there's a lot more variables that need

1 to be -- that need to be aligned in order to get
2 meaningful work done. And that's where, you know,
3 things become a little more complicated, because
4 when you're into this and this kind of environment
5 of a live operation, suddenly, you know, any -- any
6 piece of work becomes -- becomes significant,
7 because it does require quite a bit of planning and
8 it does, you know, it does have competing
9 priorities. So you need to be prioritize properly.
10 From that date on, you know, getting meaningful
11 work done is effectively problematic.

12 69 Q. And would that be the case whether
13 the meaningful work needs to be done is required to
14 be done by the contractor, or by members of the
15 maintenance team?

16 A. Yes.

17 70 Q. Is the involvement of the
18 contractor an additional complicating factor,
19 though, if they need to be involved in fixes, as
20 opposed to if it's just fixes done by the
21 maintenance team?

22 A. Yes, because that work needs to be
23 planned. You know, some of that -- not -- you
24 can't fix everything in a two-hour window between
25 the end of the night shift and the start of the

1 morning shift. So, you know, sometimes, the
2 meaningful hours we have are mostly on weekend, on
3 Sunday and Saturday night and Sunday night. But
4 that -- and those are prime spots also, because,
5 you know, it's time that would normally be used for
6 other maintenance activities. So if going you're
7 going to be eating up, what we refer to as
8 engineering hours during weekend, well, you need to
9 make sure that you plan it in such a way that you
10 don't compromise maintenance activities that would
11 be happening elsewhere. So there's quite a bit of
12 coordination that takes place.

13 And there are a sequence of priorities.
14 And we will always prioritize work that needs to
15 happen to keep the service going in a safe,
16 reliable basis. Everything else after that is --
17 you know, takes a second rank. So if you need to
18 access the tunnel to do some injections to prevent
19 leaks or to address leaks -- leaks, well, it's
20 going to -- it's going to -- it's -- it's not going
21 to take precedence over regular maintenance on the
22 tunnel ventilation system, because one of them
23 is -- is -- is -- water leak is a longer -term
24 issue, the other one is a short-term issue, because
25 we can't afford to have tunnel ventilation system

1 offline. So that's the kind of -- the kind of
2 arbitrage that needs to happen every day.

3 71 Q. When you joined, was this kind of
4 competition for time and access in order to perform
5 fixes more fierce? Were there more demands than
6 you would normally expect of the project at the
7 stage when you joined?

8 A. When I joined, we were fortunate
9 enough, because we -- we were coming out of
10 shutdowns that had been approved by the City to --
11 to address some of work from the Return to Service
12 plan. When we were dealing with shutdown, it was
13 way easier to accommodate because we would be in a
14 better position to plan the work and make sure that
15 people could work in specific areas and not compete
16 with each other or step on each other's toes.

17 As we move in 2021, it just took a bit
18 more -- a bit more sequencing as -- as we started
19 to get into longer-term maintenance -- sorry,
20 periodic maintenance on the -- on the
21 infrastructure. But -- but, you know, I'd like to
22 believe that, you know, if we had more engineering
23 hours we could certainly put them to good use. But
24 the regular hours we have is enough to -- it's
25 driven by service, it's not driven by maintenance.

1 Every time we want to do more, service is always
2 going to take precedence. So that's why we -- we
3 just need to make the most out of it.

4 But that's why we have a spring
5 maintenance shutdown or early reduction. We did
6 one last year and also looking at one this year,
7 because it's the only way we can compress --
8 combine specific activities over a period of time
9 just to make sure that everything gets carried out.

10 72 Q. This spring maintenance shutdown
11 last year --

12 A. M-hm.

13 73 Q. -- was the focus largely on
14 dealing with legacy issues that had been deferred
15 prior to revenue service availability? Can you
16 speak to what the main issues were?

17 A. The -- the -- the spring shutdown
18 was -- was mostly one about grinding. So we were
19 having some -- we were observing some corrugation
20 on the rail and some specific curve and areas.
21 That corrugation was probably -- was out of
22 tolerance, so it was creating both a noise issue
23 but also a vibration issue that was problematic
24 with the -- you know, could be problematic with the
25 vehicle. It certainly was perceived to the riders.

1 And that corrugation started showing up on the back
2 end of winter 2021. So by the time we got to the
3 spring, we had to grind the rails to -- to get rid
4 of that. So that was the main focus of the 2021
5 shutdown. Then aside from that, we -- we did cut
6 some rails preventively to address the upcoming
7 warm weather and some of the kinking of rails that
8 we would be expecting in -- when the temperature
9 gets above 30 degrees. So we would have done a
10 couple preventative activities with respect to
11 that.

12 But that -- that's what comes to mind.
13 I'm sure we did quite a few other things, but those
14 would have been the primary activities last year.

15 74 Q. And the vibration caused by the
16 corrugation of the rail, I understand that the
17 noise is an issue, but what other problems flowed
18 from that, that were seen on Stage 1?

19 A. I would probably take that
20 question to some of the vehicle experts. But that
21 vibration over long-term basis, I'm -- you know,
22 with the amount of equipment that -- that's on that
23 vehicle and instrumentation, I'm sure it was
24 probably -- it's hard to pin a specific system that
25 would be impacted but with the kind of the

1 vibration that the vehicle is designed to handle
2 comfortably.

3 So over time, I'm sure it probably
4 could be -- could be problematic for the vehicle.

5 75 Q. Okay, but to your knowledge, that
6 vibration didn't cause any problems on the vehicles
7 other than noise?

8 A. Not that I'm aware of.

9 76 Q. And for the shutdown that may be
10 planned for this year, what will be the focus of
11 the work to be done there?

12 A. So, again, there's -- there's --
13 there was quite a bit of grinding. I understand
14 the plans are still evolving, so we may defer the
15 shutdown to a later part of the summer, to get the
16 meaningful -- to get the grinding done. We're
17 waiting on a piece of analysis from Alstom about
18 the root cause for the axle-bearing failure. We
19 also have findings from a wheel-to-rail interface
20 study that was done by NRC, National Research
21 Council, that is working with RTM.

22 We think that there's probably
23 improvements that need to be made to the -- how the
24 wheel interfaces with the rail, by improving the
25 profile. But we're waiting on all the bits and

1 pieces to come together in order to get to a
2 decision, because we can't be grinding rail every
3 year for the next -- for the next 30 years, because
4 quickly we're going to run out of rail to grind.
5 So it will become more of an asset issue. Right
6 now, it's not the case. We could still be
7 grinding, don't get me wrong. But we need to get
8 to the right profile so we deal away with that
9 corrugation issue. And if we get to the right
10 profile, we will be in a position to reduce the
11 frequency of -- reduce -- we hope that will reduce
12 the corrugation issue, and lead to reduced
13 frequency of grinding.

14 77 Q. Do you have a sense of what is --
15 what the cause of the corrugation is, why is it
16 that the system is experiencing corrugation?

17 A. No.

18 78 Q. The axle-bearing issue, is that
19 related to the first derailment or the second?

20 A. Yes, that is the first derailment.
21 The first derailment was a failure of the
22 axle-bearing assembly.

23 79 Q. And so was the idea that once the
24 root cause has been determined, then a range of
25 potential solutions can be identified and explored

1 and selected?

2 A. Exactly.

3 80 Q. You mentioned there were
4 infrastructure issues, I think, prior to the first
5 spring shutdown in 2021. Was that at reference to
6 corrugation of the rail we have been talking about
7 or were there other infrastructure issues that were
8 also --

9 A. The main -- the main issues with
10 respect to the infrastructure in 2021 was the rail
11 corrugation. It was the vibration on the track
12 around curves. And it was -- it was creating also
13 quite a bit of noise. So -- so adjacent population
14 were -- were impacted. So -- so that -- that's
15 what -- that was the main driver to get it done.

16 And the other -- the other issue,
17 again, is when we get to the high temperatures in
18 summer in Ottawa, the track does -- does expand,
19 and it does create -- if we're not addressing it,
20 it does create kinks. And those kinks could be
21 prone to derailment. So that's why we need to take
22 preventative measures by removing sections of rail
23 so that -- so that it has room -- proper room to
24 expand, and improving and putting some of those
25 lateral restraints that we need to put in to keep

1 the rail in its position.

2 But we've addressed that through the
3 shutdown with -- with adding an additional ballast
4 and tamping, so adding more rocks to -- to
5 strengthen the foundation of the track, which
6 wouldn't be completely unusual for a two-year-old
7 highway as everything gets settled in. So that was
8 also work that we did for last shutdown in 2021.

9 81 Q. In terms of the amount of warranty
10 claims -- warranty work to be done prior to when
11 you joined -- when you joined, was it more than you
12 would have expected for a project at the stage that
13 this one was at?

14 A. No, because, you know, there's
15 always -- because it's a contractual mechanism for
16 warranty claims, you kind of want to make sure that
17 everything gets -- gets fixed and covered. You
18 know, there -- there's nothing that prevents a
19 party from claiming. Whether or not that claim is
20 legitimate is a different discussion. And it's up
21 to the other party to assess what that claim is and
22 whether or not it's one for them -- or is it one
23 that's created from circumstances outside of their
24 control.

25 And, you know, what -- what -- what's

1 the challenge is -- is, you know, after two years
2 of operation, it doesn't have quite the new car
3 smell anymore, so some of those warranty claims,
4 you know, sometimes they come from natural wear and
5 tear or -- or maintenance activities.

6 So it's making that distinction that
7 does become a bit of a challenge.

8 82 Q. I'm about to move on to a new
9 area, so we'll take our afternoon break now. It's
10 3:26. Let's come back at 3:40.

11 A. Okay.

12 (ADJOURNMENT)

13 BY MS. MCGRANN:

14 83 Q. I'm just going to share my screen
15 with you, to show you two Affidavits that you have
16 sworn, and one in a motion record and one in a
17 responding application record. The first one is up
18 on my screen now. This is a March 1st, 2022,
19 Affidavit that you swore in the context of a motion
20 record. It's 24 pages, and I'm happy to scroll
21 through it to let you refresh your memory. My
22 question is, do you recognize this Affidavit?

23 A. Yes, I do.

24 84 Q. Okay. And are there any changes
25 that you want to make to its contents?

1 A. Nope.

2 85 Q. Okay. So everything in there is
3 true?

4 A. Yes.

5 86 Q. Okay. And then the second
6 document is another Affidavit, 18 pages, that you
7 swore on March 14th, 2022, in the context of a
8 responding application record. Same questions.
9 First of all, do you recognize this document?

10 A. Yes.

11 87 Q. Are there any changes you want to
12 make to its contents?

13 A. No.

14 88 Q. Okay, and the contents of that
15 Affidavit have remained true?

16 A. Yes.

17 89 Q. In paragraph 29 of the March 1st
18 Affidavit, which is under document ID COM-000189 --
19 just bear with me while I take you to the page --
20 you mentioned in paragraph 29 that the "Issues to
21 the system have unfortunately led to misguided and
22 uncrafted micromanagement by elected officials of
23 OC Transpo's and RTG's operations, which have
24 caused distractions to the operations of the system
25 as well as addressing issues as they arise."

1 And then you proceed to provide an example. The
2 Commission's focus is on commercial and technical
3 circumstances that lead to the breakdowns and
4 derailments.

5 My first question is, is the micromanagement that
6 you refer to in this paragraph of your March 1st
7 Affidavit something that has led -- directly or
8 indirectly -- to any of the issues that contributed
9 to the breakdowns or the derailments on Stage 1?

10 A. The derailments, no. Breakdown,
11 it's hard to establish a direct link. I think what
12 I meant by paragraph 29 is more a statement about
13 the proximity of the public -- public side of the
14 governance of the City to the actual -- to the
15 project, which is -- which, based on my personal
16 experience, is -- is very close. Much closer that
17 I've seen it in other P3 projects that I've been
18 personally involved with.

19 And it's the -- the -- the -- you know,
20 this -- this interface with -- with the municipally
21 elected officials that I've never seen involved
22 into a project of the same magnitude of which -- as
23 I've seen in Ottawa. So some of that interference
24 and -- and management on the public -- on the
25 Transit Commission or even to -- to council, you

1 know, we're not -- you know, we don't see this in
2 other projects in Ontario, or elsewhere in Canada,
3 or maybe internationally, to a certain extent. But
4 that's certainly contrary to the kind of practice
5 that I've seen in both my time at -- at ACS, as
6 well as in my time at Grant Thornton advising
7 public sector.

8 90 Q. Understand that it's difficult to
9 draw a direct link potentially as between the
10 breakdowns, but is this -- to the micromanagement
11 that you refer to here, has it contributed to an
12 environment in which the breakdowns are more likely
13 to happen, or it was less easy to identify and
14 address the underlying issues?

15 A. It -- it's more about the --
16 this -- this level of oversight by parties that are
17 clearly not subject-matter experts into a very
18 technical issues. You know, many times we're --
19 even, we're hearing -- hearing discussions at
20 Transit Commission that are very technical topics,
21 which, you know, to a certain extent to -- to folks
22 that are experts in the field are -- you know, some
23 of them are moderate or anecdotal, but to a certain
24 extent, having deep, detailed, technical
25 discussions at a forum like a Transit Commission

1 sometimes can create a bit of, you know, non issues
2 being escalated into significant issues when
3 they're progressively not.

4 So it's hard to, you know, have that
5 level of discussions without -- you know, without,
6 you know, a counterparty that thinks -- well, not
7 thinks, is asking a question, but probably doesn't
8 know how to understand the answer so, to a certain
9 extent. OC Transpo is doing a good job. We're
10 trying hard to explain technical issues to this
11 group, but sometimes we end up in very detailed
12 technical discussions into a forum that, you know,
13 I don't know if -- I've never seen that elsewhere.

14 91 Q. And has that had any impact on RTG
15 and its subcontractors' ability to fulfil their
16 obligations under the PA?

17 A. No. It's more about, you know,
18 when we talk about day-to-day decisions, and I have
19 a client like OC Transpo that needs to explain
20 those day-to-day decisions, you know, I can see
21 them sometimes, you know, being reluctant to go
22 down into operational decisions just, you know, on
23 the basis of how that would be -- that would need
24 to be explained to -- and perceived with -- within
25 some of their elements of the governance.

1 So we just -- you know, at the end of
2 the day, when you run a railway or transit
3 operation, you need to have -- there's technical
4 elements to situations. You know, there's risk
5 mitigation. There's technical expertise.
6 There's -- and sometimes, you know, if you put it
7 into -- into the wrong forum, you can have, you
8 know, an issue that gets escalated out of
9 proportion when it shouldn't have to be the case.

10 So sometimes -- I'm not saying it's
11 driving decisions, but it's certainly putting
12 decisions into a context that -- that may create
13 more -- more problematic issues in terms of
14 addressing that governance.

15 92 Q. Can you be more specific when you
16 say "it's not driving decisions but it's creating
17 more problems"?

18 A. You know, we -- we have a contract
19 that's -- that's very -- very -- very detailed.
20 I've used that analogy in the past. You know, when
21 you put together a P3 project, there's a reason why
22 those documents are 700 pages long. The reason is,
23 you try to address as many of the common situations
24 as you would need to address over a -- it's a birth
25 certificate, it's a college degree, it's a marriage

1 licence, and it's funeral arrangements.

2 So it's all combined to -- you're
3 putting a full cycle of 30 years that you're trying
4 to anticipate how the relationship is going to be
5 working. You get it right on most cases, but
6 sometimes you get it wrong. And -- and -- and, you
7 know, those agreements grow over time as more and
8 more lessons are learned from elsewhere in other
9 projects, and you kind of readjust from one -- one
10 project to the other.

11 So maybe some of the earlier generation
12 have specific risk profile, and that risk profile
13 evolves over time as the market -- the market being
14 both the public sector and the private sector --
15 get smarter about what they want and how they want
16 to enforce that.

17 The -- the way the -- the agreement is
18 structured, you know, it's -- you know, as much
19 as -- as much as you'd like to -- to make it --
20 make it simple from the -- from the client side,
21 you know, it's not -- it's not just a simple
22 purchase order or a simple purchase transaction.
23 There's -- there's a -- there's a risk sharing.
24 There's a partnership element to that risk sharing
25 that -- that needs to be -- you know, it's -- it's

1 fundamental to the -- to the agreement per se.

2 You know, there's a portion of risks
3 that are -- that sit with the private sector, but
4 there's also a portion of risk that sits with the
5 public sector. And -- and -- and, you know, this
6 tendency to, you know, take what -- take what works
7 for you in the contract but when it doesn't work in
8 your favor, make the other side fight for it to get
9 it recognized, it's this -- it's this element that
10 kind of complexifies the relationship.

11 And it's moving the agreement to -- to
12 places where, you know, there are things we need to
13 fight for in Ottawa that we're still fighting for,
14 that are otherwise, you know, generally accepted in
15 other P3 projects in Ontario. So -- or should --
16 there should probably be non issue. So when you
17 get into this environment, you know, there's a
18 mind -- there's a -- I think there's a little -- a
19 lot of realism about the fact this these documents
20 need to evolve and they need to -- they need to
21 adjust over time.

22 In our case, you know, this -- this
23 payment mechanism or performance regime, you know,
24 has a multiple components, which -- which work well
25 in practice, but there are -- there are specific

1 aspects of the payment mechanism that create --
2 that -- that fundamentally -- fundamentally don't
3 work, and they become a huge distraction. And it's
4 taking away from service.

5 It's moving the discussion about, you
6 know, doors that don't latch properly, right --
7 shifting the focus to doors that don't latch
8 properly when we should be talking about vehicle
9 reliability and improving the performance and
10 improving the customer experience.

11 And it's just these kinds of
12 discussions that take the focus away, because the
13 economics are so disproportionate with respect to a
14 door that doesn't latch properly that, you know,
15 it's -- it's shifting attention away from the core
16 of the issue.

17 And that's when we have these
18 discussions with the City, where we're trying to --
19 I think everybody agrees that a door that doesn't
20 latch properly shouldn't take precedence over
21 tunnel ventilation or another issue. But the
22 perception is that, well, you know what? It's not
23 a good time to start -- to start discussions to
24 correct that, because any -- any change is going to
25 be meant as a -- is going to be perceived as a

1 concession to RTG, when, in fact, it's just a
2 refocus of the relationship on the right things.

3 So that's the -- that's the kind of
4 interference, because ultimately the
5 decision-makers is Council, is publicly elected
6 officials, that's prone to perception, it's prone
7 to a mood. It doesn't have this -- this same level
8 of independence from the political side that I
9 would see in other public sector clients. So it's
10 this proximity of the political side that does
11 create a bit of -- create a bit of noise in the
12 decision-making, in terms of trying to find the
13 right timing to get something to evolve.

14 93 Q. Okay. And when you refer to
15 "other public sector clients where you haven't seen
16 this kind of dynamic," does that group of clients
17 include municipalities?

18 A. Not specifically in the context of
19 a DBFM. You know, I've done projects in other
20 municipalities that have a close affiliation with
21 provincial authority that was a funding partner
22 that was deeply involved in the governments. I
23 think in this case it's more the absence of a
24 public sector -- provincial level of oversight of
25 governance in this specific case that I haven't --

1 you know, that is kind of not aligned with what I
2 am accustomed to seeing.

3 94 Q. And what do you think a provincial
4 level oversight would change about this project?

5 A. Well, I think it would bring a
6 little more perspective on what is common market
7 practice or what is -- what is understood to be
8 market conditions. You know, as a private sector
9 entity, we are involved in projects, and it's not
10 our only project. We have projects with other
11 jurisdictions. We have other projects in Ontario.

12 You know, we have a bit more
13 perspective about what is being done on other
14 projects because we live in -- we live and breathe
15 it every day. How it's -- how the model is
16 supposed to work, whereas we don't think -- doesn't
17 look like, or it's certainly not coming across
18 this -- this -- this knowledge about market
19 practice is equally present on the side of the
20 City. They obviously have advisors, don't get me
21 wrong. But whether or not they live and breathe it
22 in terms of firsthand experience the same way
23 other -- you know, other clients are, that's the --
24 that's a different discussion.

25 95 Q. Before we move away from this, I

1 just -- you talked about the focus on -- on certain
2 aspects taking away from service, and you used, as
3 an example, a door that doesn't latch properly.
4 Are you referring to a door on the train? Or are
5 we talking about --

6 A. No, a door in the station.

7 96 Q. (Indiscernible)?

8 A. There are doors that -- doors that
9 are behind secure doors. So the best example is a
10 door into a janitor -- janitorial space and in the
11 janitor space, there is a closet that doesn't latch
12 properly that -- that's the kind of doors we're
13 talking about not -- not latching properly. But at
14 the end of the day, that's been the essence of the
15 disputes.

16 You know, it's -- it's the City taking
17 a very, very firm view on -- on what we refer to as
18 key performance metrics. And whenever there's a --
19 there's a work order taking -- taking its view
20 forward, that, you know, there are very punitive
21 key performance metrics, we could -- we could spend
22 three hours discussing this, but there's a concept
23 of safety and security system, which ultimately
24 is -- could capture pretty much everything.

25 Where there -- if you apply that

1 standard to things that are not necessarily as --
2 as critical, does -- does create noise into the
3 system, and it does -- it -- it fails to properly
4 account for the relative importance between a door
5 that doesn't latch properly versus a tunnel
6 ventilation system that has an alarm on it.

7 If you ask me, on the operational
8 level, of course the tunnel ventilation system is
9 the first thing we'll be attending. But when we
10 look at it from a payment mechanism or a work order
11 or performance management regime, technically the
12 door that doesn't latch properly has the same
13 importance as the tunnel ventilation system which
14 doesn't work. That is complete nonsense.

15 I think operationally, OC Transpo is
16 aware of the issue. We asked for the mechanism of
17 a payment -- for the process of a payment mechanism
18 review. We have multiple correspondence with the
19 City. And that mechanism is anchored into the
20 project agreement. But we haven't had the chance
21 to properly engage that -- because that mechanism
22 should lead to changes into the PA, which --
23 which -- which we understand there's no appetite
24 politically to accept. So we're locked and trapped
25 into the status quo situation, where we're trying

1 to administer something that takes the focus away
2 from the core of the operation.

3 97 Q. The KPMs, if those requirements
4 are not met and one of the results is that there
5 are deductions to monthly maintenance payments that
6 are made to RTG, and then passed down to RTM and
7 onwards; is that correct?

8 A. Correct.

9 98 Q. What has the impact of the non
10 payment or the deductions to those payment
11 mechanisms been on the project, since revenue
12 service launched?

13 A. Very significant. You know, as of
14 today, we are May 9, 2022. I still -- the project
15 still hasn't been paid for service in September of
16 2019, October of 2019, November of 2019, December
17 of 2019, January, February, and March of 2020. So
18 seven months of performance for which the City has
19 still not paid a penny. There's mechanisms into
20 the project agreement where they are a required to
21 pay undisputed amounts. The City has created
22 disputes, which it believes it is above.

23 You know, long story short, they're not
24 following their contract, because the way they have
25 been applying their contract since April of 2020,

1 it's different. It's a different standard than
2 what they've applied.

3 So here we are, we are seven months
4 into operation, we still haven't been paid. You
5 know, obviously if RTG hasn't been paid, RTM hasn't
6 been paid, Alstom hadn't been paid. We're in a
7 situation where service -- we're calling on
8 resources to come in and work overtime. You know,
9 we're bringing in resources externally. Of course
10 we get to a default in March, nobody's paid. The
11 whole supply chain is starving for cash.

12 So I'm not saying people are
13 compromised. Partners still deployed resources,
14 but it becomes pretty difficult. The first payment
15 we saw from the client is for the April, May, June
16 of 2020 invoices, and that was at the end of
17 August, once the client felt that we were making
18 progress.

19 So we can't -- you know, cash certainty
20 in the P3 structure is -- is a must. Like,
21 there -- the payment mechanism needs to be properly
22 and fairly adapted -- adjusted . It's, you know,
23 it's as if we felt -- well, how we felt is no
24 deduction would be enough to justify the pain that
25 we would have -- that we would have applied to

1 the -- to the citizens of the City of Ottawa.
2 Certainly that's the impression we got.

3 The first payment we got was one for
4 the month of August -- sorry, for the month of
5 service September, but it was based on the
6 deduction for August. And, you know, the -- we
7 understand we saw the papers like everybody else.
8 If you look at the press coverage, you know, the OC
9 Transpo then-president took hell from Council.
10 Councillors asking for his resignation for making a
11 payment to RTG, which they were required to do so.
12 So this kind of sets the stage for the kind of
13 environment we're in.

14 You know, we have -- you know, we have
15 a dispute ledger that got significantly increased
16 over that period of time, and we're -- even today,
17 we're still trying to -- to get paid those months.
18 And we're two years and a half. So -- and there
19 are mechanism. Like, the City -- the way it's
20 applying payments right now, you know, when we have
21 deductions and we have disputes, they're entitled,
22 they're holding back \$10,000 per day, so roughly --
23 up to \$300,000 a month. They should be releasing
24 the difference. In this case, they don't want to
25 apply the same standard to those first seven months

1 of performance.

2 So here we are, being asked to fix the
3 system, being asked to correct it. Whatever we're
4 entitled to, we're effectively owed under the
5 contract. The City doesn't want to pay it, and yet
6 we're still out of the money trying to fix it and
7 correct it.

8 This is not -- this is the consequence
9 of the 18 months of delay that we've had. We're
10 back to the sink hole, like it's a build-up of
11 tension between the parties. Mario and I are
12 working hard to stabilize it into a steady state,
13 but that's baggage we have to overcome. Even
14 today, as much as we like to get that resolved,
15 there's no appetite to get it resolved.

16 The City doesn't want to negotiate.
17 They have given us a proposal which would
18 crystallise deductions for which we're not -- we do
19 not -- we do not believe we are responsible for.
20 But, you know, because -- so it's just creating
21 this -- this environment that -- that is not -- you
22 know, clearly not productive .

23 99 Q. You mentioned a dispute ledger.

24 What's that --

25 A. Yes.

1 100 Q. -- in reference to?

2 A. So every month -- I'm sorry.

3 Let's start. Every day after the day -- so
4 tomorrow morning, the teams from the City and RTM
5 are going to sit together, look at the performance
6 for the day. They are going to look at kilometres
7 travelled compared to the schedule, if we missed
8 the schedule, they'll look at why we missed the
9 schedule. And they'll make a determination as to
10 what's projectco cause versus what's not projectco
11 cause.

12 They're going to generate what we call
13 the daily operating report. The daily operating
14 report is also going to have all the work orders,
15 okay, that have been closed today. So for each one
16 of the work orders are like service calls, we have
17 a faulty line, we have a faulty door, we have -- we
18 need to replace this, we need to replace that.
19 So -- so generally, it's anywhere between 50 to 75
20 work orders that gets generated per day.

21 When those work orders get closed, you
22 know, when they get open and we -- when we open
23 them, we give those work orders a key performance
24 metric. Not all work orders have a key performance
25 metric, some of them do, some of them don't.

1 Obviously, the ones that have a KPM, a key
2 performance metric that's applied to that work
3 order are going to be treated in priority, because
4 if they're not dealt within the -- the prescribed
5 timeline, either from a response or rectification
6 time, those trigger a deduction.

7 But some of those work orders,
8 sometimes they don't get KPM attached to it, so
9 they get, I guess, a lower priority. But when the
10 work order gets closed, the City looks at the list
11 and -- they are going through the list and saying,
12 well, this work order should have had a KPM. So
13 after the fact, they're being applied KPM. And if
14 that work order stayed open for three days, five
15 days, and the City gave it a KPM that had a very
16 high-priority level like a safety and security,
17 well, every time -- for which we would have two
18 hours to correct -- so every two hours, we incur a
19 deduction. So if that's going on for three weeks
20 before it got closed, after the fact, we get
21 applied a significant deduction.

22 And most of the time, you know, we
23 would -- you know, in some cases, we accept the
24 City position. But in others, we dispute it. So
25 all of those disputes, they get recorded in the

1 daily operating report and they get aggregated into
2 the monthly performance -- performance -- the PMR,
3 performance management report. And that's what
4 feeds the dispute ledger.

5 So we have a dispute ledger that
6 accumulates all the work orders that have been
7 disputed, that are still in dispute since, I think,
8 January 1st of 2020, because we didn't do one in
9 2019. And -- and that dispute ledger is over \$70
10 million. And it's all about the key performance
11 metric interpretation. How the City takes its own
12 views, applies it retroactively, creates a problem,
13 and then obviously we're not going to accept the
14 City position, so that gets punted over the dispute
15 ledger. But it's taking valuable management
16 attention away from -- from the -- you know, the --
17 the day-to-day operations.

18 101 Q. That was going to be my next
19 question, how does -- how does the dispute and --
20 and the -- the non payment or deductions of payment
21 impact on service? Because I understand that RTG's
22 partners have been -- have been injecting resources
23 into the project.

24 A. Correct.

25 102 Q. Right? And --

1 A. Some of which -- some of those
2 resources are -- are not -- is time and energy of
3 resources but they don't come with an invoice. So
4 it's -- it's time from experts from ACS, EllisDon
5 that are coming over to the project for which the
6 project simply can't pay for it, because they don't
7 have money to do so. So there is a good chunk of
8 that.

9 Obviously, every time we have a
10 deduction -- I'll go back to your initial question,
11 because I realised I haven't answered it. Every
12 time we have a dollar deduction, that dollar
13 deduction, unfortunately, flows down to RTM. And
14 then RTM decides whether or not that's a deduction
15 specific to the Alstom scope. If that's case, they
16 drop it down to Alstom. The problem is, you know,
17 when those deductions become -- you're asking
18 companies with -- with the very -- you know, a
19 margin, you know, that margin is -- is a -- is --
20 is a percentage of the total payment.

21 It's not the full payment, because the
22 full payment covers actual cost and direct cost.
23 You know, they're able to absorb some measure of
24 deductions, but at one point -- at one point, the
25 quantum of deductions becomes so big that it's

1 cutting down the resources that are available for
2 that resource to continue to support its direct
3 cost.

4 So it wasn't -- then you get into a
5 double punitive environment, because that deduction
6 is not only just punitive in terms of removing
7 margin, it's also impeding the ability to continue
8 to perform. So it has -- it's a bit of a
9 double-edged sword. You know, you have to be
10 careful about that.

11 And I think -- I think overall, the
12 City is -- is mindful of these issues. There is
13 just no willingness to address them, because --
14 because they -- there is a perception that this
15 would come across as a -- as a -- as a favor to
16 RTG, and that's certainly not the case. It's just
17 making sure that you have a -- a contract that --
18 that can be managed, and can be enforced and can
19 effectively delivery performance.

20 But if the City -- if the deduction are
21 such that it reduces and it amputates a big chunk
22 of the payment, then that's money that is not
23 available -- is not sustainable over the long-term.
24 It's money that is not available to compensate
25 direct costs.

1 103 Q. So how has this whole situation
2 played out as far as the availability during
3 revenue service so far and the breakdowns,
4 derailments, if applicable, on the system?

5 A. Nothing, because we never
6 compromised on safety. You know, there's always
7 been, you know -- we've always made sure that we
8 would have enough resources to -- to deliver safe,
9 reliable service. That's a -- that's -- that's the
10 basic condition. But -- but, you know, in terms of
11 promoting and investing to improve operation, there
12 is -- there is very little capital available to do
13 that.

14 You know, whatever margin we've had,
15 we've been able to -- to keep afloat. We're --
16 we're not -- you know, we're not in particular
17 financial distress, because the City did pay a
18 portion of its costs. But keep in mind that the
19 way the structure is done is, you know, I drop all
20 the deductions down to RTM. So I keep, you know,
21 enough to service the debt, because that's the
22 first expenditure. And the service of the debt is
23 a payment to the City. So -- so it's money being
24 recycled going back to the City.

25 But ultimately, that's the first --

1 that's the first portion of the cost that goes --
2 you know, the first revenue goes towards debt
3 service. And then after that, I can start
4 releasing funds to -- to RTM, and then RTM can
5 start releasing funds.

6 But if we take the full payment and
7 then remove the debt and capital portion, then
8 there's only a portion left for service, which is
9 less than 100 percent, and then after that, there's
10 a portion that goes to RTM and a portion that goes
11 to Alstom. But when you have deductions that
12 impact 75 percent of the payment or the full
13 payment, that means they're not getting paid for
14 that period but also not getting paid for
15 subsequent period. So at what point this addition
16 to deduction just impede or -- or mortgages your
17 future ability to delivery.

18 104 Q. What about indirect impacts? And
19 an example would be, potentially higher turnover at
20 the staff level due to their concerns that they
21 will not get paid, because they're hearing in the
22 media that the payments are not being paid. Are
23 you seeing any indirect impacts --

24 A. Let me be clear.

25 105 Q. -- about that?

1 A. I'm sorry, let me be clear. We're
2 all major companies. We're all big companies.
3 Everybody is getting paid. Nobody is taking a pay
4 cut. Okay, so let's be clear about that. You have
5 major players that are standing behind this project
6 because they still feel that, you know, it's a
7 project we -- we want to make it a success. Okay?
8 So that's point number 1.

9 Point number 2 is, you get into an
10 environment where this constant, you know,
11 conflicting relationship with the City that's --
12 that's after -- you know, chase -- sometimes leaves
13 the perception that they're chasing deductions. I
14 know this is not what they're doing. They're
15 trying to apply their contract. But when -- when
16 we're being cast into a relationship where, you
17 know, both sides know the contract is wrong but --
18 but, you know, one side wants to correct it, and
19 address it, and make it sustainable over 30 years,
20 and the other side is -- simply doesn't want to
21 engage.

22 Because they don't -- they're not sure
23 how that's going to be perceived, and whether or
24 not it's going to well-received because of all the
25 history we're in. We're just waiting for favorable

1 conditions to turn this around to get everybody
2 into a pot -- into a positive spirit so that
3 there's appetite to get this resolved.

4 I've personally never seen that
5 professionally, you know. When we have a -- when I
6 have a -- when I'm on the project and that project
7 has issues, the public sector and the private
8 sector, they get together, sit down, they address,
9 they engage, they negotiate and they correct the
10 issue, just so that it's -- it becomes sustainable
11 and we can redirect it.

12 But right now, this tendency that we
13 have of not engaging, I think, is just aggravating
14 the overall circumstance.

15 106 Q. In your March 14th Affidavit,
16 which we had up as COM-1941 -- I can take you to
17 paragraphs directly -- but you mentioned that: (As
18 read)

19 "The City's administration of
20 the project agreement as being done
21 in an extreme and punitive fashion."
22 Is that what you were referring to when you talk
23 about application of KPIs and things like that?

24 A. Exactly.

25 107 Q. Anything else that you were

1 referring to there that we haven't discussed that
2 has an impact on the service reliability and
3 potential ties to the breakdowns and derailments?

4 A. Not specifically to -- to
5 derailments, because the -- again, the
6 derailments -- I'm going to carve out and talk
7 about it just after, okay?

8 But there are key places where things
9 we take for granted as private sector on P3s are --
10 is a fight we need to have with the City every day.
11 There's a key principle that we see on the payment
12 mechanism -- the worst I can do in a month, is lose
13 my payment. If I do really a bad performance or
14 bad issue, I'm going to accumulate deduction. But
15 as soon as I get into -- to May 31st, the bleeding
16 stops, and I start with a clean slate. That's a
17 fundamental principle that we see in other P3s.

18 In Ottawa, the City has jell -- has
19 firmed up the view that no, no, no, every dollar of
20 deductions that's applied in the month is fully
21 enforceable. So if it's not enforceable against
22 the May performance, then I will enforce it against
23 the June performance.

24 So -- so whatever dollar is being
25 generated by the payment formula, every dollar gets

1 applied.

2 So that means, again, we're
3 mortgaging -- so we had a very bad May, and the
4 deductions we've applied in May, you know, a
5 portion of that is applied through the payment but
6 if there's a left over, it's going to be applied in
7 the month of June. So again we're kicking the --
8 kicking the can forward, and it's a practice I
9 haven't seen elsewhere.

10 You know, the common practice for other
11 P3s in Ontario is the carryover of deduction
12 doesn't apply. The most you can lose is the
13 payment for the month. Every month after that, you
14 start with a clean slate. So that's one example.

15 Another example is when we started
16 the -- the -- the project late because of the
17 derailment, we ended up losing the first 15 months
18 of service. You know, obviously we didn't get a
19 payment for 15 months. The City never paid, never
20 made an availability payment or capital payment or
21 a life cycle payment. And effectively, you know,
22 until we got to August of 2019, which was the start
23 of revenue service, you know, under usual P3
24 projects, I would have expected we started the
25 schedule at month 15 of the schedule. Well, and

1 that -- so that, you know, the first 15 months that
2 I've had in terms of delay, I've had those covered
3 through the financial plan through liquidated
4 damages with my contractor, and then my contractor
5 was able to claim those from the insurers. So at
6 the end of the day, I understand that the first
7 months I'm losing in terms of the payment are the
8 months that I have -- that I will be recovering
9 either directly or indirectly.

10 Where it gets complicated is you know
11 in the payment schedule, we have a life cycle
12 payment, which is a separate payment, and that life
13 cycle payment is not a flat one. It's one that
14 fluctuates every year. That life cycle is -- has
15 what we refer to as a profile, and that profile is
16 essentially driven by the timing of expended --
17 of -- of expended expenditures -- expected
18 expenditures.

19 When you look at the profile in our
20 case, the -- the payments for the last 18 months of
21 the project are quite significant, because during
22 that period of time, we're being expected to -- to
23 upgrade the system and bring it back to what we
24 refer to as hand-back standard.

25 Well, the interpret -- the usual

1 interpretation in the P3 is the months when you're
2 late, you lose the first months in the schedule.
3 And then you -- when you start, you start on where
4 you should have been compared to the original
5 schedule. So in this case, we would have lost the
6 first 15 months.

7 The City's interpretation is no, no,
8 no, no, no, we -- when you start the project, you
9 start on month number one. So the months we lost
10 are not the months -- the first 15 months.
11 Effectively is we'll never get to claim the last
12 15 months into the schedule.

13 So instead of losing the first 15
14 months, we end up losing the last 15 months, and in
15 that case along can the way, we're going to be
16 short -- and it's a dispute that we have the City.
17 Don't get me wrong. We will try -- we will try to
18 plead our case.

19 But it's not a principle that -- you
20 know, it's a principle that we're expecting on
21 other P3 projects, you know, that -- you know,
22 those life cycle payments at the end of the day,
23 it's not profit to us. It's money that we'll use
24 to upgrade the system and bring it back to its
25 standard.

1 But by taking this position, the City
2 is taking away millions of dollars that we wont
3 have at that point to make the hand-back -- to meet
4 the hand-back requirement.

5 So that's the kind -- again, it's more
6 conflicts, issues, no proactive issues. It's up to
7 us to fight it. We need -- we need to litigate it.
8 There's no tendency to resolve unless we make it a
9 priority.

10 So the only thing the City is
11 interested in resolving is a default dispute, which
12 has absolutely no implication on the day-to-day
13 performance of the system.

14 But that's the only one that they've
15 taken proactive step to resolve. Everything else,
16 you know, it's up to us to fight for -- to fight
17 our way in.

18 Fundamentally, it's just -- it just
19 becomes a drag every step along the way, and it's
20 making it, you know, very difficult to -- to -- you
21 know, to focus on operation, because the issues
22 keep adding, and there is apparently no willingness
23 to resolve anything.

24 108

24 Q. Just to make sure that I
25 understood the impact of the 15-month piece that

1 you've just explained --

2 A. Yes.

3 109 Q. -- and I'll explain it back to
4 you, and you can tell me if and when I go wrong.
5 Okay?

6 So the life cycle payments are not
7 static; they go up and down over the course of the
8 life of the project. And the expectation would be
9 that payments in the last 15 months of the project
10 would be higher than in the first 15 months, for
11 example, due to all that you would need to do in
12 order to meet the hand-back requirements. So far
13 so good?

14 A. So far so good.

15 110 Q. Okay. And in this case, you would
16 expect to start -- you're 15 months late, but when
17 you do start up, you would start at month 14 as far
18 as the life cycle payments go, which means that as
19 you continue on the project, you end on the last
20 week, as is expected in the life cycle payment; is
21 that correct?

22 A. That's correct. Let me -- I'll --
23 I'll give you specific data points so you can
24 pinpoint with that. So it's Table 3 in Schedule 20
25 of the project agreement, okay, that details the

1 life cycle payment. It's based on a curve where we
2 would have started revenue service in May of 2018,
3 okay? And that -- that would have been contract
4 month number 1. And then contract month 360, which
5 is -- which would have been the final, and we would
6 have had the full 30 years' worth of life cycle
7 payment.

8 In our case, you know, we started
9 operation on contract month number 16, which was
10 August of 2019. So I said 14, 15, it's effectively
11 16. We lost the first 15 months.

12 111 Q. Okay. And so as I continue to try
13 to spit out my understanding here, what actually
14 happens here that as you start your -- your
15 month 16 is counted as month 2 as far as the life
16 cycle payments go; is that right?

17 A. In the City's perspective.

18 112 Q. Yeah. And so when you reach the
19 end of the contract term, you are going to be
20 15 months behind where you would be, and so you
21 lose out on those 15 months of life cycle payments,
22 which would be substantial given what you would
23 expect?

24 A. Correct.

25 113 Q. Okay. Thank you for letting me

1 just clear that up.

2 All of this, you've explained how this
3 has an impact on the project in terms of revenue
4 service availability. I just wanted to make sure
5 there wasn't anything you wanted to add to that
6 answer as a result of what you had explained on the
7 life cycle payments.

8 A. No, the life cycle payment is
9 going to be an issue further down the road. Right
10 now, we're not in a situation where we're making
11 expenditures on the life cycle, because the system
12 is still fairly new. But obviously as we're going
13 to get towards the end of the project, that will
14 become more and more significant.

15 114 Q. Okay. In the same Affidavit, the
16 March 14th Affidavit, you speak about --

17 Just bear with me for one second.

18 The City imposed challenges with
19 reference to the contract administration. And I
20 just wanted -- is there anything else as far as the
21 City imposed challenges on this project that we
22 haven't discussed today?

23 A. I'm sure there is, but we -- I
24 think we've covered the main ones.

25 115 Q. The debt swap that was executed

1 that led to RTG effectively becoming -- sorry, the
2 City effectively becoming RTG's lender, have you
3 seen this happen on any P3 project that you have
4 worked on before?

5 A. Nope.

6 116 Q. In your view, does that debt swap
7 and more specifically the elimination of the senior
8 creditors who were part of the system before have
9 any impact on the partnership and its functioning
10 sharing revenue service?

11 A. No direct but certainly indirect.

12 117 Q. Can you speak to the indirect
13 impact that you've seen?

14 A. Well, you know, lenders --
15 third-party financing is -- is a -- is a key
16 element of the -- of the P3 risk transfer. It's --
17 like, my old life, I used to call it the glue that
18 sticks everything together. And it's -- it's
19 good -- it's good from a public sector -- public
20 sector perspective, because it's -- it's a level of
21 oversight that goes even deeper into the inner
22 affairs of the private partner, and there is --
23 there is an alignment of interest between public
24 authority and the senior creditors.

25 But there's also -- there's also with

1 that a -- you know, this -- this third party
2 involvement is also healthy, because -- because it
3 does provide -- I think it makes the City more
4 accountable to the marketplace with that senior
5 creditor -- with third party senior creditors being
6 involved, because, you know, in our case, nobody
7 knows what's going on with RTG in the marketplace.

8 With the kind of deductions we're --
9 we're accumulating, you know, if we had public
10 debt, we would have had senior creditors that would
11 be calling us saying, Hey, Nick, what's going on
12 with all the deductions? What's going on with the
13 City? And the senior creditors, I think, would
14 be -- you know, I don't think they would be nervous
15 about their ability to get their money back, but
16 they would certainly try to understand exactly
17 what's going on. And it would make, I think --
18 make the problem a little more to an expanded
19 audience than just RTG and the City.

20 You know, when you have senior
21 creditors or bond holders that are holding, you
22 know, debt that depends on cash flows being
23 generated by a project and those -- and the quantum
24 of deductions and disputes that we have been
25 getting, they would certainly be, you know, asking

1 for meetings with the City to understand exactly
2 why is it the City is behaving that way, why is it
3 the City is taking those positions? And they would
4 want to make sure that, you know, the agreement is
5 being handled or treated, you know, as per the
6 agreement.

7 And those -- those lenders, they would
8 provide market perspective, because they would be
9 in a position to look at the City and say, Hey,
10 hold on. We lend against other P3s in Ontario.
11 Why is it that we have this problem in Ottawa, and
12 we don't have it in other P3s in Ontario or other
13 projects in Ontario? Because those are all in our
14 portfolio.

15 So when -- when they remove, you know,
16 third-party financing from this whole equation, we
17 remove something that would have been very healthy.
18 And it would have been healthy for the City and
19 healthy for -- for the private partner, because it
20 did -- it would have provided this independent --
21 this independent third party to provide a bit of,
22 you know, market reality that -- that we are
23 otherwise lacking.

24 Because right now, it's just --
25 everything RTG is asking is -- is obviously skewed,

1 and it's to be in the favor of RTG. So, you know,
2 who -- who provides fairness or -- or a market
3 perspective if -- if we don't have party lenders to
4 do that?

5 118 Q. You had mentioned earlier that you
6 wanted to carve into the derailments and speak to
7 them separately, so why don't we do that now?

8 A. Okay.

9 119 Q. What specifically did you want to
10 speak to about them?

11 A. Well, you know, the -- the
12 derailment -- the first derailment is a serious
13 incident, don't get me wrong. It's -- and we'll
14 get -- we'll get technical experts if you haven't
15 already met them that are going to tell you those
16 axle bearing fail -- the cartridges, they're not
17 meant to fail; they're meant to be work horses.
18 They're meant to be good for hundreds of thousands
19 of kilometres before they start needing to be
20 replaced. We don't know what the problem with axle
21 bearing is. Is it a -- is it a question of
22 fatigue? Is it a question of track? Is it a
23 question of design and forces?

24 And we're doing a very serious study,
25 and we're taking this very seriously with Alstom to

1 understand exactly what happened, because it's not
2 a component that's meant to fail.

3 But at the end of the day, it's -- you
4 know, we had that incident. We regrouped. We
5 looked at it. We understood and working with
6 Alstom, you know, they knew what the problem was,
7 and they were able to come up with a mitigation
8 measure. And we recovered on the first derail.

9 Yes, it's significant, but it wasn't --
10 I don't think it was -- it's unfortunate, don't get
11 me wrong, but I don't believe there was ever a
12 safety issue with respect to that.

13 You know, the system behaved the way it
14 should have behaved. There were intervention. It
15 was obviously because of the (indiscernible) that
16 we had, it was heavily media-ized.

17 But it took a week to recover, and then
18 as we were introducing the fleet, we -- we got --
19 we were able to, you know, bring back service
20 and -- and get to where we needed to be.

21 The second derailment is not -- is
22 linked to the first derailment, but it's not the
23 same problem as the first derailment in the sense
24 that, you know, it wasn't an axle bearing failure.
25 Is -- you know, my take on it, it was -- as part of

1 the mitigation measures we did for the axle
2 bearing, we introduced a new test every 7,500
3 kilometre, which -- which we call the axle play
4 test. Has someone explained it to the Commission
5 counsel, or do you need me to explain it?

6 120 Q. No, it's okay. I'd rather focus
7 on the areas that are within your --

8 A. Okay.

9 121 Q. -- wheelhouse, so to speak.

10 A. So that's right. So -- so this
11 axle play test is a test every 7,500 kilometres,
12 and whenever there's a movement outside of
13 tolerance -- and tolerance is .1 millimetres, so
14 that's is very tight tolerance -- then the vehicle
15 gets pulled on the side, and the axle gets replaced
16 proactively before it ever becomes an issue.

17 In this case, it was in the early stage
18 of the axle replacement. So after the first
19 derailment, we reinspected the fleet. We
20 identified a couple of vehicles that needed those
21 axles to be replaced. As they were replaced, they
22 were being -- the fleet was -- they were being
23 reintroduced to the revenue service.

24 The car that derailed on the second
25 derailment was a car that was in to have one of its

1 axle replaced I think the day or two days prior.
2 And effectively it was a car that was freshly
3 reinduced to revenue service.

4 At the end of the day, this car -- you
5 know, it's the -- it's when the axle was being --
6 sorry, the gearbox was being reassembled to the
7 axle that, you know, faulty workmanship took place,
8 a shift change, you know, the guy that left at
9 night, you know, didn't finish torquing the bolts,
10 and the guy that started in the morning didn't --
11 assumed the bolts were being torqued. There was
12 inadequate documentation. And that's -- that the
13 main of the issue with the second derailment.

14 It's -- what's -- what's difficult with
15 the second derailment is -- you know, from a
16 technical perspective, its an easiest to cure,
17 because that one is about process, it's about
18 quality, it's about oversight, it's about -- you
19 know, it doesn't require a new piece of equipment
20 or a new tool. It's just about human behaviour and
21 tightening the process.

22 But what created the issue with the
23 second derailment is everything else that came with
24 it, because suddenly, you know, the City completely
25 shut down. The way we recovered from service on

1 the second derailment was completely different than
2 the way we recovered from the first derailment or
3 even the cracked wheels if you -- if we go that far
4 back.

5 You know, it's -- you know, the City
6 completely shut down. They said, Well, we've lost
7 faith. We need to get a thirty party in to come in
8 and, you know, take a look at it, validate that
9 everything is being done the way it should be.

10 And it -- and it's from that new
11 process that was being put together by the City.
12 We obviously played along. We didn't have any
13 choice. But to a certain extent, I think it was --
14 it was -- a second derailment back to back to a
15 first one, don't get me wrong, is very serious.
16 But we understood what was the issue. I think we
17 could have recovered quicker, but we played along,
18 because I think the process was more important than
19 the end result. We needed to make sure that we
20 covered all angles.

21 And fortunately, it did not -- you
22 know, the return to get back to where we needed to
23 be didn't uncover any other major issue. We
24 addressed and identified and corrected it. And
25 since we corrected that, then, you know, we've been

1 into a pretty good -- we had to restart service
2 progressively, which we did. We effectively have
3 been monitoring -- sorry, operating under a very
4 tight monitoring window.

5 We've had a couple hiccups, don't get
6 me wrong. I'm not trying to -- but nowhere near
7 the same magnitude as we had before. We're sitting
8 here today May 9th with a service that has been --
9 that has been -- that has been providing reliable
10 service for the last six months.

11 So, yes, it's -- I see this as a -- as
12 a -- as a speed bump and a significant one. I
13 think it's a reality check. We took the message
14 seriously.

15 What we like, however, is the system
16 did perform the way it was designed to. You know,
17 people that were interviewed sitting on the train,
18 you know, on the second derailment as -- as drastic
19 or as dramatic as it looked on the images, the
20 system, you know, performed to -- to the level it
21 was being designed -- it was designed for.

22 So it's unfortunate, don't get me
23 wrong, and we take it very seriously. But to a
24 certain extent, it's a mechanical failure, but it's
25 driven by human error. And we know human error,

1 and we know how to control for that.

2 122 Q. With respect to the hiccups since
3 returning to service, could you just speak briefly
4 to what those are and the nature of them?

5 A. Well, there's -- there's a --
6 there's one issue with a parafil that -- that --
7 that -- a parafil that holds a OCS cable that --
8 that -- that ruptured and created a service
9 interruption on service on a Saturday of a couple
10 of hours. We were able to single track and keep
11 service moving, but ultimately we're -- we're still
12 investigating that.

13 We had another issue about a gearbox
14 that -- that we didn't have enough oil in it. And,
15 again, that's -- that's another one we took very
16 seriously with -- with Alstom.

17 And, again, it's -- it's to tighten up
18 the -- this -- this logging of activities.

19 But, you know, every -- we're being
20 very, very cautious with the system. And every
21 time we have something -- a component or a system
22 component or an element or a vehicle that displays
23 abnormal behaviour, out of an abundance of caution,
24 we will isolate that vehicle, and we will take
25 everything seriously, and I think it's part of the

1 new culture we're in. And we're not taking any
2 risks specifically, but -- but we just want to make
3 sure that we cover all bases before we effectively
4 deal with the -- with an issue.

5 So, you know, sometimes you -- we will
6 out of an abundance of caution, you know -- you
7 know, if we have a burning smell, we won't take any
8 chances. We'll pull the vehicle on the side. 80,
9 90 percent of the time, it's a non issue. But
10 because we -- because it's reported, we're taking
11 things seriously. It's part of the new operating
12 environment we're in.

13 123 Q. Given the limited amount of time
14 we have left, I'm going to bounce around through
15 some topics here.

16 A. Go ahead.

17 124 Q. So just bear with me.

18 So looking at the contractual structure
19 on the maintenance side, you know, RTM and OLRTC
20 are related companies. Any concerns there that
21 there's an incentive for RTM to avoid imposing
22 obligations otherwise on OLRTC and instead take on
23 obligations that don't rightly belong to it and
24 push those down to Alstom, where they may not
25 belong? Anything like that?

1 A. The -- the -- I don't -- I'm not
2 aware of any case where RTM has blocked an Alstom
3 claim. If anything, I think, you know, if a -- if
4 a claim is being put forward, RTM per contract is
5 required to push it over to OLRTC. I am aware of
6 OLRTC pushing back on an Alstom related claim,
7 because those claims are not properly
8 substantiated. They lack details, and they lack
9 the evidence. You know, raising a claim is -- is
10 the easy part. You know, documenting that claim
11 is -- is where the essence is, and it's in
12 documenting the claims that I understand that
13 there's been shortcomings.

14 125 Q. We have spoken about some of the
15 breakdown issues that have come up, and I'm trying
16 to focus on those that have been in issue since
17 you -- so shortly before you joined or since you
18 joined.

19 The ruptured parafil that you've seen
20 recently, any ties from that back to issues that
21 you've seen on the system previously?

22 A. The -- this parafil that -- that I
23 referred to we understand is one that was replaced
24 as part of the remedial plan. It did fail
25 prematurely. Now, is this a question of cold

1 weather? Is it a question of maintenance? Was the
2 maintenance properly done by Alstom with respect to
3 that parafil? Because they need to be inspected
4 regularly, and they need to be cleaned regularly.
5 So that's all -- that's all things that we are
6 currently checking. So before calling it a defect,
7 we -- first we need to make sure that maintenance
8 was done properly.

9 126 Q. The final completion certificate
10 for this project has not been applied for yet is my
11 understanding; is that correct?

12 A. Correct. There are still
13 documentation with respect to deficiencies
14 outstanding.

15 127 Q. And deficiencies, not non
16 conformances?

17 A. That's semantics.

18 128 Q. Okay.

19 A. NRC -- NCR are a process during
20 construction and operation where something doesn't
21 seem to align with the contract. The deficiencies
22 is -- is -- is a concept that's anchored into the
23 PA as part of the substantial completion process.

24 So as far as substantial completion,
25 they do an inspection, they identify everything

1 that's missing to get the final completion. Some
2 of the things that are missing are called
3 deficiencies, but some -- most of the time, they're
4 linked to NRCs but not all -- but not always.

5 129 Q. Okay. Is the automation of the
6 maintenance and storage facility one of the
7 outstanding issues that's --

8 A. Correct.

9 130 Q. -- coming up? Okay. And can you
10 just speak to the status of that and the projected
11 timing?

12 A. So the automation of the yard has
13 been an ongoing project. It's one that -- that
14 was -- I wish it would have been done as part of
15 the commissioning, but obviously people's attention
16 was focussed on the main line.

17 I understand that it is a fairly
18 complex project to implement in the context of a
19 live operation, because, you know, we can't just
20 shut down the yard for six hours per day to allow
21 Thales to run with trains and run test. You know,
22 we -- you know, on one hand, we want to support
23 revenue service and have all the trains available
24 to have the capability to address issues on the
25 line but also prepare trains for the following day

1 and carrying out preventative maintenance.

2 So this automation of the yard has yard
3 has been a competing priority, one that's been
4 probably neglected over the past few months because
5 of the other issues we were dealing with but
6 certainly one that we're pushing hard over the last
7 month or so to make time available to Thales to
8 properly carry out.

9 But, you know, I think everybody need
10 to realize commissioning a UTO in the context of a
11 live operation is way more complex than it would
12 have been had it been done before substantial
13 completion.

14 131 Q. Bouncing back for a second to the
15 City's debt swap and stepping in as the lender, in
16 your Affidavit, you talk about the City having
17 leverage associated with being RTG's lender and has
18 the ability to choose rights and remedies from
19 either the project agreement or the credit
20 agreement. What is the leverage that you're
21 speaking about there? What are the new rights and
22 remedies available to the City as a result of the
23 debt swap?

24 A. So usually the credit agreement is
25 structured in such a way that it does get

1 activated, the remedies under the project
2 agreement.

3 There's also information and covenants
4 and information reporting that we need to do under
5 the credit agreement that we -- we would not
6 normally do under the -- under the project
7 agreement. For instance, financial statements,
8 oversight by the lender's engineer, the City --
9 those are not remedies that are available to the
10 City under the project agreement. They would have
11 been remedies that would be available to the City
12 as a senior creditor. All the covenants, the ratio
13 calculation, the reserve funding, the planning for
14 cost -- longer term cost for life cycles, these are
15 all information that are readily available to
16 senior creditors, it's part of what we signed up
17 for, but -- but not otherwise available to the
18 City.

19 Now with the City becoming a senior
20 lender, then effectively they get access to all
21 that information. So they do get more than other
22 public sector clients do.

23 132 Q. Okay. And other than the access
24 to more and different kinds of information, any
25 other leverage that the City has obtained as a

1 result of the debt swap?

2 A. Not specifically right now,
3 because the City has been -- has been -- you know,
4 the thresholds we've -- we've activated are
5 thresholds that are under the project agreement,
6 and that is the primary mechanism over which the
7 City has taken advantage.

8 But, again, there are provisions about
9 accelerating the debt that are across default
10 provisions under the credit agreement that we are
11 mindful about in the context of a default or debt
12 acceleration that we're worried about.

13 But aside from that the City hasn't
14 been entirely clear about where they want to go
15 with all this. So at this point, it's just
16 speculation.

17 133 Q. You've also spoken in your
18 Affidavit about a communications plan that RTG and
19 the City have agreed to. And you say RTG has
20 followed it, but the City's public communications
21 would frequently breach. And I'm wondering first
22 of all if that has any impact either directly or
23 indirectly on the subject matter that is the focus
24 of the Commission's work, which is commercial and
25 technical circumstances that lead to break downs

1 and derailments. Do you see any direct or indirect
2 impact?

3 A. I'm not going to link
4 communications to the derailment. What I'm going
5 to link communications is, you know, again,
6 evidence that the City is going to follow whatever
7 provision it has historically followed, whatever
8 provision of the project agreement it felt it was
9 entitled to but hasn't been entirely thorough in
10 terms of following all relevant provisions of the
11 project agreement.

12 134 Q. And just to understand your
13 evidence there, what breaches of the communication
14 plan are you speaking about?

15 A. Well, the releases of memos,
16 reports to the council and public without RTG being
17 consulted, how we manage some of the communication
18 side with respect to the project. And just I
19 could -- there's a couple of examples or situations
20 we encountered in the past where the City said, No,
21 we don't want you to engage specifically on that
22 media side. It doesn't fit where we want to go
23 with this.

24 So, you know, per the PA, we're
25 required to coordinate with the City on our

1 communications, but we would expect that the City
2 would communicate -- would coordinate with us on
3 their communications. But there's been cases where
4 they have gone around and, you know, released memos
5 to council. And this is part of what they do; it's
6 just sometimes we get visibility, sometimes we
7 don't.

8 135 Q. Just while I'm looking at my
9 notes, Mr. Harland, do you have any follow-up
10 questions that you wanted to ask?

11 MR. HARLAND: Looking as well.

12 MS. MCGRANN: Sorry, I didn't quite
13 catch that.

14 MR. HARLAND: Sorry. I don't have any
15 at the moment, I don't think.

16 MS. MCGRANN: Okay.

17 BY MS. MCGRANN:

18 136 Q. From where you're sitting, have
19 you formed a view as to what may have contributed
20 to the breakdowns that were seen on the line in the
21 first period of revenue service?

22 A. I -- I think one of the -- one of
23 my personal lessons learned and certainly one I
24 communicate internally is, you know, the -- the
25 start of operation for Confederation Line is --

1 is -- is a significant milestone in the development
2 of a transit system or transit infrastructure for a
3 City like Ottawa.

4 And when you commission these -- these
5 major systems, you know, running it for two weeks
6 is not a -- is not a metric to -- to -- to consider
7 that it's -- it's fully ready to go. And -- and
8 before dismantling everything that -- that used to
9 be there, that used to be perfectly functioning,
10 you know, I think -- I think it was a -- it was a
11 little short-term saving. And I think the lesson
12 learned is -- is perhaps just in terms of
13 minimizing the pressure on ridership and the
14 population and ultimately the political side, you
15 know, maybe running the buses for a couple of
16 months at least through winter. You know, with
17 hindsight -- and I know it's easy with hindsight --
18 probably would have relieved a lot of the pressure.
19 I know it came with a cost. Don't get me wrong, it
20 came with a cost. But when you're throwing -- when
21 you're throwing billions to an infrastructure
22 project and, you know, you -- you're 15 months late
23 where you save 15 months of payment -- mind you,
24 you probably have paid 15 months of additional bus
25 service, don't get me wrong, you know, a couple

1 of -- 10 or 20 million to run a bus service for a
2 couple of months is pocket change to ensure the
3 success and the smooth transition.

4 And, you know, with -- I don't think it
5 would have relieved the operational issues that we
6 would have had. We would have continued to be
7 accountable for those operational issues. But it
8 would have certainly removed all the pain to the
9 population of Ottawa, because they would have had a
10 back-up system that they could have deployed, and
11 they would have been able to do so until we get to
12 a point where we would have been comfortable about
13 the reliability of the system.

14 And -- and I think with hindsight,
15 that's certainly a lesson learned. Before --
16 before dismantling something that works perfectly
17 fine to get with the new toy, maybe you just -- you
18 know, two weeks is -- is not just enough.

19 And, you know, we try -- I know my
20 predecessor tried to make that point. Ultimately,
21 I think it was a fiscal decision. There's a cost
22 that came with that measure. But, you know, I
23 think I've seen -- I hope this would have been
24 money well invested that I think would have saved
25 us collectively a lot of -- a lot of issues.

1 Because if you -- if you remove that
2 level of public angry -- angry-ness or hostility or
3 frustration, I think it gets everybody more into a
4 stable environment. Because, you know, the issues
5 that we had, they're significant, don't get me
6 wrong, but they're not completely unprecedented.

7 So I know that's certainly a lesson
8 that -- that should be mentioned to other
9 jurisdictions thinking about commissioning a new
10 train.

11 137 Q. And so keeping the buses on would
12 have alleviated some of that pressure. But with
13 respect to the issue that we're actually seeing,
14 you said that they're not unprecedented, but
15 they're -- they are what they are. Do you have a
16 view of why the issues cropped up when they did,
17 the number of them, the nature of them, anything
18 like that?

19 A. I think it's -- how do I say this?
20 You know, a P3 is a very complex arrangement, and
21 it comes from -- from -- you know, the way the
22 contract has been structured comes from a series of
23 lessons learned. I don't think it's something you
24 can take off the shelf without -- without
25 understanding where it came from. And -- and, you

1 know, take it from -- borrow it from some other
2 jurisdiction, tailor it, try to apply it to our --
3 your own reality, and then -- and then try to run
4 with it without losing -- without being in touch
5 with the way it's being applied.

6 And I think, you know, this
7 separation -- sometimes I wish -- you know, we've
8 offered to the City in discussions, you know, How
9 about we get -- we get some -- some marriage
10 counselling? Or how about we get some -- some
11 help, we bring in a third party, you know, try to
12 help work us -- work out differences? And there is
13 this -- you know, every time, it's a no.

14 And I don't -- I don't understand it.
15 I don't want to go through dispute. We can't
16 afford to go to dispute over 30 years. Let's work
17 things out. Let's get -- let's get a third party
18 to come in. Maybe what I'm explaining to you
19 doesn't resonate. Maybe what you're telling me I
20 don't -- I'm not listening. Let's try to get some
21 third party in to help us out and -- and -- and
22 help sort out -- sort through -- sort through all
23 that noise so that we can -- we can stabilize the
24 commercial side, and we can all focus on operation.

25 And in all fairness, I must tell you,

1 operationally, we're all aligned. Like, you know,
2 the -- the -- you know, the RTM team shows up every
3 day, the Alstom maintenance team shows up every
4 day, the City team works -- you know, shows up
5 every day. Yes, we have issues but -- but nowhere
6 near -- like, at the operational level, this is
7 working.

8 Last six months is -- is -- is a token
9 of the new stable state that we want to be in. You
10 know, issues get -- you know, they get identified,
11 they get handled, they get progressed, they get
12 tracked. That's way it should be.

13 But what we need now is take this
14 operational and -- and add this layer of commercial
15 reality to bring it back to a steady state,
16 because -- because unless we do it, you know, this
17 operational -- is going to continue. But at one
18 point, the commercial is going to catch up.

19 138

20 Q. One more question about your
21 March 1st Affidavit. You speak about information
22 that was given to you by Mr. Matthew Slade about
23 the City's decision to offer full service to the
24 public. And before that date, RTG, OLRTC, and
25 City's consultants STV recommending a soft opening.
Could you just speak to -- give us some more

1 information about what you're describing in that
2 paragraph?

3 A. Well, obviously I was not there at
4 that time, so I -- but I did have the ability --
5 you know, the opportunity to discuss with
6 Matt Slade as well as a couple of other players
7 that were there at that time. You know, what we
8 understand -- yes, we're ready for revenue service,
9 but I think what we were trying to tell the City is
10 yes, it's revenue for service, but we should run it
11 for, you know, a couple of weeks if not longer
12 before we -- we -- we start becoming the final or
13 the only solution for transit operation.

14 And -- and, you know, obviously I was
15 not in those discussions, but the way it's been
16 relayed is it's always been a no. You know,
17 they -- they were -- they've been wanting for the
18 trains for 15 months.

19 Sorry. Just a moment. Sorry about
20 that.

21 They've been waiting for the trains for
22 15 months. You know, they really want to get it
23 going. You know, we're going to get it in August;
24 they want it for the -- the -- the fall. You know,
25 I think it was a timing consideration. I don't

1 know what drove that timing consideration, why
2 September 15 and not October 15th.

3 Yes, the problem -- the system was
4 running, it was ready to be operated. But -- but I
5 don't think two weeks of operation or three weeks
6 of operation without, you know -- you know, two
7 weeks of operation with passengers was -- was
8 enough. I don't think -- I think we -- maybe a bit
9 longer or -- longer or having a back-up alternative
10 would have removed a lot of pressure and to take
11 the kind of volume.

12 But yes, the system was ready. We
13 remain accountable for every dollar of deduction
14 that the City applied during that period of time.
15 I don't think -- you know, we haven't disputed
16 those. We disputed all the noise around it but
17 certainly not that. Sorry about that.

18 139 Q. No problems. Based on the number
19 of outstanding deficiencies and staffing levels and
20 things when you joined and the information that was
21 available to you, are the number of issues that
22 were -- and the nature of issues that were seen and
23 in service surprising to you when the system went
24 into revenue service?

25 A. No, because when you transition

1 into operation, you still have the full
2 construction team that's available to help out with
3 the transition.

4 So the -- so the -- the first initial
5 period is -- is not overly problematic. It's --
6 it's over time as the construction team gets
7 demobilised and the operation team steps in that --
8 that things become a little more -- you know, if
9 there are still a number of unresolved issues and
10 those aren't properly -- properly addressed, then
11 they become -- they become more of a distraction
12 for the operational staff.

13 About Alstom, I wasn't there at that
14 time, so I wouldn't know whether or not they had
15 enough technicians for the warranty or the vehicle
16 or, you know, that -- that part, I wouldn't have an
17 opinion on.

18 140 Q. I've mentioned this a couple times
19 already, but the Commission's mandate is to focus
20 on the commercial and technical circumstances that
21 led to the breakdowns and derailments. Are there
22 any topics or areas that we haven't discussed today
23 that you think the Commission should be looking at
24 in its work?

25 A. No. No, I think we covered

1 everything.

2 141 Q. And then the Commissioner's been
3 asked to make recommendations to prevent issues
4 from happening going forward. Any specific
5 recommendations or areas of recommendations other
6 than the lessons learned that you shared that you
7 think should be considered as part of that work?

8 A. I was -- -- you know, my comment
9 about this -- this market knowledge and oversight
10 and -- and support, I think, is -- is certainly
11 something that -- that one -- you know, somebody
12 that -- that can -- that can have an opinion that's
13 going to be listened saying, Yeah, maybe you don't
14 want to, but you have to -- to -- to try to, you
15 know, balance or counterbalance the -- maybe some
16 of the political side of the equation, I think,
17 would have been beneficial in our case.

18 And -- and, you know, again, it's
19 just -- it's not about -- it's not about contract
20 administration. There -- there's mechanisms in
21 those agreements to allow them to grow over time.
22 And you can't just hide behind the contract and --
23 and -- and, you know, make it work when it works
24 for you, but when it works for the other, have them
25 fight their way to get their rights recognized.

1 It's -- it's not an agreement that's meant to --
2 that's meant to be under litigation or arbitration
3 constantly. You know, minor issues should be
4 resolved at the operational level, and that's
5 where, I think, this agreement fails to deliver on
6 that basis.

7 So maybe there's -- there's something
8 about the dispute process that should be revisited
9 before we -- to -- to make that dispute -- you
10 know, have those disputes resolved, because if they
11 keep standing -- if they keep sitting there with no
12 incentive to resolve, then you depend -- they just
13 grow in size, and they become -- they become at one
14 point unmanageable.

15 142 Q. Do you have any idea specifically
16 about how you can incentivize early --

17 A. Yeah, there's --

18 143 Q. -- (indiscernible)?

19 A. -- mechanisms about -- I've seen
20 in other jurisdictions about a dispute panel of
21 three that's meant to address expedited decisions.
22 I've seen that in -- in federal projects as well as
23 in other jurisdictions.

24 Not to say the dispute process in
25 Ontario doesn't work. At the end of the day, I

1 think it's worked successfully, but, you know, I
2 want to make sure that the Commission is well
3 aware. Ottawa is not the only project that has
4 problems. Every project has problems. The
5 difference in Ottawa is other projects, they find a
6 way to resolve the problems before they effectively
7 end up in litigation.

8 And they do end up in litigation from
9 time to time, but not the operational issues.
10 Operational issues should be resolved fairly --
11 fairly efficiently to the -- to the mutual benefit
12 of both parties working with the agreement.

13 And -- and -- but that needs -- that
14 needs a willing partner on both sides that's
15 willing to sit down and address it and have a
16 discussion and not this perception that, you know,
17 because we're adjusting the agreement to make it
18 more aligned with the -- with the operational
19 reality, by definition, I'm giving you something.
20 That's not the case. We're just making the
21 agreement more workable for both parties.

22 But that -- that reality is -- you
23 know, takes a bit of time to percolate. So if --
24 sometimes if there's more oversight of the public
25 sector, maybe that's -- maybe that's another lesson

1 learned that needs to be looked at.

2 MS. MCGRANN: And we promised your
3 counsel the opportunity to ask follow-up questions
4 if there was any time left. We are over time, but
5 did you have any questions you wanted to ask?

6 MS. WRIGHT: No, I didn't have any
7 questions. Thanks.

8 MS. MCGRANN: Okay. Then we'll draw
9 your questions for today to a close, and we can go
10 off the record.

11 -- Upon concluding at 5:01 p.m.

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1 REPORTER'S CERTIFICATE

2
3 I, Eveliene Symonds, BA, CSR(A),
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 witness was put under oath
8 by me;

9 That the testimony of the witness
10 and all objections made at the time of the
11 examination were recorded stenographically by me
12 and were thereafter transcribed;

13 That the foregoing is a true and
14 correct transcript of my shorthand notes so taken.

15 I further certify that this
16 questioning was conducted in accordance with the
17 Protocol for Remote Questioning, Revised
18 05/05/2020.

19 Dated this 9th day of May, 2022.

20 

21
22 _____
23 NEESONS COURT REPORTING INC.

24 PER: EVELIENE SYMONDS, BA, CSR(A)

25 CERTIFIED REAL-TIME REPORTER

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