

Ottawa Light Rail Commission

Riccardo Cosentino
on Friday, May 13, 2022



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OTTAWA LIGHT RAIL COMMISSION
RIDEAU TRANSIT GROUP - RICCARDO COSENTINO
MAY 13, 2022

--- Held via Zoom Videoconferencing, with all
participants attending remotely, on the 13th day
of May, 2022, 9:00 a.m. to 12:04 p.m.

1 COMMISSION COUNSEL:

2 Kate McGrann, Commission Co-counsel

3 Emily Young, Litigation Counsel Member

4

5 PARTICIPANTS:

6 Riccardo Cosentino: STV

7 Jesse Wright: Paliare Roland

8

9

10 ALSO PRESENT:

11 Helen Martineau, Stenographer/Transcriptionist,

12 Chandani Joshi, Virtual Technician

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

2 RICCARDO COSENTINO: AFFIRMED.

03:56:39

3 KATE McGRANN: The good morning,
4 Mr. Cosentino, I'm Kate McGrann, and one of the
5 colead counsel for the Ottawa Light Rail Transit
6 Public Inquiry, joined this morning by my
7 colleague, Emily Young, she's a member of the
8 Commission's counsel team.

03:56:51

9 The purpose of today's interview is to
10 obtain your evidence, under oath or solemn
11 declaration, for use at the Commission's public
12 hearings. This will be a collaborative
13 interview such that my cocounsel may intervene
14 to ask certain questions. If time permits your
15 counsel may also ask follow-up questions at the
16 end of this interview.

03:57:07

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

03:57:16

23 The transcript will be posted to the
24 Commission's public website, along with any
25 corrections made to it, after it is entered into

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

03:57:31

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
9 with the participants or entered into evidence.
10 Any nontypographical corrections made will be
11 appended to the transcript.

03:57:43

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

03:58:13

25 As required by section 33(7) of that

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

03:58:21

4 We will pause for a break around
5 10:30, but if at any point you need a break
6 during our discussion this morning please just
7 let us know and we will pause the recording.

03:58:31

8 RICCARDO COSENTINO: Thank you.

09:02:47

9 KATE McGRANN: Would you please
10 provide us with a brief description of your
11 professional experience as it related to the
12 work that you did on Stage 1 of Ottawa's Light
13 Rail Transit system?

09:02:57

14 RICCARDO COSENTINO: So, I'm a civil
15 engineer. I graduated from a U.K. university.
16 I worked in my early career as a construction
17 professional.

09:03:07

18 I then pursued a Master in Business
19 Administration, which led me to work for the
20 Ontario government at Infrastructure Ontario
21 doing procurement of major infrastructure
22 programs for the Ontario government for about
23 three and a half years.

09:03:26

24 I then joined SNC Lavalin in 2010
25 where I was responsible for major pursuits on --

1 public-private partnership pursuits. That's
2 where I started working on the OLRT pursuit back
3 in 2011 and then -- for a brief period of time.
4 And then in 2012 part time as a bid director.

09:03:53

5 I have been working as a professional
6 with SNC Lavalin since then. I pursued probably
7 25 major public-private partnerships across
8 Canada. I was successful in securing five major
9 projects, and wherever is the financing as well
10 as overseeing these investments. So I'm
11 currently still a Board member of Rideau Transit
12 Group following my role as a bid director for
13 the consortium back in 2012.

09:04:30

14 KATE McGRANN: And during the time
15 that you were working in Infrastructure Ontario
16 what roles did you fill there?

09:04:36

17 RICCARDO COSENTINO: I started as a
18 project co-ordinator and then I was promoted to
19 project manager. And I worked on two major
20 transactions. I work on the Ontario Highway
21 Service Centre transaction when the Ministry of
22 Transportation renewed the 23 -- well, they're
23 now known as the ONroute service stations.

09:04:53

24 And then I worked on the first civil
25 project for Infrastructure Ontario -- for the

1 Province of Ontario under the AFP model, which
2 was the Windsor-Essex Parkway, where I basically
3 took the transaction from Cabinet submission to
4 the preferred proponent stage, at which point I
5 left Infrastructure Ontario and joined SNC
6 Lavalin.

09:05:14

7 KATE McGRANN: And did you have any
8 particular area of focus when you were working
9 at Infrastructure Ontario, for example,
10 technical aspects or financial aspects of a
11 project?

09:05:38

12 RICCARDO COSENTINO: So my role was
13 Project Manager so I was responsible for the
14 overall procurement, obviously under the
15 stewardship of the Vice President and Senior
16 Vice President. So I wasn't directly involved
17 with the financing component but I was project
18 managing the team -- a multi-disciplinary team
19 to bring the entire transaction to bear, and
20 also working with our client at the time, which
21 was the Ministry of Transportation.

09:05:55

22 KATE McGRANN: And prior to Stage 1 of
23 Ottawa's Light Rail Transit system, did you have
24 any prior rail experience?

09:06:02

25 RICCARDO COSENTINO: Well, I started

1 my career as a construction professional on the
2 railway in the United Kingdom. I had two major
3 roles, I worked in a project called the West
4 Coast Main Line modernization, where my role was
5 to -- on a particular station was to extend the
6 platforms in order to allow the passage of high
7 speed trains.

09:06:28

8 I also worked on an area maintenance
9 contract in East Anglia where we were
10 responsible for maintaining all of the
11 structures on the railway in a particular region
12 of the United Kingdom.

09:06:36

13 I also had -- once I left -- during my
14 time at Balfour Beatty I was overseeing an
15 electrification project in -- the commercial
16 aspect of electrification project in Greece from
17 an implementation standpoint, from a risk
18 management standpoint".

09:07:01

19 KATE McGRANN: And then you walked us,
20 at a high level, through your involvement in
21 Stage 1 of the LRT. Can you just give us a bit
22 more detail about which roles you fulfilled
23 during which period of time?

09:07:12

24 RICCARDO COSENTINO: So I started
25 pre -- what we call the "request for

1 qualification", I was part of the team that
2 worked to assemble the -- what is now known as
3 the "Rideau Transit Group" consortium at the
4 time.

09:07:28

5 I participated at the beginning in the
6 request for qualification, but half way through
7 their request for qualification I was -- another
8 project I was working on was reaching a critical
9 stage, it was the Highway 407 bid.

09:07:40

10 So I departed the project during the
11 RFQ and came back at around probably
12 January 2012 as -- in the role of bid director.

09:07:53

13 There was a bid director for the
14 consortium who had basically moved on to other
15 activities within SNC, so I took over that role
16 as overall bid director representing the
17 interests of SNC Lavalin, but then in front of
18 the client I was the nominated bid director.

09:08:14

19 KATE McGRANN: And how long did you
20 stay in the role as bid director?

09:08:17

21 RICCARDO COSENTINO: Until we reached
22 financial close, at which point that role
23 extinguished because we're now entering the
24 contracting phase. And so my -- I became Board
25 member of RTG the day we closed the project.

09:08:34 1 KATE McGRANN: And with respect to
2 your role, you said you were bid director on
3 behalf of SNC. And to the client you are bid
4 director on behalf of the consortium, is that
5 right?

09:08:51 6 RICCARDO COSENTINO: That's correct.
7 Under the procurement process the consortium has
8 to put forward one representative to represent
9 the entire consortium, obviously it's a big team
10 and there's one point of contact. I was that
11 one point of contact.

09:09:05 12 KATE McGRANN: And who were you
13 replacing when you came?

09:09:08 14 RICCARDO COSENTINO: A fellow called
15 Marc Hulin.

09:09:28 16 KATE McGRANN: Were you involved in
17 any industry consultations prior to the release
18 of the RFQ for this project?

09:09:35 19 RICCARDO COSENTINO: Not directly, but
20 I do recall that -- I didn't personally go to
21 Ottawa to the market consultation. But I
22 remember the individual that went for SNC, and I
23 believe it was Judy Cohen, she was dealing with
24 that directly. I was just getting briefed after
25 those events by her.

09:09:58 1 KATE McGRANN: And any particular
2 notes from the briefing stand out in your mind
3 as something that RTG saw as a challenge on this
4 project?

09:10:07 5 RICARDO COSENTINO: I think -- not
6 that I can recall. I mean obviously, you know,
7 there was -- there was always -- it wasn't
8 always clear exactly what procurement model the
9 City was going to adopt. And I think -- I think
10 that was the main -- it wasn't a concern but the
11 main question mark for us is, which route is the
12 City of Ottawa going to take with the
13 procurement?

09:10:37 14 And I think, if my memory serves me
15 well, I believe it wasn't a done deal that it
16 was going to be a private-public partnership
17 until closer to the release of the RFQ document.

09:10:53 18 KATE McGRANN: And with respect to the
19 pre-RFQ industry consultations, were there any
20 areas or topics that you would have expected the
21 City to canvass that they didn't?

09:11:04 22 RICCARDO COSENTINO: I wasn't directly
23 involved but I think -- so, yeah, again by
24 memory, that's a long time ago. I believe it
25 was more of a presentation from the City to the

	1	market rather than a market engagement, I think.
09:11:26	2	From my time at Infrastructure
	3	Ontario, what we did on the Windsor-Essex
	4	Parkway, we went to Windsor and we had a
	5	full-day market event where we presented a
	6	project and then we engaged on a one-on-one with
	7	all the companies that wanted to engage with us
	8	and got feedback.
09:11:45	9	I don't believe that happened in
	10	Ottawa, but I wasn't there.
09:11:51	11	KATE McGRANN: And then getting into
	12	the procurement process itself, did you form an
	13	overall view on the procurement process that the
	14	City ran? Anything that really stood out about
	15	it to you?
09:12:03	16	RICCARDO COSENTINO: No. I think it
	17	was a fairly well run procurement. I think they
	18	followed the best practices in terms of process.
	19	You know, there were commercially confidential
	20	meetings, there was design presentation
	21	meetings, there was some level of engagement
	22	with the proponents, which followed what I was
	23	used to at Infrastructure Ontario.
09:12:27	24	So it felt that, you know, they were
	25	following best practices when it came to the

	1	process.
09:12:34	2	KATE McGRANN: And overall, any
	3	concerns that you're aware of from anyone about
	4	the fairness of the procurement process that the
	5	City ran?
09:12:40	6	RICCARDO COSENTINO: No. No concerns
	7	at all.
09:12:49	8	KATE McGRANN: Focusing more
	9	specifically on the RFP, have I got it right
	10	that you had stepped away from the project when
	11	the RFP was issued, but you rejoined during the
	12	in-market period?
09:13:00	13	RICCARDO COSENTINO: Correct.
09:13:05	14	KATE McGRANN: Can you speak generally
	15	to the project specific output specifications,
	16	or the PSOS for this project? What your view of
	17	those were overall, and then we'll dig into some
	18	details.
09:13:22	19	RICCARDO COSENTINO: I wasn't very
	20	involved with the output specification. As a
	21	bid director I think I was -- I had an overall
	22	view of the process. I think anecdotally -- all
	23	I can say is that, like other projects, it was a
	24	very prescriptive set of output specification.
09:13:43	25	I think the name should -- the name

1 speaks for itself. It should be output-based
2 specification. And I think the general feeling
3 that I had at the time is that it was not that
4 output-based, it was more prescriptive.

09:13:58

5 But as I said, I wasn't involved
6 intimately. I wasn't responsible for the
7 development of the design. I wasn't responsible
8 for the development of the technical proposal.
9 My role was to bring the overall proposal
10 together, leveraging the expertise of a
11 construction contractor, an O&M contractor, and
12 all the legal, technical and financial advisor
13 that are available to the consortium.

09:14:25

14 KATE McGRANN: I understood that you
15 weren't responsible for the design of the
16 project. I am going to ask you some questions
17 about different aspects of the PSOS, and if you
18 don't have information to share you can just let
19 me know. But for starters, with respect to the
20 requirements for the rail itself, were there any
21 concerns about what the requirements were for
22 the line?

09:14:50

23 RICCARDO COSENTINO: I don't -- I
24 don't recall exactly the details. I think -- I
25 don't think they were concerned about the

1 alignment itself, or the chosen alignment. I
2 think that's not something we as a consortium
3 would opine on. That's a sponsor decision.

09:15:17

4 I think there were concerns about the
5 architectural design of the stations, and the
6 intricacy of the design, and specifically also
7 as we associated -- you know taken in
8 association with the affordability cap that was
9 specified.

09:15:36

10 I think there was some concern about
11 the vehicle specifications and the
12 prescriptiveness -- and some of the
13 requirements, and the triangulation of certain
14 requirements that made -- that, in our opinion,
15 narrowed the field of potential vehicle
16 suppliers that could meet those specifications.
17 Those are the main ones that come to mind.

09:16:07

18 KATE McGRANN: With respect to the
19 affordability cap, can you speak more to the
20 reaction of that and how that was addressed in
21 RTG's bid?

09:16:13

22 RICCARDO COSENTINO: So I think,
23 again, I said I think that the City followed a
24 good process and best practices because they
25 engaged with the proponents during the bid. So

1 as we were developing our technical solution and
2 we were processing our technical solution we
3 were able to provide feedback to the City on how
4 and if we could meet the affordability target
5 that they were specifying.

09:16:39

6 And I think after I joined, and fairly
7 early on after I joined, it had become clear
8 that we couldn't quite deliver what the City was
9 looking for, from an architectural standpoint,
10 for the station within the affordability cap
11 provided.

09:16:57

12 And if my memory serves me well, I
13 believe there was -- the affordability cap was
14 changed. I think it was increased at least
15 once, I believe based on our feedback and
16 probably the other proponents' feedback, and
17 some of the requirements for the stations were
18 also relaxed, so to speak.

09:17:20

19 If we look at the original reference
20 design concept, which is the design that the
21 client does before going to market, you can
22 probably see this really nice rendered, curved
23 roofs, glass. And that obviously is
24 architecturally pleasing but extremely expensive
25 to design and implement and procure.

09:17:49 1 So we suggested to the City that in
2 order to meet the affordability cap some of
3 those station requirements had to be changed,
4 and other things had to be changed. The
5 platform length and the tunnels. And you know,
6 other -- we made a lot of suggestions in order
7 to change the specifications in order to meet
8 the affordability cap.

09:18:12 9 KATE McGRANN: And other than the
10 architectural requirements for the stations, any
11 other elements of the project that raise
12 particular concerns or were the subject of
13 particular comment -- requests for change from
14 an affordability cap perspective?

09:18:29 15 RICCARDO COSENTINO: I'm sure there
16 were but I can't recall.

09:18:45 17 KATE McGRANN: Do you recall any
18 particular cost saving or value of engineering
19 measures that RTG was proposing to take that it
20 discussed with the City during the in-market
21 period?

09:18:55 22 RICCARDO COSENTINO: Well, yeah. I
23 think I mentioned the architectural design of
24 the station and, you know, the shape of the
25 roof. I remember jokingly calling it -- we went

1 from curved roof to an origami roof. And if you
2 look at the station today you'll see that
3 they're all squared, and that was a significant
4 saving.

09:19:15

5 We had to do a lot of micro climate
6 analysis. And I think there was more enclosure
7 than it needed to be in order to have a proper
8 micro climate.

09:19:26

9 I think our construction technique --
10 and again I wasn't directly involved, but by
11 recollection our construction technique for the
12 tunnel was innovative for that project, where
13 we -- instead of having a tunnel boring machine
14 we went for a sequential excavation method,
15 which allowed us more flexibility in the
16 construction schedule and provided more
17 resilience to the tunnel construction.

09:19:55

18 Those were some of the key -- I think
19 there was platform design. I can't exactly
20 recall what the innovation was but I think we
21 did something innovative with the platform
22 design, platform length, especially in the
23 underground stations.

09:20:17

24 KATE McGRANN: Could you just describe
25 the work that RTG is going through during the

1 in-market period to estimate what it will cost
2 to get this work done and how it will approach
3 it? So what's done on your end behind the
4 scenes?

09:20:30

5 RICARDO COSENTINO: So, again, RTG is
6 the -- is this -- at the time is a consortium,
7 there's no legal entities. But RTG then becomes
8 the special purpose vehicle and it drops down
9 the obligation of design and construction to
10 OLRTC and operation and maintenance to RTM. So
11 those legal entities are not formed but there's
12 sort of a shadowing of that structure during the
13 bid. So RTG would basically request OLRTC to
14 develop the design. And so I think that's what
15 we call "design development", to
16 approximately -- and it's typical for
17 public-private partnership projects, a typical
18 20, 30 percent design is developed.

09:21:15

19 So the City provides us -- or the
20 client provides us with a reference concept,
21 which is nonbinding for their part. It's more
22 of a demonstration that the project can be
23 built. That's just one solution. So the bidder
24 is -- are then tasked to develop their own
25 solution.

09:21:34 1 So the reference concept is typically
2 a 5 percent design. And so the bidders take it
3 to 20, 30 percent. It's not a homogeneous
4 30 percent. You basically design, develop the
5 component of the project that way you want to
6 get more or less certainty, right? So if you
7 have a risky element of the project you probably
8 take it to 35, 40 percent design to truly
9 understand the complexity of that element.

09:21:58 10 And there are other elements that are
11 not that critical, you only do 5 percent design
12 and you end up at 20, 30 percent design average
13 for -- in order to have a sense of quantities
14 and sequencing of work.

09:22:15 15 So that design is developed and then
16 quantities are taken off, and those quantities
17 are priced. And then also from that design you
18 do the construction sequencing, you develop your
19 program -- the construction schedule.

09:22:30 20 And all of that is happening in
21 collaboration with the maintenance group, in
22 parallel, because as you develop your design
23 solution you want to make sure that you include
24 the comments and input from the maintenance team
25 so that there's a whole-life approach taken on

1 the design development and to the implementation
2 of the project.

09:22:56

3 So all of that was happening. It
4 wasn't happening -- so we didn't go into a room
5 for nine months and develop that and then submit
6 the bid. The City had a process, which is best
7 practice, to have design presentation meetings
8 where we would develop component, then present
9 it to the City, get feedback through the design
10 presentation process. It's a formal document,
11 the feedback process, where the City tells us if
12 our design is compliant or not.

09:23:24

13 Based on that feedback we make
14 refinements in order to make sure that by the
15 time we submit the bid it's a compliant bid.

09:23:34

16 KATE McGRANN: Who from the City were
17 you predominantly interacting with during the
18 in-market period?

09:23:40

19 RICCARDO COSENTINO: It was a team.
20 That were -- in a design presentation meeting it
21 could have been probably 25, 30 people in the
22 room, or multiple stakeholders. So obviously
23 there was a technical advisor for the City,
24 financial advisors, other advisor. And the City
25 would also bring stakeholders. So it wouldn't

1 be uncommon if we were presenting the station
2 design that maybe other City stakeholders would
3 be present.

09:24:05

4 And so at the CCM, commercially
5 confidential meetings, so two streams,
6 commercially confidential meetings were more
7 contractual, design presentation meetings were
8 more technical. So obviously at the
9 commercial -- CCM it would be more legal --
10 legally focused than commercially focused, so
11 you wouldn't have the same people. So there
12 probably was another 15 people at the CCM,
13 different from the 20, 25 for the DPM.

09:24:41

14 KATE McGRANN: You mentioned the
15 technical advisor for the City, would that be
16 representatives of Capital Transit Partners?

09:24:46

17 RICCARDO COSENTINO: I believe so,
18 yes.

09:24:50

19 KATE McGRANN: And then you mentioned
20 legal advisors, financial advisors, would that
21 be people from Deloitte?

09:24:58

22 RICCARDO COSENTINO: For the financial
23 advisor, yes, it was Deloitte; and for the
24 legal, BLG.

09:25:06

25 KATE McGRANN: And any other advisors

	1	that you interacted with during your work on the
	2	project?
09:25:11	3	RICCARDO COSENTINO: I believe
	4	Infrastructure Ontario was there as an advisor
	5	and I believe Boxfish was there as an advisor as
	6	well.
09:25:19	7	KATE McGRANN: And could you speak
	8	briefly to what you understood the roles of each
	9	of those two advisors to be?
09:25:27	10	RICCARDO COSENTINO: So for
	11	Infrastructure Ontario I believe they were an
	12	advisor to the City of Ottawa, and they were not
	13	procurement agent, they were just an advisor to
	14	the City. And same with Boxfish, it was an
	15	advisor to the City. Who I believe -- or we
	16	believed to be an advisor to the Mayor.
09:25:47	17	KATE McGRANN: You believed to be an
	18	advisor to the Mayor?
09:25:51	19	RICCARDO COSENTINO: Yes.
09:25:52	20	KATE McGRANN: And what led to you
	21	forming that view?
09:25:54	22	RICCARDO COSENTINO: Speculation.
09:25:56	23	KATE McGRANN: Speculation based on
	24	what?
09:25:57	25	RICCARDO COSENTINO: Hearsay. I

	1	probably didn't have any reason to believe that.
09:26:05	2	KATE McGRANN: And who from Boxfish
	3	were you interacting with?
09:26:09	4	RICCARDO COSENTINO: Brian Guest.
09:26:12	5	KATE McGRANN: Anybody else?
09:26:12	6	RICCARDO COSENTINO: I think mostly
	7	Brian Guest. I think as we proceeded maybe
	8	there were -- I can't remember if Simon Dupuis
	9	[ph] was involved or if I'm getting confused for
	10	Stage 2, because I was also responsible for the
	11	negotiation of Stage 2, let's say mostly Brian
	12	Guest.
09:26:38	13	KATE McGRANN: Did you form a view of
	14	the effectiveness of the work of the City's
	15	advisors during the procurement?
09:26:47	16	RICCARDO COSENTINO: I think -- I
	17	didn't, but I can -- based on my experience
	18	running a procurement for -- a similar
	19	procurement for Infrastructure Ontario, I think
	20	it was following the -- it was following what I
	21	would have done had I still been on that side.
09:27:13	22	So I think from a process standpoint
	23	it was a well-run process.
09:27:20	24	KATE McGRANN: And then with respect
	25	to the substance of -- we'll take the CCM and

1 DPM meetings differently, but if your view is
2 the same then you can just let me know.

09:27:28

3 Starting with the CCM meetings, how
4 would you describe the City's approach to those
5 meetings?

09:27:39

6 RICCARDO COSENTINO: I think for the
7 CCM it was difficult. There was -- I clearly
8 remember, you know, in the industry especially
9 in Ontario there was an -- what we call an
10 "established template" of what a public-private
11 partnership would look like, an AFP at the time.
12 Because you need to have a bankable -- you need
13 to have a bankable Project Agreement that can be
14 financed.

09:28:04

15 And I think we felt that the City made
16 significant changes to what is the Ontario
17 template, clearly was not their template and
18 they were very clear in expressing that. They
19 were not Infrastructure Ontario and, therefore,
20 they weren't bound by the same template.

09:28:22

21 However, that template was a
22 bankable -- an established, bankable document.
23 So making modification to that was complicating
24 the process of raising, financing and securing
25 internal approvals.

09:28:39	1	So we had to go through significant
	2	amount of comments and discussion on something
	3	that shouldn't have probably been that
	4	difficult, because there was an established
	5	industry precedent within the Province of
	6	Ontario.
09:28:57	7	KATE McGRANN: What changes do you
	8	recall being made that were creating issues,
	9	from your perspective?
09:29:07	10	RICCARDO COSENTINO: I can't remember
	11	specifically. Well, I mean, I guess the
	12	milestone was a big change, even though it
	13	wasn't a complete change for the Ontario
	14	template because we had similar milestones on
	15	the Windsor-Essex Parkway, even though they were
	16	not as discreet as the milestone in Ottawa.
09:29:40	17	But it was injurious affection. I
	18	think we had a lot of discussion about injurious
	19	affection and how the City wanted us to take
	20	injurious affection risk.
09:29:53	21	KATE McGRANN: I'm sorry, what risk is
	22	that? I didn't catch it?
09:29:57	23	RICCARDO COSENTINO: Injurious
	24	affection.
09:30:01	25	KATE McGRANN: What is that?

09:30:01 1 RICCARDO COSENTINO: I'm not a lawyer,
2 but if I remember correctly this is the risk of
3 a lawsuit against the project, not against the
4 development of the project or the construction
5 of the project but general -- a lawsuit against
6 the project.

09:30:27 7 So the City wanted us to be the first
8 respondent, and we clearly said, We're just the
9 contractor. We didn't choose the project. We
10 didn't choose the alignment. We didn't do the
11 expropriation. So this is a case where somebody
12 was [indecipherable] the City -- with legal
13 action against the project sponsor, and the City
14 wanted us to be the first respondent to that
15 claim, which is not -- and so I think we wanted
16 an indemnity on that. That's one example and,
17 again, it was an established precedent.

09:31:03 18 KATE McGRANN: Other than the changes
19 that were made to the established Ontario
20 template that you've described, any other
21 aspects of the CCMS that were difficult from
22 RTG's perspective?

09:31:18 23 RICCARDO COSENTINO: No. I think --
24 it's a commercial negotiation so I think
25 everything was done in a professional manner,

1 and I think everything was going -- went
2 according to our expectation.

09:31:31

3 KATE McGRANN: And ultimately you were
4 able to -- RTG was able to finance the project
5 so I take it you were able to get past whatever
6 challenges you encountered?

09:31:41

7 RICCARDO COSENTINO: Yes.

09:31:42

8 KATE McGRANN: And then with respect
9 to the DPMs, the design presentation meetings,
10 how would you characterize the City's approach
11 to those meetings?

09:31:50

12 RICCARDO COSENTINO: Similar. Where
13 it was, again, it goes back to having a
14 prescriptive set of specifications. I think it
15 was a very involved process. I think the
16 feedback was very detailed and the amount of
17 noncompliance/compliance was probably high. But
18 it was a good dialogue, right? It was good
19 input. And I think there was a lot of effort
20 from all parties to come to the best solution.

09:32:18

21 So to a certain degree it was
22 collaborative. I guess maybe from our side some
23 of the frustration was that the specification
24 was quite prescriptive and, therefore, the
25 feedback that we were receiving was in line with

1 those prescriptions. Because obviously the City
2 was expecting certain things, and they have
3 specified, and maybe at times we felt that they
4 didn't have to go to the degree of
5 specification.

09:32:49

6 KATE McGRANN: And what were the
7 implications of the level of specification that
8 the City was reaching for for the work that you
9 and everybody you were working with was doing?

09:33:00

10 RICCARDO COSENTINO: Well, the
11 implication is that it constrains innovation, it
12 constrains the ability of a large consortium
13 with a lot of experience and expertise to bring
14 that expertise to the table. Because the
15 solution is prescribed and is not left to us to
16 develop.

09:33:18

17 KATE McGRANN: And do you recall any
18 particular aspects of the specifications, or
19 specific requirements from the City, that you or
20 your colleagues felt were leading to a system
21 that was less than it could be?

09:33:38

22 RICCARDO COSENTINO: The vehicle. The
23 vehicle specification was extremely
24 prescriptive. And, yeah, I think that's one
25 area that created a lot of anxiety on the

1 outside.

09:33:54

2 KATE McGRANN: Can you describe
3 generally the approach that was taken to the
4 procurement of the vehicles on this project,
5 from the City's approach, and then how that fed
6 into what RTG did to identify its vehicle
7 supplier?

09:34:09

8 RICCARDO COSENTINO: Yeah. So it
9 started before I joined so I -- before I joined
10 the second time. But I believe that there was
11 a -- the City mandated a process within the RFP
12 document where the three proponents would have
13 to go out and solicit proposals from all vehicle
14 and signaling providers. I believe the original
15 intent was for the City to review those
16 proposals, alongside the proponents. And so all
17 those proposals were supposed to be submitted
18 for review to the City.

09:34:42

19 I cannot recall if they were actually
20 submitted or not, but, irrespective, I think
21 that changed and instead the City asked us to
22 present our solution -- our selection to them
23 instead of presenting them all of the proposals.

09:35:00

24 So then obviously we ran that process.
25 We short listed -- "we" I mean the consortium,

1 it was really the construction team. They short
2 listed, I believe it was three teams. I believe
3 it was Alstom, Siemens and CAF, those were the
4 main suppliers.

09:35:16

5 We also talked to others. We talked
6 to Ansaldo, we talked to Kinkisharyo, Rotem.
7 But in the end the three teams that the
8 construction team put forward was Alstom,
9 Siemens and CAF. Bombardier at the time was
10 obviously not with Alstom. Bombardier was not
11 available to the other two proponents because
12 Bombardier made the decision of joining a team
13 at the RFQ stage, so they committed to one
14 specific team up front.

09:35:56

15 So in that process obviously the
16 specifications were prescriptive. I think
17 the -- I believe the City wanted a low-floor
18 vehicle that was service proven, that could
19 reach speeds of, I think it was 100 kilometres
20 an hour, or close to that speed, with a certain
21 acceleration. And it was always felt that when
22 you triangulate all those parameters there
23 aren't many suppliers that can meet that.

09:36:33

24 We always felt that maybe some of
25 those requirements were unnecessary. When we

1 think of segregated right-of-way, like is the
2 OLRT, a low-floor vehicle is helpful when you
3 are in an urban environment, when you're in
4 mixed traffic. So you have people that go from
5 the curb on to the streetcar, or to the vehicle,
6 so you obviously want a low floor.

09:37:03

7 But when you have a segregated
8 right-of-way where you can actually build as
9 high to the platform to meet the height of the
10 entrance of the vehicle, it adds a requirement
11 that maybe wasn't necessary. And, obviously,
12 when you have a low-floor vehicle, reaching a
13 high speed is more difficult because the wheels
14 are smaller.

09:37:24

15 So those were all things -- I mean, I
16 learned a lot from that process about vehicles,
17 more than I ever imagined.

09:37:32

18 But in the end I believe we selected
19 our vehicle supplier, our preferred vehicle
20 supplier. We presented our solution at the DPM,
21 the presentation meeting, and we received
22 negative feedback on the supplier that we had
23 selected.

09:37:50

24 KATE McGRANN: And who was your
25 preferred vehicle supplier?

09:37:54 1 RICCARDO COSENTINO: CAF.

09:37:56 2 KATE McGRANN: And what was the
3 substance of the negative feedback that you
4 received?

09:38:00 5 RICCARDO COSENTINO: Mostly it was the
6 argument that it was not a service proven
7 vehicle. So we didn't obviously -- we felt it
8 was a service proven vehicle. A lot of the
9 component -- all the components were service
10 proven. But the CDI, the vehicle itself, was
11 not -- the entirety of the vehicle in that
12 particular configuration that we presented was
13 not service proven.

09:38:30 14 So I think after the DPM, and after
15 receiving the compliance feedback, we -- I think
16 we organized -- we tried to have another ad hoc
17 CCM with the City, at our request, to try and
18 explain why we felt that the vehicle was service
19 proven.

09:38:47 20 KATE McGRANN: So did you say you had
21 another CCM or another --

09:38:50 22 RICCARDO COSENTINO: It was on ad hoc
23 CCM. So the way the process is structured -- so
24 the meetings are scheduled by the City. So the
25 DMP and CCM is all organized and scheduled by

1 the City. However, the proponents can request a
2 special meeting, called on "ad hoc CCM", I
3 believe it was one or two that we had available
4 and we can choose the topic. And so we decided
5 to -- we elected to call an ad hoc CCM in order
6 to have further discussion with the City about
7 the CAF vehicle.

09:39:26 8 KATE McGRANN: And what was the
9 outcome of that meeting?

09:39:31 10 RICCARDO COSENTINO: The outcome of
11 that meeting was conclusive. The City said,
12 This is a noncompliant vehicle. If you -- it's
13 a noncompliant vehicle and we're not going to --
14 it's not going to be an acceptable solution to
15 the City.

09:39:45 16 KATE McGRANN: And so what did RTG and
17 its subcontractors do in response to that
18 decision by the City?

09:39:51 19 RICCARDO COSENTINO: We went to the
20 only other -- the only other vehicle supplier
21 that could meet the specification and was
22 available to the market, which was Alstom.

09:40:01 23 KATE McGRANN: And What happened to
24 Siemens, the third vehicle --

09:40:03 25 RICCARDO COSENTINO: So Siemens -- so

1 we were talking to Siemens, and because it was a
2 negotiation obviously the other proponents were
3 also talking to Siemens.

09:40:15

4 And so we -- as our construction team
5 was weighing all the options and trying to
6 understand the solution, Siemens asked -- I
7 think Siemens wanted to have a quicker
8 resolution of the process, and we couldn't
9 provide that because we were assessing all of
10 our options. So Siemens asked to be released so
11 that they could join the other team.

09:40:39

12 KATE McGRANN: And before I ask you
13 some questions about how things proceeded with
14 Alstom, what was your understanding of what the
15 proven service requirement meant? What would it
16 take to meet it?

09:40:50

17 RICCARDO COSENTINO: I don't remember
18 the specific -- I think there was a specific
19 requirement in terms of amount of kilometres
20 performed, number of vehicles that had been put
21 in service in other jurisdictions. I don't
22 recall the details.

09:41:13

23 KATE McGRANN: At what point in time
24 in the life of the RFP was Alstom brought on as
25 RTG's vehicle supplier?

09:41:23 1 RICCARDO COSENTINO: I think -- I
2 believe I joined in January. The bid was
3 submitted -- the technical bid was submitted in
4 September. So just -- I don't recall the
5 specific time but I have to say it's probably
6 going to be June, July of 2012, but I might be
7 wrong, maybe earlier, it would be earlier than
8 that.

09:42:01 9 KATE McGRANN: Did RTG and Alstom have
10 the opportunity to go through the confidential
11 meetings that were originally envisioned for the
12 vehicle as part of the project? So did you get
13 to have all the conversations with the City that
14 you should have?

09:42:18 15 RICCARDO COSENTINO: I don't recall.

09:42:27 16 KATE McGRANN: And what was the City's
17 response to the Alstom selection from a service
18 proven perspective?

09:42:32 19 RICCARDO COSENTINO: I don't recall
20 the specifics but I don't recall any issues. I
21 think once we dropped CAF and took on Alstom, I
22 think after that we just proceeded with our --
23 with developing our solution and submitted the
24 bid.

09:42:48 25 As I said, you're asking -- I can't

1 remember if we went through a design
2 presentation meeting, I would have to look
3 through my -- the records.

09:42:56

4 I think if there was a design
5 presentation meeting about Alstom it should be
6 in the data room, because obviously that would
7 have received feedback from the City. Because
8 every design presentation meeting would provide
9 feedback. I never actually -- I didn't research
10 that in my part.

09:43:16

11 KATE McGRANN: Do you recall whether
12 any waivers were sought or granted for
13 noncompliance with respect to the Alstom
14 vehicle?

09:43:22

15 RICCARDO COSENTINO: No. There wasn't
16 such a thing, right? There's no -- like
17 public-private -- PPP bid. There is no -- where
18 you have to submit a 100 percent compliant bid.

09:43:39

19 KATE McGRANN: Any surprise on RTG's
20 end that Alstom was accepted as a vehicle for
21 this project?

09:43:44

22 RICCARDO COSENTINO: No.

09:43:44

23 KATE McGRANN: Why had RTG chosen CAF
24 over Alstom in the first place?

09:43:50

25 RICCARDO COSENTINO: I don't recall

1 the specific. I believe it was -- you know, it
2 was a selection process and I believe CAF put
3 forward the most compelling proposal to us, and
4 I think they were better prepared to support the
5 project.

09:44:13

6 And, as I said, it could have been a
7 component of quality and price in terms of the
8 proposal. As I said, there was a committee of
9 individuals that selected the vehicle, it wasn't
10 just one person. And there was a proper process
11 that was run by RTG's consortium members. And
12 then CAF provided the best solution for all our
13 needs.

09:44:43

14 KATE McGRANN: With respect to the
15 manufacturing proposal that was put forward for
16 the vehicles, can you speak to how that was
17 envisioned?

09:44:50

18 RICCARDO COSENTINO: You refer --
19 you're referring to the local content?

09:44:56

20 KATE McGRANN: I assume -- that may
21 come into it, but I'm speaking more generally to
22 what was the plan for where the vehicles would
23 be built and how?

09:45:04

24 RICCARDO COSENTINO: And are you
25 asking that in relation to CAF or in relation to

	1	Alstom?
09:45:09	2	KATE McGRANN: In relation to Alstom.
	3	Thank you for clarifying.
09:45:19	4	RICCARDO COSENTINO: In relation to
	5	Alstom the plan was to assemble the vehicle in
	6	the maintenance facility. If I remember
	7	correctly there was -- the first two prototypes
	8	would be developed in Paris, or in France, at
	9	their facility there; they would be shipped to
	10	Hornell and then some more assembly done in
	11	Hornell; but in order to meet with the local
	12	content requirements the idea was to finish the
	13	assembly in Ottawa.
09:45:46	14	And I -- again, I don't recall exactly
	15	but I -- well, that was the plan. Yeah, the
	16	plan was Paris for the first two prototypes,
	17	shipped to Hornell, further assembly and then
	18	final assembly in Ottawa, in the MSF.
09:46:05	19	KATE McGRANN: And any discussions or
	20	concern about whether the manufacture or
	21	assembly of these vehicles in a new environment
	22	would increase the risk of issues that the
	23	vehicles would require additional work down the
	24	line to troubleshoot, or anything like that?
09:46:21	25	RICCARDO COSENTINO: Not that I'm

1 aware of. At the time of the bid we always felt
2 it was a clever way of meeting the requirements
3 and providing a lower cost, which was paramount
4 to the bid. Because the bid is evaluated on the
5 lowest NPV basis and there was an affordability
6 cap. So we felt that was a very cost-effective
7 way of meeting the local content requirement and
8 providing a vehicle to the project.

09:47:03

9 KATE McGRANN: I do have some
10 questions about the local content requirement,
11 but before I get to them, what were the driving
12 factors in the decision to manufacture the
13 vehicles largely out of the maintenance and
14 storage facility in Ottawa?

09:47:14

15 RICCARDO COSENTINO: I think it was --
16 I think it was cost as well as meeting the local
17 content requirements.

09:47:23

18 KATE McGRANN: And what impact did the
19 local content requirements have, generally, on
20 this particular project?

09:47:38

21 RICCARDO COSENTINO: I mean, I don't
22 have direct experience in vehicle assembly
23 requirements and challenges. I know what I have
24 anecdotally been briefed on as a Board member of
25 RTG, so I know what the challenges ended up

1 being after the fact.

09:48:01

2 At the time, as I said, we felt -- we
3 were in a position. We wanted to put forward a
4 competitive bid. We were trying to find a way
5 of cutting costs and still meeting the
6 requirements, and we felt that that was -- it
7 was a clever way of doing that. Hindsight
8 afterwards, as I've been briefed as a Board
9 member, there was obviously supply chain
10 challenges.

09:48:33

11 It's not as simple to set up a new
12 supply chain in a new country, in a new City.
13 There were shortages, still there were shortages
14 to be able to assemble the vehicle. But at the
15 time of the bid we had a lot of optimism bias.
16 We felt that that was all going to be -- we were
17 all going to be able to work on that.

09:48:59

18 KATE McGRANN: And at any point during
19 the in-market period, or following, was there
20 any discussion with the City about whether the
21 Canadian content requirements could be relaxed
22 in any way?

09:49:11

23 RICCARDO COSENTINO: I mean, I believe
24 we raised that comment -- as part of the CCM
25 process we commented on the Project Agreement.

1 I'm pretty sure that was one of the comments we
2 raised. Could the content requirement -- the
3 local content requirement be relaxed? And I
4 this I the answer was, "no".

09:49:33 5 KATE McGRANN: And did it ever come up
6 again on the project?

09:49:39 7 RICCARDO COSENTINO: I don't know.

09:49:40 8 KATE McGRANN: You mentioned "optimism
9 bias" as something that took -- that formed part
10 of -- maybe you can help me understand what
11 optimism bias is and how it played into the
12 decision-making on this project, in your view?

09:49:56 13 RICCARDO COSENTINO: I think we need
14 to talk about optimism bias in general. I think
15 there's -- so optimism bias is basically this
16 proven research -- it comes from research called
17 "prospect theory", which has been applied to
18 major projects; where basically human beings are
19 able to -- they assume that -- they never assume
20 the worst is going to happen in order to achieve
21 a certain outcome.

09:50:28 22 So it has been established that for
23 major programs there's a lot of optimism bias at
24 the beginning of the project. And, in fact, I
25 think I -- I think I'd like to quote Professor

1 Flyvbjerg, who provided testimony to another
2 Inquiry in Canada, where he articulated that the
3 root causes of major program delays and major
4 program overspend is associated with two
5 factors, optimism bias and strategic
6 misrepresentation that occurs at the time the
7 investment decision to pursue the project is
8 made.

09:51:13

9 So I think all parties typically
10 involved in these major pursuit are subject to
11 optimism bias, because we are trying to secure a
12 contract. And so we -- sometimes human beings
13 have a tendency to, because of optimism bias, to
14 overlook the downside in order to move forward
15 with a certain decision.

09:51:45

16 KATE McGRANN: And with the benefit of
17 hindsight, are there any particular downsides
18 that you think were overlooked on this project
19 when the bid was put together?

09:51:54

20 RICCARDO COSENTINO: Yeah. I mean,
21 you just have to look at what went wrong and all
22 of the things that have gone wrong, that's
23 probably down to optimism bias; and this is my
24 personal opinion.

09:52:14

25 There are -- you know, every project

1 is going to have technical challenges and then
2 you have experienced professional who
3 understands the technical challenges.

09:52:28

4 When you anticipate the technical
5 challenge you can do two -- during the bid
6 phase, or during the early stages, you can do
7 two things. You can say, Okay, this is going to
8 be a challenge and I have to mitigate it, and I
9 have to put in place all these things in order
10 to mitigate it. Or you can say, No, no, we
11 are -- we have all the resources. We are very
12 capable and we are going to overcome that
13 challenge. That's what optimism bias -- the
14 second description is what optimism bias is.

09:53:02

15 And you know, prospect theory, which
16 is a Nobel Prize winning theory by Daniel
17 Kahneman, tells you that human beings are
18 predisposed to have optimism bias, so they're
19 always going to try and make a decision that has
20 positive connotation rather than negative
21 connotation.

09:53:30

22 And Bent Flyvbjerg has demonstrated,
23 through his research, and then there's his
24 testimony at the Inquiry into Muskrat Falls,
25 where the root causes of project delays -- and,

1 by the way, according to Bent Flyvbjerg
2 research, 80 percent of railway projects around
3 the world have cost overrun, 8 out of 10
4 projects have cost overrun and 8 out of 10
5 projects have schedule overrun.

09:53:56

6 So it is fair to expect that a major
7 program, which the OLRT is; because according to
8 Bent Flyvbjerg a project above 1 billion is a
9 major program. So 8 out of 10 times they're
10 going to be late and they're going to be over
11 budget.

09:54:15

12 KATE McGRANN: So a couple of
13 follow-up questions on that. First of all, when
14 you said, for example, you can anticipate
15 technical challenges. And for the technical
16 challenges you can anticipate you can do one of
17 two things, you can either look at how to
18 mitigate it or believe that you will overcome
19 it. Is that a fair paraphrasing so far?

09:54:35

20 RICCARDO COSENTINO: Yes.

09:54:35

21 KATE McGRANN: Would it be right to
22 say that if you take the mitigation route you're
23 then planning to mitigate and pricing that out,
24 and that's going to have an impact on the price
25 of your bid?

09:54:46 1 RICCARDO COSENTINO: Correct.

09:54:47 2 KATE McGRANN: And if you take the
3 optimistic approach and assume that you can
4 overcome it then there is no planning or
5 pricing, you're just going to deal with it when
6 it arises?

09:54:56 7 A. Yes. And you believe that you
8 have all the means and resources already
9 available to you to overcome it.

09:55:01 10 KATE McGRANN: And with the knowledge
11 that 8 out of 10 projects of this nature are
12 going to come in over budget and not on
13 schedule, what is -- what did RTG do to try and
14 account for that in its bid, or in negotiations
15 of the Project Agreement?

09:55:19 16 RICCARDO COSENTINO: So as any prudent
17 organization, I mean, we obviously did risk
18 analysis, we did schedule analysis. We used all
19 the tools that are used in the industry to
20 understand the risk.

09:55:34 21 We're trying to mitigate the risk, but
22 always working within the envelope of the
23 affordability cap that was specified by the
24 client, right? I think you do all of that with
25 this sword over your head of the affordability

1 cap. So you're really trying to come up with
2 ways to meet all the constraints that you're
3 faced with.

09:55:59

4 And so I think, you know, the
5 innovation on the MSF. How do we meet the
6 costs? How do we meet the local content? How
7 do we meet the schedule requirements? So we --
8 the team came up with, let's assemble the
9 vehicle in the MSF. It was meeting a lot of the
10 requirements, but clearly, in hindsight, it also
11 brought challenges.

09:56:21

12 So obviously because of optimism bias,
13 not because of incompetence, it's, as I said, a
14 human nature, because of optimism bias some of
15 those challenges were overlooked, not with
16 malicious intent but just because it's human
17 nature.

09:56:43

18 KATE McGRANN: Turning back to the
19 selection of Alstom for another minute. We've
20 talked about the vehicle, but what did RTG do to
21 assess Alstom as a maintenance provider for that
22 aspect of the project?

09:57:04

23 RICCARDO COSENTINO: That I don't know
24 because that was done by RTM. That I don't
25 know.

09:57:12 1 It was not a particular area of focus,
2 because I think that the maintenance activity, I
3 guess, in our mind, was a less risky aspect than
4 the construction activities. Those typically
5 tend to be the most risky element of the project
6 and where the most focus takes place.

09:57:36 7 KATE McGRANN: Looking at the number
8 of interfaces on this project, the interface
9 between the train and the computer -- the train
10 control system, as an example, how did RTG
11 approach how all of those systems would be
12 integrated in its bid and then in the Project
13 Agreement?

09:57:55 14 RICCARDO COSENTINO: I'll just
15 specify, it's OLRTC that had the obligation to
16 deliver the construction element of the project.
17 I was a Board member of RTG so I was briefed by
18 the management team of RTG, which was one step
19 removed from the leadership and the
20 implementation from OLRTC.

09:58:16 21 I mean, having said that, I think
22 it's -- based on the briefing I received as a
23 Board member, and as a bid -- when I was bid
24 director, I think it's bringing the expertise of
25 individuals that have done that before.

09:58:34 1 So, you know, I think SNC had
2 individuals that worked on the Canada Line where
3 they have integrated a similar system with
4 Thales and a different vehicle, but still.

09:58:48 5 And, you know, there are tools
6 available and available experience on how to
7 project manage a complex implementation like the
8 signal and train interface. That is standard
9 project management practices.

09:59:11 10 So I think all of those practices were
11 implemented, risk analysis, schedule analysis,
12 technical collaboration between the parties.
13 It's not -- given the right amount of resources
14 and time it's not an impossible task, it's not
15 an overly difficult task if planned. Because
16 it's been done before over and over again, and
17 it was done before a few times, especially by
18 SNC Lavalin in British Columbia.

09:59:47 19 KATE McGRANN: And to your knowledge
20 had Alstom and Thales, like Alstom vehicles and
21 the Thales signaling system been integrated
22 together before?

09:59:56 23 RICCARDO COSENTINO: I don't know
24 that.

09:59:57 25 KATE McGRANN: As RTG's Bid Director,

1 what involvement did you have in the work that
2 OLRTC was doing to prepare the response to the
3 RFP?

10:00:08

4 RICCARDO COSENTINO: It's very similar
5 to my role as a Board member. I would just get
6 briefed on the progress and the salient points.
7 But I was not -- we had what we call a "bid
8 office" where I was located at with all the bid
9 resources. We had weekly progress meetings.

10:00:31

10 Also, because we had to raise
11 financing, I was responsible for all the
12 engagement with the lenders, then the technical
13 advisor.

10:00:43

14 So I was responsible for putting
15 forward the presentation to the lenders in order
16 to allow them to do their own due diligence on
17 the project. So because I was doing that I was
18 co-ordinating and liaising with OLRTC. So I had
19 some level of understanding, but not in the
20 details.

10:01:11

21 KATE McGRANN: In terms of the -- what
22 I'll call the steps to prepare the whole system
23 for revenue service, as at the time that the --
24 that you're -- the in-market period and then as
25 the Project Agreement is being negotiated. What

1 discussions do you recall, if any, about a dry
2 running time or a burn-in time to allow the
3 vehicles to run through the system and shake out
4 any bugs or identify any latent issues so they
5 could be addressed?

10:01:41

6 RICCARDO COSENTINO: So I don't recall
7 those conversations, it doesn't mean they didn't
8 happen but I don't recall them.

10:01:51

9 KATE McGRANN: Do you recall there
10 being any concerns on the RTG side with
11 reference to precedent projects, or otherwise,
12 about whether there would be enough time to look
13 at the system as a whole, in operation, and
14 identify any issues that may need to be
15 addressed?

10:02:06

16 RICCARDO COSENTINO: I don't think so,
17 because ultimately the schedule -- and I don't
18 believe there was a specified opening date. So
19 I believe RTG or OLRTC had complete control on
20 the completion date.

10:02:27

21 KATE McGRANN: And with respect to the
22 opening date, do you recall what the plans were
23 for system opening? In terms of how much of the
24 system would be available? What level of
25 traffic would be expected? What service was to

1 be provided on opening day?

10:02:40

2 RICCARDO COSENTINO: I don't recall.
3 But I have to assume that it was 100 percent,
4 that's my sense, that there was always -- you
5 know, we want to go full operation right away
6 type of approach.

10:03:00

7 KATE McGRANN: Do you recall whether
8 there were any concerns with that approach among
9 RTG or it's subcontractors?

10:03:05

10 RICCARDO COSENTINO: I don't recall
11 the concerns because, like I said, I believe we
12 had -- I know I would have to triple check, but
13 I believe we had control of the opening date.

10:03:13

14 So we obviously had, again, this is
15 optimism bias at its best coming in, right? So
16 we probably had latitude of when to open the
17 line, which would then allow us to schedule what
18 we needed to schedule in order to meet all the
19 requirements, as specified in the contract,
20 right?

10:03:33

21 So in theory, you know, you just pick
22 the date where you have absolute certainty that
23 you're able to meet all the requirements,
24 understanding that we had all the requirements
25 up front. However, you are under competitive

1 tension, you are in a procurement process. An
2 elongated schedule means more cost, more costs
3 means less chance of winning the project. So
4 you then have to make those commercial
5 trade-offs in order to secure the contract.

10:04:03

6 Because if you start allowing all of
7 the contingency that you need to have
8 100 percent certainty you're probably not going
9 to be able to win the project.

10:04:14

10 KATE McGRANN: With respect to the
11 maintenance requirements for the project, and
12 the payment mechanism that would be applied
13 during the maintenance period, were there any
14 particular concerns or challenges with what the
15 City was proposing?

10:04:33

16 RICCARDO COSENTINO: We had discussion
17 during the CCMs about the payment mechanism, we
18 provided comments, we had back-and-forth.

10:04:39

19 I think there's always a tendency from
20 our side to make sure that it's not a punitive
21 regime. We felt that maybe some areas were a
22 little bit punitive, but in dialogue with the
23 City during the CCM we got ourselves comfortable
24 that even though it might be punitive maybe they
25 weren't going to be implemented in a punitive

1 way.

10:05:11

2

3 So again, maybe some optimism bias
4 from our side where we kind of saw that there
5 could have been problems with the payment
6 mechanism, or the implementation of the payment
7 mechanism. But we probably made a decision that
8 we can probably work through the issues as they
9 arise.

10:05:27

9

10 KATE McGRANN: Do you remember any
11 particular aspects of the payment mechanism that
12 were the subject of concerns that they were
13 punitive?

10:05:33

13

14 RICCARDO COSENTINO: No, I don't. But
15 there would be a record of it because we would
16 have submitted written comments to the Project
17 Agreement as part of the CCM process.

10:05:52

17

18 KATE McGRANN: And do you remember how
19 you got comfortable that even if there were
20 elements that could be punitive they wouldn't be
21 applied in a punitive way by the City?

10:06:00

21

22 RICCARDO COSENTINO: You know,
23 discussion during the CCM, you build a rapport
24 during the CCM, you work through the issues, you
25 have discussion. And you know, there's PPP,
it's a partnership so you take certain comfort

1 in that, that this is a partnership and,
2 therefore, there's a common interest and a
3 common objective. You're basically -- you're
4 trying to rationalize optimism bias, I guess.

10:06:32

5 KATE McGRANN: Did you form a view of
6 what you expected the City to be like as a
7 counterpart on this project through your work
8 during the bid phase?

10:06:42

9 RICCARDO COSENTINO: During the bid
10 phase we knew -- just based on the way that they
11 amended the template contract that was
12 established, given that they were -- they had a
13 very prescriptive set of specifications. Given
14 that they had a very ambitious program with not
15 enough money to deliver the program, we knew it
16 was going to be challenging.

10:07:10

17 But, again, you're always trying to
18 think positive. And I guess we knew that we
19 were going have challenges but we would have to
20 work through them.

10:07:27

21 KATE McGRANN: Fair enough. But with
22 respect to how the City would be, like, how you
23 anticipated the City would act and approach
24 those challenges with RTG, did you form any sort
25 of view of what kind of approach they would

1 take?

10:07:40

2

RICCARDO COSENTINO: I mean, based on
3 how the -- that was my initial answer, based on
4 how they behaved during the procurement process
5 we knew it was going to be a difficult
6 relationship.

10:07:53

7

KATE McGRANN: And when you say you
8 knew it was going to be a difficult
9 relationship, what aspects of it did you think
10 were going to be difficult?

10:08:04

11

RICCARDO COSENTINO: No flexibility.
12 I think we saw during the procurement phase in
13 requesting changes to the specification, even
14 just the whole issue with CAF and Alstom, how
15 set in their ways they were. We knew that would
16 translate into a pretty difficult contract
17 management relation.

10:08:29

18

KATE McGRANN: Anything that was done,
19 based on that anticipation of a difficult
20 relation, in the negotiation of the Project
21 Agreement to try to account for that?

10:08:36

22

RICCARDO COSENTINO: Yes. We submit
23 comments, right? We are always trying to change
24 to provide changes to the agreement that would
25 help us have a better, more balanced relation so

1 that it's not -- you know, the contract is not
2 heavily skewed towards who is writing the
3 contract and it's a bit more fair. But at the
4 end of the day we don't write the contract. We
5 can provide comments.

10:09:09

6 And then you really have -- if those
7 comments are not accepted you really have two
8 options in the procurement, you either walk away
9 or bid, and you bid as is. You don't have --
10 there is no -- there is no allowance for
11 qualification, if you submit a qualification
12 with your bid you're disqualified.

10:09:28

13 So you try your best during the
14 procurement process, and then you either walk
15 away, you bid as is, or you price all the
16 contingencies that you think you're going to
17 need, knowing very well that you're most likely
18 not going to win the project.

10:09:46

19 KATE McGRANN: And for people who
20 wouldn't be familiar with what different
21 pressures are operating at that point in the
22 bid, how available is the walk-away option?
23 What forces come into play there?

10:09:58

24 RICCARDO COSENTINO: It's not very
25 available. I mean, it's a last resort. I think

1 it's important to remember a bid of this
2 complexity can cost north of \$20 million to put
3 together.

10:10:13

4 I can't remember the exact -- the
5 amount of stipend that the City provided.
6 "Stipend" meaning like a remuneration to the
7 losing proponent that doesn't get selected. But
8 certainly the stipend does not cover the entire
9 cost of the bid and the pursuit.

10:10:29

10 And I think the north of \$20 million
11 is just external resources to develop the
12 design, that doesn't take into account the
13 overheads from the corporation that are
14 involved.

10:10:40

15 So it's a significant investment that
16 you make of time, and there's a humungous
17 opportunity cost that you undertake whenever you
18 take on these opportunities. Because if you
19 take on this project it means you're not going
20 to pursue other 10 projects. So the opportunity
21 cost is even bigger than the actual cost.

10:11:04

22 So walking away towards the end of the
23 bid, it's an extremely difficult decision. And
24 I believe -- and I believe clients understand
25 that and used that.

10:11:21 1 KATE McGRANN: Now, you mentioned that
2 there were concerns that some of the aspects of
3 the payment mechanism may have been punitive but
4 that RTG got comfortable that they wouldn't be
5 applied in a punitive way. Has that expectation
6 borne out in practice?

10:11:37 7 RICCARDO COSENTINO: No.

10:11:38 8 KATE McGRANN: Could you speak about
9 that?

10:11:39 10 RICCARDO COSENTINO: Yeah. I mean as
11 a Board member of RTG, I mean, I'm -- I think
12 that one example is the carry-forward of
13 penalties. I think that it's a -- and I need to
14 be careful because we're in dispute.

10:12:00 15 But there's a dispute on how penalties
16 are accrued, and if a penalty from
17 month-to-month should be carried forward.

10:12:08 18 And so I think our interpretation of
19 the contract is that every month we accrue
20 penalties we get penalized, we have a deduction
21 against that. And I think there's a limit to
22 the deduction that can be applied. And I think
23 once the deduction has been applied then the
24 overage just disappears.

10:12:27 25 That interpretation where the overage

1 gets carried over to the following month and
2 added to any new deductions, creating a fairly
3 punitive environment. And I believe that's
4 under dispute at the moment.

10:12:42

5 KATE McGRANN: What has the impact of
6 that punitive environment been on RTM's ability
7 to live up to its obligations under the Project
8 Agreement?

10:12:51

9 RICCARDO COSENTINO: You know, I mean
10 there's obviously -- there's two components I
11 would say. And, again this is as RTG, and I'm
12 not a member of the RTM Board so I only get
13 briefed as an RTG Board member so I have limited
14 knowledge. But I believe there's a shortage of
15 cash.

10:13:11

16 There is the typical death by a
17 thousand cuts. Maybe they are not -- it's not
18 just one single thing, it's a lot of things that
19 are happening. There's a disruption, there's a
20 lack of trust, there's frustration, all these
21 elements that impede the normal course of
22 operation.

10:13:37

23 But I think, you know, the financial
24 implications are important, because as you apply
25 financial pressure the pressure percolates down

1 all the way to the bottom of the project, and
2 that creates animosity and creates a really bad
3 working environment.

10:13:58

4 KATE McGRANN: Can you speak a little
5 bit more to how -- like, the implications of all
6 of this on the working environment for people
7 who are working directly on the project
8 day-to-day?

10:14:06

9 RICCARDO COSENTINO: You know, when
10 any corporation, even without talking
11 specifically to RTM, any time a corporation is
12 under financial distress there are decisions
13 that are made by senior management, by the
14 leadership, and those decisions have
15 implications. And every -- you know, you can
16 pump cash into the project but there's a limit
17 on the financial means of any entity.

10:14:39

18 So this -- these constraints obviously
19 put additional scrutiny on the individuals
20 working on the project, and this additional
21 scrutiny creates tension. So the work itself is
22 the same. If you're working on the project you
23 have to do your job, but now you're doing it
24 under intense scrutiny because all of the
25 parties are scrutinizing everything that's

1 happened, and that creates tension, that creates
2 stress. And then whenever you're having stress
3 obviously it creates a really bad working
4 environment. And this is, I think, in general,
5 it doesn't have to be specific to RTM, I think
6 it's applicable to all working environments.

10:15:31

7 KATE McGRANN: Stepping back in time a
8 bit from the maintenance period and the
9 operations phase back to the bid phase. I'd
10 like to ask you some questions about the
11 geotechnical risk transfer that was affected on
12 this project.

10:15:49

13 First of all, do you know if anybody
14 on RTG, or its subcontractors' side, was
15 involved in any market sounding on the
16 geotechnical risk approach that was to be taken?

10:16:02

17 RICCARDO COSENTINO: I don't believe
18 there was any market sounding. I believe, if my
19 memory serves me well, I believe that the -- the
20 regime that was put in place in the Request for
21 Proposal at the end was the genesis of the
22 comments that we were providing during the
23 procurement phase.

10:16:22

24 So basically I can't remember exactly
25 what the regime was when the Project Agreement

1 or the RFP was released, but I believe that the
2 regime that we ended up bidding, I think with
3 the three options, was something that was
4 implemented as a consequence of us providing
5 feedback during the bid process.

10:16:49

6 KATE McGRANN: And what was the nature
7 of the feedback provided?

10:16:51

8 RICCARDO COSENTINO: It might not even
9 have been us but it might have been another
10 proponent. And so I think -- I believe we
11 started with 100 percent of the risk passed to
12 the private sector. And I think at the end we
13 ended up with the three option where there was a
14 reward to the proponent that would take the most
15 risk.

10:17:15

16 And I don't believe it was us that
17 provided the feedback to the City to implement
18 that, but it could have been another proponent
19 or maybe it was us, I don't recall. But it was
20 not -- what we ended up in the end was not what
21 we started with, and it was the consequences of
22 the feedback during the procurement process.

10:17:32

23 KATE McGRANN: So there was a change
24 made during the in-market period to the
25 presentation of the geotechnical risk, it

1 started with 100 percent over to the private
2 sector.

10:17:47

3 RICCARDO COSENTINO: Yes. I'm nodding
4 because my memory is coming back to me. Yes, we
5 started with 100 percent. And I think -- I
6 don't think all the -- again this is speculation
7 because I don't know what the other proponents,
8 but I've done enough of these bids to understand
9 the mechanics and I've been on the other side as
10 well so I think I understand the mechanics.

10:18:14

11 I think the reason we ended up with
12 options was probably because the City was
13 getting conflicting feedback from the three
14 proponents. It was getting feedback from one
15 saying, We can take the risk. And probably
16 getting feedback from another proponent saying,
17 We can't take the risk. They couldn't quite
18 judge the truth so they developed these
19 mechanisms where, you know what? I don't know
20 what's true. Can you take it? I will reward.
21 I will put a reward to whoever takes the most
22 risk.

10:18:43

23 KATE McGRANN: Do you remember
24 generally the nature of the feedback that RTG
25 provided on this aspect of the project?

10:18:48 1 RICCARDO COSENTINO: We -- I think we
2 were quite neutral, I think our construction
3 team was quite neutral. We felt -- we felt that
4 our construction technique gave us an advantage.
5 And again, this -- yes, I mean, I was in the
6 room. So -- we felt that our sequential
7 excavation method gave us an advantage and
8 mitigated some of the geotechnical risk compared
9 to a tunnel boring machine. I don't know if
10 that's understand, the difference, but I can
11 elaborate if you want me to.

10:19:28 12 KATE McGRANN: No, that's okay. But I
13 do need to understand what you mean when you say
14 your feedback was neutral. Was the feedback,
15 Yeah, we can take the risk with concerns that
16 it's bankable, that we may not be able to get
17 financing? What does that mean?

10:19:37 18 RICCARDO COSENTINO: Yes. We felt
19 that we could take the risk. Hindsight, I don't
20 know if that was correct. I think that the
21 general feeling was, we can do this and if this
22 gives us a competitive advantage we'll use that
23 competitive advantage in our bid.

10:20:05 24 KATE McGRANN: And in terms of what
25 risk was actually transferred, from the

1 perspective of delivering the project to the
2 public, what is your view of the effectiveness
3 of the risk transfer that was done on this
4 project?

10:20:21

5 RICCARDO COSENTINO: This is an
6 extremely large philosophical question but I'm
7 going to try to address it.

10:20:29

8 So there's a school of thought that
9 says that when you're dealing with a complex
10 system, when you're dealing with a complex
11 project, ultimately you can never -- a project
12 owner can never really transfer the risk.

10:20:46

13 So you can transfer a component of the
14 risk. But if you are a project owner who is
15 looking at the project as an holistic way where
16 the objective of the project is not to complete
17 the construction period on time and on budget,
18 but the holistic of the project is to start
19 moving passenger from A to B sooner rather than
20 later, when you're looking at that you can
21 conclude that you can never -- a project owner
22 can never transfer the risk. Because, sure, you
23 transfer the geotechnical risk, for example, and
24 so now somebody has the risk that if something
25 happens that was unforeseen, and the project is

1 delayed and there's a cost overrun, the project
2 owner can seek remedies against that entity and
3 be compensated.

10:21:34

4 So yes, from the geotechnical risk
10:21:39 5 standpoint you have transferred the risk, but
6 have you really transferred the overall risk?
7 Which is, if one of those events occurs and is
8 not managed and mitigated there's a cost and
9 schedule impact to the ultimate objective, which
10 is to move people from A to B.

10:21:57

11 And so who is best placed to manage
12 and mitigate unknown events, unknown occurrences
13 that will affect the ultimate objective of the
14 project? And one would argue that a civil
15 contractor is not the best entity that can
16 mitigate and manage unknown, unforeseen risks
17 that will affect the ultimate objective of the
18 project.

10:22:28

19 KATE McGRANN: And why is that? Given
20 that the civil contractor is in charge of
21 construction and has control over means and
22 methods and schedule, and things like that?

10:22:40

23 RICCARDO COSENTINO: Because, again
24 I'm going to take a bit of a long route to
25 explain that. And again it's to do with

1 complexity. And I think there's a bit of a
2 fallacy in thinking that a construction project
3 during a major program is something that is
4 predictable and manageable.

10:23:05

5 We're dealing -- and I think that's
6 part of the problem with major programs and how
7 misunderstood they are. When you're dealing
8 with a simple project you have -- you can
9 schedule, you can plan, you can articulate what
10 it's going to take to go from beginning to end.
11 If you're building a house you're building the
12 foundation, you're building your walls, and you
13 have one, two small contractors. And so your
14 tools, your schedule, your plans, your estimate,
15 it's all quite workable.

10:23:38

16 But when you start scaling up to a
17 major program the level of complexity is much
18 bigger. And so I think what tends to happen,
19 especially in Canada, is that major programs are
20 treated as normal programs and the same tools
21 and approaches are used to mitigate risk, when
22 in reality it's a completely different kettle of
23 fish.

10:24:05

24 The example that I always like to give
25 is, like, if a pilot can pilot a two-seater

1 propeller plane does that mean that that pilot
2 can pilot an F35 fighter jet? They are two
3 completely different machines. And just because
4 you can pilot or you can manage a small plane
5 doesn't mean you can manage a large program
6 (sic). So I think what works on small projects
7 doesn't really work on major programs, but I
8 think that the understanding is lacking.

10:24:42

9 So, sure, the civil contractors
10 control some things, but we're dealing with a
11 complex system. We're dealing with a very, very
12 large system which nobody actually can
13 understand exactly the complexity and how the
14 complexity interacts.

10:25:01

15 I want to give another example because
16 I talk about the complexity of the system. And
17 by "system" I don't mean the train system, I
18 mean a system as a component of parts, as a
19 group of parts together that interact together.

10:25:14

20 So the example I always like to give
21 is complicated versus complex, and those are two
22 words that we use. A major program is a complex
23 system, and a program -- a small, a normal
24 program is a complicated system. And the two
25 analogy I give is a Swiss watch and a weather

1 system. So a Swiss watch, with all the
2 mechanisms inside the watch, is a complicated
3 system, where you know all these thousand of
4 wheels interact with each other but you know the
5 outcome. You know that after all these
6 thousands of wheels are turned the hand will
7 move one second. So that's a complicated
8 interaction. So you always know the outcome
9 even though it's a very complicated structure.

10:26:04

10 In a complex system you do not
11 understand the interaction. So the weather
12 system is the perfect example. If you have a
13 weather system forming in the Gulf of Mexico you
14 kind of know what might happen and you forecast,
15 but you never forecast exactly. And also you
16 cannot forecast years in advance, you can
17 forecast a week in advance. Because you don't
18 really understand how the elements of that
19 weather system interact with each other. And
20 the same thing is with major programs.

10:26:33

21 So the construction element of the
22 major program is just one entity of that system
23 but that doesn't exist in isolation. That
24 exists within the broader system, and in that
25 system you have a political system, you have the

1 funders, you have the lenders, you have
2 stakeholders. And so, yes, theoretically
3 speaking the contractor drives the machine that
4 excavates the soil and so to that extent they
5 have some level of control. But at the end of
6 the day, and I use geotechnical risk because I
7 think it's a good example, nobody actually knows
8 what's underneath the ground. So again with
9 optimism bias you can take the risk.

10:27:28

10 But the reality is, when you look at
11 any civil project, you have a series of
12 boreholes. So you drill boreholes every ten
13 metres. So you know what the ground condition
14 is here, you know what the ground condition is
15 here, and you make an assumption what the ground
16 condition is between the two. But that's an
17 assumption, you have no degree of certainty. So
18 you have experience, you have experts, you have
19 mitigations, but the reality is nobody knows
20 what the ground is between those two data
21 points.

10:27:58

22 So who is best positioned to manage
23 and mitigate an unknown risk in the context of a
24 wider system? In the context that there are
25 multiple stakeholders, and in the context that

1 the objective is to move people from A to B as
2 fast as possible? And I think the Ottawa LRT
3 project actually shows that. There was a
4 feeling that the risk transferred to the private
5 sector and the private sector was going to
6 deliver that. And ultimately the private sector
7 had the challenges, and contractually it's to
8 determine whose fault it was. But the ultimate
9 outcome, forget why, the ultimate outcome is
10 that the ultimate user suffered. So who is best
11 positioned to mitigate the impact to the
12 ultimate user of the system? And not just the
13 train system but the overall system?

10:29:05

14 And so I think, yes, again I think
15 your question -- going back to your question,
16 what control does the contractor have? Yes, the
17 contractor can mitigate, the contractor can
18 manage, the contractor can bring their
19 expertise. But there are ultimate consequences
20 the contractor will take on but can't really
21 mitigate and manage when they actually appear.
22 And I think you've seen that on the OLRT
23 project.

10:29:40

24 KATE McGRANN: I think we'll take the
25 morning break now. We'll come back at 10:40.

10:29:57 1 -- RECESSED AT 10:30 A.M. --

10:39:23 2 -- RESUMED AT 10:39 A.M. --

10:39:24 3 KATE McGRANN: Before the break we
4 were talking about the geotechnical risk
5 transfer and I have one more question about
6 that. To the extent that you can, can you speak
7 about how transfers like this are being
8 approached in the market now as opposed to the
9 approach taken back in the RFP?

10:39:39 10 RICCARDO COSENTINO: I can't speak to
11 it because it's been a while since I bid
12 something in Canada. Before it was the Trillium
13 LRT and I think it was a similar risk
14 allocation.

10:39:55 15 KATE McGRANN: Before I proceed I
16 wanted to just check in with my colleague,
17 Ms. Young, to see if she has any follow-up
18 questions on anything we've discussed so far.

10:40:04 19 EMILY YOUNG: Sure. I had a question
20 about one point that you mentioned about OLRTC
21 and RTM. You said, Mr. Cosentino, that when you
22 started the bidding process they didn't actually
23 exist yet. I was wondering at what point in the
24 process they were officially formed and whether
25 that sort of made any difference to the

1 interactions between the different parties as
2 you were preparing the bid?

10:40:32

3 RICCARDO COSENTINO: So the first --
4 they're legally formed I believe at financial
5 close, that's when the entities are
6 incorporated. It doesn't really make a
7 difference because the shareholders of OLRTC and
8 RTM were all involved in the bid process, they
9 were just not involved as part of an established
10 legal entity.

10:41:12

11 KATE McGRANN: Starting now to focus
12 on your work as a member of RTG's Board of
13 Directors. For starters, can you just describe
14 what the involvement of the Board is in the work
15 through the construction and manufacturing phase
16 and into operations?

10:41:19

17 RICCARDO COSENTINO: So basically it's
18 a quarterly Board meeting. So we have a
19 quarterly Board meeting throughout the project.
20 The Board delegated authority to the RTG
21 management. So there's a formal delegation of
22 authority where we articulate what the CEO and
23 the CFO can and cannot do, where they have to
24 come back and seek approval from the Board. So
25 there's certain things required for approval.

10:41:50 1 Some of the things that come to mind
2 is initiating disputes that will require Board
3 approval, otherwise a lot of the things are
4 delegated down to the management team and then
5 we just get briefed on a quarterly basis.

10:42:12 6 Obviously we also focus on -- as a
7 governance Board we focus on preserving -- our
8 duty of care is to the shareholder of RTG. And
9 obviously the -- and we're trying to safeguard
10 and assess and mitigate the impact that the RTG
11 obligation could be having to the RTG
12 shareholder. So obviously the obligation of RTG
13 have been dropped down to OLRTC and RTM, we rely
14 on those subcontractors to live up to their
15 obligations.

10:42:43 16 KATE McGRANN: And what, if any, level
17 of information is flowing back up from the
18 subcontractors on their meeting of obligations,
19 any challenges they run into, things like that?

10:42:55 20 RICCARDO COSENTINO: There's obviously
21 progress reports. So let's take the vehicle
22 since it's nice and easy. With the vehicle we
23 knew we had a delivery schedule to begin with.
24 So if everything goes according to plan we don't
25 get briefed. We just start getting briefed when

	1	things are not following the expected path.
10:43:19	2	So I think with the vehicle I think
	3	there was a delay. And also because we have to
	4	manage the interaction with the lender, so the
	5	lender technical advisors is working for the
	6	lenders but we manage that interaction. So
	7	whenever the LTA and the technical advisor
	8	reports in to the lender there are issues, then
	9	RTG has to be a bit more involved because we
	10	need to manage the expectation of the lenders.
10:43:48	11	So with the vehicle I think there
	12	was -- there were some issues. I can't remember
	13	if it was a milestone but I do specifically
	14	remember that there was a remedial plan that we
	15	had to submit to the lenders because certain
	16	things were not met.
10:44:01	17	Also that started raising some flags
	18	so obviously then we started asking more
	19	questions, and we wanted a bit more detailed
	20	reports on the vehicle manufacturing throughout
	21	the project. We couldn't really control the
	22	outcomes because it's two levels down. So we
	23	passed down the obligation to OLRTC and then
	24	OLRTC passed down the supply contract to Alstom.
10:44:26	25	So what we can do to intervene is

1 limited, but I think we need to be aware and see
2 whatever we can do to mitigate that. Again,
3 these contracts are -- the penalty and rewards
4 are self-contained. So everything is structured
5 so that obligation, payments and penalties or
6 remedies are all self-contained. So obviously
7 if OLRTC doesn't deliver on its obligation we,
8 RTG, get compensated for the losses, right?

10:45:05

9 So if you look at the dropdown
10 contract, liquidated damages, obviously if a
11 contract is late we have to pay lenders
12 additional interest costs. Those interest costs
13 are captured and articulated in the liquidated
14 damages. So if the contractor is late RTG is
15 protected, to a certain extent. That's why we
16 don't interfere because it's a self-contained,
17 lump sum turnkey project that we have dropped
18 down.

10:45:38

19 KATE McGRANN: A phrase that I have
20 heard used when talking about benefits to the
21 public partner of an AFP or P3 project is there
22 is "one throat to choke", one entity to go to
23 when there are issues. And I take it that RTG
24 would be that entity in this case. Are you
25 managing the relationship with the City?

10:46:02

1

RICCARDO COSENTINO: That's correct.

2

Theoretically speaking that's correct. I mean,

3

RTG is that one throat to choke. The reality is

4

that everything is dropped down to our

5

subcontractors, and I think you need -- I'm not

6

saying "I think", it's all factual.

10:46:24

7

The amount of resources available --

8

it's no recourse financing. You're talking

9

about -- the exposure that RTG has, when you

10

look specifically at RTG, or any special purpose

11

vehicle in any project finance solution,

12

remember that PPP is a project finance solution.

13

A project finance solution is a form of

14

financing called -- known as "no recourse

15

financing". So ultimately the exposure that RTG

16

has is the equity that has been invested into

17

the project, and it's by design.

10:47:00

18

So I can't remember -- I should know

19

because I'm a Board member. But take any

20

project, not RTG, but let's say a special

21

purpose vehicle invests \$100 million, that's

22

always available as a recourse. The other

23

recourse is drop down to the -- so, again

24

lenders -- and I think it's important to go

25

through -- I've tried to explain the project

1 finance structure in -- because it might come in
2 handy later.

10:47:32

3 So no recourse is basically there's no
4 recourse to the prime companies of the equity
5 sponsor. So the equity sponsor invests the
6 equity which is used to raise the debt. There's
7 a debt to equity ratio of 90/10, so 90 percent
8 is debt, 10 percent is equity. Then obviously
9 the lenders want to make sure that they're going
10 to get repaid at the end of the project, and so
11 they demand -- and by the way, the lenders are
12 repaid not by the SPV, they're repaid by the
13 client.

10:48:05

14 So if we take the short-term lenders,
15 when the project reaches revenue service in this
16 case the client takes out the short-term
17 lenders. So the lenders want to make sure that
18 the project reaches substantial completion, or
19 revenue service. And in order to do that they
20 have -- they want a guarantee. The special
21 purpose vehicle cannot provide those guarantees
22 because it's an empty shell. All they have is
23 the \$100 million of equity that has been
24 invested.

10:48:39

25 So then what the SPV does is they

1 secure -- they get a security package from the
2 contractor. And so that is used -- is pledged
3 towards the lenders to make sure that if there
4 are problems with the project there is both
5 liquidity in the form of a letter of credit and
6 overall access to corporate funds through the
7 parental company guarantees of the contractor.

10:49:06

8 So the actual security doesn't come
9 from the equity. So that neck to choke is
10 limited, because ultimately who is responsible
11 for the delivery and who has pledged most of the
12 security is actually the contractor.

10:49:20

13 And also the ultimate client relies on
14 the lenders to implement that. Right? Because
15 it's the lenders that has advanced 90 percent of
16 the funds. So there's an expectation that the
17 lenders are going to oversee the project and
18 make sure that the project progresses because
19 there's an alignment of interest. The lenders
20 want to get to revenue service because that's
21 when -- the short-term lender, that's when they
22 get paid. The long-term lenders want to get
23 there because that's when they start getting
24 paid principal. So there's an overall alignment
25 of interest.

10:50:03 1 However, there's not a perfect
2 alignment of interest between the City and the
3 lenders. There are obviously -- the lenders
4 is -- they focus on what it takes to get their
5 money back. The City has to look after the user
6 of the system, it has to look after the
7 thousands of stakeholders that are involved in
8 the project. This goes back to the complex
9 system, right. For a lender a project finance
10 is not a complex system, it's just I'm lending
11 money against this contract, against this
12 parameter, I want these things to happen so I
13 can get my money back. And as long as those
14 things happen that's all I care.

10:50:39 15 But the ultimate client has to have a
16 broader perspective because the managing
17 stakeholder, especially if it's a public entity
18 rather than a private entity, there's different
19 degree of complexity.

10:50:51 20 So that one neck to choke is -- that's
21 why I say it's theoretical, because ultimately
22 whenever you go to choke the SPV, the SPV drags
23 along the contractor and says, Talk to them
24 because it's your security package. All the SPV
25 does if something goes wrong is they pull up the

1 contractor because they have most of the
2 financial pressure through the LC and PCG.

10:51:29

3 KATE McGRANN: Thinking about the role
4 of the lenders for a second, you spoke about the
5 fact that their interests are not perfectly
6 aligned with the City. A ways into the
7 construction phase the City executed a debt
8 swap, is my understanding, and stepped into the
9 shoes of RTGs lenders. Do you know what I'm
10 referring to?

10:51:48

11 RICCARDO COSENTINO: Yes.

10:51:48

12 KATE McGRANN: Can you speak to
13 reaction of the Board of RTG when that took
14 place?

10:51:54

15 RICCARDO COSENTINO: And just for
16 completeness, I was a Board member but I was
17 also involved with the negotiation of the Stage
18 2. Which I think the two things are linked even
19 though they took over -- even though they took
20 over the debt of Stage 1 that was within the
21 context of the Stage 2 negotiation, I think it's
22 important to frame it that way.

10:52:19

23 So, yeah, it was highly concerning.
24 You know, you're now tinkering with an
25 established structure in a way that hasn't been

1 really done before, outside the mechanism
2 envisioned in the contract.

10:52:36

3 So the contract, the Project Agreement
4 between RTG and the City contemplated a removal
5 of the lenders. And so there's a mechanism it's
6 called "Termination for Convenience", you can
7 terminate the lenders for convenience. There's
8 an established mechanism. But the City decided
9 not to use the provision in the Project
10 Agreement, they went a completely different
11 route. Which they didn't really take out the
12 lenders, the lenders are still existing. They
13 just assumed the loan.

10:52:57

14 So typically I think we would have
15 been less concerned if the City had just
16 exercised its rights under the Project
17 Agreement, because that's articulated. That's
18 what we signed up to when we signed the Project
19 Agreement. We knew, okay, if the City decides
20 to take out the lender that's how they're going
21 to do it, but they didn't do it that way. They
22 assumed the Credit Agreement and they kept the
23 lenders in place, and they're paying the lenders
24 directly themselves.

10:53:47

25 So that -- that created an uneasiness

1 because now you have the City as the lender. So
2 now you still have a project finance structure
3 but with different entities. I think what we
4 always contemplated when we bid the project was
5 that if the lenders are taken out you no longer
6 have a project finance structure. Because the
7 lenders would have been taken out, they would
8 have been made whole and now you have a
9 different scenario. So they kind of skirted
10 around the agreement and created their own
11 process to take out the lenders.

10:54:30

12 And again, you're tinkering with a
13 complex system. Going back, you have a complex
14 system and you're now -- you have now acted on a
15 particular component of a system that is already
16 difficult to understand how the system
17 interacts. And when I say "system" it's the
18 broader system. It's very difficult to know how
19 all the components of the system interact with
20 each other, and now you're tinkering with a
21 critical component of the system, which has
22 never been done before. So you don't even have
23 a precedent to say, Okay, another jurisdiction
24 tinkered with the component and that happened.
25 Here there wasn't even that. It was a

1 completely unprecedented move.

10:55:12

2 And again, one might argue that the
3 interest of the lenders are aligned with the
4 interest of the City, but that's not correct.
5 And I can give an example of that. I
6 specifically remember towards the end of Stage 1
7 the construction contractor, RTG, has to certify
8 to the lenders that the project will be
9 completed before the lenders long stop date, and
10 that's a condition precedent to draw. And I
11 specifically remember that we couldn't certify
12 that because at that point we knew that we would
13 be past the lenders' long stop date, not the
14 long stop date of the contract but the lenders.

10:55:53

15 And so I remember specifically talking
16 to the short-term lenders, would you waive that
17 requirement of the certificate for meeting the
18 long stop -- the lenders' long stop date? And
19 the short-term lenders said, Yeah, we can talk
20 about it. We are open to it. These are
21 relationship banks. Even though it's no
22 recourse finance these are the same banks that
23 serve our corporate interests so we have really
24 good relations. There's a lot of trust. They
25 know these corporations are not going to walk

1 away from the project, which is the main concern
2 with not meeting the lenders' long stop date.

10:56:26

3 And -- but the feedback that we were
4 getting, I was getting in this informal
5 discussion I had with the short-term lenders, it
6 was like, we might be able to consider it but
7 the City, as a long-term lender, is not
8 interested. And that is absurd. Because when
9 we actually look at how the funding flows in a
10 project finance like Ottawa, the money of the
11 long-term lenders is the first money that goes
12 into the project. That's actually raised the
13 day of financial close.

10:56:59

14 So the long term lender injected money
15 up front. So when you're drawing money at the
16 end of the project you're actually drawing money
17 from the short-term lenders. So if there's
18 anybody that has a concern about advancing funds
19 in a scenario where the lenders' long stop date
20 might not be met, should be the short-term
21 lenders. The long-term lenders' money is
22 already into the project so why would they
23 object?

10:57:20

24 And, you know, and that's one example
25 where the relationship became even more

1 imbalanced, where there was almost like a
2 capricious act in order to exert more pressure
3 on to RTG and OLRTC. It was, you know, you want
4 more money? You need to give me something in
5 return.

10:57:45

6 KATE McGRANN: So you talked about the
7 fact that when this was done you're tinkering
8 with a complex system and the outcome was
9 unknown. There's no precedent to look to and it
10 hadn't been done before, right?

10:57:59

11 RICCARDO COSENTINO: Correct. To my
12 knowledge.

10:58:00

13 KATE McGRANN: You've given us one
14 example of an implication that came to life and
15 was actually realized. So in the example that
16 you gave was it the case that the City refused
17 to consent to any amendment to the long stop
18 date or to waive that requirement?

10:58:20

19 RICCARDO COSENTINO: Again, this was a
20 discussion I was having with a representative of
21 the short-term lender club. I mean, the reality
22 is we never got any more draws. So I don't know
23 what the discussion between the lenders ended up
24 being. I wasn't in the room with the short-term
25 lenders and the City, or the long-term lender.

1 But the outcome was that we never actually got
2 any more draws. Once we couldn't meet the
3 lenders' long stop date we couldn't draw any
4 more.

10:58:50

5 KATE McGRANN: What other
6 implications, if any, have realized from the
7 City stepping in to the shoes of the lenders?

10:58:58

8 RICCARDO COSENTINO: I think
9 anecdotally you have a structure that is set up
10 from the beginning and you have this tension
11 between all of the parties, and each party
12 brings a different set of interest. And you
13 have lenders, City, ProjectCo, and that triangle
14 is balanced. You have now kind of removed one
15 of those parties. And, again I think it's only
16 anecdotal because -- and I don't know if the
17 relation with the City would have precipitated.
18 I just don't know what would have happened to
19 the project through the challenges that we had
20 as a group. If the long-term lenders had been
21 there would it have been a different type of
22 outcome? We will never know.

11:00:03

23 What we do know is that the structure
24 was designed to have three parties, based on
25 years' of experience, hundreds of precedents

1 where everybody -- where there are established
2 precedents that having the three parties is
3 beneficial. Well, now what we'll never know is
4 if removal of that party did that make things
5 worse? We know that for other projects it was
6 always envisioned to be the right structure. We
7 just won't know what would have been if the
8 long-term lenders would have been there as
9 envisioned.

11:00:39

10 Would that have helped the outcomes?
11 Would that have helped smoothing the relation
12 with the City? Would that have helped in having
13 less of the adversarial -- having a third party
14 that could mediate between us and the City?
15 Because they bring a different perspective. As
16 I said, their interests are aligned with the
17 City but they're not perfectly aligned with the
18 City. So you just have another party that can
19 see both perspectives because they're in the
20 middle. They're not perfectly aligned with us,
21 they're not perfectly aligned with the City.
22 Again, it's checks and balances.

11:01:15

23 KATE McGRANN: And I'm thinking about
24 your analogy here of a triangle, the lenders the
25 City, the ProjectCo, and you've spoken about the

1 fact that there was the option in the Project
2 Agreement of terminating for convenience. So
3 how would that approach, which removes one side
4 of the triangle, have different implications to
5 the project than the approach that was taking
6 with the City stepping in to the shoes of the
7 lender, in your view?

11:01:43

8 RICCARDO COSENTINO: Yeah. So in my
9 view -- again, I think contractually you can see
10 how if you do it that way you -- so RTG has a
11 lending agreement with the long-term lenders.
12 By doing it as the contract said that agreement
13 disappears.

11:02:01

14 So it's now a relation -- and there
15 are obviously mechanisms to protect all of the
16 parties under the project, which I don't recall
17 because I never really reviewed it. But all I
18 know it's a makewhole provision, that's why it
19 makes it onerous for the City to do it, because
20 it's a makewhole provision, but that's all
21 articulated. It's been drafted, discussed,
22 reviewed and then becomes a two-party agreement,
23 by design.

11:02:30

24 And now by doing it the way the City
25 did it you still have a three-party agreement

1 but now one of the parties has been changed
2 without the consent, or without -- we couldn't
3 do anything or say anything, right?

11:02:46

4 And we can get into that, if needed,
5 but we -- we kind of had to accept the situation
6 as it was. We didn't get a say.

11:02:59

7 KATE McGRANN: Can you walk me
8 through, from what you were able to see in your
9 involvement, how this all came about?

11:03:06

10 RICCARDO COSENTINO: My recollection
11 is that it comes from the negotiation of the
12 Stage 2 extension. I think there was an intense
13 negotiation where part of the negotiation was to
14 keep the long-term lenders in a no better/no
15 worse position. The project was structured just
16 for Stage 1, and any changes to the scope, to
17 the agreement required lender's consent. And
18 obviously lenders' want to be kept in a no
19 better/no worse position.

11:03:48

20 So what tends to happen, as you're
21 adding operation -- as you're adding maintenance
22 scope to the project, once the phase two has
23 been built, now there's -- the operational
24 leverage of the project changes as you're adding
25 more O&M revenues. And, therefore, the lenders

1 need to rebalance the operating leverage. And
2 the way you balance the operating leverage is
3 you add more equity.

11:04:20

4 So Stage 2 negotiation would have
5 envisioned a lenders' consent and additional
6 injection of equity in order to keep the lenders
7 in a no better/no worse position.

11:04:33

8 I don't think that was palatable to
9 the City. I think the prospect of a lenders'
10 consent fee, plus the prospect of adding more
11 equity, was not very palatable. And so the City
12 decided to take out the lenders so that the
13 additional equity was not maintained.

11:04:54

14 And again, as I'm explaining this,
15 that's the other example with the checks and
16 balances, it's not just -- they didn't just
17 remove -- the reason the long-term lenders have
18 operating leverage requirements, which is
19 related to the amount of revenue that comes in,
20 is all to do with default scenarios.

11:05:16

21 So as you're adding more revenues to
22 the project company, that flow down to RTM you
23 need to add more equity. And again, that is all
24 to rebalance the debt, that triangle. More
25 scope means more equity, and that didn't happen.

11:05:41 1 So now you have a scenario where you
2 have significantly more scope. You still have a
3 project finance solution. You added more scope,
4 you didn't add more equity. So it's not just
5 anecdotal that that triangle is off balance,
6 even the numbers tell you it's off balance.

11:06:08 7 KATE McGRANN: And how does that "off
8 balance" affect RTG?

11:06:10 9 RICCARDO COSENTINO: The incentives
10 are different. The incentives and rewards are
11 off scale.

11:06:22 12 And this is a theoretical point but I
13 think it's worth making it. Which is, RTG is an
14 entity and it has a profit and loss account, we
15 make revenues and we take risks, and those risks
16 are compensated by a return. So now what
17 happened at the RTG level, we've taken on more
18 risk and we didn't get more rewards because we
19 didn't put in more equity.

11:06:53 20 And the -- the reason the lenders want
21 more equity is because, again, in case a default
22 happens, in case things go wrong the lenders
23 need to be able to take that money and take over
24 the project, right?

11:07:10 25 So these contracts have been developed

1 over the last thirty years, and they've taken
2 the shape they've taken because of all the
3 lessons learned that have been implemented from
4 project-to-project over the last thirty years.
5 So these structures didn't just happen.

11:07:30

6 And I think that was part of the
7 problem during the bid phase, which was the
8 client start tinkering with the structure that
9 was established because they felt they were in
10 control and could do it. But, again, without
11 understanding the consequence of that tinkering
12 because now you're dealing with something
13 extremely complex, and you start moving certain
14 things and you don't fully understand the
15 unintended and intended consequences that you
16 have when you tinker with something this
17 complex.

11:08:08

18 KATE McGRANN: With respect to the
19 concept that RTG is taking on more risk as a
20 result of the scope change brought by Stage 2,
21 have I got that right so far?

11:08:17

22 RICCARDO COSENTINO: Yeah. More
23 scope, more risk therefore, yes.

11:08:24

24 KATE McGRANN: And was it the case
25 that that risk was then accounted for, from

1 RTG's perspective, in any agreements in entered
2 into with respect to Stage 2? Like, isn't that
3 how that would be dealt with in this situation?

11:08:34

4 RICCARDO COSENTINO: Yeah,
5 theoretically, but we didn't. Like, we just got
6 a variation for the additional scope. And as I
7 said, because had the lenders stayed in the
8 picture that would have been taken into account.
9 Because the lenders would never have given
10 consent this variation if certain things had not
11 been put in place. So in order to remove that
12 annoyance the City took out the lenders.

11:09:09

13 KATE McGRANN: So I guess the question
14 then becomes, why did RTG agree to this?

11:09:14

15 RICCARDO COSENTINO: To be honest the
16 Stage 2 negotiation was very tense. We had been
17 threatened with termination for convenience if
18 we couldn't come up with a solution. And so we
19 felt -- do we want to get terminated or are we
20 going to swallow this and carry on?

11:09:35

21 KATE McGRANN: So we took a bit of a
22 detour there, but we had been talking about
23 RTG's Board and its level of involvement, and
24 its role in the project overall. You had
25 explained that you're getting quarterly updates

1 at Board meetings. Are you receiving
2 information in between the Board meetings about
3 the progress of the project, any issues that are
4 coming up? Anything like that?

11:10:00

5 RICCARDO COSENTINO: No. Not in the
6 early years. I mean, it's business as usual.
7 But towards the end, so let's say 2016, 2017,
8 when things were not -- we would be getting a
9 briefing and also we would have to provide more
10 input as maybe litigation would start, or
11 dispute resolution would start, we would have to
12 sign off on that. So we would maybe get some
13 briefing in between board meetings.

11:10:34

14 But certainly during the 2018, 2019,
15 phase when things were at a critical stage we
16 would be looped into the correspondence. So
17 instead of getting briefings we would then just
18 get the correspondence as it was happening so we
19 would be abreast of everything that was
20 happening.

11:10:59

21 KATE McGRANN: And as things are
22 ramping up, as you've described it, and dispute
23 resolution and processes are being engaged with,
24 you're being looped into correspondence, does
25 the nature of the Board's involvement change in

	1	response to any of that?
11:11:08	2	RICCARDO COSENTINO: Not
	3	significantly, no.
11:11:12	4	KATE McGRANN: And from what you could
	5	see, does RTG's involvement itself change as
	6	things are escalating?
11:11:25	7	RICCARDO COSENTINO: Yes, from the CEO
	8	perspective. Yeah, the CEO would get more and
	9	more involved because the interaction -- as a
	10	consequence as the interaction with the City
	11	increased then obviously RTG involvement would
	12	increase. And obviously RTG would rely on the
	13	subcontractors, so that co-ordination would be
	14	stepped up in order to meet the demands of the
	15	City in terms of progress update and issue
	16	management. So, yeah, I think the management
	17	team got more and more involved.
11:12:01	18	KATE McGRANN: And, as I understand
	19	it, the management team is turning to the Board
	20	for direction where it required to under the
	21	delegation of authority?
11:12:11	22	RICCARDO COSENTINO: Correct.
11:12:17	23	KATE McGRANN: I'm going to ask you
	24	some specific questions, but before I dig into
	25	them, as you know the Commission's mandate is to

1 investigate the commercial and technical
2 circumstances that led to the breakdowns and
3 derailments. From where you're sitting as a
4 Board member do you have a view of what aspects
5 of either the commercial or technical
6 circumstances, in this case, may have
7 contributed to an environment in which the
8 issues that we saw during revenue service
9 occurred?

11:12:42

10 RICCARDO COSENTINO: So, I mean, I
11 won't opine on the technical issues, because
12 even though I read some of the reports it's not
13 my -- I don't have the complete knowledge to
14 opine on the technical issue. In terms of the
15 environment I would like to talk about that.

11:13:02

16 And I think, again, I'm quoting
17 Professor Flyvbjerg, which is not just him but
18 his testimony and his research. When we see
19 these things happening these are causes. What
20 you're assessing is -- these are the causes of
21 delays and overruns or accidents, right?

11:13:26

22 So geotechnical risk, inflation,
23 geology, scope changes, complexity, those all
24 contribute to the consequences such as
25 derailment or a delay in service.

11:13:46

1

However, I think we have to look at what are the root causes? And so these are not root causes. Nothing that has happened in the project from financial close to today is a root cause -- are root causes of the event. The root causes of the event, and this is not me, this is established research, is optimism bias and strategic misrepresentation that happens at the development phase of the project.

11:14:20

10

So if you think about it a project has to be approved. In order to be approved there's limited fiscal -- there are fiscal constraints in any administration. So there's a tendency, because of optimism bias, because of the prospect theory, that Kahneman and Tversky developed and proved, that project budgets are never correct, are never enough. And -- because if the true cost of a project had to be put forward that project would not be approved. So what happens is that optimism bias, and strategic misrepresentation to come up with budget that can be palatable to the politicians. And then what tends to happen is that you now end up with a project that doesn't have the right resources. Sometimes it's misunderstood

25

1 because the level of complexity is not
2 understood because maybe there hasn't been
3 enough training for the program manager to
4 understand.

11:15:26

5 And I feel comfortable in talking
6 about this because there is a precedent, not a
7 precedent but there's an established practice in
8 the United Kingdom where -- it's been there for
9 over twenty years, where the Treasury Department
10 applies an "optimism by uplift" to any project,
11 mayor program that comes to their purview for
12 approval.

11:15:49

13 So this concept of optimism bias and
14 strategic misrepresentation in the development
15 of the project budgets is so established and so
16 understood that what they do is they add an
17 optimism bias uplift and then they go for
18 approval. So would the project still be
19 approved if we removed the optimism bias from
20 the estimate and really portrayed the true cost,
21 would that project still go ahead? Because by
22 having the right cost you have the right
23 resources.

11:16:23

24 And so, you know, when we look at
25 the -- all the decisions that are made on a

1 project, I mean, they all have financial
2 repercussions. So not having the right amount
3 of resources to carry out the project will
4 create these issues, will create these causes of
5 delay. But the root cause is at the source.
6 The root cause is that the project was never
7 enabled to achieve its intended objective
8 because it was never given the right amount of
9 resources.

11:16:59 10 KATE McGRANN: The optimism bias
11 uplift that you speak about, that's applied by
12 the Treasury Department in the U.K., do you know
13 at what point in the life cycle of the project
14 it's applied? You said it's before it's
15 approved?

11:17:12 16 RICCARDO COSENTINO: Yeah. It's
17 basically before it goes to the Treasury
18 Department for funding. So at the investment
19 decision stage.

11:17:18 20 KATE McGRANN: Okay. And how is that
21 approach different than calculating a
22 contingency for the budget, for example?

11:17:30 23 RICCARDO COSENTINO: Good question. A
24 contingency will still have an optimism bias.
25 So, again, in the research what you have --

1 optimism bias -- you have to take an outside
2 view. So if you ask the same individual that is
3 giving you the estimate to also calculate the
4 contingency, that individual will still have the
5 optimism bias. So you need to take an outside
6 view.

11:17:54

7 And in order -- and again this is an
8 established process. I mean Bent Flyvbjerg and
9 his team have what they call "reference class
10 forecasting". And Daniel Kahneman talks about
11 reference class forecasting in his book,
12 "Thinking Fast and Slow". Which basically you
13 have to eradicate the optimism bias, and the
14 only way to do it is by taking an outside view.

11:18:21

15 So the optimism bias uplift that's
16 what it does, it creates an outside view. So
17 you're no longer relying on the same individual
18 that had the optimism, it's a set value done for
19 research that is added, and that creates the
20 outside view.

11:18:37

21 KATE McGRANN: Like a reality check on
22 the budget basically?

11:18:40

23 RICCARDO COSENTINO: Yes. And it's
24 the HM Treasury Green Book that has the -- it's
25 a whole process for approval articulated in the

	1	HM Treasury Green Book.
11:18:54	2	KATE McGRANN: Looking specifically at
	3	some of the things that took place during the
	4	construction and manufacturing phase on Stage 1
	5	on Ottawa's LRT. I understand that there was
	6	some changes to the plans for manufacturing the
	7	vehicles, changes to the locations of the
	8	prototypes that were to be made, the number of
	9	prototypes that were to be made and the timing
	10	of the validation testing. Were those changes
	11	reported up to RTG's Board?
11:19:22	12	RICCARDO COSENTINO: After the fact,
	13	yeah. We were the last one to find out because
	14	clearly Alstom reports to OLRTC, OLRTC report to
	15	RTG. So we were made aware of them but when the
	16	decision was made.
11:19:39	17	KATE McGRANN: is that the kind of
	18	thing that RTG's Board would then be asking or
	19	sending questions back down to its
	20	subcontractors, OLRTC and onwards, How is this
	21	going to be managed? We would like a schedule
	22	update. Please provide assurance that this is
	23	all going to work out?
11:19:55	24	RICCARDO COSENTINO: That's correct,
	25	that's how it would happen. Also because we had

	1	to report to the lenders so obviously the
	2	lenders have a similar interest.
11:20:03	3	But I think it's important to remind
	4	ourselves that ultimately, you know, the
	5	obligation to deliver, the penalty -- or the
	6	security package associated with failure to
	7	deliver, it's all contained within the OLRTC.
11:20:19	8	So at a certain point we can ask the
	9	question, we can try to understand and help them
	10	mitigate, but they have incentive and rewards.
	11	It's all self-contained.
11:20:31	12	So the Board at OLRTC said, Listen, I
	13	know that I'm late. I know the consequences
	14	that I'm going to suffer so don't micromanage
	15	what I'm doing because I'm -- I know that I'm
	16	going to have a problem and my problem is
	17	actually bigger than yours because I suffer all
	18	the financial consequences.
11:20:58	19	KATE McGRANN: And you've spoken to
	20	this a little bit already but just to ask the
	21	question clearly, what tools or options are
	22	available to RTG to change the direction being
	23	taken by OLRTC, or its subcontractors, if it
	24	disagrees with the approach being taken?
11:21:05	25	RICCARDO COSENTINO: It's limited.

	1	It's limited because, you know, the financial
	2	resources available to RTG are limited. I think
	3	it's limited to the equity that we've invested.
11:21:22	4	You can try and have a -- you can ask
	5	for the -- to the shareholders for more money,
	6	but ultimately it's a limited amount of
	7	resources.
11:21:34	8	So we lean heavily on and we expect
	9	the subcontractors are going to live up to their
	10	obligation. And we have put in place, through
	11	the lenders -- with the lenders we put together
	12	the financial penalties and incentives that are
	13	going to drive the behaviours. Beyond that
	14	there is limited things that can be done, unless
	15	more cash is injected, but that's always
	16	problematic, especially on a no recourse
	17	structure.
11:22:08	18	KATE McGRANN: And explain to me what
	19	you mean when you say, more cash injections are
	20	problematic on a non-recourse structure?
11:22:17	21	RICCARDO COSENTINO: Well, the
	22	obligation of the special purpose vehicles are
	23	limited to the equity invested, right? There is
	24	no recourse upstream to that.
11:22:24	25	So if the -- there is no obligation by

1 any party to continue funding, right? The
2 obligation would come from the parental
3 guarantees. So if you have a parental guarantee
4 the guarantor wraps the obligation of the entity
5 that is performing the obligation. There is no
6 guarantee for the equity provider, that's a
7 self-contained box. And then once that equity
8 is expired the entity either goes bankrupt or
9 the shareholders decide to put more money in,
10 but there's no obligation to put more money in.

11:23:02

11 KATE McGRANN: In this case the
12 shareholders did opt to put more money in, am I
13 right?

11:23:07

14 RICCARDO COSENTINO: No. No, the --
15 OLRTC -- OLRTC -- so the way that cash injection
16 worked it was through the obligation -- so
17 OLRTC, through their parent company, provided
18 more cash, but not RTG.

11:23:26

19 I mean, the parent company, the
20 shareholder, that's where it get's a little
21 confusing, but technically speaking, legally
22 speaking the money came from the guarantor of
23 OLRTC.

11:23:40

24 KATE McGRANN: So the pressure that
25 the lenders would apply to RTG is effectively --

	1	flowed down to the subcontractors as well, so
	2	you're having the conversations but the payment
	3	stops at a level below RTG?
11:23:56	4	RICCARDO COSENTINO: Correct.
11:23:56	5	KATE McGRANN: At any point during the
	6	project did the Board of RTG form concerns about
	7	the approach taken to a systems integration on
	8	this project?
11:24:19	9	RICCARDO COSENTINO: No. To be fair,
	10	I don't know that we had that level of details
	11	and understanding.
11:24:21	12	KATE McGRANN: And would you have
	13	expected to have that kind of insight if there
	14	were system integration issues?
11:24:28	15	RICCARDO COSENTINO: No, because we
	16	rely on the contractor, OLRTC, to manage all
	17	those. They are the expert. They are -- they
	18	are the expert and they have the resources to
	19	manage that.
11:24:41	20	RTG is a team of I think a CEO, a CFO,
	21	a technical director, a couple of site
	22	inspectors and an accountant. Six, seven
	23	people, that's RTG, right? While OLRTC is
	24	hundreds of people with hundreds of
	25	subcontractors. And so we wouldn't have the

	1	means to opine on something that complex.
11:25:05	2	KATE McGRANN: Any requirement to deal
	3	with concerns about systems integration raised
	4	by the creditors, for example?
11:25:13	5	RICCARDO COSENTINO: Again, the
	6	creditors are focused on, we need to get to
	7	revenue service, substantial completion and then
	8	revenue service because that's when the
	9	short-term lenders get paid out. And even the
	10	lenders are fairly protected, right? Because up
	11	to the long stop date there are liquidated
	12	damages secured by a letter of credit from the
	13	contractor.
11:25:39	14	So at a certain point the lenders know
	15	that no matter what happens, even if the revenue
	16	service date is missed, they're still going to
	17	get their interest charges covered. And so does
	18	RTG, right? Our equity returns are, in case of
	19	a delay, are paid by the contractor. So
	20	financially both the lenders and RTG are
	21	protected in case of a delay.
11:26:09	22	KATE McGRANN: Does RTG become more at
	23	risk in the event of a potential default or
	24	termination?
11:26:15	25	RICCARDO COSENTINO: That's correct.

11:26:16 1 KATE McGRANN: That's when it
2 becomes --

11:26:18 3 RICCARDO COSENTINO: Yes.

11:26:19 4 KATE McGRANN: So has RTG been engaged
5 at that level? And if so how has that changed
6 the reaction or the steps taken?

11:26:33 7 RICCARDO COSENTINO: So obviously
8 there's a notice of default, which we're
9 disputing. And I think -- yeah -- again, within
10 the means that we have available we're trying to
11 be more informed and work collaborative with the
12 City and the contractor to try and resolve the
13 issues.

11:26:50 14 That's -- even a disputed event of
15 default, like we have now, it focuses our
16 attention as a Board, and as a shareholder.
17 But, again it's limited -- you know, it's
18 limited mechanism that we can implement.
19 Ultimately the obligation -- again, there's a
20 security -- the same way we have a security
21 package from the contractor during the
22 construction phase, we have a security package
23 from the maintenance contractor during the
24 maintenance phase, right?

11:27:26 25 I mean, these structures are designed

1 so that if there's a default, the project
2 company, so RTG, can step into the maintenance
3 contractor's shoes and perform the obligation,
4 using the letter of credit and the parental
5 guarantee as sources of funds. Because
6 obviously RTG has limited -- RTG, and the
7 shareholder, SPVS, has limited resources.
8 There's the equity, which by the way has been
9 used to -- as a source of funds during the
10 project, so the equity is already injected. So
11 the amount of cash available is limited. So
12 that's why you have a security package from the
13 maintainer. So RTG has the ability to step into
14 that. If RTG doesn't step into that then the
15 lenders step in.

11:28:29

16 KATE McGRANN: Do you have a view of
17 the effectiveness of the milestone payments as
18 incentives to complete this project on time, on
19 budget, anything like that?

11:28:36

20 RICCARDO COSENTINO: Yes. I do have a
21 view. The milestone payments were designed to
22 reduce the cost of capital. Because if you have
23 milestone payments that means there is cash
24 coming in and there's less need to borrow that
25 cash. And obviously the City can borrow at a

1 lower rate than the private sector.

11:29:03

2 So by having those injections during
3 the project you're reducing the overall cost of
4 the project. And so that was -- that is the
5 intent of those milestones.

11:29:16

6 KATE McGRANN: In terms of delays on
7 this project and how they may have impacted the
8 outcome, from where you're sitting as a member
9 of RTG's Board, do you have a view of which --
10 of how those affected the outcome?

11:29:30

11 RICCARDO COSENTINO: I mean, the --
12 obviously the sinkhole, the sinkhole was
13 something that happened that was probably
14 unexpected. It was unexpected so that
15 contributed to the delay. That contributed
16 to -- again, this is from a briefing that I was
17 getting as a Board member. And from my
18 understanding being a civil engineer, and having
19 worked on construction projects early in my
20 career, carrying out work out of sequence
21 created further delays, soured the environment,
22 further, made things more complicated.

11:30:12

23 So, yeah, unexpected events certainly
24 didn't help. There were other -- there were
25 other factors, maybe not to the magnitude of a

1 sinkhole, that contributed to small delays.
2 But, again, it's death by a thousand cuts. I
3 think the sinkhole is just what precipitated
4 everything, but there were other things. You
5 know, there are claims still ongoing about the
6 supply of the Ash wood and the fare gate. And
7 those are not unexpected in a project of this
8 size and complexity, but the sinkhole really
9 affected everything.

11:30:55

10 KATE McGRANN: As you're -- as the
11 project moved through the testing and
12 commissioning phase towards substantial
13 completion, what kind of reports was the RTG
14 Board getting about the readiness of the system
15 for trial running and revenue service
16 availability?

11:31:16

17 RICCARDO COSENTINO: I don't recall in
18 specific, but most likely at that stage we were
19 still getting just quarterly reports. I think
20 we probably did see some optimism in some of the
21 reports that we were getting. But again, we
22 would just take them at face value, right? If
23 the expert that is the contractor, OLRTC, says
24 that this is what they're going to do, they've
25 done their due diligence, they've done more due

1 diligence than we can ever do as RTG with the
2 limited resources as a Board.

11:31:50

3 And as I said, we relied heavily on
4 the contracted incentives and penalties within
5 the OLRTC contract to get comfortable that they
6 would do whatever it took to get to revenue
7 service in a safe manner.

11:32:12

8 And if they said that was the plan, we
9 would probably not challenge it.

11:32:21

10 KATE McGRANN: To your knowledge, did
11 the level of engagement of RTG or its Board
12 change after the first substantial completion
13 submission was rejected?

11:32:31

14 RICCARDO COSENTINO: So the level of
15 engagement changes insofar that we had to
16 provide more information to the lenders and
17 to -- so by doing that obviously to ourselves as
18 well. But it was more a matter of understanding
19 what the plan was.

11:32:51

20 Again, this is where they -- when I
21 said the alignment of the lenders -- the
22 interest of alignment between the lenders and
23 the City are generally in the same direction,
24 but not perfect.

11:32:59

25 So the lenders are looking for

1 completion by the lenders' long stop date. So
2 the lenders are not -- and so does RTG by the
3 way. So we're not concerned about revenue
4 service. We are concerned about the lenders'
5 long stop date or the contract long stop date.

11:33:15

6 So there's -- for us it was more,
7 Okay, I know you're not going to meet revenue
8 service but are you going to be able to meet
9 revenue service before the lenders' long stop
10 date? And that's what we focused on. Which
11 obviously it's a different level of scrutiny
12 than the City, whose interest is to reach
13 revenue service. So obviously we would react to
14 the City's thirst for knowledge and data to
15 obviously mitigate -- manage that relation. But
16 for us it was more like, can we meet the revenue
17 service date by the lenders' long stop date?

11:33:57

18 KATE McGRANN: And how did that play
19 out?

11:34:11

20 RICCARDO COSENTINO: Well, if I
21 remember correctly, I think we missed that. And
22 I think that's where our role is to manage the
23 lenders and talk to the lenders. And that's why
24 we started having more direct interaction with
25 the lenders to make sure that they had an

1 understanding.

11:34:21

2 You know, a lender's long stop date is
3 there to protect them so that they can step in
4 and remedy. But ultimately they don't want to
5 do it, right? I mean, they're bankers and
6 not -- they would have to go out and hire
7 another contractor, right?

11:34:36

8 So if we can't demonstrate to them
9 that the contractor is not going to abandon the
10 project, that the contractor is still going to
11 pay liquidated damages so they get their
12 interest charges. The lenders have a tendency
13 to say, Okay, I see you have this under control.
14 I'm nervous but you're still paying my interest.
15 I know you're a reputable contractor. I know
16 you're going to finish the job. I will give you
17 latitude.

11:35:03

18 And that's what RTG did quite well, is
19 keeping the lenders informed and abreast so that
20 they became a partner in a very difficult
21 situation and they were not threatening to
22 terminate or step in. That threat was never
23 made and there was an understanding that --
24 because they could see an end, even though it
25 was not by the lenders' long stop date, they

1 could see that significant progress was being
2 made every month.

11:35:32

3 KATE McGRANN: And when you talk about
4 the management or the interaction with the
5 lenders that RTG is having, at this point in
6 time it also includes the City, is that right?

11:35:42

7 RICCARDO COSENTINO: Yes. At a
8 certain point the City assumed the long term
9 bonding indenture. So I specifically remember
10 one meeting at the MSF where it was lenders and
11 the City showed up, I think it was shortly after
12 assuming the long term loan.

11:36:00

13 KATE McGRANN: And were they exerting
14 any pressure that was out of step with what the
15 other lenders were doing as the long stop date
16 is missed and the project continues to progress?

11:36:11

17 RICCARDO COSENTINO: Yeah. Look, I
18 specifically remember that lender's meeting at
19 the maintenance facility, which I attended. I
20 didn't attend many but I attended that one
21 because obviously things were difficult.

11:36:29

22 And, yeah, the short-term lenders had
23 a constructive approach and they wanted to
24 understand what was happening. Would we get
25 there? But the City, as a long term lender,

1 behaved as the City.

11:36:41

2 So, again, if they were a true lender
3 they would have had the same stance. So they
4 shouldn't have cared about the revenue service
5 because as a long-term lender you care about the
6 long stop date. But they came to the meeting
7 with the lenders and behaved as the client,
8 which made everything quite difficult. Because
9 obviously we have established relation with the
10 lenders, they are our corporate bankers, they
11 support us on many other projects and they want
12 would be constructive and helpful. And they
13 felt that the City's behaviour was not
14 constructive or helpful as a lender. It was
15 tense, it was a very intense meeting.

11:37:25

16 KATE McGRANN: What was the outcome of
17 that meeting?

11:37:30

18 RICCARDO COSENTINO: It was more of a
19 site tour, it was more of a discussion. It was
20 just for the short-term lenders to get an
21 understanding where are we. They are concerned.
22 Is the contractor going to walk away? Do I have
23 to step in? They don't want to do it but they
24 will do it. So they just want to get their
25 reassurances that they can still rely on the

1 contractor to finish the project. So I think
2 the short-term lender got that comfort and they
3 never -- the proof is they never stepped, they
4 never exercised their step-in rights.

11:38:04 5 KATE McGRANN: Before I move on,
6 Emily, do you have any follow-up questions you
7 want to ask?

11:38:14 8 EMILY YOUNG: I don't think so, thank
9 you.

11:38:17 10 KATE McGRANN: Once the project moves
11 into the trial running phase what level of
12 information and how frequently is the RTG Board
13 being updated on the progress through trial
14 running?

11:38:26 15 RICCARDO COSENTINO: I believe at this
16 point we're getting -- we're basically looped
17 into the correspondence. So for many years we
18 tried to keep the separation between the legal
19 entities in order to maintain legal rights and
20 privacy and privilege.

11:38:47 21 I think at this point, during trial
22 running, I think we -- the project director or
23 the CEO's of RTG and the project director, they
24 created one distribution list so that we're
25 getting the same briefing that the OLRTC Board

	1	gets and the RTM Board gets.
11:39:06	2	So I don't recall specifically what I
	3	was getting but I was getting significantly more
	4	information during that period on how things
	5	were going.
11:39:16	6	I wouldn't be getting -- you know, I
	7	wouldn't be getting everything that the CEO
	8	would be getting, but I would be getting a high
	9	level summary throughout -- maybe even on a
	10	daily basis as they were going through, or maybe
	11	every couple of days we would say, okay --
	12	especially when things went wrong, we missed the
	13	date, and we would be notified.
11:39:39	14	I think that's the general approach.
	15	If things go according to plan we don't need to
	16	know. We need to be briefed when things don't
	17	go according to plan.
11:39:49	18	KATE McGRANN: Were you aware that
	19	there were changes to the requirements of trial
	20	running that were put into effect during the
	21	trial running period?
11:39:56	22	RICCARDO COSENTINO: Yes.
11:39:57	23	KATE McGRANN: And what kind of
	24	information was provided to the Board about what
	25	was happening there?

11:40:03 1 RICCARDO COSENTINO: I don't recall
2 the specific. I do recall being notified that
3 they were going to make changes because it was
4 getting difficult to achieve some of the
5 metrics, and again I'm using these words
6 loosely.

11:40:19 7 So we were just notified that, you
8 know, we're going to try and work with the City
9 to find a way to get there in a safe way. Our
10 concern was always safety. Whatever you do it
11 has to be jointly agreed by all parties. And
12 this was the instruction to the CEO, needs to be
13 agreement by all the parties and we still need
14 to follow all the processes. But before the
15 parties feel that changing some of the
16 parameters is the right thing to do, we trust
17 them.

11:41:00 18 KATE McGRANN: Did you have an
19 understanding that -- let me ask a couple of
20 questions actually. The Board's direction to
21 the CEO is that it has to be safe and agreed to
22 by the parties?

11:41:09 23 RICCARDO COSENTINO: Correct.

11:41:10 24 KATE McGRANN: Any other directions
25 given by the Board to the CEO about changes to

1 the trial running requirements?

11:41:19

2 RICCARDO COSENTINO: No. I don't
3 think it was direct direction to the CEO. I
4 think the way we have managed and led the
5 project, I think that was implied. I think
6 everything the way -- we always gave this
7 management team latitude, there was a delegation
8 of authority.

11:41:37

9 But given the critical point of the
10 project, given the critical time and the
11 complexity and the parties involved, we might
12 have given or hinted to the CEO that there is a
13 little more latitude. And that's why we said,
14 As long as all the parties are in agreement, as
15 long as the client is in agreement and there's
16 general sign-off and it's safe, and the team
17 feels its safe, we'll support you.

11:42:04

18 Because we didn't want to be an
19 impediment to the process, even though we are
20 the Board of the entity that is contractually
21 linked to the client. We also were keenly aware
22 that OLRTC was doing all the work and OLRTC was,
23 you know, moving things forward. So we didn't
24 want to be impediment to achieve -- like I said,
25 we were a small team, far removed and so we

1 placed a high degree of trust onto the team.

11:42:39

2 KATE McGRANN: And in terms of the
3 motivation to give more latitude on this, what
4 would that have been?

11:42:48

5 RICCARDO COSENTINO: We knew that
6 there was -- a lot of the parties involved,
7 especially OLRTC and the City wanted to reach
8 revenue service availability. It's not a
9 secret, you know, revenue service availability
10 for the OLRTC means there's a payment. So
11 that's when the liquidated damages stop because
12 the short-term lenders are taken out. And for
13 the City they can do what they have to do to get
14 to service. So we knew that the City wanted to
15 get that too.

11:43:32

16 KATE McGRANN: So there was an
17 understanding that the requirements -- there was
18 trouble meeting the requirements as they were
19 set at the outset of the project?

11:43:43

20 RICCARDO COSENTINO: Yes. Yes, we
21 were aware. We were aware there were
22 challenges, we were aware -- as I said, when we
23 would miss the day during trial running they
24 would be notified.

11:43:55

25 Again, it was more notification

1 because what am I going to do as a Board member?
2 I have to put the trust -- and my leadership --
3 there's enough checks and balances in the system
4 that I -- you know, let me know, but I'm not
5 going to intervene. I'm not a system engineer.
6 I've never done trial running. I've never put a
7 system into service.

11:44:21 8 So what I have to make sure is that
9 everything is safe.

11:44:24 10 I mean, we were -- you know, it was
11 a -- it's a fine balance right. I think we also
12 want RTM to be involved. Because ultimately,
13 from the RTG standpoint, safety first, but
14 safety aside, you know, we were keenly aware
15 that whatever happened -- if anything was -- you
16 know, any compromises that were made during that
17 phase would have been absorbed by RTM.

11:44:58 18 Again, we, as RTG drop down. Our main
19 concern is, is RTM in the room? Is RTM aware of
20 what's happening? Because ultimately whatever
21 decision is made now it will have repercussion
22 for RTM. But if RTM is in the room and is aware
23 of what is happening then I think we're
24 comfortable. And I think they were in the room.

11:45:21 25 KATE McGRANN: So on that front,

1 recognizing that whatever compromises are made
2 are going to be caught by RTM, the repercussions
3 will land on them, is that right?

11:45:32

4 RICCARDO COSENTINO: Yes. It's a
5 blanket, right. If you make compromises, if you
6 move one side something is going to have to
7 give.

11:45:47

8 KATE McGRANN: So what information was
9 being received or sought by the RTG Board about
10 RTM's ability to absorb the implications of
11 those compromises.

11:46:03

12 RICCARDO COSENTINO: I don't recall.
13 Again, it's a fast-paced environment. So the
14 question we were asking is, is RTM in the room?
15 And as long as they're there they're the best
16 one to police what's happening.

11:46:16

17 KATE McGRANN: So if RTM is agreeing
18 to what's happening the Board is effectively
19 trusting their judgment and not looking behind
20 it?

11:46:19

21 RICCARDO COSENTINO: Yeah. Because
22 they have the obligation, right? The
23 contractual obligations are with them, we have
24 flowed them down. So I think contractually,
25 like if we put a contractual hat on, I want to

1 make sure that RTM doesn't come back and claim
2 against RTG for not -- for not providing the
3 system as we committed in the drop down
4 contract. So having RTM in the room mitigated
5 that risk.

11:46:51

6 KATE McGRANN: And in terms of other
7 entities that RTG is responsible for interfacing
8 with, I take it the short-term lenders don't
9 really care one way or another what happens once
10 you get into operations because they've been
11 taken out, is that right?

11:47:05

12 RICCARDO COSENTINO: Yeah.

11:47:05

13 KATE McGRANN: So the party that
14 you're really dealing with as owner, as lender,
15 is the City?

11:47:12

16 RICCARDO COSENTINO: Yeah.

11:47:13

17 KATE McGRANN: What kind of
18 interactions is RTG having with the City as the
19 trial running period draws to a close and all
20 these compromises are about to land on it as
21 operator and RTM as maintainer?

11:47:26

22 RICCARDO COSENTINO: I mean, RTG,
23 through our CEO, Peter Lauch, he was the point
24 person in the relation with the City as an owner
25 and as a lender. So Peter was basically

1 co-ordinating all of the interaction with the
2 City. He was the point person and was the
3 ultimate person responsible for interacting with
4 the City. Which at that point was, you know,
5 Manconi, Kanellakos, the mayor at times. So we
6 delegated, the Board delegated the authority to
7 Peter to make that happen.

11:48:13

8 KATE McGRANN: And what about the
9 negotiation of the term sheet that was put in
10 place as part of the revenue service
11 availability achievement?

11:48:35

12 RICCARDO COSENTINO: So we delegated
13 that to Peter and the management team and -- I
14 can't remember. I have to -- if RTG signed
15 that -- we either delegated authority to Peter
16 to sign it or it might even have to be the Board
17 signing it. Sometimes certain things get signed
18 but again it's -- you know, the actual
19 negotiation of the document would have fell on
20 to the CEO.

11:48:45

21 KATE McGRANN: And did you form a view
22 of what the implications of that term sheet
23 would be for RTM?

11:48:54

24 RICCARDO COSENTINO: Yes. But
25 ultimately I felt that my -- our obligation was

1 dropped down to RTM. So ultimately if they were
2 comfortable with that then I was going to be
3 comfortable with it, because ultimately they
4 were going to be the ones to live with it.

11:49:19

5 KATE McGRANN: But what was your view
6 of what the implications of the term sheet would
7 be for RTM?

11:49:20

8 RICCARDO COSENTINO: Well, you know,
9 my expectation is it was going to be
10 challenging. Everything had been done,
11 everything had been squeezed. Since the
12 sinkhole everything was accelerated. Not
13 accelerated but, you know, how the sequencing
14 works, there were challenges in meeting of some
15 of the trial running requirements.

11:49:48

16 I think at a high level it never felt
17 comfortable. I couldn't point -- I'm not an
18 expert. I'm not in the details, but the broader
19 picture was never a comfortable picture.

11:50:02

20 KATE McGRANN: And I'm looking at the
21 amount of time we have left, sorry, to make the
22 most of it.

11:50:07

23 Based on what you knew about the
24 status of everything we've been discussing
25 heading into revenue service, were any of the

1 issues encountered by way of breakdowns, in
2 advance of the derailments, a big surprise to
3 the Board, as far as you know?

11:50:22

4 RICCARDO COSENTINO: Yeah. The
5 derailments, yeah, they weren't catastrophic but
6 it's a big event. So we didn't think -- yeah,
7 it was a surprise.

11:50:37

8 KATE McGRANN: But leave the
9 derailments aside for a second, we'll talk about
10 those.

11:50:45

11 But the issues that appear before the
12 derailments?

11:50:48

13 RICCARDO COSENTINO: Again, from a
14 place of ignorance, not being a super technical
15 expert but having a little bit of knowledge,
16 it's not completely surprising, given what I
17 know about the project and given what I know the
18 processes have been leading up to the
19 maintenance period. I mean, it's not surprising
20 that we had issues.

11:51:10

21 KATE McGRANN: And then can you speak
22 to what the Board's involvement was in terms of
23 addressing the derailments?

11:51:18

24 RICCARDO COSENTINO: Again we tried to
25 provide as much resources to the team. Again,

1 you know, our expectation was that RTM would
2 have the obligation to fix that.

11:51:33

3 Obviously there's some affiliation
4 with these entities so we instructed the
5 management team to be as supportive and
6 collaborative as possible. Even though they are
7 contractual relation we made sure that Peter and
8 the other members of RTG were going to be as
9 co-operative as possible and as supportive as
10 possible to RTM to address the deficiencies and
11 to work with Alstom.

11:52:08

12 KATE McGRANN: Can you speak to the
13 nature of the relationship between RTG and the
14 City, as you understood it from your position as
15 a Board member, and how it may have changed?

11:52:19

16 RICCARDO COSENTINO: Yeah. I mean,
17 again it's -- we talked about how the P3,
18 structure works. We are the contracting entity.
19 We are the interface between the City and the
20 contractors.

11:52:40

21 In the early years, and to be honest
22 even in the later years during the construction
23 period, we tried to be the arbiter between the
24 City and the contractor. Because the City has
25 expectations, we have dropped down all the

1 expectations to the contractor, and we're trying
2 to bridge that gap that could be in terms of
3 expectation for both parties.

11:53:00

4 Even the claims, when the contractor
5 has claims they're always submitted to the City
6 under the equivalent project relief regime. So
7 even though it might say it is an RTG claim, but
8 when you look RTG is just forwarding the claim
9 from the contractor to the City, under the
10 understanding with the contractor that RTG will
11 only pay when paid. So RTG doesn't actually
12 have an obligation to compensate the contractor
13 for a claim. So, you know, it is a bridging
14 relation.

11:53:36

15 For all the years, speaking to Antonio
16 first and then Peter Lauch after, they managed
17 the best they could. And eventually the
18 frustration started coming through about the
19 fact that RTG was -- every time there was an
20 issue RTG would just turn around to the
21 subcontractors. And the City's expectation was,
22 Well, you're the contracting entity. What are
23 you doing about it? And it was, yeah, but we
24 have dropped all this down.

11:54:02

25 And, by the way, they knew that

1 because they had access to all of the drop down
2 agreement at bid stage and even at financial
3 close, so the relationship was not unknown.
4 It's very common in a P3. And there's been
5 hundreds of P3s done in Canada and thousands
6 worldwide.

11:54:19

7 So that soured. And, you know,
8 there's frustration that sometimes it felt that
9 the City had their hands tied behind their back
10 in their relations with us or OLRTC. And that's
11 what soured the relationship because they felt
12 they just couldn't intervene. They weren't
13 getting the intervention that they were seeking
14 from RTG. They weren't getting the intervention
15 they were expecting from the lenders. I think
16 I'm speculating because I was not at the City,
17 but I assume that they were expecting the
18 lenders to maybe exert more pressure, and that's
19 why the reason they did that.

11:55:17

20 Does that address the question?

11:55:19

21 KATE McGRANN: I think that that
22 addresses the question.

11:55:22

23 To the extent that you can answer this
24 question, did you have a view on whether the
25 term sheet that was signed in August of 2019 set

	1	the system up for a successful launch?
11:55:43	2	RICCARDO COSENTINO: I would be
	3	speculating but I will speculate. I think there
	4	was optimism bias in that too. Could it have
	5	worked? Yes, but it didn't.
11:56:04	6	KATE McGRANN: Where was the optimism
	7	kind of landing in that? Where was the hope
	8	that this would work out and where did it fail?
11:56:12	9	RICCARDO COSENTINO: I think we went
	10	from 15 to 13 vehicles, right? And that 15 was
	11	there for years. So clearly somebody at some
	12	point sat down and did a bit of an analysis and
	13	realized that 15 vehicles is what was needed to
	14	be successful.
11:56:37	15	And further analysis was done to see
	16	how do we mitigate -- we need to get to revenue
	17	service. What can we do in a safe manner and
	18	what can give in order to get there? And
	19	obviously with optimism bias you try and figure
	20	out a workable solution that doesn't -- and you
	21	take risks.
11:56:54	22	Clearly it's just math. You go from
	23	15 to 13 you automatically increase the risk.
	24	Is it now becoming an unmanageable risk? It's
	25	debatable. It's within complexity here.

11:57:10 1 With all of these decisions -- once
2 you start deviating from an initial plan you're
3 making compromises. So you take -- and that's
4 why -- I had the discussion earlier about you're
5 dealing with a complex system. There are many
6 moving parts. So now you have a need to put the
7 system into service, and you got those
8 pressures. So who is best positioned to make
9 those decisions? Who is best positioned to make
10 those trade-offs?

11:57:44 11 And ultimately, I think even in this
12 scenario, I would conclude that the client is
13 always in the best position to make these
14 decisions because they have the holistic view,
15 right?

11:57:58 16 However, now you are constrained by a
17 contract that was developed five years ago that
18 didn't really envision these situations. So the
19 P3 contract is really rigid. It's not really
20 well suited to deal with complexity, because in
21 a P3 contract you need to specify all the
22 events, you need to articulate all of the events
23 that are potentially going to happen so that
24 somebody can price it in a lump sum price, lump
25 sum, turn key price.

11:58:28 1 And when these inevitably -- it's
2 absurd to think that when 8 out of 10 projects
3 are late that this project is not going to
4 encounter the same issue. They might not be the
5 same issue that another project encountered but
6 there will be a set of issues.

11:58:46 7 So in order to deal with complexity
8 you need to be able to adapt, you need to be
9 able to implement. So you need to have the
10 resources to do that. So that -- was that
11 enough funding? It's not just funding for the
12 contract when it's signed, but is there enough
13 funding available to manage these unexpected
14 events.

11:59:04 15 And obviously the City had articulated
16 that in their mind everything had been passed to
17 the private sector. So, no, we don't need
18 additional funding because everything has been
19 transferred, all the risk has been transferred
20 and the private sector will deal with it.

11:59:19 21 At a certain point the private sector
22 dealt with it but not the satisfaction of the
23 City, but ultimately the City had passed that
24 obligation on.

11:59:27 25 So for the private sector, for us, as

1 long as we complete the project we have met our
2 obligation, but that's when the political
3 pressure comes in because the politicians don't
4 want the completed project, they want the
5 completed project at a specific date in time.

11:59:42

6 So is it really true that the private
7 sector is better able to manage that situation?
8 No. Because we don't control the politicians.
9 We just have a contract that says, finish the
10 project on a certain date and if you don't there
11 will be liquidated damages. But we made a
12 commercial trade-off between paying the
13 liquidated damages and finishing late, which is
14 within our right. But that creates a lot of
15 tension in the City because the user wants the
16 system.

12:00:09

17 So the City wanted to have the risk
18 transfer but also the flexibility of directly
19 managing the contract and telling -- and making
20 sure that the project was finished when they
21 wanted it to be finished, without additional
22 cost. Because in their mind the risk had
23 completely been transferred so there was no need
24 to additional costs.

12:00:31

25 And, again, when you're dealing with a

1 complex project like this, you need to be ready
2 to deal with unforeseen consequences and you
3 need to be ready to manage that for a
4 collaborative approach.

12:00:50 5 KATE McGRANN: Emily, do you have any
6 follow-up questions on anything we have
7 discussed?

12:00:55 8 EMILY YOUNG: No.

12:01:07 9 KATE McGRANN: I've said this already,
10 but the Commission's been asked to investigate
11 the commercial and technical circumstances that
12 led to the breakdowns and derailments on Stage 1
13 of Ottawa's Light Rail Transit project. Are
14 there any topics or areas that we haven't
15 discussed this morning that you think the
16 Commission should be looking at as part of that
17 investigation?

12:01:12 18 RICCARDO COSENTINO: So to me is --
19 yeah, I think it's as I mentioned, root causes.
20 It's important that there's an understanding of
21 what are the root causes? And are project
22 sponsors ready and capable of delivering major
23 programs of this complexity? And I think in my
24 analogy about the plane, you know, just because
25 you are able to pilot a propeller plane does

1 that make you ready to pilot a fighter jet?

12:01:56

2 And I think, you know, again, I have
3 to draw parallel to the best practices in the
4 United Kingdom where every program manager -- so
5 if you are delivering a major program that
6 receives HM Treasury funding, you need to have
7 gone through a two-year program called "The
8 Major Project Leadership Academy", and this has
9 been going on for many, many years, probably
10 twelve, fifteen years.

12:02:27

11 And there's an understanding that
12 major programs requires a different level of
13 training. And the leaders of major programs are
14 trained to manage that. And I don't think that
15 level of understand exist in the Province of
16 Ontario or even Canada, where a major program is
17 viewed the same as any other program. So if you
18 can deliver an infrastructure project of
19 \$200 million, \$300 million then all you have to
20 do is scale it up. You increase the resources
21 and you're capable of delivering, when in
22 reality it is a completely different beast.

12:03:10

23 And I think starting -- there's a
24 concept in the United Kingdom called "capable
25 owner", and there's been a lot of emphasis over

1 the last ten years about having capable owners.
2 Which doesn't mean that we have incompetent
3 owners, it just means these are not normal
4 projects. They're major programs and they are
5 completely different. And I think starting to
6 understand that and preparing the people
7 involved in those programs will go a long way to
8 help remove complexity or dealing with
9 complexity and removing some of the root causes.

12:03:54

10 KATE McGRANN: And I think that you've
11 answered this question but I'll ask it and if
12 there's anything you want to add let me know.
13 The Commission has been asked to make
14 recommendations to try to prevent issues like
15 this from happening going forward, any specific
16 recommendation or areas of recommendations,
17 beyond what you've already shared, that you
18 would suggest be considered in that work?

12:04:11

19 RICCARDO COSENTINO: No. I think I've
20 talked about -- I talked about the best
21 practice -- you know, looking at the best
22 practices from the United Kingdom's
23 jurisdiction, looking at the best practices
24 there, that's what I would recommend.

12:04:32

25 KATE McGRANN: And I'll ask your

1 counsel if she has any follow-up questions she
2 wants to ask.

12:04:36 3 JESSE WRIGHT: No, no other questions
4 for me.

12:04:39 5 KATE McGRANN: That brings our
6 questions for today to a close and we can go off
7 the record.

12:04:44 8 -- Completed at 12:04 p.m.

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REPORTER'S CERTIFICATE

I, HELEN MARTINEAU, CSR, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were
taken before me at the time and date therein set
forth, the witness having been placed under oath
by me;

That the statements of the presenters
and all comments made at the time of the meeting
were recorded stenographically by me;

That the foregoing is a certified
transcript of my shorthand notes so taken.

Dated this 13th day of May, 2022.



Per: Helen Martineau

Certified Shorthand Reporter

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