



Public Hearing

Audience publique

Commissioner / Commissaire

The Honourable / L'honorable
C. William Hourigan

VOLUME 1

Held at :

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

Monday, June 13, 2022

Tenue à:

Immeuble Ian Scott
100, Thomas More Private
Salle de cours au 2^e étage
Ottawa, Ontario
K1N 1E3

Lundi, le 13 juin 2022

INTERNATIONAL REPORTING INC.

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II Appearances / Comparutions

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

III Appearances / Comparutions

Kyle Lambert
Jeremiah Kopp

Morrison Hershfield

Heather MacKay
Jeffrey Claydon
Adam Mortimer

The Province of Ontario

Michael Varantsidis
Gary Gibbs
Kim Gillham

Rideau Transit Group – EJV (Engineering Joint Venture)

Jennifer McAleer
Peter Mantas
Maria Braker

Thales Canada Inc.

David Jeanes

Transport Action Canada

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

RTG (Rideau Transit Group General Partnership)

+

OLRTC (Ottawa Light Rail Transit Group General Partnership)

+

RTM (Rideau Transit Maintenance General Partnership)

Michael O'Brien
James Doris

STV

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Ottawa, Ontario

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--- Upon commencing on Monday, June 13, 2022 at 9:03 a.m.

THE REGISTRAR: Justice William Hourigan presiding.

COMMISSIONER HOURIGAN: Good morning, everyone watching here at the University of Ottawa and elsewhere. Before we begin, I'd like to thank the University of Ottawa Law School for hosting us. It's a terrific location and we're very pleased to be here. Commission counsel, John Adair, will be examining the first witness who is John Jensen, City of Ottawa. So, Mr. Adair, if you want to proceed?

MR. JOHN ADAIR: Thank you, Mr. Commissioner, I'll do so. Let me just turn my mike off for one second, just to address a technical issue.

(SHORT PAUSE)

--- JOHN JENSEN, Sworn

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

MR. JOHN ADAIR: Thank you. Good morning, Mr. Jensen, and thanks for attending today.

MR. JOHN JENSEN: Thank you. I'm happy to be here.

MR. JOHN ADAIR: Mr. Jensen, you are, of course, the first witness. I'll be using the, roughly, two hours that I have with you as an opportunity to go through a bit of a high-level overview of the management of this project, and then some more detail regarding, specifically, the time from the planning of the project through to the execution of the project agreement. If I ask you a question, sir, that you don't understand or to which you don't know the answer, please just let me know and I will either rephrase it or move on, okay?

MR. JOHN JENSEN: Very good, thank you.

MR. JOHN ADAIR: Let me start if I may, Mr. Jensen, with some questions about the manner in which the City's governance structure was set up and the different roles played by some of the individuals involved on the City's part. And just to give us a bit of a frame of reference, Mr. Jensen, I'm going to ask that our technology

1 team, here, to call up a document. It is document number COM235.

2 **--- EXHIBIT No. 001: COM0000235 - by COM**

3 Mr. Jensen, you should be able to see there, if we just scroll down
4 a little bit on the first page, you should be able to see there the Project Charter put
5 together by the City of Ottawa. Do you have that, sir?

6 **MR. JOHN JENSEN:** Yes, I do.

7 **MR. JOHN ADAIR:** And I'm going to ask if we can go to page 24
8 of 37, please, and just focus us on the diagram that appears in section 7.1. And
9 Mr. Jensen, we'll just use that as a bit of a road map to work through some of the
10 governance aspects of this project from the City's side of things, okay?

11 **MR. JOHN JENSEN:** Very good, thank you.

12 **MR. JOHN ADAIR:** Starting, sir, with your role, you were, as I
13 understand it, in 2011, the Director of the Rail Implementation Office, do I have that
14 right?

15 **MR. JOHN JENSEN:** That's correct.

16 **MR. JOHN ADAIR:** And that's the box we see at the bottom of the
17 screen, roughly, the green box, Rail Implementation Office. Can you just describe for
18 us a little bit, sir, the Rail Implementation Office's role? And we'll use the acronym, RIO.

19 **MR. JOHN JENSEN:** The R-I-O, or the RIO, the role of the RIO
20 was to advance the project from functional design into preliminary engineering and,
21 ultimately, to prepare the procurement and procure the project, and then oversee the
22 delivery of the project once a successful proponent was selected.

23 **MR. JOHN ADAIR:** And sir, in terms of reporting within the City's
24 overall structure, how did RIO fit into that?

25 **MR. JOHN JENSEN:** RIO fit into that -- I reported directly to the
26 Deputy City Manager, and the Deputy City Manager reported into the City Manager.
27 And then, alternatively, we had an Executive Steering Committee that RIO reported up
28 through for the various key elements of the project, and that committee was chaired by

1 the City Manager.

2 **MR. JOHN ADAIR:** Okay. So, RIO is the, sort of, primary day-to-
3 day point of contact with respect to the planning and procurement activities?

4 **MR. JOHN JENSEN:** Yes. All of the activities for the procurement
5 of the project ran -- would go through the RIO.

6 **MR. JOHN ADAIR:** And then, RIO reports -- from a formal
7 perspective, RIO up to the Executive Steering Committee, or the ESC?

8 **MR. JOHN JENSEN:** Yes. RIO reported up to the ESC.

9 **MR. JOHN ADAIR:** I understand, sir, that RIO is also responsible
10 for all public communications. Do I have that right?

11 **MR. JOHN JENSEN:** With respect to the project, yes,
12 communications went through the RIO.

13 **MR. JOHN ADAIR:** And, sir, am I right in understanding or,
14 perhaps, assuming that the reason that one City office was responsible for all public
15 communications is to ensure coordination and consistency of the messages that the
16 public is receiving?

17 **MR. JOHN JENSEN:** That's correct.

18 **MR. JOHN ADAIR:** Okay. Let me just explore with you a little bit
19 more detail with respect to some of these other bodies we see on the screen, including
20 the Executive Steering Committee and also, the Finance and Economic Development
21 Committee. Let me start with the ESC. Can you just briefly describe the role played by
22 the ESC in terms of direction and oversight with respect to this project?

23 **MR. JOHN JENSEN:** Well, the ESC represented all the key
24 individuals within the City of Ottawa and Infrastructure Ontario as a governance body to
25 review the progress of -- and planning of the project, review finances, review any critical
26 decisions about the project and, ultimately, make decisions with respect to progressing,
27 reporting, and getting approvals from City Council.

28 **MR. JOHN ADAIR:** And we'll see the -- we see there on the

1 screen in front of us, the ESC consists of, is it fair to say, the senior City staff, being, the
2 City Manager, the Deputy City Managers, the Solicitor and the Treasurer, as well as,
3 yourself?

4 **MR. JOHN JENSEN:** That's correct. All the key individuals in the
5 City that were directly related to the project or had a role in the project. And then, you'll
6 note that there's an Interdepartmental Functional Integration Committee which covers
7 integration and consultation with other senior City officials to ensure that there was good
8 coordination within the City.

9 **MR. JOHN ADAIR:** Right. That would be coordination with senior
10 City officials who were not directly part of the ESC but, for whatever reason at whatever
11 point in time, would have a need to be involved?

12 **MR. JOHN JENSEN:** That's correct.

13 **MR. JOHN ADAIR:** Okay. And then, the Executive Steering
14 Committee, we see, also had the GM of Transit Services, who I neglected to name, but
15 it's there. And then, two members from IO which, I take it, refers to Industry Ontario?

16 **MR. JOHN JENSEN:** That's correct.

17 **MR. JOHN ADAIR:** Sorry, Infrastructure Ontario. I'm sorry.

18 **MR. JOHN JENSEN:** Yes. That's correct.

19 **MR. JOHN ADAIR:** And just generally speaking, I take it, there
20 were sort of decisions, perhaps we'll characterize them as more in the nature of day-to-
21 day decisions that could be made at the RIO level, and then more significant decisions
22 had to get escalated up to the ESC and, perhaps, in some cases, escalated up to
23 Council. Is that fair?

24 **MR. JOHN JENSEN:** That's correct.

25 **MR. JOHN ADAIR:** And just to try to put some specifics around
26 that, just as an example, my understanding is that bringing Infrastructure Ontario aboard
27 during procurement, which we're going to hear about later this week, that was a
28 decision that went up to the ESC?

1 **MR. JOHN JENSEN:** That's correct.

2 **MR. JOHN ADAIR:** So, let me then ask you, sir, the next level up
3 on the diagram that's in front of us above the ESC as the Finance and Economic
4 Development Committee, which I understand is referred to as FEDCO?

5 **MR. JOHN JENSEN:** That's correct.

6 **MR. JOHN ADAIR:** And my understanding, sir, correct me, please,
7 if I'm wrong, is that that is not a project specific committee. It's a standing committee of
8 City Council?

9 **MR. JOHN JENSEN:** That's correct. It's a standing committee of
10 City Council.

11 **MR. JOHN ADAIR:** And just generally describe for us the area of
12 responsibility for FEDCO.

13 **MR. JOHN JENSEN:** FEDCO was designated as the council
14 committee that the project reported up to through the Executive Steering Committee for
15 reporting and for decision making that ultimately went to Council.

16 **MR. JOHN ADAIR:** So, that would be -- FEDCO would be, then,
17 sort of Council's main point of contact with the project?

18 **MR. JOHN JENSEN:** That's correct.

19 **MR. JOHN ADAIR:** FEDCO, as I understand it, sir, consisted of
20 various city councillors, the chair of each standing committee, and the Chair of the
21 Transit Commission, as well as the mayor?

22 **MR. JOHN JENSEN:** I assume that's correct. I can't remember
23 specifically who all was on the committee, but it sounds like you're in the right ballpark.

24 **MR. JOHN ADAIR:** All right. And do you recall that the mayor was
25 the Chair of FEDCO?

26 **MR. JOHN JENSEN:** I believe so, but I can't be positive with that
27 memory.

28 **MR. JOHN ADAIR:** Okay. We can take the Project Charter down

1 from the screen now, please. Let me just briefly, Mr. Jensen, touch on the role of the
2 Transit Commission. Can you just describe how the Transit Commission fits into this
3 structure that we've just been talking about in terms of the City's governance and
4 operations?

5 **MR. JOHN JENSEN:** Well, the Transit Commission is where OC
6 Transpo reports into, but the project itself reported into FEDCO. So, we had very little
7 involvement directly with Transit Commission.

8 **MR. JOHN ADAIR:** Okay. And, sir, just let me clarify one thing,
9 because I don't want there to be any mistake. I've been asking you these questions, in
10 most cases, using present tense language. I am asking you about the state of affairs
11 back in 2010 and 2011. I know you understood that. I just want to state that for the
12 purposes of clarity, okay?

13 **MR. JOHN JENSEN:** Yes, that's correct. I understood that.

14 **MR. JOHN ADAIR:** Thank you. And then just briefly, OC Transpo,
15 can you just describe what that was at the time and how that entity fit into the structure
16 we've just been talking about?

17 **MR. JOHN JENSEN:** So, just to clarify, you're asking me what role
18 OC Transpo played in the project?

19 **MR. JOHN ADAIR:** I'm asking at the moment how OC Transpo fit
20 into the overall structure of decision making and management for a project.

21 **MR. JOHN JENSEN:** OC Transpo fit into that overall structure
22 with, first of all, the general manager as a member of the Executive Steering
23 Committee. So, he would have been involved in all of the decision making related to
24 the project. There was also a transit services working group that was on the same flow
25 chart that we've been looking at, and OC Transpo had several team members
26 participating in that, particularly, their service planning folks who were part of the
27 process going forward.

28 **MR. JOHN ADAIR:** Lastly, sir, let me just ask you about the

1 mayor's place in all of this. The mayor was, as I think we've touched on and as far as
2 you recall, Chair of FEDCO, correct?

3 **MR. JOHN JENSEN:** That's correct.

4 **MR. JOHN ADAIR:** And also, as I understand it, at least, a
5 member of the Transit Commission?

6 **MR. JOHN JENSEN:** I believe so, but I can't be sure from my
7 memory.

8 **MR. JOHN ADAIR:** Okay. So, the mayor had -- if we're right about
9 that, the mayor had a role in more than one of the different entities that was responsible
10 for overall governance and management of this project, correct?

11 **MR. JOHN JENSEN:** Well, I would assume so, but again, it's a
12 decade since the project -- since my involvement, so can't be absolutely sure that that's
13 correct, but I believe it's correct.

14 **MR. JOHN ADAIR:** Thank you. Just generally, sir, what's your
15 recollection, as you sit here today, of the extent to which the mayor was involved in the
16 planning and procurement phase of the project in terms of reporting and decision
17 making and directing those processes?

18 **MR. JOHN JENSEN:** Well, my recollection is the mayor's
19 involvement was with the city manager. So, really, that interface occurred at that level.

20 **MR. JOHN ADAIR:** All right, thank you. Before we get into some
21 of the more specifics of the project, just while we're in the neighbourhood of the City's
22 decision-making structure, there were also, you'll recall, external advisors who were
23 involved during the planning and procurement phase?

24 **MR. JOHN JENSEN:** That's correct.

25 **MR. JOHN ADAIR:** I just want to touch on some of those, so that
26 we all have some common ground as we move forward. First of all, my understanding
27 is that RIO was responsible for, or taking the lead on, identifying and retaining external
28 advisors?

1 **MR. JOHN JENSEN:** That's correct.

2 **MR. JOHN ADAIR:** If we identify some of those external advisors
3 in terms of who they were, we have -- I'm not putting these in any particular order, but
4 we have Infrastructure Ontario, which served as the commercial lead on procurement
5 for the City, correct?

6 **MR. JOHN JENSEN:** That's correct.

7 **MR. JOHN ADAIR:** And I believe it's the case that you and RIO
8 were directing -- and responsible for directing IO's procurement efforts?

9 **MR. JOHN JENSEN:** That's correct.

10 **MR. JOHN ADAIR:** And then I also understand, sir, there was a
11 group called Capital Transit Partners, which was a consortium of engineering firms that
12 were involved in what's referred to as the preliminary engineering work?

13 **MR. JOHN JENSEN:** That's correct.

14 **MR. JOHN ADAIR:** And that is an entity -- you may hear me use
15 the acronym CTP on occasion, but that's an entity that was, as I understand it, selected
16 through a competitive procurement process to provide the City with advice prior to
17 execution of the contract with advice about how to design and engineer this system?

18 **MR. JOHN JENSEN:** Yes. CPT was procured in an open
19 procurement, and ultimately engaged to deliver a number of work packages ranging all
20 the way from preparation of output specifications, from procurement, and into project
21 management services going into the design and construction period.

22 **MR. JOHN ADAIR:** Thank you. Next, I want to just identify
23 Deloitte as another firm that was involved in advising the City. I understand that they
24 were providing, for the most part, advice with respect to financial analysis about some of
25 the various aspects of this project during the planning phase?

26 **MR. JOHN JENSEN:** Correct.

27 **MR. JOHN ADAIR:** And lastly, sir, one of the names we're going to
28 see over the next few weeks is the name Boxfish, all one word, which is a consulting

1 firm, as I understand it. Can you just describe a little bit about what Boxfish was and
2 what their role -- more importantly, what their role was?

3 **MR. JOHN JENSEN:** Boxfish was engaged primarily to assist with
4 providing a challenge function in the project in terms of helping us work through the
5 various components of the project and ensured that each item was challenged and
6 evaluated for its value. They also provided insight into certain innovations that we
7 worked through.

8 **MR. JOHN ADAIR:** Okay. And we have both used "they" to refer
9 to Boxfish, but if I recall correctly, Boxfish was really one individual, a gentleman by the
10 name of Mr. Brian Guest, who was providing those consulting services?

11 **MR. JOHN JENSEN:** The primary for Boxfish that we engaged
12 with was Brian Guest.

13 **MR. JOHN ADAIR:** Sir, now that we have a picture of the
14 governance structure and some understanding of the external consultants, I want to turn
15 to the project itself, and I'd like to start, big picture, with a discussion of some of these
16 guiding principles for undertaking this project. I wonder if we can call up the Project
17 Charter again, which is document COM235, please? Just bear with me a second, Mr.
18 Jensen, while I get this set up on my screen.

19 If we can go to page 4 of 37, please? What you should have there,
20 sir, is Section 1.1 Purpose of the Charter, and the paragraph that's under that, I don't
21 need you to read it out loud or anything, but in summary, one of the purposes of the
22 Charter was to set out the guiding principles pursuant to which the City would undertake
23 this project, is that fair?

24 **MR. JOHN JENSEN:** That's fair.

25 So I want to touch on those principles specifically, and for that, I'm
26 going to ask if we can turn please to page 21, section 6.

27 And section 6 you'll see is headed "Guiding Principles". I want to
28 take you through some of those.

1 **MR. JOHN ADAIR:** And the reason for that, I'm assuming -- and
2 you'll correct me if I'm wrong -- but among other things, one of the reasons for that is, if,
3 instead you go the other way and you approach things in a way that's aggressive and
4 adversarial, that is, at least what -- in terms of what the City believed back in October of
5 2011 -- that would be something that would be more likely to lead to a poor outcome?

6 **MR. JOHN JENSEN:** That's correct.

7 **MR. JOHN ADAIR:** Okay. Six point two (6.2) speaks to integration
8 with City objectives. I'm actually going to skip that over, but I will come back to it, sir.

9 **MR. JOHN JENSEN:** Okay.

10 **MR. JOHN ADAIR:** Six point three (6.3), if we can just go over the
11 page to page 22, please, 6.3 speaks to transparency and accountability. I'll just give
12 you a moment to read 6.3 to yourself.

13 **MR. JOHN JENSEN:** Yes, thank you.

14 **MR. JOHN ADAIR:** So this idea of transparency in terms of the
15 communication, sir, was considered an important guiding principle by the City, was it?

16 **MR. JOHN JENSEN:** That's correct.

17 **MR. JOHN ADAIR:** And just if we sort of want to think for a minute
18 about why that would be the case, I think it's fair to say that these large complex
19 infrastructure projects, they're difficult to pull off, correct?

20 **MR. JOHN JENSEN:** That's correct.

21 **MR. JOHN ADAIR:** And when you have a large complex project
22 that's difficult to pull off, one very helpful tool in terms of managing the difficulties that
23 one would think will inevitably arise is through transparent communication?

24 **MR. JOHN JENSEN:** That's correct.

25 **MR. JOHN ADAIR:** And that's, I expect -- and please correct me if
26 I'm wrong -- but that's, I expect, one of the reasons why transparency was identified by
27 the City at an early stage as a guiding principle?

28 **MR. JOHN JENSEN:** That's correct.

1 **MR. JOHN ADAIR:** Sir, if we can then focus our attention on 6.4,
2 "The Public Interest". And again, I'll just give you a moment to read those two -- or
3 three paragraphs to yourself.

4 **MR. JOHN JENSEN:** Thank you.

5 **MR. JOHN ADAIR:** The public interest, it's somewhat trite to say,
6 sir, but the public interest was an important guiding principle for the City, correct?

7 **MR. JOHN JENSEN:** Yes, absolutely.

8 **MR. JOHN ADAIR:** And the public interest is something that we --
9 let me start over. The public interest is something that the City, back in 2011, I assume,
10 defined relatively broadly in the sense that it's not, strictly speaking, financial; it's not,
11 strictly speaking, mobility; it's not, strictly speaking, about the reliability of the system;
12 it's all of those things together and more?

13 **MR. JOHN JENSEN:** That's correct.

14 **MR. JOHN ADAIR:** And in the -- within the section on the public
15 interest, what the City noted in the last sentence of the second paragraph, it says:

16 "Communications must provide an awareness of the
17 project and its phases to inspire and encourage the
18 public to support the project." (As read)

19 Do you see that?

20 **MR. JOHN JENSEN:** Yes.

21 **MR. JOHN ADAIR:** And the City understood that a crucial element
22 of maintaining public confidence and acting in the public interest was proper transparent
23 communication with the public?

24 **MR. JOHN JENSEN:** Correct.

25 **MR. JOHN ADAIR:** Okay. If we can just go over the page,
26 please? You're going to see on page 23 of 37 here, Mr. Jensen, section 6.6,
27 "Professional and Ethical Values". It's a relatively short section. I just have one short
28 question about it, but I'll give you a second to read those two paragraphs.

1 **MR. JOHN JENSEN:** Thank you.

2 **MR. JOHN ADAIR:** Just the first -- really, the first half of the first
3 sentence there, Mr. Jensen:

4 "All stakeholders and staff will be encouraged to work
5 in a partnership of mutual support and collaboration."
6 (As read)

7 That -- I assume that that captures what the City understood and
8 believed at the time was the right approach to the project?

9 **MR. JOHN JENSEN:** That's correct.

10 **MR. JOHN ADAIR:** If we go back up, please, to page 21 of 37, just
11 to the bottom half of that page -- there we go. Thank you.

12 Mr. Jensen, I'm just coming back now to section 6.2, which I said I
13 would do. And as I understand it, in terms of this idea of integration with City objectives,
14 as I understand it, in 2011 -- and I think it specifically says July of 2011 -- City council
15 had adopted what's referred to there as a corporate planning framework, and was -- the
16 gist of what's being noted here in 6.2 is that one of the guiding principles would be
17 integration with that corporate planning framework. Do I have that right?

18 **MR. JOHN JENSEN:** That's correct.

19 **MR. JOHN ADAIR:** Okay. I'm going to ask to call up another
20 document so that we can see the City's corporate planning framework.

21 **--- EXHIBIT No. 002: IFO0004372 - by COM**

22 If we can go, please, to IFO4372, and just for the benefit of all of
23 our attendees on Zoom, this is the March 2012 Project Management Plan.

24 And if we can just scroll down, just a touch, you'll see on the face of
25 the document the title being that Project Management Plan, as I have described, from
26 March of 2012.

27 And if we can go, please, to page 5 of 76, there's a diagram at the
28 bottom of this page that I'd like to just talk about, and I'm going to ask that that be

1 expanded just a little bit so that it's easier to see. There we go. That's great. Thank
2 you.

3 Mr. Jensen, you're familiar with that diagram, albeit it it may be
4 quite a number of years since you saw it?

5 **MR. JOHN JENSEN:** Yes, I'm familiar with the diagram.

6 **MR. JOHN ADAIR:** And does the diagram essentially capture the
7 City's July 2010 -- sorry, 2011 corporate planning framework strategic goals, et cetera?

8 **MR. JOHN JENSEN:** I believe that was the strategy map put in
9 place by the City at that time.

10 **MR. JOHN ADAIR:** Okay.

11 And I'm sorry. I'm just going to ask if we can scroll just above the
12 diagram just for a moment and then we'll come back. Just right there, that great.

13 Just the last sentence, Mr. Jensen, before the diagram itself, notes
14 that:

15 "The development of the LRT System is an integral
16 component of the Transportation and Mobility
17 Strategic Plan." (As read).

18 So I take it the idea here is to try to incorporate these strategic
19 goals into the development of the LRT System?

20 **MR. JOHN JENSEN:** That's correct

21 **MR. JOHN ADAIR:** Okay, and if we can just scroll back to the
22 diagram, please. And Mr. Jensen, this is sort of a pictorial representation of what I was
23 asking you earlier, which is, really, the point is that, from the City's perspective, what the
24 City is trying to accomplish in terms of serving the public interest is defined, necessarily,
25 quite broadly, right?

26 **MR. JOHN JENSEN:** That's correct.

27 **MR. JOHN ADAIR:** And it includes things like quality of life,
28 economic prosperity, thinking about and being considerate of the environment and

1 dealing with housing issues, and all of the kinds of issue we both see on the diagram
2 and would expect a city to include in its thinking about major projects?

3 **MR. JOHN JENSEN:** Correct.

4 **MR. JOHN ADAIR:** And I think it's fair to say, sir, that when the
5 city approaches a project like this, and thinks about how to serve the public interest, the
6 City is not, and really cannot, limit itself to economic goals alone?

7 **MR. JOHN JENSEN:** That's correct.

8 **MR. JOHN ADAIR:** And, sir, the idea of serving to public interest
9 is, I'm going to suggest to you, perhaps best captured by item C1, which you'll see sort
10 of in the top band of the project under the word "residents", contribute to the
11 improvement of my quality of life. Would that be fair?

12 **MR. JOHN JENSEN:** I would say that would be fair.

13 **MR. JOHN ADAIR:** And so if we sum up all of what we've been
14 looking at over the last several minutes, I'm going to suggest to you that back in 2010,
15 in 2011, in 2012, as this project was proceeding through the planning and procurement
16 phases, council and staff had decided upon and understood the following. First, that the
17 goal was to improve quality of life for the residents.

18 **MR. JOHN JENSEN:** Correct.

19 **MR. JOHN ADAIR:** And that required a broad understanding of,
20 and approach to, identifying project priorities?

21 **MR. JOHN JENSEN:** I would say so.

22 **MR. JOHN ADAIR:** And that the focus at all times was on the best
23 outcome for the residents of, and visitors to, Ottawa?

24 **MR. JOHN JENSEN:** Correct.

25 **MR. JOHN ADAIR:** And then I'm going to suggest, also, that the
26 City council and staff had decided upon and understood that the best way to accomplish
27 those goals was through the adoption of that partnership philosophy we saw referred to
28 in the Project Charter?

1 **MR. JOHN JENSEN:** That was a way, yes.

2 **MR. JOHN ADAIR:** And it was, in fact, a way that the City had
3 understood was the most likely to produce a successful outcome?

4 **MR. JOHN JENSEN:** Correct.

5 **MR. JOHN ADAIR:** And just lastly, sir, I think it's probably fair to
6 say that the City also understood and had decided that open, transparent
7 communication was critical, particularly with the public?

8 **MR. JOHN JENSEN:** Correct.

9 **MR. JOHN ADAIR:** Okay, we can take the Project Charter down
10 off the screen, please. Let me -- now that we have covered off the sort of higher-level
11 governance framework as well as the sort of guiding principles for the project as the City
12 identified them, let me turn to more of the project specifics so we can just get a sense of
13 what it is we're talking about when we refer to the project. And I'm going to start by just
14 identifying it as the Confederation Line, which I'm sure people here know by now was
15 an electric light-rail transit system that runs on a roughly east-west access through the
16 city?

17 **MR. JOHN JENSEN:** Correct.

18 **MR. JOHN ADAIR:** And that there are -- I think there are 13
19 stations with Tunney's Pasture in the West and Blair Station in the east.

20 **MR. JOHN JENSEN:** Yes, I believe so.

21 **MR. JOHN ADAIR:** And that track covered approximately --
22 covers, I should say, approximately 12 kilometres that's mostly above ground, but then,
23 of course, we know there's a tunnel through the downtown core?

24 **MR. JOHN JENSEN:** Correct.

25 **MR. JOHN ADAIR:** And we're going to see reference, I expect, Mr.
26 Jensen, several times over the next few weeks to Stage 1, and that Stage 1 really
27 describes the line that I've just given some specifics of?

28 **MR. JOHN JENSEN:** Yes. I'm assuming if Stage 1 is the current

1 Confederation Line, that's correct.

2 **MR. JOHN ADAIR:** And in terms of the operation, the
3 Confederation Line is owned by the City and operated by OC Transpo. Do I have that
4 right?

5 **MR. JOHN JENSEN:** That's correct.

6 **MR. JOHN ADAIR:** Okay. Let me go back a number of years, Mr.
7 Jensen, to look at the genesis of this project. I'm going to focus now on a couple of
8 timelines and then drill down on some specifics. But if we just think about the rough
9 timeline for the project, start to finish, for a minute, recognizing that you weren't involved
10 in all of it -- but I think, at a high level, we should be able to get agreement on the
11 following timeline. And sir, just to be clear, these dates aren't perfect. In the sense of
12 the years that I'm going to give you, some of the aspects bleed, maybe, a little bit into a
13 year that goes beyond what I've covered off. I'm not trying to be perfect about it. I'm
14 just trying to give us a very high-level understanding. So the planning prior to project
15 approval, if we just think about that phase for a minute, that was approximately 2007 to
16 2010, was it?

17 **MR. JOHN JENSEN:** I believe so. I believe the final planning
18 report was about January 2010, something like that.

19 **MR. JOHN ADAIR:** Okay. And then there would be a further --
20 you might call it planning, but further planning and preliminary engineering that -- in
21 2010 and 2011 leading into the procurement process?

22 **MR. JOHN JENSEN:** The planning section -- the planning portion
23 produced the functional design. The functional design was passed to RIO to move to
24 preliminary engineering and advance the design.

25 **MR. JOHN ADAIR:** Right. And RIO's goal in what you've just
26 described is getting the design to a place that meaning procurement can take place?

27 **MR. JOHN JENSEN:** That's correct.

28 **MR. JOHN ADAIR:** So if we -- we'll call that "preliminary

1 engineering”, for lack of a better description, and that’s approximately 2010, 2011?

2 **MR. JOHN JENSEN:** Correct.

3 **MR. JOHN ADAIR:** And then procurement itself begins late-2011
4 and ends late-2012?

5 **MR. JOHN JENSEN:** To the best of my recollection, yes.

6 **MR. JOHN ADAIR:** Okay. And the -- we know -- and I don’t -- if
7 you don’t recall one way or the other, it’s not terribly important because we know, and I
8 don’t think there’s any question, that the project agreement gets signed in February of
9 2013, and construction begins after that.

10 **MR. JOHN JENSEN:** Correct.

11 **MR. JOHN ADAIR:** And I’m going to just, just for the purposes of
12 being able to discuss over the next little while, say construction goes 2013 until into
13 2018, 2019, okay?

14 **MR. JOHN JENSEN:** Okay.

15 **MR. JOHN ADAIR:** And then we of course know that the line
16 becomes open to the public in September 2019, and from and after that point, I’m going
17 to describe as “operations and maintenance”, but not something we’re -- you and I are
18 going to spend a lot of time on.

19 **MR. JOHN JENSEN:** Thank you.

20 **MR. JOHN ADAIR:** So let me just drill down a little bit into the first
21 -- that first block of time, which is the planning phase. And I’m only going to cover this
22 at a relatively high level, sir. And I recognize that you had relatively limited involvement
23 in that phase, if any. Just so we all understand what that involves, the planning phase
24 of project like this refers to coming up with the concept and then doing various studies,
25 and consultations, and whatnot to try to understand the best way -- the best kind of
26 configuration in terms of should it be east-west or north-south, and do we think light rail
27 is the way to go, things like that. Is that fair?

28 **MR. JOHN JENSEN:** Yes.

1 **MR. JOHN ADAIR:** And so, just to put some specifics on it, I think
2 we know, for example -- and it doesn't quite matter whether you recall this specifically,
3 but we know that there was report in 2007 by what was known as the "Mayor's
4 Taskforce on Transportation", excuse me, that recommended an east-west light-rail line,
5 and you became familiar with some of that history through your work on the project,
6 correct?

7 **MR. JOHN JENSEN:** That's correct.

8 **MR. JOHN ADAIR:** And we also know -- just drilling down into
9 some of the more important events a little bit, we know that what's been referred to as
10 an EA, an environmental assessment was done and presented to Council in late 2009,
11 together with a report from Ms. Schepers? Are you familiar with that?

12 **MR. JOHN JENSEN:** I'm aware of that report.

13 **--- EXHIBIT No. 003 - COW0000028 - by COM**

14 **MR. JOHN ADAIR:** Okay. And I want to just call that up for us.
15 The document number is COW28, and this is actually a Transit Committee report but if
16 we scroll down to page 5, what you'll have there is a report from Ms. Schepers from
17 December the 9th of 2009. I don't intend to take you too far into this report, sir, because
18 it's not yours, but I just want to use it to set the stage for a few events that we are
19 concerned with.

20 If we can go to page 7 of 72? Sorry, just bear with me one second,
21 Mr. Jensen, just while I get the right reference here. If we can just scroll down one more
22 page? I apologize.

23 Mitchell, may I just ask you to go forward one more page, please?
24 Thank you.

25 Just, sir, at the top of the page there under financial implications,
26 you'll see that the budget estimate at the time was \$2.1 billion, just in the first sentence
27 there?

28 **MR. JOHN JENSEN:** Yes.

1 **MR. JOHN ADAIR:** And that was in 2009 dollars, correct?

2 **MR. JOHN JENSEN:** Correct.

3 **MR. JOHN ADAIR:** Which means that at least as the numbers
4 stood at the time, it didn't include provision for inflation?

5 **MR. JOHN JENSEN:** That's my understanding. Correct.

6 **MR. JOHN ADAIR:** And then just the -- I'm just going to direct you
7 to the last sentence of that first paragraph, sir. It says, "This estimate does not include
8 escalation and is subject to refinement as the project progresses through subsequent
9 design phases."

10 And I take it, although you didn't author this report, we can
11 reasonably conclude that that's a reference to the preliminary engineering work that will
12 be done?

13 **MR. JOHN JENSEN:** Correct.

14 **MR. JOHN ADAIR:** That preliminary engineering work that's
15 referred to there as being something that would reasonably be assumed to refine the
16 budget, that was work that was led by your office in consultation with experts, was it?

17 **MR. JOHN JENSEN:** That's correct.

18 **MR. JOHN ADAIR:** And we're going to talk a little bit about that,
19 but my understanding is that the purpose of that work was to get a clear understanding
20 of what the project should be able to do and what it should be?

21 **MR. JOHN JENSEN:** Yes, and to prepare it for procurement.

22 **MR. JOHN ADAIR:** Right. Exactly right, and it's that work that
23 allowed and informed a meaningful procurement process?

24 **MR. JOHN JENSEN:** Exactly.

25 **MR. JOHN ADAIR:** So, as you're going through the preliminary
26 engineering phase that this report appears to refer to, the project contours may change,
27 I assume?

28 **MR. JOHN JENSEN:** Correct, as the design is refined, as the

1 schedule is refined and as the budget is refined, that's correct.

2 **MR. JOHN ADAIR:** And that's why, presumably, given that --
3 recognizing, rather, that you weren't the author of this report, that's why there's a nod in
4 the report to the likelihood that the budget will change?

5 **MR. JOHN JENSEN:** That's correct. That would be normal
6 development in the evolution of a project.

7 **MR. JOHN JENSEN:** As you progress into design, you may learn
8 more about exactly what it is you're trying to do and how much that's going to cost?

9 **MR. JOHN JENSEN:** That's correct.

10 **MR. JOHN ADAIR:** Okay. We can take that document down.
11 Thank you.

12 And then, sir, one of the sort of key events in terms of the life of the
13 planning of this project is that in late 2010, I believe, maybe the fall of 2010, the City
14 receives what's referred to as approval in principle from the federal and provincial
15 governments for shared funding?

16 **MR. JOHN JENSEN:** That's correct.

17 **MR. JOHN ADAIR:** And then that's really what allows the
18 preliminary engineering to begin in earnest, because now some of those costs are going
19 to be shared?

20 **MR. JOHN JENSEN:** Yes. Once the contribution agreements
21 were signed, then the project was able to proceed in earnest.

22 **MR. JOHN ADAIR:** And we know that one of the things that
23 happens, I just want to sort of give us the timeframe for a minute. We're going to circle
24 back to it in a moment, but one of the things that happens over the course of the
25 preliminary engineering work is that in 2011, in the spring of 2011, the project schedule
26 gets accelerated by a year?

27 **MR. JOHN JENSEN:** That's correct.

28 **MR. JOHN ADAIR:** And then in July of 2011, Council approves

1 implementing the LRT project on the accelerated schedule. Is that roughly consistent
2 with your recollection?

3 **MR. JOHN JENSEN:** I believe so, yes.

4 **MR. JOHN ADAIR:** Okay. And I'm going to come back to some of
5 this, but just to put a bookend on things, the procurement then takes place fall of 2011
6 through to late 2012, and it's in December 2012 that the project, including the selected
7 proponent, is approved by Council?

8 **MR. JOHN JENSEN:** Correct.

9 **MR. JOHN ADAIR:** Okay. Let me now just drill down a little bit on
10 some of the planning work that was done. I'm sorry, I've misspoken. I want to drill
11 down on some of the preliminary engineering work and how that affected the project.

12 First of all, in terms of the advisors that the City retained to assist
13 with the preliminary engineering, first of all, we have Capital Transit Partners doing the
14 sort of technical side of things, correct?

15 **MR. JOHN JENSEN:** Correct.

16 **MR. JOHN ADAIR:** And although I'm referring to it as preliminary
17 engineering, the effort that was underway in 2010 and 2011 really went beyond that and
18 included, for example, advice from Infrastructure Ontario about procurement and how
19 the contract might -- the model that might be chosen?

20 **MR. JOHN JENSEN:** Correct.

21 **MR. JOHN ADAIR:** And also, advice from Deloitte with respect to
22 some of the financial aspects of the project?

23 **MR. JOHN JENSEN:** Correct, and advice from Deloitte in terms of
24 the procurement model.

25 **MR. JOHN ADAIR:** Right. Fair enough. On some level, these
26 things overlap and fit together because you have to -- if you're going to give advice
27 about the financial aspect of a project, you need to think about the procurement model,
28 and if you're thinking about the procurement model, you need to think about the

1 engineering and what we're trying to deliver, correct?

2 **MR. JOHN JENSEN:** Correct.

3 **MR. JOHN ADAIR:** And the reason, of course, that the City didn't -
4 - that the City went out and retained external experts like Capital Transit Partners, and
5 Deloitte, and Infrastructure Ontario, is because the City doesn't have the expertise
6 necessary to do all of that analysis in-house?

7 **MR. JOHN JENSEN:** That's correct.

8 **MR. JOHN ADAIR:** And, in fact, millions of dollars were spent on
9 that preliminary engineering work to make sure that the City had the right advice for a
10 project as large and as complex as this one?

11 **MR. JOHN JENSEN:** That's correct.

12 **MR. JOHN ADAIR:** So, let me just talk to you a little bit about the
13 setting of the budget, Mr. Jensen. I don't want to deal in great detail with that because
14 other witnesses can speak more directly to it, but I do want to just touch on a couple of
15 points.

16 So, we saw from the report that Ms. Schepers delivered to Council
17 in December of 2009 the document we just looked at a moment ago, that the budget of
18 \$2.1 billion had been set in 2009, and specifically using 2009 dollars. And then in 2010,
19 there were municipal elections, correct?

20 **MR. JOHN JENSEN:** I believe so.

21 **MR. JOHN ADAIR:** And my understanding is that Mayor Watson,
22 who was ultimately successful in that election, and some of the councillors, made it part
23 of their campaign that they would support the project, provided that it could come in on
24 budget at \$2.1 billion. Do you recall that?

25 **MR. JOHN JENSEN:** I can't clearly recall that.

26 **MR. JOHN ADAIR:** Okay. What I think probably you will recall,
27 though, is that after Mayor Watson and the new council were elected, one of the
28 directions that was given to staff such as yourself was to undertake the preliminary

1 engineering work on the basis that the project would be designed to budget. Do you
2 remember that being a directive from Council?

3 **MR. JOHN JENSEN:** I don't recall the design to budget being a
4 directive. I recall an interest in ensuring that the budget was managed, and we were
5 delivering the best value for the lowest cost.

6 **MR. JOHN ADAIR:** All right. Let's see if we can just get a
7 document in, and sir, I appreciate that this was many years ago, but let's see if we can
8 just get a document that may refresh your memory.

9 If I can ask that we have, please, COW148252 put up on the
10 screen, please? And if we could just scroll to the top of the second page, please? Oh,
11 sorry. I'm sorry. Could we just go to the first page, just so we can identify this
12 document for Mr. Jensen?

13 **--- EXHIBIT No. 004: COW0148252 - by COM**

14 Mr. Jensen, you'll see here a March 1, 2011 memo written to Mayor
15 and Council from RIO, and then if we go to the end of the second page, you'll see that it
16 was authored by or at least went out under your name?

17 **MR. JOHN JENSEN:** Yes, correct.

18 **MR. JOHN ADAIR:** Sorry, the top of the third page. I'm sorry.
19 You'll see your name there?

20 **MR. JOHN JENSEN:** Yes.

21 **MR. JOHN ADAIR:** So, if we go back to the second page, just
22 above the heading "Procurement and Contracting", I just want to focus on the second
23 last paragraph above that heading. You'll see the following written in the first sentence
24 of that paragraph, "To ensure the project remains within the \$2.1 billion (2009 dollars)
25 functional design cost estimate, RIO staff have directed a preliminary engineering team
26 to design to budget."

27 **MR. JOHN JENSEN:** That's correct.

28 **MR. JOHN ADAIR:** And that was the direction that came from

1 Council, correct, was to design to budget?

2 **MR. JOHN JENSEN:** I'm not sure that there was ever a specific
3 direction to design to budget. The direction was to manage costs and to get the best
4 costs, and design to budget is a way to get to that.

5 **MR. JOHN ADAIR:** Okay. And just for the sake of clarity, when
6 you say you're not sure if there was ever a direction to do that, it's clear that there's a
7 statement here that the directive is design to budget, it's just not clear who it comes
8 from. RIO says, "this is what we've told the preliminary engineering team," and I take it
9 what you're telling us is you just can't recall whether that came from RIO or from
10 Council?

11 **MR. JOHN JENSEN:** That's correct.

12 **MR. JOHN ADAIR:** Okay. We can take that down, and I'm just
13 going to ask to pull up one more document on this topic. The document ID is
14 COW148248. Yes, if we can just change the sizing of that so it's easier to see? That's
15 great. Thank you.

16 **--- EXHIBIT No. 005 - COW0148248 - by COM**

17 Mr. Jensen, what you'll have there in front of you on the screen is
18 an email from yourself of March 10th, 2011 to the Mayor and Council referencing an
19 article in the Le Droit publication with respect to project costs. If you just want to take a
20 minute to read that to yourself so that you can refresh your memory, please?

21 **MR. JOHN JENSEN:** Okay.

22 **MR. JOHN ADAIR:** And just using that email to refresh your
23 memory a little bit about what was happening in March of 2011, I take it it's fair to say
24 that there was a fair bit of budget pressure being applied from Council and/or the Mayor
25 to RIO, and you understood that pressure, and that's what prompted this email?

26 **MR. JOHN JENSEN:** I'm not sure what prompted the email. It
27 looks like -- yeah. No, I'm not sure what prompted the email, but the bottom line of the
28 email is that we're -- we hadn't -- no, I don't know what -- sorry, I don't know where that

1 -- I don't recall that.

2 **MR. JOHN ADAIR:** Okay. I guess the only reason I'm suggesting
3 that, sir, and if you don't recall, that's fine, but the reason I'm suggesting that, I mean,
4 obviously, it's an article in Le Droit that prompted the article -- sorry, the email, but in
5 terms of the reason you felt the need to send the email, my suggestion is, and if you
6 look at the last line -- sorry, the last sentence of the email, the last paragraph where -- of
7 the substance of it where it says, "the project cost estimate has not increased," you
8 say, "The preliminary engineering team," and I'm just skipping over the parenthesis,
9 "has been directed to design and assist and it matches the \$2.1B cost estimate."

10 I take it the reason you felt the need to reassure Council of that is
11 because you knew that there was a great deal of pressure coming from Council to hit
12 that budget.

13 **MR. JOHN JENSEN:** Well, I think not remembering this
14 specifically and the events, to me, it's more likely that this was just a reassurance that
15 costs weren't running out of control and that they were being managed going forward,
16 and that we were being cost conscious.

17 **MR. JOHN ADAIR:** Okay. And we can take the email down.
18 Thank you.

19 In terms of this concept, sir, of design to budget, meaning \$2.1
20 billion, what that means, I take it, is 2.1 is the number, and we need the preliminary
21 engineering team to put a design together that achieves that number. That's what
22 design to budget is, right?

23 **MR. JOHN JENSEN:** Well, basically, it's a target to work to, an
24 objective to attain.

25 **MR. JOHN ADAIR:** Right, so that the design is being driven by the
26 budget rather than the other way around.

27 **MR. JOHN JENSEN:** For the purposes of good budget
28 management, yes.

1 **MR. JOHN ADAIR:** Right. And, sir, just to help me out with this,
2 when Ms. Schepers has her December 2009 memo in which she says the number is
3 likely to change through the preliminary engineering process, because that's what's
4 going to allow us to understand the contours of the project better, it seems to me, and
5 perhaps I'm misunderstanding, but it seems to me that design to budget really turns that
6 concept on its head, doesn't it? Because design to budget is, no, the number is not
7 going to change with preliminary engineering; in fact, the engineering is going to fit the
8 number.

9 **MR. JOHN JENSEN:** That's not entirely correct. The design to
10 budget concept is a means of setting a target to try and achieve, without compromising
11 quality of the project, to scrub the project for any extra costs, any design efficiencies, to
12 see how close we can get to that without compromising the project. It doesn't mean
13 that, ultimately, we won't exceed 2.1. It just gives the preliminary engineering team a
14 target to work towards and look for efficiencies.

15 **MR. JOHN ADAIR:** I don't want to get into a fight about this or
16 anything like that, sir, but I'm going to suggest to you that what design to budget means
17 is here's the number, go figure out how to hit it, not that this is just a target to work
18 towards, do you disagree?

19 **MR. JOHN JENSEN:** I would disagree that it's that hard a line.

20 **MR. JOHN ADAIR:** Okay. Sir, I'm just going to show you another
21 document here. If we can call up, please, COM1555?

22 **--- EXHIBIT No. 006 - COM0001555 - by COM**

23 Sir, this is a report that Deloitte and Boxfish did for the City in 2015,
24 because at this point, Stage 2 was being contemplated and the City, I gather, wanted to
25 understand or review, rather, what it might learn from the Stage 1 process. Were you --
26 are you, I should say, familiar with the document?

27 **MR. JOHN JENSEN:** I have reviewed the document.

28 **MR. JOHN ADAIR:** And if we go to page 5 of the document, which

1 is page 7 of 20 if we're using the PDF page numbers, and you go to the last paragraph
2 of that page, please? In terms of under the heading, "Meeting the Project Budget", and
3 the Deloitte has the heading, "Overview of the Issue and Lessons Learned", there's a
4 reference in the first paragraph to the project budget being set, essentially, in 2009 at
5 \$2.1 billion. And then just the last paragraph I want to refer you to, sir, it says, "The cost
6 estimates done at the EA phase are intended to compare the different project options at
7 a high level, the costs relative to one another as required by the province's EA process."

8 And just this last sentence is where I want to focus, "These
9 estimates are typically developed at a very high level and do not involve a meaningful
10 constructability review."

11 Just pausing there, the 2009 estimate of \$2.1 billion, that was
12 before the design and preliminary engineering work had taken place in 2010 and 2011,
13 correct?

14 **MR. JOHN JENSEN:** That's correct.

15 **MR. JOHN ADAIR:** And before, therefore, you had had a
16 meaningful constructability review?

17 **MR. JOHN JENSEN:** That's correct.

18 **MR. JOHN ADAIR:** And certainly, it was Deloitte's view as of 2015
19 that one of the lessons from how things were done with respect to Stage 1 is that setting
20 the budget that early puts you at risk that you are sort of tethering yourself to a
21 particular number at a time when you don't necessarily have all of the information you
22 need to know if the number is right or not?

23 **MR. JOHN JENSEN:** It's not uncommon for planning budget
24 numbers to become ingrained, which makes it a little bit challenging, moving forward to
25 functional design, because once the design is more advanced, we get a more
26 meaningful view of what the budget actually is.

27 **MR. JOHN ADAIR:** Right. And in order to solve that problem
28 you've just described, you have two options; either you change the budget, or you

1 change the design?

2 **MR. JOHN JENSEN:** That's correct. And one approach or an
3 initial approach is the concept of design to budget to see if the design could be
4 advanced to stay within the planning budget in a meaningful way.

5 Should we discover that it can't, then other decisions would have to
6 be made.

7 **MR. JOHN ADAIR:** Right. And the concept of design to budget, in
8 this case, we -- I asked you a little bit earlier about whether that came from RIO or from
9 council. You couldn't recall. In any case, it came from the City, not from the expert
10 consultants that you had retained? It was a direction from the City to the experts?

11 **MR. JOHN JENSEN:** That's correct.

12 **MR. JOHN ADAIR:** Okay, sir. We can take down the Deloitte
13 report now, and I'm going to ask you just briefly about the schedule.

14 As I understand, sir, this was the largest infrastructure project in the
15 City's history?

16 **MR. JOHN JENSEN:** Correct.

17 **MR. JOHN ADAIR:** And I think we can probably agree that when
18 you are taking -- undertaking a project this large and this complex, it's almost inevitable
19 that there will be significant unexpected issues that arise over the course of the
20 construction?

21 **MR. JOHN JENSEN:** That's often the case.

22 **MR. JOHN ADAIR:** And those issues will have some consequence
23 for the schedule? People will try to mitigate it and address those consequences as they
24 do, but those issues have, at the very least, potentially serious consequences for the
25 schedule?

26 **MR. JOHN JENSEN:** That can be the case.

27 **--- EXHIBIT No. 007 - COW0000066 - by COM**

28 **MR. JOHN ADAIR:** I just want to talk about schedule for a minute.

1 If we can call up, please, COW 66? This is -- if we just scroll down a little bit, just
2 staying on the first page there, you'll see this is an update to FEDCO from March of
3 2011, and if we go to page 15, please, if we can just scroll down -- I'm sorry, if we go to
4 the next page, thank you, page 16, you'll see there a rough outline of the anticipated
5 timeline as of March 2011?

6 **MR. JOHN JENSEN:** Correct.

7 **MR. JOHN ADAIR:** And this was -- sir, this was done -- this would
8 have been created sort of six or eight months after the preliminary engineering work
9 started?

10 **MR. JOHN JENSEN:** I believe so. I can't recall exactly.

11 **MR. JOHN ADAIR:** Yeah. I think -- I mean, I'm sure I'll be
12 corrected if I'm wrong, but I think the preliminary engineering work starts early fall of
13 2010 and here we are, March of 2011.

14 And as of that date, you'll see, sir, that City staff and the preliminary
15 engineering team were working towards a schedule that would have RSA, meaning in-
16 service operation occur in 2019. Do you see that in the bottom right corner of the page?

17 **MR. JOHN JENSEN:** Yes.

18 **MR. JOHN ADAIR:** And that was the schedule that you and the
19 experts were working towards, having the benefit of input from CTP and some of the
20 other experts who were involved?

21 **MR. JOHN JENSEN:** Correct.

22 **MR. JOHN ADAIR:** And I think what happened, sir, is, at the
23 meeting where this is presented to council -- sorry, to FEDCO, I'm sorry -- the mayor
24 directed staff to review options for accelerating the project?

25 **MR. JOHN JENSEN:** I believe that's correct. At some point, we
26 were encouraged to review acceleration of the project.

27 **MR. JOHN ADAIR:** Right. And if we can just call up a different
28 document for a minute, I'm going to ask that this one be taken down and we put up

1 COM 14.

2 **--- EXHIBIT No. 008 - COM0000014 - by COM**

3 And this, sir, you'll see is a report that you delivered to council May
4 5th of 2011?

5 If we go to page 2, and just scroll down to the bottom of the page,
6 please -- right there, under "Executive Summary". That's great.

7 There's a reference there to a March 1, 2011 meeting of FEDCO,
8 which I think is the meeting where that PowerPoint we just looked at was presented,
9 and it says that, in the first couple of sentences underneath "Background", that at that
10 meeting, staff were directed to explore opportunities to accelerate the OLRT Project
11 schedule.

12 And you'll see, sir, "In addition, the mayor has engaged RIO --- "
13 I'm paraphrasing a little bit here, I think fairly -- "to ensure that every
14 opportunity to advance the project more quickly is fully explored."

15 Do you see that?

16 **MR. JOHN JENSEN:** I do.

17 **MR. JOHN ADAIR:** And that was -- I think you'll agree with me --
18 that was a directive that was coming down from FEDCO, and in particular, the mayor
19 was to push the schedule hard, correct?

20 **MR. JOHN JENSEN:** Yes, to attempt to advance the schedule.

21 **MR. JOHN ADAIR:** Right. And not just to attempt to advance it,
22 but to ensure that every opportunity for advancement was fully explored, right?

23 **MR. JOHN JENSEN:** Well, that's the language in the document,
24 correct.

25 **MR. JOHN ADAIR:** And what happened as a result of that -- I can
26 take you through this document if you want, but if you recall, we'll just deal with it that
27 way -- is, there were two separate chunks of six months that were shaved off the
28 schedule?

1 **MR. JOHN JENSEN:** That's correct. There was time shaved the
2 procurement and then time shaved off the schedule, based on analysis by our
3 schedulers.

4 **MR. JOHN ADAIR:** Right. So when you say "time saved off
5 procurement" -- well, sorry, I'm sorry. I'm going to move back up a second. The second
6 part of your answer there, when you say "time shaved off the schedule", that was the
7 construction schedule?

8 **MR. JOHN JENSEN:** That was the construction schedule, and that
9 was as a result of an analysis by our schedulers.

10 **MR. JOHN ADAIR:** Right. And what I want to focus is the time
11 saved on the RFP process, just for a minute. That was achieved by sort of tightening
12 up some of the dates, as I understand it?

13 **MR. JOHN JENSEN:** Well, partly tightening up some of the dates,
14 but also advancing when we were able to produce the documents, so in other words,
15 producing the RFP sooner and more quickly to get it on the street.

16 **MR. JOHN ADAIR:** Right. And if we just go to page 3 of the
17 document that's in front of you there, just above the heading "Procurement Option"
18 which is in italics -- and sir, may I just ask you to scroll down one more page, please
19 and thank you? There we go, just right there. If we can just go back up just a titch?
20 Thank you.

21 Sir, you'll see there, this is under the heading -- I can -- we can
22 show it to you if you need it, but at the top of the page, the heading is "Analysis" -- and
23 just above where it says "Procurement Option", two paragraphs up, it says:

24 "If council directs staff to pursue this accelerated
25 schedule, it is possible some project elements may be
26 fully constructed and be available for a ceremonial
27 opening and/or festive celebrations around Canada's
28 sesquicentennial celebrations in July 2017." (As

1 read)

2 The sort of motivation and desire to accelerate the schedule and be
3 able to have a good deal of the work done and possibly even some ceremonial
4 openings in time for July of 2017, I think it's fair to say that was a political directive that
5 was coming from council and the mayor's office down to staff and then on to the
6 experts?

7 **MR. JOHN JENSEN:** I think it was a strong interest for downtown
8 Ottawa to be in good condition and a showcase for that particular celebration.

9 **MR. JOHN ADAIR:** Right. And I understand sort of why it was
10 important to mayor and the council. My point simply, sir, is, yet you were spending
11 millions and millions of dollars on experts to advise you about matters like scheduling
12 and engineering, and what the order of operations should be, and how long things
13 should take. And it wasn't those experts who were directing the schedule to be
14 accelerated and attempts to be made to hit July of 2017. That was coming from the
15 Mayor and Council?

16 **MR. JOHN JENSEN:** Well, part of July '17 schedule intention was
17 to make sure that downtown Ottawa was in reasonably good condition for all of the
18 public that would be in attendance. And so part of the scheduling analysis that we were
19 doing was looking to see if we could create an environment where downtown was not
20 too disrupted at that time and there was good mobility in the core.

21 **MR. JOHN ADAIR:** Right. And, as a I say, I appreciate why the
22 directive was coming down and what Mayor and Council were interested in. My point
23 simply, if you could just -- just sort of focus on my question for a minute, my point simply
24 is that the desire to accelerate the schedule to that degree, or at all, as the case may
25 be, was not coming from the experts who you were paying to advise you. It was coming
26 from the Mayor and Council.

27 **MR. JOHN JENSEN:** It was not coming from the experts who were
28 paid to advise us.

1 **MR. JOHN ADAIR:** Right.

2 **COMMISSIONER HOURIGAN:** That's three times. So can we
3 please have an answer to the question that counsel's asking you?

4 **MR. JOHN JENSEN:** I'm sorry. Can you repeat the question
5 again? I thought I was answering.

6 **MR. JOHN ADAIR:** Certainly. That's okay, sir. So the -- the point
7 I'm trying to make is -- you've confirmed for me that the directive to accelerate the
8 schedule and try to hit July of 2017 was not coming from the experts, and I appreciate
9 that. And just if you could please just confirm that, in fact, where it was coming from
10 was the Mayor and Council.

11 **MR. JOHN JENSEN:** That's correct.

12 **MR. JOHN ADAIR:** Thank you. And then, if we can go down to
13 page 10 of this document, please -- if you scroll down just a little -- that's perfect,
14 thanks. Just above the heading "Highway 417 Lane Widening", sir, just that paragraph
15 before that, it says:

16 "As the detailed RFP is developed, considerable
17 weight will be given to project scheduling. A premium
18 will be placed on the fastest possible construction with
19 the least possible disruption to transit and traffic
20 operations while achieving the best value for the City."

21 (As read).

22 Just pausing there, what you were doing with this report, in terms of
23 how you were telling Council that the RFP process would be run, is you were confirming
24 for Council that you understood, and would follow, the mandate to achieve the fastest
25 possible construction schedule, correct?

26 **MR. JOHN JENSEN:** That's correct.

27 **MR. JOHN ADAIR:** And, sir, without trying to be overly critical
28 here, I take it we can agree that the Mayor and Council did not have any expertise when

1 it comes to matters of RFP scheduling and construction scheduling?

2 **MR. JOHN JENSEN:** I would say that's a good assumption.

3 **MR. JOHN ADAIR:** And I think we can also agree, sir, that when
4 you have a project that's as large and complex as this one, pushing the schedule hard
5 creates a degree of additional risk.

6 **MR. JOHN JENSEN:** I would say that pushing the schedule hard
7 is a challenge, but it's an achievable challenge.

8 **MR. JOHN ADAIR:** Well, you never really know that at the
9 oversight, right, because you don't know what you're going to run into. And so I'm just --
10 what I'm trying to do is sort of situate myself back in 2011 as these mandates are being
11 given and these documents are being exchanged and just try to think about what the
12 perspective was at the time and why decisions were made. And nobody really knows at
13 the outset looking forward in any project of this complexity whether it's achievable or not
14 achievable. My point simple is, when you push the schedule hard, it has to be the case
15 that creates additional risk. Whether the risk materializes or not, we don't know, but it
16 creates additional risk. Fair?

17 **MR. JOHN JENSEN:** Yes, it could create additional risk.

18 **MR. JOHN ADAIR:** And one of the risks that it creates is that
19 expectations are set, both internally, in terms of the Mayor and Council, and people on
20 the City side who have to make decisions, and externally, with respect to the public. It
21 creates the risk that expectations about a schedule are set, and those expectations are
22 frustrated or not met, right?

23 **MR. JOHN JENSEN:** Correct.

24 **MR. JOHN ADAIR:** And the more you push the schedule, the
25 greater the risk of that happening?

26 **MR. JOHN JENSEN:** Correct.

27 **MR. JOHN ADAIR:** And then, if problems do arise over the course
28 of the project, and we've been pushing the schedule from day one, that can create

1 additional pressure on all of the participants. The City, project company, all the
2 stakeholders, that can create additional on those participants to fix a problem that
3 perhaps should never have existed in the first place.

4 **MR. JOHN JENSEN:** Unforeseen events that occur within a
5 project that affect the schedule are a common element of any project moving forward.

6 **MR. JOHN ADAIR:** Yeah. And because you know that, and you
7 know you're going to have to respond to those unforeseen risks, which, as we've
8 already described -- or discussed and agreed can create problems for the schedule --
9 because you know that, when you've started by pushing a schedule hard, you
10 potentially create a situation where, once those risks materialize, people are having to
11 fix a problem that, as I say, perhaps should never existed in the first place. Is that fair?

12 **MR. JOHN JENSEN:** Yes and no. Part of the -- part of the
13 procurement process is to -- is to push for the best schedule, the best outcome, and the
14 best cost. And then, as part of the procurement process, the bidders will evaluate that
15 and incorporate that into their bids.

16 **MR. JOHN ADAIR:** Right. And when you talk about creating the
17 best schedule, the best budget, the best process, you have to rely -- "you", being the
18 City, of course. I don't mean you personally. You have to rely on your experts for that.
19 That's why you bring them in.

20 **MR. JOHN JENSEN:** That's correct.

21 **MR. JOHN ADAIR:** And respectfully, at least in this particular
22 case, that's not what was happening at the time. It was the budget and the schedule
23 were being driven by people who weren't experts.

24 **MR. JOHN JENSEN:** The process was then being evaluated by
25 the experts and, if the experts had not felt that that was a proper direction to go, or if we
26 were pushing too aggressively on the schedule, the experts were -- we were expecting
27 the experts to advise us accordingly.

28 **MR. JOHN ADAIR:** That's fair. Let me talk to you about the

1 project requirements. We can take down the document that's on the screen. Thank
2 you. I'm going to use the phrase "project requirements", Mr. Jensen. I don't have a
3 better one at my disposal. What I mean is I'm going to talk about the City's operational
4 requirements for the Confederation Line for the light-rail system as the preliminary work
5 -- engineering work is being done. So what kind of system was the City looking for and
6 what did that system have to be able to do? Okay, that's going to be the subject of the
7 next series of questions I ask you.

8 **--- EXHIBIT No. 009 - COW0143351 - by COM**

9 If we can start with a document, please, COW0143351. So there
10 you have a presentation by Capital Transit Partners to your office, to RIO. And if we
11 just scroll down just a touch, we'll see the date there, I think. Yeah, November of 2011,
12 thank you. And as we know, CTP is the engineering consortium that was advising.
13 Sorry, Mr. Jensen.

14 If we can go, please, to page 3 of 115. So here we have an
15 executive summary of the analysis that CTP had done. And what I just want to talk
16 about and focus on for a minute, sir, is the capacity to move passengers that was being
17 analysed, in part, in this document. If you look at the first paragraph under "Operational
18 Analysis" -- really the first two paragraphs under "Operational Analysis" -- what you'll
19 see is there's a few different five-digit numbers with the -- with -- it's not -- with the
20 acronym beside them "PPHPD". And what that refers to is the number of people that
21 were being moved per hour per direction. You see that?

22 **MR. JOHN JENSEN:** Yes.

23 **MR. JOHN ADAIR:** And there were some projections in place
24 here. In the first paragraph under operational analysis, we see that there were loads
25 predicted for 2021 of a little over 11,000 passengers -- I'm just going to say passengers
26 per hour. It's shorter. You understand what I mean. And then just over 18,000 by
27 2031, correct?

28 **MR. JOHN JENSEN:** Correct.

1 **MR. JOHN ADAIR:** And then in the second paragraph, there's
2 analysis of peak passenger capacity and some assumptions made, of course, about the
3 type of vehicle. And then it says in the second sentence of that paragraph, "And
4 ultimate capacity of 24,000 passengers can be supported with the trains that were being
5 looked at, at the time," correct?

6 **MR. JOHN JENSEN:** Correct.

7 **MR. JOHN ADAIR:** And then if we can scroll down, please, to
8 page 5 of 15? Under section 3.1, "Ridership Demand Forecasts," just the second last
9 paragraph on this page, so the paragraph that begins Table 3.1, if we can just have that
10 whole paragraph? Thank you.

11 Those numbers we just looked at are repeated, and then what
12 Capital Transit Partners tells you in the last sentence of that paragraph is they say, "It is
13 noted that the proposed peak loads would likely represent the highest passenger
14 volumes on a light rail system in North America." Do you see that?

15 **MR. JOHN JENSEN:** I see that.

16 **MR. JOHN ADAIR:** And what Capital Transit Partners was telling
17 you was that the system that was being contemplated at the time was one that would be
18 able to accommodate more passengers per hour than, as far as they were aware, any
19 light rail system in all of North America, correct?

20 **MR. JOHN JENSEN:** So, that's the statement.

21 **MR. JOHN ADAIR:** And you didn't have any reason to disagree
22 with that?

23 **MR. JOHN JENSEN:** No.

24 **MR. JOHN ADAIR:** Without sort of trying to put too much colour
25 into it, what Capital Transit Partners was telling you was that the passenger loads the
26 City was intending to be able to move with this system were at the edge of what light rail
27 could do or was doing, at the very least, based on experience in North America?

28 **MR. JOHN JENSEN:** They said that -- yes, they were saying it's a

1 high-performance system.

2 **MR. JOHN ADAIR:** Now, in terms of what the City wanted this
3 particular system to be, one of the important requirements, as I understand it, was that
4 the vehicle be service proven?

5 **MR. JOHN JENSEN:** That's correct.

6 **MR. JOHN ADAIR:** And that is a requirement that was built, in fact,
7 right into the project agreement, correct?

8 **MR. JOHN JENSEN:** That's correct.

9 **MR. JOHN ADAIR:** And just to get some common ground on the
10 definition of what service proven means, is it fair to say that it means the City is not
11 taking on the risk of sort of working out the kinks of a new vehicle?

12 **MR. JOHN JENSEN:** That's correct.

13 **MR. JOHN ADAIR:** Because if you are acquiring for the City a new
14 vehicle, you're going to potentially be in a position where you're at risk of being the
15 guinea pig who has to experience the problems that can arise with new vehicles?

16 **MR. JOHN JENSEN:** That's correct.

17 **MR. JOHN ADAIR:** And I'm sorry, we can take that document
18 down off the screen, please. Thank you very much.

19 And an important element of the vehicle being service proven was
20 you wanted a vehicle that was operating in a similar climate to Ottawa's, correct?

21 **MR. JOHN JENSEN:** That's correct.

22 **MR. JOHN ADAIR:** And service proven, I should have gone back
23 to this, it really just means that there is substantially the same or a similar vehicle out
24 there somewhere in operation so that you can see sort of proof of concept, right?

25 **MR. JOHN JENSEN:** Correct.

26 **MR. JOHN ADAIR:** And the reason that climate was a particularly
27 important aspect of seeing the vehicle out in operation or a similar vehicle out in
28 operation in similar conditions is because of the significant temperature difference that

1 Ottawa experiences from summer to winter?

2 **MR. JOHN JENSEN:** It's not just temperature. It's snow, ice, salt,
3 all of the harsh elements that go along with an Ottawa winter, but also the heat and
4 humidity in the summertime.

5 **MR. JOHN ADAIR:** Right. That's quite fair and thank you for that.
6 And the reason, sir, I just -- I think this is stating the obvious, but the reason you don't
7 want to be -- "you" being the City -- doesn't want to be the customer that is the proof of
8 concept, the reason it wants a service proven vehicle is because taking on a new
9 vehicle increases the risk that things will go wrong?

10 **MR. JOHN JENSEN:** That's correct.

11 **MR. JOHN ADAIR:** And in terms of the requirements for the
12 vehicle, in addition to the general requirement that the vehicle be service proven, there
13 were certain very specific requirements for the vehicle that are captured in an acronym
14 that's referred to as PSOS, which I believe means project specific output specifications?
15 You're familiar with that?

16 **MR. JOHN JENSEN:** Yes.

17 **MR. JOHN ADAIR:** I just want to touch on a few of those in terms
18 of what specific requirements the City had established through the preliminary
19 engineering process, because I think we're going to hear about some of these as we go
20 forward. Among other things, one of the requirements was a minimum 70 per cent Low
21 4 technology?

22 **MR. JOHN JENSEN:** Correct. That was identified by the City
23 during the planning process, a Low 4 vehicle.

24 **MR. JOHN ADAIR:** Yes. And another requirement was the vehicle
25 had to use what's known as a communication-based train control system, or a CBTC
26 system?

27 **MR. JOHN JENSEN:** Yes.

28 **MR. JOHN ADAIR:** And had it used that CB -- if we just think

1 about sort of the manner in which the trains are controlled, it had to use that CBTC
2 system in conjunction with what's referred to as ATO, which stands for automatic train
3 operation?

4 **MR. JOHN JENSEN:** That's correct.

5 **MR. JOHN ADAIR:** And the idea was that for the most part, the
6 control of the trains could be done remotely?

7 **MR. JOHN JENSEN:** That's correct.

8 **MR. JOHN ADAIR:** And then another requirement that was set out
9 in the project agreement for the specs that the vehicle had to be able to meet or achieve
10 was a speed of 100 kilometres per hour?

11 **MR. JOHN JENSEN:** Correct.

12 **MR. JOHN ADAIR:** And just to touch on a couple more of these,
13 sir, the City had required in the project agreement and had made the decision that it
14 should require that the vehicle perform to the same level and be able to hit all of the
15 performance metrics regardless of the weather conditions?

16 **MR. JOHN JENSEN:** Correct.

17 **MR. JOHN ADAIR:** So that even in extreme weather conditions,
18 the vehicle was expected to perform the same as it would on a nice day like today?

19 **MR. JOHN JENSEN:** Correct.

20 **MR. JOHN ADAIR:** And just two more -- I just want to touch on
21 something because we're going to come back to it, but the low temperature requirement
22 for the vehicles, I believe, was that the vehicles had to be built to be able to perform
23 when the temperature dropped as low as negative 38?

24 **MR. JOHN JENSEN:** I know it was a low temperature. I can't
25 recall the exact temperature.

26 **MR. JOHN ADAIR:** Okay. I think someone will correct me if I'm
27 wrong, but it's in Schedule 15.2 to the project agreement. We can come back to that if
28 we need to.

1 Just the last requirement I just want to touch on, sir, just so that we
2 have it for context, the vehicle also had to meet Canadian content requirements, did it?

3 **MR. JOHN JENSEN:** That's correct.

4 **MR. JOHN ADAIR:** And that meant, essentially, that 25 per cent of
5 the total final costs for the vehicles had to come from Canadian sources?

6 **MR. JOHN JENSEN:** Correct.

7 **MR. JOHN ADAIR:** Okay. Mr. Commissioner, if it's convenient,
8 perhaps that's a good time to take the morning break?

9 **COMMISSIONER HOURIGAN:** That's fine. We'll take the morning
10 break.

11 **THE REGISTRAR:** Order. All rise. The Commission will recess
12 for 15 minutes.

13 --- Upon recessing at 10:30 a.m.

14 --- Upon resuming at 10:52 a.m.

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

16 **COMMISSIONER HOURIGAN:** All right. We're back on the
17 record.

18 Mr. Jensen, occasionally things happen in Commissions, and one
19 did this morning.

20 I'm advised that you were not sworn. So counsel is going to deal
21 with that issue right now.

22 **MR. JOHN ADAIR:** Thank you, Mr. Commissioner, and my
23 apologies, Mr. Jensen, for the oversight there, but what we'll do, Mr. Jensen, if it's okay
24 is, we'll swear you in now. The Registrar will swear you in now, and I'll just then, once
25 that's done, I'll ask you to adopt the prior answers you've given, okay, sir?

26 **MR. JOHN JENSEN:** That's fine.

27 **--- JOHN JENSEN, Resumed:**

28 **MR. JOHN ADAIR:** Okay. Thank you, Mr. Jensen, and now I'll put

1 the question to you, just asking you if you adopt the answers you gave this morning
2 prior to being sworn in?

3 **MR. JOHN JENSEN:** I do.

4 **MR. JOHN ADAIR:** Thank you.

5 **COMMISSIONER HOURIGAN:** Thank you very much for that.

6 **--- EXAMINATION IN-CHIEF BY MR. JOHN ADAIR (cont'd) :**

7 **MR. JOHN ADAIR:** So then, Mr. Jensen, let me move forward. I'm
8 going to stick with the subject of the vehicles that we were just talking about before the
9 break, and specifically, the issue of the vehicle -- of the City's requirement that the
10 vehicle be service proven.

11 Just to get a few names in front of us here, Mr. Jensen, RTG, which
12 is the consortium that was ultimately successful in bidding on the project and entered
13 into a contract with the City, RTB, their bid ultimately included a train manufactured by
14 Alstom, correct?

15 **MR. JOHN JENSEN:** Correct.

16 **MR. JOHN ADAIR:** And in terms of the name of the train, am I
17 right that the family, as it were, would be described as Citadis, which is, for the record,
18 C-i-t-a-d-i-s, and that the model that the Ottawa vehicle was going to be based on was
19 the Dualis model?

20 **MR. JOHN JENSEN:** I believe that's correct, yes.

21 **MR. JOHN ADAIR:** And sir, did you understand in 2012 when RTG
22 was bidding and putting forward the Alstom vehicle that this would be Alstom's first entry
23 into the North American LRT market?

24 **MR. JOHN JENSEN:** I believe so. I'm just trying to remember
25 back, but I believe it's correct.

26 **MR. JOHN ADAIR:** And sir, I'm going to ask you about -- some
27 questions about whether that vehicle was service proven or not. I want to be fair to you
28 and start by acknowledging that some of the elements of the vehicle were certainly in

1 use in other places, but I also want to deal with some of the specific evidence that we
2 have, and that's not to foreclose any discussion of the elements of the vehicle, it's just to
3 make sure that you're aware that I'm acknowledging that.

4 Are you aware, sir, that Alstom, in formal interviews conducted by
5 this Commission, has referred to the vehicle as a "development project" -- that's a direct
6 quote -- to bring low-floor technology to North America?

7 **MR. JOHN JENSEN:** I have -- I am not aware of any other
8 testimony that's been in play. I had not.

9 **MR. JOHN ADAIR:** Were you aware back in 2011 and 2012, as
10 the procurement process was taking place, that Alstom was treating this as a
11 development project?

12 **MR. JOHN JENSEN:** No.

13 **MR. JOHN ADAIR:** Okay. Let me drill down with some of the
14 information that the City had with respect to the extent to which this vehicle was service
15 proven, and I'm going to start with a document number COW14492.

16 **MR. JOHN JENSEN:** What's the document? Can you identify the
17 document?

18 **--- EXHIBIT No. 010 - COW0144492 - by COM**

19 **MR. JOHN ADAIR:** Sorry, Mr. Jensen. So, the document is a -- a
20 -- what's called a prequalification written submission by RTG from January of 2012,
21 which I had not understood was subject to a claim, but, you know, I want to be clear that
22 there are a lot of parties that could make claims here, on various documents and so...

23 **MR. JOHN JENSEN:** Well, it's an RTG document. I release
24 written reasons to deal with claims made by Ottawa and Infrastructure Ontario where
25 confidentiality claims were made with respect to, probably, that universe of documents.
26 So, what I think has happened here is that these are documents that were subject to a
27 previous claim, so I think that we should proceed on that basis. So, all that to say we're
28 good to go. Let's call up the document.

1 **MR. JOHN ADAIR:** What you'll see there, Mr. Jensen, in front of
2 you is a -- as I've just described, what's called a prequalification written submission, and
3 this was, just to situate ourselves, part of the RFP process involved, the proponents, the
4 potential bidders, putting forward to the City and its technical advisors, information
5 about how they would satisfy the requirements for this project, so that the City could
6 decide in consultation with its advisors whether what the proponent was putting forward
7 would actually comply with the requirements. Is that a fair description?

8 **MR. JOHN JENSEN:** Yes.

9 **MR. JOHN ADAIR:** And if we can go to page 37, please, you'll see
10 there, Mr. Jensen, under the heading A.8.1.1.7, with respect to the performance and
11 reliability and safety of the vehicle in similar conditions, climate conditions, there's a
12 statement that the Citadis Dualis products are designed to operate at temperatures of
13 up to negative -- down to, I should say, negative 25. Do you see that?

14 **MR. JOHN JENSEN:** I do.

15 **MR. JOHN ADAIR:** And I think, and I can take you there if you
16 want, but if you'll, sort of, accept this for the moment, the City's requirement as
17 expressed in the project agreement was up to -- down to, I should say, negative 38. Do
18 you want me to show you that specifically, or are you okay working on that basis?

19 **MR. JOHN JENSEN:** No, I'm okay working on that basis.

20 **MR. JOHN ADAIR:** All right. Thank you. So that at least
21 according to this submission, the Dualis product that was being relied on as kind of the
22 base model, if I can put it that way, was not able to meet or designed to meet, I should
23 say, the City's standards; is that fair?

24 **MR. JOHN JENSEN:** According to the language there, that's
25 correct.

26 **MR. JOHN ADAIR:** And then, if we look at A-1 -- A -- sorry,
27 A.1.1.8, where it gets into the issue of the service history of the proposed vehicle, which
28 is really where the proponent advises the City and its experts of the fact that this is a

1 service proven vehicle; the first two pictures and described projects are from the Citadis
2 product range, and then when we scroll down to the bottom of that page 37, we get into
3 the Citadis Dualis project -- product range. And the first reference to an in-service
4 vehicle is the Nantes project, which I'm sure I'm mispronouncing, which is a city in
5 France, and then the next one on the next page, you'll see at the top of page 38, there's
6 a reference to a project in Lyon, where the Dualis is being used. You see those two?

7 **MR. JOHN JENSEN:** I do.

8 **MR. JOHN ADAIR:** And those are the -- were the existing light rail
9 transit systems that Alstom was putting forward in order to demonstrate the service
10 proven history of the vehicle, correct?

11 **MR. JOHN JENSEN:** In this submission? Yes.

12 **MR. JOHN ADAIR:** Right. And to the extent you're aware, sir, do
13 you know it to be the case that the average monthly temperature in each of Nantes and
14 Lyon never gets below zero?

15 **MR. JOHN JENSEN:** I don't know what the conditions are, but I'm
16 assuming they're moderate.

17 **MR. JOHN ADAIR:** Right. Given where they are, they're certainly
18 not comparable to Ottawa?

19 **MR. JOHN JENSEN:** I would say they're different than Ottawa.

20 **MR. JOHN ADAIR:** And I'm going to take you to another document
21 now to show you the initial reaction of the City and I'm -- Mr. Jensen, I'm using the
22 phrase of the City, "the City". I want to be clear that this is significantly informed by
23 feedback from the experts you have -- you had, I should say, at the time. So ---

24 **MR. JOHN JENSEN:** Thank you.

25 **MR. JOHN ADAIR:** --- just -- I acknowledge that, but it's just easier
26 if I say, the City, and you'll understand that I mean that to include the experts.

27 If we can go, please, to COW144536? And, Mr. Commissioner, I
28 think this is on the same basis as the last one, if you're okay to proceed in the same

1 fashion as you directed on the last document?

2 **COMMISSIONER HOURIGAN:** Yes. Proceed on that basis, thank
3 you.

4 **MR. JOHN ADAIR:** Thank you. And it will be the same for the
5 next, and then we'll be done with that issue.

6 **COMMISSIONER HOURIGAN:** All of these documents were
7 subject to a claim of confidentiality that I rejected, so we can proceed ahead.

8 **--- EXHIBIT No. 011 - COW0144536 - by COM**

9 **MR. JOHN ADAIR:** So, Mr. Jensen, what you will have now with
10 this next document is feedback that was offered to the proponents with respect to some
11 of the submissions that they had made, and this one is feedback to RTG with respect to
12 its proposal to use Alstom. And if we go to point number seven, so if we can just scroll
13 down until we see seven in the left-hand column? What you'll see there is part of the
14 feedback being given to Alstom is -- or to RTG, I should say, but with respect to the
15 Alstom proposed vehicle, is there's a note that the car was rated only to minus 25, and
16 therefore, not compliant and the City -- the design consultation team on behalf of the
17 City asked for more feedback -- sorry, for more detail, rather. Do you see that?

18 **MR. JOHN JENSEN:** I do.

19 **MR. JOHN ADAIR:** And the response you got was that the minus
20 25 was a mistake and that what it should say is that it would reach a temperature down
21 to minus 38. Do you see that?

22 **MR. JOHN JENSEN:** I do.

23 **MR. JOHN ADAIR:** Did it cause the City any concern that when
24 the formal submission that was made was not compliant and the City pointed that out,
25 the answer was, "That's just a mistake. Actually, it will be compliant to minus 38?"

26 **MR. JOHN JENSEN:** We would rely on our technical evaluators to
27 get comfort with -- with that response and -- as to whether or not they had a concern,
28 and if our technical evaluator had a concern, they would raise it.

1 **MR. JOHN ADAIR:** Okay. And then, if we can just scroll down a
2 couple more pages just so that we've got number 10 in the left-hand column? And
3 you'll see there, there's a reference to the portion of the prequalification submission that
4 I took you to. It says, "The two cities are listed with Citadis Dualis. Neither is yet in
5 revenue service. This is insufficient for service-proven requirement. Revenue service
6 in other cities is requested."

7 And I'll just give you a moment to read the answer to yourself
8 before I ask you a question about it.

9 **(SHORT PAUSE)**

10 **MR. JOHN JENSEN:** Okay.

11 **MR. JOHN ADAIR:** What the proponent told you in response to
12 the concern that there was insufficient evidence of the vehicle being -- the Citadis Dualis
13 being service-proven.

14 What the proponent told you is that the -- the Citadis family had
15 been in operation since 1999, but they did not in fact give any more real detail around
16 the Dualis other than reference to other products within the same general family, but not
17 the same specific vehicle. Is that fair?

18 **MR. JOHN JENSEN:** According to the language, yes.

19 **--- EXHIBIT No. 012 - COW0148076 - by COM**

20 **MR. JOHN ADAIR:** And, if we just go to one last document here,
21 I'm going to take you, please, to COW0148076. And this is RTG's Design Presentation
22 No. 3 with respect to vehicles, train control, LRT Systems, et cetera. We can all see it
23 there. Sorry. I'm sorry. If you scroll down just a little bit, you'll see it on the bottom of
24 that first page, what I've just described as their Design Presentation No. 3.

25 And sir, just stepping away from the document for a minute, the --
26 in terms of what was happening and how their procurement process operated,
27 proponents were given opportunities to have the design presentation meetings with the
28 City and its advisors where they would communicate what it is that they intended to put

1 forward, and be able to get feedback, so that there could be a bit of a dialogue to make
2 sure that what was being proposed was compliant with what the City wanted. Is that
3 accurate?

4 **MR. JOHN JENSEN:** That's correct.

5 **MR. JOHN ADAIR:** Okay. And this quite a long document, sir. I
6 don't intend to take you to very much at all of it, but if we can just go to page 98. In
7 terms of the vehicle being service-proven and the operating system, in this case, train
8 control, being service-proved, what RTG was telling you in the first bullet point is that a
9 CBTC system, so communications-based train control system -- and that -- we know
10 that was one of the requirements of the project because we've discussed that already --
11 operating low-floor LRVs, which was -- low-floor was also a requirement because we've
12 discussed that -- in a climate similar -- in a climate, I should say, similar to Ottawa's,
13 which is -- we know was a requirement -- has not been proven in revenue service. Do
14 you see that?

15 **MR. JOHN JENSEN:** I do.

16 **MR. JOHN ADAIR:** And acknowledging, in fairness to you, that the
17 major components of the system itself, the CBTC system -- I just want to -- now just
18 looking at the next couple of bullets -- and that the major components of the vehicle
19 would be service-proven -- acknowledging those two points are there, the City was told
20 in relatively plain terms that the precise specifications that the City was looking for, or
21 the precise sort of key operating elements in combination together that the City was
22 looking for, was just something that didn't exist already anywhere in the world, correct?

23 **MR. JOHN JENSEN:** That's what they're saying in this
24 presentation.

25 **MR. JOHN ADAIR:** And as a result of that, the City would know --
26 heading into the construction phase, and when it selected RTG and Alstom as the
27 suppliers, the City would know that it in fact was going to be receiving a vehicle that had
28 not been tested, had not been through that process of working out the kinks that we

1 talked about?

2 **MR. JOHN JENSEN:** Well, I can't speak to the City's response
3 without seeing the compliance feedback that was given to this presentation.

4 **MR. JOHN ADAIR:** Okay, that's fair. We can take that document
5 down, thank you. Just in terms of sort the extent to which the City was receiving
6 something that was not yet tried and tested, if I can put it that way -- in terms of some of
7 the elements that surround the vehicles, albeit not vehicles themselves, you're aware, of
8 course, that the plan was that the vehicles would be assembled at a manufacturing
9 facility in -- right here in Ottawa, on Belfast Road?

10 **MR. JOHN JENSEN:** Correct.

11 **MR. JOHN ADAIR:** And that would be done in a new facility that
12 had not previously been in operation for that purpose?

13 **MR. JOHN JENSEN:** Correct.

14 **MR. JOHN ADAIR:** So that to the extent we're thinking about the
15 risk that gets created when we try to do new things, that was another element of trying
16 to do something that wasn't already being done?

17 **MR. JOHN JENSEN:** Well, I would expect an internationally
18 qualified, high-volume vehicle company such as Alstom is perfectly capable of setting
19 up a production line.

20 **MR. JOHN ADAIR:** And just, sir, the -- I'm sure you did expect
21 that. I'm not suggesting that there was an expectation that it wouldn't work. But if we
22 just go back to my question for a minute, in terms of the risks that exist and are inherent
23 when we try something new, one of the things that was being tried that was new is
24 assembly in a brand-new facility.

25 **MR. JOHN JENSEN:** Alstom was setting up an assembly in a
26 brand-new facility. That's correct.

27 **MR. JOHN ADAIR:** Right. And then more layers you add of things
28 that had not been done or not -- were not in operation already to a project like this, the

1 more risk you have that there will be reliability and performance issues.

2 **MR. JOHN JENSEN:** It's possible. We -- Alstom would have had
3 to set up production regardless.

4 **MR. JOHN ADAIR:** Sure, I accept that. But surely, it's the case
5 that the more elements you add of things that have not -- that are not already tried and
6 tested, the more risk you create. Is that fair?

7 **MR. JOHN JENSEN:** Every element like that is technically a
8 possible risk.

9 **MR. JOHN ADAIR:** Right. And this was being done by a company
10 that was not already in the LRT market in North America, correct?

11 **MR. JOHN JENSEN:** I can't speak to North America.

12 **MR. JOHN ADAIR:** Okay. Are you also aware, sir, that this was
13 one of the first, if not the first, time that a Thales signalling system had interfaced with
14 Alstom trains?

15 **MR. JOHN JENSEN:** I was not aware of that.

16 **MR. JOHN ADAIR:** Okay.

17 **MR. JOHN JENSEN:** I was under the understanding that Alstom
18 and Thales had worked together in the past.

19 **MR. JOHN ADAIR:** Right, but with the specific sort of type of
20 operating system that was in play here being a CBTC system, and the type of LRT train
21 that was in play here, were you aware one way or the other of whether that had been
22 successfully undertaken by those two companies in the past?

23 **MR. JOHN JENSEN:** No personally, but I relied on our technical
24 evaluation experts to review matters like that.

25 **MR. JOHN ADAIR:** Okay. And, sir, in terms of the selection of
26 Alstom, the way the procurement process worked, the bidders -- for example, RTG --
27 we responsible for procuring a vehicle themselves and including that within their bid,
28 correct?

1 **MR. JOHN JENSEN:** That's correct.

2 **MR. JOHN ADAIR:** And you'll recall that RTG initially put forward a
3 vehicle from a different manufacturer and not from Alstom, a company by the name of --
4 or known as "CAF"?

5 **MR. JOHN JENSEN:** My understanding is that's correct. I've got
6 poor memory that right at the moment.

7 **MR. JOHN ADAIR:** And do you recall, sir, that CAF was ultimately
8 deemed non-compliant, and then Alstom came in?

9 **MR. JOHN JENSEN:** My understanding is that's correct.

10 **MR. JOHN ADAIR:** And do you recall, sir, that Alstom came in --
11 and I believe it will be Alstom's evidence in the course of the -- before this Commission
12 that they came in relatively late in the process, some time in June or July of 2012, and
13 therefore had very little time left to prepare a full bid?

14 **MR. JOHN JENSEN:** I would have to take your word for that. I
15 can't recall specifically what the dates were.

16 **MR. JOHN ADAIR:** Okay. And you recall, sir, just from our
17 discussion prior to the break when we were talking about the planning phase, and the
18 preliminary engineering, and some of the scheduling work that was done, one of the
19 ways that your office was able to shave a year off the schedule at the Mayor's request
20 was to push the RFP dates.

21 **MR. JOHN JENSEN:** Correct.

22 **MR. JOHN ADAIR:** And when you do that, sir, when you push the
23 schedule and you push the RFP process, I take it you'd agree with me that that creates
24 a risk that the proper information isn't obtained and people don't have time to make the
25 right decisions?

26 **MR. JOHN JENSEN:** We felt that the dates that we established
27 and the length of the procurement period was adequate and acceptable, and that was
28 based on the expert input of all our technical advisors and Infrastructure Ontario.

1 **MR. JOHN ADAIR:** Sure, and that -- I have no doubt that that's
2 what the perspective was at the time. I don't think anybody set out knowing this project
3 wasn't going to work. But the bottom line is, when you push the schedule like that, in
4 particular by truncating the RFP period, it is more likely that information gets missed and
5 decisions can't be made as well as they would be if the original allotted amount of time
6 were given.

7 **MR. JOHN JENSEN:** It can put more time pressure on the
8 process.

9 **MR. JOHN ADAIR:** Right. So I don't have a ton of time left, so I
10 want to move on to the contract itself. I don't, in doing that, mean to -- well, let me just
11 spend five minutes on the procurement process. I apologize. And I realize that's not a
12 lot of time for a process that was complicated. I just want to hit on a couple of high
13 points.

14 In terms of the procurement approach that was taken and the
15 manner in which the City was going to structure this project, we can agree, I'm sure, that
16 this was structured as a P-3 project, what's known as a P-3?

17 **MR. JOHN JENSEN:** It was structured as a design bid build. I'm
18 not sure that P-3 is the correct acronym, but it was structured as the design bid build --
19 a design build maintain with finance.

20 **MR. JOHN ADAIR:** Okay. Yeah, and I was just going to say, just, I
21 think, sir, probably we're just kind of getting a little bit mixed in acronyms, sitting here 11
22 years after the fact.

23 The project, as I understand it, was undertaken -- well, I'm going to
24 give the acronym first and then I'm going to explain the meaning on the basis of what's
25 known as a DBFM, meaning Design Build Finance and Maintain. Is that consistent with
26 your recollection?

27 **MR. JOHN JENSEN:** That's correct.

28 **MR. JOHN ADAIR:** And that really speaks to the aspects of the

1 project for which the private sector partner is responsible, meaning the design, the
2 construction, some of the financing, and the maintenance, correct?

3 **MR. JOHN JENSEN:** That's correct.

4 **MR. JOHN ADAIR:** And can you just describe just briefly the
5 perceived advantages of that model?

6 **MR. JOHN JENSEN:** Well, the advantages are, a project like this
7 is very complicated with a lot of components that are integrated, and if you just think of it
8 simply as rail, trains, overhead wires, and interface with stations, it makes sense for one
9 party to be in control of the integration of all of those pieces as one part, because they
10 all affect each other, and it creates ultimate accountability in one party. And that's the
11 primary advantage.

12 Some other advantages are that it tends to be more cost effective,
13 and it tends to be more efficient in terms of the schedule, because one proponent can
14 apply all of their proprietary technologies and their advantages in the industry to deliver
15 on the schedule.

16 So there are plenty of advantages, going forward.

17 **MR. JOHN ADAIR:** Right. And just focused on the advantage you
18 identified of having one party being able to be responsible for all aspects, that
19 advantage is one that is -- significantly, it depends on that one party successfully
20 undertaking what's known as systems integration; is that right?

21 **MR. JOHN JENSEN:** Yes, that's correct.

22 **MR. JOHN ADAIR:** And what that means, just at a high level,
23 systems integration, as the name implies, referring to coordination of all of the different
24 moving parts of a project of this complexity through sort of one central body?

25 **MR. JOHN JENSEN:** That's correct. And the advantage with, you
26 know, going to market and having bidders of the quality and calibre that were bidding on
27 this project in the global experience, and the multiple projects they've worked, they tend
28 to have a high level of expertise in being able to do that.

1 **MR. JOHN ADAIR:** Right. And in terms of the City's approach to
2 both procurement and the structuring of the contract, you know, the one, in many
3 respects, feeding into the other, my understanding is, one of the core principles the City
4 was applying was a desire to have the best possible risk profile?

5 **MR. JOHN JENSEN:** The City was looking for the best risk profile
6 and looking to have the party best able to manage the risk to manage the risk.

7 **MR. JOHN ADAIR:** And what that means in practice -- I appreciate
8 that it would be perhaps overly simplistic to say that means that you push all the risk
9 onto the private sector, but what it means in practice is that the private sector partner is
10 going to bear the risks of scheduling issues, budget issues, unforeseen events, et
11 cetera, through the construction, and that's because the theory is, the private sector
12 partner is in the best position to bear those risks. Is that a fair characterization of the
13 approach?

14 **MR. JOHN JENSEN:** Yes.

15 **MR. JOHN ADAIR:** Let me just talk to you briefly, sir, about the
16 project agreement, and I'm not -- it's not my intention to sort of go through term by term
17 the project agreement. I just want to try to hit on some of the highlights of what the
18 project agreement did.

19 First of all, sir, the project agreement, that was, as I understand it,
20 based on the Infrastructure Ontario template?

21 **MR. JOHN JENSEN:** Yes.

22 **MR. JOHN ADAIR:** And it required RTG, the consortium that was
23 the winning bidder, to design and build and finance the Confederation Line, and then
24 maintain it for a period of 30 years after handover, correct?

25 **MR. JOHN JENSEN:** That's correct.

26 **MR. JOHN ADAIR:** And just in terms of the overall structure of --
27 on the private sector side, just to go through it so that we have some common ground
28 as we make our way through the evidence that the Commission's going to hear, RTG is

1 the party that contracts with the City, and then RTG, as you're aware, I'm sure,
2 subcontracted out various elements of its contractual obligations with the City, correct?

3 **MR. JOHN JENSEN:** That's correct.

4 **MR. JOHN ADAIR:** And it subcontracted out the design and
5 construction activities to an entity known as OLRTC?

6 **MR. JOHN JENSEN:** I believe that's correct.

7 **MR. JOHN ADAIR:** And then it subcontracted out the maintenance
8 to another consortium known as RTM?

9 **MR. JOHN JENSEN:** I believe that's also correct.

10 **MR. JOHN ADAIR:** And then do you recall that OLRTC itself
11 entered into subcontracts for some of the key components -- and I'm just doing this, sir,
12 so that we can have these names brought out now at an early stage of the Commission
13 -- the engineering was subcontracted out to RTG Engineering JEV which is sometimes
14 referred to as RTGEJV; do you recall that?

15 **MR. JOHN JENSEN:** I don't have those documents in front of me,
16 so I can't remember all the entities that were involved.

17 **MR. JOHN ADAIR:** Okay. Just in terms of the main ones that
18 we're going to hear about, we've already heard that the contract for the vehicles was
19 given to Alstom?

20 **MR. JOHN JENSEN:** That's correct.

21 **MR. JOHN ADAIR:** And for the signalling system, to Thales?

22 **MR. JOHN JENSEN:** Correct.

23 **MR. JOHN ADAIR:** And in terms of that systems integration that
24 we talked about earlier, that was a role that was going to be played by OLRTC. Do you
25 recall that?

26 **MR. JOHN JENSEN:** I don't recall who was going to play the role.

27 **MR. JOHN ADAIR:** Okay. Are you able to recall, sir, anything in
28 terms of the requirements in the project agreement with respect to trial running,

1 meaning the sort of last bit of, as the name implies, running the system on a trial basis
2 right before handover?

3 **MR. JOHN JENSEN:** There's a schedule of the RFP, that RFB
4 project agreement that covers that.

5 **MR. JOHN ADAIR:** And have you -- did you hear reference at the
6 time, sir, to a requirement that there be 12 days of trial running?

7 **MR. JOHN JENSEN:** I'm aware of that.

8 **MR. JOHN ADAIR:** And I think it's the case -- and I hope we don't
9 have to get too far into the project agreement as we move forward here -- but I think it's
10 the case that the project agreement did not specify sort of what 12 days of successful
11 trial running meant. Do you recall that?

12 **MR. JOHN JENSEN:** I'd have to look at the language in the project
13 agreement, but I'm sure that there was language that dealt with what the trial running
14 needed to accomplish.

15 **MR. JOHN ADAIR:** Okay. Let me leave that for other witnesses
16 who were more involved in that specific aspect of things.

17 I just want to touch with you, sir, on the payment structure and the
18 payment aspects of the project, because I think those are going to be important as we
19 move forward.

20 Do you recall that the approach to the payment structure in terms of
21 paying for construction as you went was referred to as a milestone payment structure?

22 **MR. JOHN JENSEN:** Yes.

23 **MR. JOHN ADAIR:** And that essentially means that the contractor
24 gets paid as certain stages of work or milestones are completed?

25 **MR. JOHN JENSEN:** Correct.

26 **MR. JOHN ADAIR:** That was something that was done, as I
27 understand it, on the advice of one or both of either Deloitte or Infrastructure Ontario?

28 **MR. JOHN JENSEN:** Partly, yes.

1 **MR. JOHN ADAIR:** And then, sir, RTG also had -- there were quite
2 significant payment terms attached to the concept of what's referred to as RSA,
3 meaning Revenue Service Availability, which essentially means the line being open to
4 the public. Just before we get into the payment terms, you understand what I mean
5 when I say RSA?

6 **MR. JOHN JENSEN:** Yes.

7 **MR. JOHN ADAIR:** And in terms of the financial aspects of the
8 contract with respect to RSA, do you recall that if RTG missed the RSA deadline in the
9 contract that there would be a penalty of \$1 million?

10 **MR. JOHN JENSEN:** Yes.

11 **MR. JOHN ADAIR:** And do you also recall that when RSA
12 achieved -- sorry, I got the wrong acronym there for a minute -- when RTG achieved
13 RSA, they were entitled to a substantial milestone payment...

14 **MR. JOHN JENSEN:** Correct.

15 **MR. JOHN ADAIR:** And I believe, and if you don't recall or you can
16 correct me if I'm wrong, but I believe that was in the nature of \$202 million?

17 **MR. JOHN JENSEN:** I believe it was in that order of magnitude. It
18 was several hundred million dollars.

19 **MR. JOHN ADAIR:** And so, in terms of sort of structuring the
20 contract and the use of payment mechanisms to create incentives, RTG had an
21 enormous financial incentive to hit RSA, to get to RSA?

22 **MR. JOHN JENSEN:** Correct.

23 **MR. JOHN ADAIR:** Just the last aspect, sir, of the payment
24 aspects of the contract I want to touch on has to do with the maintenance obligations
25 that were taken on, and without getting into the nitty gritty, which is both complicated
26 and going to come out through other witnesses, there were financial penalties that were
27 applied if the reliability didn't perform and if the maintenance obligations weren't met,
28 correct?

1 **MR. JOHN JENSEN:** Correct.

2 **MR. JOHN ADAIR:** And just on that, sir, do you recall discussion
3 during the procurement phase between IO and your office with respect to something
4 called a bedding in period?

5 **MR. JOHN JENSEN:** I don't recall any specific conversations, but
6 a bedding in period is typical with a new vehicle.

7 **MR. JOHN ADAIR:** And that's because -- let's just start with what
8 a bedding in period is. I apologize, but that refers to a period of time during which those
9 financial penalties with respect to reliability or maintenance issues would either not be
10 applied or they would be less severe in order to give a little bit of time to work out the
11 kinks in the system?

12 **MR. JOHN JENSEN:** My recollection from the agreement is that
13 the bedding in period was to be dealt with prior to revenue service availability.

14 **MR. JOHN ADAIR:** Right, and I apologize, but I just want to go
15 back just so that we're talking about the same thing in terms of what a bedding in period
16 is. Have I described it accurately in concept, as far as you recall?

17 **MR. JOHN JENSEN:** Well, a bedding in period is essentially
18 running the trains for a certain period of time and to test all the components.

19 **MR. JOHN ADAIR:** All right. I believe that Infrastructure Ontario's
20 evidence will be that a bedding in period refers to a period of time after RSA, so after
21 the system is turned over, when some of the financial consequences that are
22 associated in a contract with reliability or maintenance issues are either not applied or
23 not as strictly applied, in order to sort of acknowledge that there's going to be some
24 initial kinks in the system. Do you recall that?

25 **MR. JOHN JENSEN:** No, I don't.

26 **MR. JOHN ADAIR:** Okay. And just to be very fair to you, sir, I
27 think that we may hear from Mr. John Traianopoulos, one of the IO witnesses, that this
28 is something that IO discussed with the City, and something the City rejected and that it

1 was discussed with you in particular, and you were the one, at least, who
2 communicated the rejection, whether it was your decision or not. Do you have any
3 recollection, one way or another, of any of that?

4 **MR. JOHN JENSEN:** I don't recall that.

5 **MR. JOHN ADAIR:** Okay. And forgive me asking a lawyerly
6 question, Mr. Jensen, but does that mean you think it didn't happen or you just don't
7 recall one way or the other?

8 **MR. JOHN JENSEN:** I just don't recall one way or the other.

9 **MR. JOHN ADAIR:** Okay, thank you. I appreciate that clarification.
10 Let me just finish, sir, with the City's approach to the relationship and the contract.

11 **MR. JOHN JENSEN:** Which contract?

12 **MR. JOHN ADAIR:** The contract with RTG and, really, I'm more
13 interested in the relationship with RTG, but the contract, I think, is going to come into it.

14 The evidence that we've heard, and I appreciate you haven't looked
15 at it, but the evidence we've heard, both from yourself when you were interviewed and
16 from some of the people from the City who were involved at the time is that the City's
17 approach to the relationship with RTG was to take what I will describe as a relatively
18 strict approach to enforcement of the contractual obligations; is that fair?

19 **MR. JOHN JENSEN:** The team's responsibility was to ensure that
20 the contractual obligations were complied with.

21 **MR. JOHN ADAIR:** So that when ---

22 **COMMISSIONER HOURIGAN:** Wait. Please answer the question
23 that was asked of you. It was fairly specific. So, would you repeat the question,
24 counsel?

25 **MR. JOHN ADAIR:** Sure. I'm sorry, Mr. Commissioner, for
26 speaking over you.

27 Mr. Jensen, I appreciate that the team's focus was on ensuring that
28 the contract was complied with, and of course, you want to make sure that the counter

1 party is complying with the contract. I'm more interested in the philosophy and the
2 approach to the relationship, and my understanding from reading a bunch of the
3 evidence, including your own, is that the City's view was the contract is clear. It
4 requires what it requires, and that the City's primary role and approach was to insist on
5 strict performance of the contract.

6 **MR. JOHN JENSEN:** Partly, but there was also a component of
7 developing a working relationship, because there were partnering sessions that were
8 held as part of the beginning of the project. There was a works committee that was in
9 play to work together, and I mean, it's typical in an engineering -- a large project like this
10 to develop some working processes where the teams are working to achieve success.
11 While direction is given to the project management team to be diligent in ensuring that
12 the contract is complied with, there is also a component of trying to work together
13 cooperatively to get that done.

14 **MR. JOHN ADAIR:** So, what I understand you to be saying, sir, is,
15 really, if we harken back to some of the Project Charter language we looked at earlier,
16 that there still has to be a partnership philosophy.

17 **MR. JOHN JENSEN:** There has to be a philosophy of working
18 together, yes, because otherwise, you're working against each other. It makes good
19 sense and it's good practice to try and work cooperatively. But in the end, it is -- it's a
20 contract that has to be complied with and the City's program management team has a
21 responsibility to be diligent in ensuring that it's complied with.

22 **MR. JOHN ADAIR:** Right. So that the City's approach, at least as
23 I understand you to be describing it now, the City's approach was work together in a
24 partnership philosophy, and the contract is really just a backstop where at the end of the
25 day, if issues come up that can't be resolved through the partnership approach, the City
26 has the contract to rely on and enforce?

27 **MR. JOHN JENSEN:** I mean, in a sense. It's to take a partnership
28 approach but ensure that the contract is complied with, yes.

1 **MR. JOHN ADAIR:** Right. And so, to the extent that any of the
2 witnesses we hear from who were involved on the City side with this project, to the
3 extent that any of them say that the role -- the primary role and the primary approach for
4 the City philosophically was "we have a contract and we're going to enforce it," you
5 would disagree with that approach?

6 **MR. JOHN JENSEN:** I would disagree with that approach to the
7 extent that the project agreement included having a partnering session and working to
8 get the project completed in a meaningful way.

9 **MR. JOHN ADAIR:** Through these partnering sessions?

10 **MR. JOHN JENSEN:** Yes.

11 **MR. JOHN ADAIR:** Okay.

12 **MR. JOHN JENSEN:** And if you look at the bid submissions, the
13 submissions included language around having a partnering session.

14 **MR. JOHN ADAIR:** Right. So that the bidders were
15 communicating to the City what we expect is to work together in a partnership model
16 where we will, when problems arise, will solve them together for our mutual benefit.

17 **MR. JOHN JENSEN:** Yes. And the dispute resolution section of
18 the project agreement speaks to that as well, that issues will be resolved at the lowest
19 possible level first. But there is a dispute -- there is a clear dispute resolution process in
20 the project agreement.

21 **MR. JOHN ADAIR:** Right. And so, what you're trying to avoid in
22 the philosophy and approach we've just been looking at is you're trying to avoid a
23 situation that becomes overly adversarial and aggressive with one another?

24 **MR. JOHN JENSEN:** Well, the dispute resolution process
25 contained in the project agreement is designed to address that.

26 **MR. JOHN ADAIR:** Right, and I'm sorry, I kind of asked that
27 question on a follow up to your answer about the dispute resolution, but I really was not
28 particularly focused on the dispute resolution mechanism itself. The last sort of five or

1 six minutes when we've been talking about partnership meetings and partnership
2 philosophies and approaches, the reason you don't start with the contract is that could
3 lead you into a relatively adversarial position where you're being aggressive towards
4 one another, and that's not the way you wanted to approach this, right?

5 **MR. JOHN JENSEN:** Correct.

6 **MR. JOHN ADAIR:** Okay. I wonder if Mr. Jensen might just be
7 shown a copy of a transcript, his own transcript, which is TRN115, please?

8 All right, I've got page numbering that's slightly different. Just bear
9 with me one second, Mr. Jensen. Sorry, that's the wrong transcript. That's Roger
10 Woodhead. Can we just -- thank you.

11 **(SHORT PAUSE)**

12 **--- EXHIBIT No. 013 - TRN00000115 - by COM**

13 **MR. JOHN ADAIR:** And then if we can just select image.

14 Perhaps, Mr. Jensen, what I'll just do, if it's all right with
15 Mr. Commissioner, is I'll just put the excerpt to you. It's very short. I'm just going to
16 read it to you, and if -- if I have been unfair in terms of not giving you enough of it or
17 what have you, I'm sure your counsel will point that out.

18 **COMMISSIONER HOURIGAN:** So Mr. Jensen, listen carefully to
19 what's put to you, make sure you're comfortable with what's said, you don't need further
20 context, and then answer the question from counsel. Thank you.

21 **MR. JOHN ADAIR:** Mr. Jensen, I'm just going to read to you a
22 question and answer that Ms. McGrann asked you when you were examined in this --
23 as part of this Commission on May 12th of 2022. First of all, I take it you remember
24 being examined by Ms. McGrann?

25 **MR. JOHN JENSEN:** Yes, I do.

26 **MR. JOHN ADAIR:** And Ms. McGrann was, among other things,
27 asking you about the City's choice in terms of different delivery models for the project,
28 and one of the subject matters that she discussed with you was the use of what's known

1 as a DBFM model, which we already covered. You recall, just generally-speaking, that
2 there was some questions about that?

3 **MR. JOHN JENSEN:** I do.

4 **MR. JOHN ADAIR:** Okay. I'm going to read you a specific excerpt,
5 Mr. Jensen, and I -- if you believe you need more of it, just let me know. Ms. McGrann
6 said, "And" ---

7 **MR. PETER WARDLE:** Excuse me, Mr. ---

8 **COMMISSIONER HOURIGAN:** Yes, Mr. Wardle.

9 **MR. PETER WARDLE:** --- Adair. Mr. Adair, could you please
10 provide us with the page number and line number, the reference, thank you?

11 **MR. JOHN ADAIR:** Sure, and I apologise, Mr. Wardle, I should
12 have done that. It's page 56 of 144, using the PDF page numbers on the Neesons copy
13 of the transcript, lines 4 through 12. Mr. Jensen, Ms. McGrann asked you:

14 "And do you remember which factors weighed in
15 favour of the DBFM in your mind?" (As read)

16 And here's your answer, John Jensen, answer, and I'm going to
17 quote now:

18 "Well, I mean, the advantages of the design build
19 maintenance type model really lie around a better risk
20 profile for the City because the design construction
21 and integration lies in the hands of one single entity
22 with one throat to choke." (As read)

23 Do you recall giving that answer to Ms. McGrann?

24 **MR. JOHN JENSEN:** I do.

25 **MR. JOHN ADAIR:** And is it fair to say, sir, that that answer, which
26 is now on the screen—I appreciate the help of our tech support—that answer is not,
27 Mr. Jensen, in any way consistent with the idea of a partnership approach; correct?

28 **MR. JOHN JENSEN:** I would disagree because my meaning by

1 that is -- is a, unfortunately, a flip way of saying one entity is accountable.

2 **MR. JOHN ADAIR:** And I'm going to suggest to you what it really
3 means ---

4 **MR. JOHN JENSEN:** It was a poor -- it was a -- it was a poor
5 choice of words on my account. I did not mean that in an adversarial way.

6 **MR. JOHN ADAIR:** Okay, sir. And look, without getting too hung
7 up on the exact words that you chose, what I'm going to suggest to you is that the City's
8 approach to this was that its role was to exert leverage and pressure on RTG and some
9 of the subcontractors, primarily OLRTC, and that the City was not in fact approaching
10 this from a partnership-like perspective. Do you agree or disagree with that?

11 **MR. JOHN JENSEN:** I disagree with that.

12 **MR. JOHN ADAIR:** Thank you, sir. My time is essentially up, so
13 those are my questions for you.

14 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
15 According to the schedule I have, counsel for RTG Group is up next
16 with 25-minutes.

17 **MR. MICHAEL FENRICK:** Thank you, Mr. Commissioner,
18 Mr. Jensen. I just, after a lengthy examination by Commission Counsel, a lot of the
19 ground that we had intended to cover has been covered by Commission Counsel. So I
20 think I will be not taking my entire 25-minutes today, which I'm sure will please everyone
21 listening.

22 **COMMISSIONER HOURIGAN:** Well, take as long as you like, you
23 have 25-minutes. Go ahead.

24 **MR. MICHAEL FENRICK:** Sure.

25 **--- CROSS-EXAMINATION BY MR. MICHAEL FENRICK:**

26 **MR. MICHAEL FENRICK:** So Mr. Jensen, as you know, I'm
27 counsel for the RTG parties here today, and just going to ask you a few questions. The
28 first question ---

1 **COMMISSIONER HOURIGAN:** Sorry, Counsel. For the record,
2 put your name on the record.

3 **MR. MICHAEL FENRICK:** My name is Michael Fenrick. That's
4 Michael F-E-N-R-I-C-K for the record.

5 Now, Mr. Jensen, you'll recall, of course, that you were speaking
6 with Mr. Adair concerning your involvement in the procurement process? You recall
7 that?

8 **MR. JOHN JENSEN:** I do.

9 **MR. MICHAEL FENRICK:** And you were involved in -- as part of
10 your role in the procurement process, you were involved with the vehicle selection?

11 **MR. JOHN JENSEN:** I was.

12 **MR. MICHAEL FENRICK:** And you went to many meetings
13 regarding the vehicle selection during the procurement phase; that's fair?

14 **MR. JOHN JENSEN:** That's fair.

15 **MR. MICHAEL FENRICK:** And you attended many of those
16 meetings?

17 **MR. JOHN JENSEN:** I did.

18 **MR. MICHAEL FENRICK:** And do you recall, and in fairness I feel
19 I need to put this to you that Mr. Cosentino's evidence, I believe which we'll hear this
20 afternoon, is it's consistent with this, so I just wanted to put this to you in fairness. But
21 do you recall that at one of those meetings or more -- one or more of those meetings
22 that the City informed RTG that if it proceeded with the CF -- CAF vehicle its bid would
23 be non-compliant and it would be rejected?

24 **MR. JOHN JENSEN:** I do not recall that.

25 **MR. MICHAEL FENRICK:** That's fair, sir. I'd just like to speak a
26 little bit about one other topic. In your examination with Commission Counsel just a
27 moment ago, you discussed the fact that all risk with respect to schedule and other
28 matters was being transferred to the private partner. Is that a fair characterisation of

1 your evidence?

2 **MR. JOHN JENSEN:** Yes.

3 **MR. MICHAEL FENRICK:** But sir, you're familiar with the Project
4 Agreement and how it's structured since you were involved in negotiating it?

5 **MR. JOHN JENSEN:** Yes.

6 **MR. MICHAEL FENRICK:** And you're aware that this project
7 agreement and following the IO standard template of these project agreements does
8 include relief events. Is that fair?

9 **MR. JOHN JENSEN:** That's correct.

10 **MR. MICHAEL FENRICK:** And that those relief events do in fact
11 leave risk with the City in the sense that if one of those relief events occurs there may
12 be schedule relief on the project. Is that fair?

13 **MR. JOHN JENSEN:** Correct.

14 **MR. MICHAEL FENRICK:** And in fact, one of those relief events,
15 there's a list of them, and I won't take you to them unless we need to, but one of those
16 relief events would be, for instance, a blockade. Does that -- does accord with your
17 memory?

18 **MR. JOHN JENSEN:** I can't specifically recall the list of relief
19 events.

20 **MR. MICHAEL FENRICK:** You'll recall that one of them is pipes
21 bursting in a tunnel during tunnel work?

22 **MR. JOHN JENSEN:** I do not recall specific relief events. I'd have
23 to review the document.

24 **MR. MICHAEL FENRICK:** Okay, that's fair, sir. And we'll take
25 those up with other witnesses as they -- as they give evidence.

26 Now, I just want to turn to another topic. In your evidence,
27 Commission Counsel spoke to you about Brian Guest and Boxfish, who were City
28 consultants. Do you recall that?

1 **MR. JOHN JENSEN:** I do.

2 **MR. MICHAEL FENRICK:** And Mr. Guest provided a challenge
3 function, you said, and also innovative thinking about the project?

4 **MR. JOHN JENSEN:** Correct.

5 **MR. MICHAEL FENRICK:** And Mr. Guest, are you aware, he's not
6 a lawyer, is he?

7 **MR. JOHN JENSEN:** Not that I'm aware of.

8 **MR. MICHAEL FENRICK:** And he's not an engineer?

9 **MR. JOHN JENSEN:** Not that I'm aware of.

10 **MR. MICHAEL FENRICK:** So what was the nature of the advice
11 that Mr. Guest was providing? Was it more political in nature?

12 **MR. JOHN JENSEN:** His -- his advice -- his service that he was
13 providing was helping us to work through challenging various parts of the project and
14 suggesting innovations.

15 **MR. MICHAEL FENRICK:** Well, can you unpack that for me? I
16 think you said that a couple of times. What was this challenge function that he
17 performed?

18 **MR. JOHN JENSEN:** Well, working with us when we went through
19 value engineering, working with us as we went through various elements of the project,
20 and helping us and encouraging us to look at things with fresh eyes, challenge of
21 language, challenge design, to make sure that we were getting the best product
22 possible.

23 **MR. MICHAEL FENRICK:** And he's not a lawyer or an engineer,
24 so what was his basis for commenting on these -- on these items?

25 **MR. JOHN JENSEN:** His basis was on his experience as a -- as a
26 consultant.

27 **MR. MICHAEL FENRICK:** And working with politicians in the past?

28 **MR. JOHN JENSEN:** I'm not familiar with all of Mr. Guest's

1 activities.

2 **MR. MICHAEL FENRICK:** And Mr. Guest was involved in
3 discussions about the Project Agreement?

4 **MR. JOHN JENSEN:** He had -- yes, he was involved.

5 **MR. MICHAEL FENRICK:** And it's fair to say that the City found
6 that Mr. Guest -- that the City relied on Mr. Guest's advice and Boxfish's advice?

7 **MR. JOHN JENSEN:** Mr. Guest provided valuable input but, in
8 project agreement, we were relying our legal team and our financial team to manage the
9 project agreement..

10 **MR. MICHAEL FENRICK:** But he was a significant consultant to
11 the City?

12 **MR. JOHN JENSEN:** He provided value.

13 **MR. MICHAEL FENRICK:** So he was a significant consultant. He
14 provided value, correct?

15 **MR JOHN JENSEN:** He was a consultant for the project and he
16 provided value.

17 **COMMISSIONER HOURIGAN:** Again, Mr. Jensen, these are
18 specific questions being put to you. You need to listen to the question and answer the
19 question, all right? Counsel's asked you twice. I'm going to ask counsel to ask you one
20 more time.

21 **MR. MICHAEL FENRICK:** Mr. Guest was a significant consultant
22 to the City?

23 **MR. JOHN JENSEN:** It -- I can't define "significant". I don't
24 understand that word.

25 **MR. MICHAEL FENRICK:** His advice was -- his advice and
26 recommendations were taken seriously?

27 **MR. JOHN JENSEN:** Yes.

28 **MR. MICHAEL FENRICK:** Okay. I just want to take you to -- again,

1 just a couple of questions about the -- there's a lot of acronyms in this case, so forgive
2 me, but the design, build, finance, maintain model, the DBFM model, do you recall you
3 were asked some questions by Commission counsel about that?

4 **MR. JOHN JENSEN:** I was.

5 **MR. MICHAEL FENRICK:** And you'd agree with me that the
6 finance component of the DBFM model can benefit the City?

7 **MR. JOHN JENSEN:** Yes.

8 **MR. MICHAEL FENRICK:** And that one of the elements of adding
9 in the finance to the model is that it brings third-party lenders and investors into the
10 picture?

11 **MR. JOHN JENSEN:** Yes.

12 **MR. MICHAEL FENRICK:** And that third-party lenders tend to be
13 very interested in making sure that they benefit from the process and from the project.
14 Is that fair?

15 **MR. JOHN JENSEN:** I would assume so, yes.

16 **MR. MICHAEL FENRICK:** And one benefit is that third-party
17 lenders provide additional oversight or independent oversight from the other parties on
18 the project. Is that fair?

19 **MR. JOHN JENSEN:** That's our understanding.

20 **MR. MICHAEL FENRICK:** On the both the City and the contractor,
21 correct?

22 **MR. JOHN JENSEN:** I would assume on the contractor. I'm not
23 sure how the City is involved.

24 **MR. MICHAEL FENRICK:** So as a general proposition with me,
25 you'd agree there is a benefit to the City of having third-party lenders involved in a
26 project of this kind.

27 **MR. JOHN JENSEN:** Yes, I believe so.

28 **MR. MICHAEL FENRICK:** Just a couple more questions. When

1 did you involvement with the project -- Stage 1 of the project end, approximately.?

2 **MR. JOHN JENSEN:** At contract award.

3 **MR. MICHAEL FENRICK:** So that was about 2012, then?

4 **MR. JOHN JENSEN:** Yeah, January 2013, December 2012, in
5 there.

6 **MR. MICHAEL FENRICK:** Okay. And you've had very little
7 involvement or no involvement in the project since then?

8 **MR. JOHN JENSEN:** I've had no involvement in the project since
9 then.

10 **MR. MICHAEL FENRICK:** So in terms of discussions that may
11 have taken place closer to revenue service, closer to when passengers started riding
12 the trains, about a soft launch, you wouldn't know anything about that?

13 **MR. JOHN JENSEN:** No, I was not involved in that.

14 **MR. MICHAEL FENRICK:** Thank you. Those are our questions
15 for this witness.

16 **COMMISSIONER HOURIGAN:** All right, thank you, Counsel.

17 Alstom is next.

18 **MR. MICHAEL VALO:** Thank you.

19 **--- CROSS-EXAMINATION BY MR. MICHAEL VALO:**

20 **MR. MICHAEL VALO:** Good morning, Mr. Jensen. My name is
21 Michael Valo. That's Valo, v-a-l-o. And I'm one of the lawyers for Alstom. I've been
22 allocated only five minutes this morning, so I have really just one line of questioning to
23 ask you about. And I'd like to back, if I could, to some of the questions that Mr. Adair
24 had asked you with respect to the City's requirements, the PA requirements for the
25 vehicle. Do you recall if you went through some requirements in the PSOS?

26 **MR. JOHN JENSEN:** I do.

27 **MR. MICHAEL VALO:** And he had asked you, sir, and you had
28 agreed, that one of the requirements is that the vehicle had to perform the same way

1 regardless of weather conditions. Do you recall that?

2 **MR. JOHN JENSEN:** I recall that.

3 **MR. MICHAEL VALO:** And really, it's just that limited element that
4 I want to understand more clearly. When you say "operate the same way", was it the
5 City's expectation, and your expectation, that the vehicle would be operated the same
6 way regardless of weather conditions?

7 **MR. JOHN JENSEN:** I'm not sure how to answer that, but -- but
8 the output specification would have defined the expectations of the City in terms of the
9 vehicle and its operation in whichever climatic conditions.

10 **MR. MICHAEL VALO:** Let come at it by way of analogy, then. Do
11 you have a driver's license, sir?

12 **MR. JOHN JENSEN:** Yes.

13 **MR. MICHAEL VALO:** And you drive a car?

14 **MR. JOHN JENSEN:** Yes.

15 **MR. MICHAEL VALO:** And you've been driving in Ottawa some
16 long period of time, I presume?

17 **MR. JOHN JENSEN:** I have driven in Ottawa.

18 **MR. MICHAEL VALO:** And do you drive your car the same way in
19 the summer as you do in the winter when there's snow on the ground, for example?

20 **MR. JOHN JENSEN:** I drive according to the conditions.

21 **MR. MICHAEL VALO:** Right. So, for example, if there's snow on
22 the ground, you might break at a more gentle rate coming up to the stop sign in the
23 winter as you would -- as compared to summer. Is that fair?

24 **MR. JOHN JENSEN:** Of course.

25 **MR. MICHAEL VALO:** Right. So coming back to the requirement
26 that the vehicle perform the same way in summer and winter, we shouldn't understand
27 the City's expectation from the PSOS to mean the vehicle would be operated in identical
28 ways in the summer and winter, should we?

1 **MR. JOHN JENSEN:** The vehicle would be operated according to
2 the specifications that were laid out in the project agreement.

3 **MR. MICHAEL VALO:** Sir, I'm not sure that quite answers my
4 question. I understand -- we've heard from you the performance specification required
5 the same performance levels regardless of the weather. I'm asking about how we're to
6 interpret that. Are we to interpret that to mean that the expectation was for these
7 vehicles to accelerate and brake at exactly the same rate regardless of the weather
8 conditions?

9 **MR. JOHN JENSEN:** I can't interpret the project agreement for
10 you here. I'm sorry.

11 **MR. MICHAEL VALO:** Okay. Thank you, Mr. Jensen. Those are
12 all my question.

13 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
14 Next up is Infrastructure Ontario.

15 **MS. JULIE PARLA:** Infrastructure Ontario. We don't have any
16 questions for this witness.

17 **COMMISSIONER HOURIGAN:** All right.
18 Next up is STV.

19 **--- CROSS-EXAMINATION BY MR. JAMES DORIS:**

20 **MR. JAMES DORIS:** Good morning, Mr. Jensen. My name is
21 James Doris, Tyr LLP, counsel for STV. Just a few questions. And so I understand
22 from your evidence that your involvement on the project ended after the project award?

23 **MR. JOHN JENSEN:** At contract award, yes.

24 **MR. JAMES DORIS:** And I take it from that answer, sir, that you
25 were not, then, involved in enforcement, on behalf of the City, of the project agreement?

26 **MR. JOHN JENSEN:** I'm sorry. I didn't hear the question.

27 **MR. JAMES DORIS:** You were not involved in the enforcement of
28 the project agreement.

1 **MR. JOHN JENSEN:** Correct.

2 **MR. JAMES DORIS:** And so you're not able to speak to the City's
3 approach to the enforcement of the agreement, right?

4 **MR. JOHN JENSEN:** Yeah, I can't speak to how the City managed
5 once I left.

6 **MR. JAMES DORIS:** Thank you. Those are my questions.

7 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
8 Next is the Province of Ontario.

9 **MS. HEATHER MACKAY:** Good morning, Heather Mackay for the
10 Province. The Province has no questions for this witness, Commissioner.

11 **COMMISSIONER HOURIGAN:** Thank you.

12 Next is the Amalgamated Transit Union 279.

13 **MR. JOHN McLUCKIE:** Good morning, sir, John McLuckie,
14 spelling m-c-l-u-c-k-i-e, for the record, sir, counsel for AT Local 279.

15 **COMMISSIONER HOURIGAN:** Go ahead, Counsel.

16 **--- CROSS-EXAMINATION BY MR. JOHN McLUCKIE:**

17 **MR. JOHN McLUCKIE:** So, Mr. Jensen, I have about 5 minutes,
18 so I'll try and be succinct in my questioning of you. You were familiar with OC Transpo
19 given both that you're a resident of Ottawa and involved with the City's transportation
20 network?

21 **MR. JOHN JENSEN:** Correct.

22 **MR. JOHN McLUCKIE:** And you knew that OC Transpo, prior to
23 light rail, moved their passengers using a bus-based rapid-transit system?

24 **MR. JOHN JENSEN:** Sorry, ask the question again, please?

25 **MR. JOHN McLUCKIE:** OC Transpo uses buses prior to the light
26 rail to move their passengers?

27 **MR. JOHN JENSEN:** Correct.

28 **MR. JOHN McLUCKIE:** And OC Transpo owned those buses?

1 **MR. JOHN JENSEN:** As far as I know, yes.

2 **MR. JOHN McLUCKIE:** And it was OC Transpo staff that
3 maintained those buses?

4 **MR. JOHN JENSEN:** As far as I know, yes.

5 **MR. JOHN McLUCKIE:** So if there was a concern or a question
6 about bus maintenance, OC Transpo had access to the employees and the managerial
7 staff responsible for those buses, correct?

8 **MR. JOHN JENSEN:** I would assume so.

9 **MR. JOHN McLUCKIE:** So let's talk about the P3 project that the
10 light rail became. You indicated in your interview earlier with Commission counsel that
11 the P3 model was not mandated by any of your funding partners. Do you still agree
12 with that?

13 **MR. JOHN JENSEN:** That's -- I'm not aware of it being mandated,
14 no.

15 **MR. JOHN McLUCKIE:** So that was a city choice to move forward
16 in the P3 model?

17 **MR. JOHN JENSEN:** Based on a rigorous analysis, yes.

18 **MR. JOHN McLUCKIE:** Do you remember who made that choice?
19 Who gave the direction that P3 was to be the model used?

20 **MR. JOHN JENSEN:** The P3 model was selected through a
21 rigorous process led by Deloitte. And then the decision executed up through the
22 executive steering committee.

23 **MR. JOHN McLUCKIE:** And who comprised the steering
24 committee?

25 Are there politicians on that committee or simply staff?

26 **MR. JOHN JENSEN:** The steering committee was comprised of
27 City staff, Infrastructure Ontario, and advisors as necessary.

28 **MR. JOHN McLUCKIE:** So you're saying the ultimate decision for

1 P-3 was made by staff rather than elected officials of the City?

2 **MR. JOHN JENSEN:** No. The ultimate decision was made by
3 council based on a recommendation from staff.

4 **MR. JOHN McLUCKIE:** In the P-3 model that was chosen, I think
5 Commission counsel took you through earlier this morning, that was the design, build,
6 finance, and maintain model, correct?

7 **MR. JOHN JENSEN:** Correct.

8 **MR. JOHN McLUCKIE:** So for a 30-year period, the train is going
9 to be maintained by the consortium that bid for the P-3?

10 **MR. JOHN JENSEN:** Correct.

11 **MR. JOHN McLUCKIE:** And that will mean then that the staff that
12 maintain the train are not employed by the City of Ottawa, correct?

13 **MR. JOHN JENSEN:** Correct.

14 **MR. JOHN McLUCKIE:** And the staff that clean the trains are not
15 maintained by the City of Ottawa?

16 **MR. JOHN JENSEN:** Correct.

17 **MR. JOHN McLUCKIE:** Then, in fact, the consortium
18 subcontracted that role to Alstom, correct?

19 **MR. JOHN JENSEN:** To the best of my knowledge.

20 **MR. JOHN McLUCKIE:** So the City's control over the people that
21 clean and maintain the light rail is essentially two steps removed. You have a contract
22 with RTG, who in turn, has a contract with Alstom, correct?

23 **MR. JOHN JENSEN:** I couldn't speak to that. I can speak to the
24 actual arrangement.

25 **MR. JOHN McLUCKIE:** Okay. But do you understand the
26 arrangement to be the City has a contract with RTG?

27 **MR. JOHN JENSEN:** The City has a contract with RTG.

28 **MR. JOHN McLUCKIE:** And RTG has subcontracted the

1 maintenance and cleaning of the vehicles, the trainsets, to Alstom. You understand that
2 to be true?

3 **MR. JOHN JENSEN:** I can't speak to the specifics of that. That
4 would be RTG's structure, as they've developed it.

5 **MR. JOHN McLUCKIE:** So you're not aware that RTG
6 subcontracted that role to Alstom?

7 **MR. JOHN JENSEN:** I believe so, but I can't recall now.

8 **MR. JOHN McLUCKIE:** So again, that will mean that the City has
9 no direct control over any of the staff or any of the employees responsible for
10 maintaining or cleaning those vehicles?

11 **MR. JOHN JENSEN:** I can't speak to the span of control.

12 **MR. JOHN McLUCKIE:** Okay. So let me move on to another area
13 then, if you can't speak to the span of control. You're familiar with the Calgary system?
14 I understand you were previously employed there?

15 **MR. JOHN JENSEN:** Many years ago, yes.

16 **MR. JOHN McLUCKIE:** And you were previously employed
17 specifically with the light rail system in Calgary?

18 **MR. JOHN JENSEN:** I was employed with Calgary Transit.

19 **MR. JOHN McLUCKIE:** And one of your areas of responsibility
20 was light rail?

21 **MR. JOHN JENSEN:** Yes.

22 **MR. JOHN McLUCKIE:** And the maintenance function in Calgary,
23 is it performed by Calgary Transit staff or by contracted staff?

24 **MR. JOHN JENSEN:** Oh, I can't recall the structure of that.

25 **MR. JOHN McLUCKIE:** Surprise you to learn that it's Calgary
26 Transit staff directly that provide the maintenance function?

27 **MR. JOHN JENSEN:** Okay.

28 **MR. JOHN McLUCKIE:** A few other questions, if I can, in terms of

1 selection of the vehicle, and again, I have five minutes. I'm trying to be really precise in
2 my questioning of you.

3 Calgary, does it use Alstom for its trainsets?

4 **MR. JOHN JENSEN:** I believe Calgary uses Siemens, but I don't
5 work for Calgary any more, so I don't know what they're doing.

6 **MR. JOHN McLUCKIE:** And in deciding to move with Alstom --
7 you were asked this in your initial interview with Commission counsel -- was any effort
8 given to see what other cities with perhaps similar climates to Ottawa were using for
9 their trainsets?

10 **MR. JOHN JENSEN:** There was research done into what was
11 running globally in different areas, yes.

12 **MR. JOHN McLUCKIE:** Yeah. And you looked at Calgary, I'm
13 assuming?

14 **MR. JOHN JENSEN:** Yes.

15 **MR. JOHN McLUCKIE:** And are they running Alstom trains?

16 **MR. JOHN JENSEN:** Not that I'm aware of, but again, I don't work
17 for Calgary.

18 **MR. JOHN McLUCKIE:** In the research that you did, looking at
19 other cities and what they were running, did you find any cold weather climate where
20 this particular type of train was being run?

21 **MR. JOHN JENSEN:** I can't speak to that specifically now because
22 I don't have that research in front of me.

23 **MR. JOHN McLUCKIE:** Do you recall being directed or pointed to
24 any research that would have shown this particular vehicle being run in a cold weather
25 climate such as Ottawa?

26 **MR. JOHN JENSEN:** Our technical advisors would have done that
27 research, and I don't have that available to me.

28 **MR. JOHN McLUCKIE:** But the question was, do you recall being

1 directed or advised that there was research about that? So that's the question, so
2 answer that question, please.

3 **MR. JOHN JENSEN:** Yes, I was advised that there was research
4 done, I just can't recall all of the research that was done.

5 **MR. JOHN McLUCKIE:** And going back again to the operations of
6 the train, in terms of the public private partnership, does the City have the ability to give
7 specific direction to the contractor for the maintenance process? Can you, for example,
8 say, "Do this or don't do that"?

9 **MR. JOHN JENSEN:** Within the terms of the project agreement,
10 yes.

11 **MR. JOHN McLUCKIE:** Okay. And what manager was appointed
12 by you to supervise how Alstom was planning to maintain the trains? Who had that
13 responsibility?

14 **MR. JOHN JENSEN:** I'm sorry? I don't understand the question.

15 **MR. JOHN McLUCKIE:** Within your project team, who was
16 responsible for working with Alstom to design the maintenance plan for the trains once
17 they entered revenue service?

18 **MR. JOHN JENSEN:** Once they entered revenue service? That
19 would have occurred after I left.

20 **MR. JOHN McLUCKIE:** In terms of the plan before you left, were
21 you aware of what information or what steps Alstom had taken to provide the City with
22 the maintenance plan for the trains?

23 **MR. JOHN JENSEN:** That was part of the bid process.

24 **MR. JOHN McLUCKIE:** I have no further questions, sir.

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

26 Next is RTGEJV.

27 **MR. MICHAEL VRANTSIDIS:** Thank you, Mr. Commissioner.

28 Michael Vrantsidis, V-r-a-n-t-s-i-d-i-s, for the record. We have no

1 questions for this witness. Thank you.

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

3 Then I have Morrison Hershfield.

4 **MR. KYLE LAMBERT:** Thank you, Mr. Commissioner.

5 Kyle Lambert, for Morrison Hershfield. No questions for this
6 witness.

7 **COMMISSIONER HOURIGAN:** All right.

8 Then I have Transport Action Canada.

9 **MR. DAVID JEANES:** Yes, my name is David Jeanes, J-e-a-n-e-s,
10 and I am representing Transport Action Canada, which is a not-for-profit advocacy
11 organization.

12 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

13 **MR. DAVID JEANES:** Listened with interest, Mr. Jensen, thank
14 you, and I have a few questions, based on your testimony given earlier, and what you've
15 said today.

16 First of all, you mentioned that when you began in 2009,
17 specifications were available from the earlier North-South Light Rail Project, the
18 cancelled project, and that some information from those specifications was carried over,
19 for example, with relation to winter operation conditions and how those needs might be
20 met; is that correct?

21 **MR. JOHN JENSEN:** Correct.

22 **MR. DAVID JEANES:** Yeah. Now, a question I have is, we had a
23 lot of winter experience from the light rail pilot project, which I think you're also familiar
24 with, that had been operating for about eight years at that time, quite reliably, although a
25 different type of operation, certainly, operating in Ottawa's winter conditions, and some
26 things learned from that.

27 Was any of that specific experience fed into the specification for
28 Stage 1?

1 **MR. JOHN JENSEN:** I can't recall.

2 **MR. DAVID JEANES:** Okay. You talked about planning decisions
3 that had already been made before 2009, for example, the selection of light rail
4 technology versus metro technology, and I recall the City's technology forum, which I
5 believe was held in 2007, and City committee and council decisions after that which
6 selected light rail technology in principle for this system. I think you're familiar that that
7 had happened prior to 2009?

8 **MR. JOHN JENSEN:** That's correct.

9 **MR. DAVID JEANES:** And the mention earlier today in your
10 testimony was that the initial requirement was for 70 percent low floor, which I believe
11 was fairly typical of most light rail operations in North America at the time, but that at
12 some point, the decision was made that it had to be 100 percent low floor, and that, of
13 course, has implications on things like, wheel diameters that are possible, how much
14 equipment can be placed under the floor, and how bogies have to be designed, and so
15 on.

16 When was that decision to go from 70 percent low floor to 100
17 percent low floor made?

18 **MR. JOHN JENSEN:** You've got me now. I'd have to go back and
19 look at the project specifications that we landed with.

20 **MR. DAVID JEANES:** Yeah. I'm raising it partly because the 70
21 percent number was mentioned by Commission counsel earlier in ---

22 **MR. JOHN JENSEN:** I'd have to go back to the project
23 specifications right now to see what they are.

24 **MR. DAVID JEANES:** All right. Well, I only have five minutes, so I
25 won't dwell on that.

26 Another aspect of the specification was the 100-kilometre per hour
27 speed versus what was more typical at the time in North American light rail, which was
28 80 kilometres per hour, and I believe a number of vehicles that were on the market were

1 not actually capable of 100 kilometres per hour, particularly low-floor vehicles. Do you
2 know when that decision was taken? Was that speed decision taken prior to 2009?

3 **MR. JOHN JENSEN:** Well, that decision would have been taken in
4 consultation with our technical advisors to put the best specifications together for a
5 vehicle that would have the best operation here.

6 **MR. DAVID JEANES:** So Capital Transit Partners would have
7 been involved in that decision?

8 **MR. JOHN JENSEN:** Capital Transit Partners would have been
9 our technical advisor in terms of the output specification in the specification for the
10 vehicles.

11 **MR. DAVID JEANES:** Okay. One thing that was mentioned
12 earlier, I think, was the number of trains that were required for initial service and I'm not
13 quite sure. Some of this comes from other testimony, but initially, there were estimates
14 that by 2021, we would have to have a certain number of trains in service that -- based
15 on 120 metre train length trains running every 3.5 minutes in order to meet the 2021
16 requirements, and since then, we went to a shorter train length, about 100 metres rather
17 than 120 metres, and we aren't running trains, really, any more frequently than four
18 minutes.

19 So, I'm wondering, was that one of the cost-saving measures to
20 sort of downsize the initial plan to assist in capacity?

21 **MR. JOHN JENSEN:** The numbers of vehicles were determined by
22 the modelling characteristics and the ridership of the system, and the system was
23 adjusted to accommodate for the objectives that needed to be met in terms of ridership.

24 **MR. DAVID JEANES:** Okay. Do I have time for another question?

25 **COMMISSIONER HOURIGAN:** You do. Go ahead.

26 **MR. DAVID JEANES:** Thank you. So, also related to the number of
27 vehicles, in order for the system to be maintainable, there was a provision for a surplus
28 over the minimum number of vehicles needed to operate the service, and I know this

1 has become quite controversial in light of later things that were happening, but the 15
2 trains that were proposed to operate the initial service and, of course, those are 15 two-
3 car trains, so it was 30 vehicles coupled in pairs, that that number was augmented by
4 two additional trains in order to permit the maintenance cycles to operate. So, that's
5 about a seven per cent -- sorry, that's about 1/7 redundancy, if you like, in terms of
6 additional trains, two trains more than the 15 needed to run the maximum service?

7 **MR. JOHN JENSEN:** And is there a question?

8 **MR. DAVID JEANS:** Yes. Well, the question, I guess, is that
9 earlier on, for example, on the light rail pilot project, we had gone with a redundancy
10 factor of 50 per cent. In other words, in order to run the initial light rail service, we had
11 three trains where only two were ever in service. When we went to the Alstom LINT
12 Diesel light rail vehicle at a later stage, we operated four vehicles, but we ordered six.
13 So, there was always a 50 per cent margin to allow for maintenance or failures. And
14 yet, with the Confederation line, we ended up with only a 1/7, for about a 14, 15 per cent
15 margin, and I'm just wondering when that -- when that change happened.

16 **MR. JOHN JENSEN:** Well, the fleet size would be -- the fleet size
17 and the spare size would have been determined by our technical advisors based on
18 their experience regarding maintenance requirements, and also in terms of the capacity
19 -- the number of vehicles required to carry the capacity on the system based on
20 modelling. So, our technical advisors would have come up with those numbers.

21 **COMMISSIONER HOURIGAN:** All right. Again, the question was
22 when. So, do I take from your evidence that it was consistent throughout?

23 **MR. JOHN JENSEN:** I can't recall.

24 **MR. DAVID JEANS:** Okay. I'm just going to close with one very
25 quick -- last question, if I may? The public interest was mentioned specifically in terms
26 of the document of guiding principles early on in the project, and I'm just wondering to
27 what extent the requirement for transparent communication with the public included the
28 experts such as the members of the Capital Transit Partners and so on. To what extent

1 was there public engagement or public presentations or an opportunity for the public to
2 interact with the experts who were guiding your work?

3 **MR. JOHN JENSEN:** To my recollection, through the process,
4 there was public consultation in the form of open houses and input from the public. I
5 can't recall specifically what all of that was. There was public consultation as part of the
6 process.

7 **MR. DAVID JEANS:** Thank you very much, Mr. Jensen.

8 **COMMISSIONER HOURIGAN:** Thank you. Next, we have the
9 City of Ottawa.

10 **MR. DAVID JEANS:** Thank you, Mr. Commissioner. Peter Wardle
11 for the City of Ottawa, W-A-R-D-L-E.

12 **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

13 **MR. PETER WARDLE:** Mr. Jensen, I want to start by asking you
14 some questions about the City budget, and you will recall that Mr. Adair asked you
15 some questions about design to budget, do you recall that?

16 **MR. JOHN JENSEN:** I do.

17 **MR. PETER WARDLE:** And you said in one of your answers that it
18 was in the City's interest that it be managed, and that you deliver best value for cost; do
19 you recall that answer?

20 **MR. JOHN JENSEN:** I do.

21 **MR. PETER WARDLE:** Is there, in your view, anything
22 inconsistent with that principle to the overall goals and objectives of the City as set out
23 in the Project Charter or the project management plan?

24 **MR. JOHN JENSEN:** I'm sorry, ask the question again, please?

25 **MR. PETER WARDLE:** I'll rephrase it slightly, Mr. Jensen. Is there
26 anything in the idea of best value for costs that is inconsistent with the goals and
27 objectives set out in the Project Charter or the project management plan that Mr. Adair
28 took you to?

1 **MR. JOHN JENSEN:** No, not that I'm aware.

2 **MR. PETER WARDLE:** And during the period you were involved in
3 this project up until the project award, did you develop any concerns that the budget for
4 this project was insufficient?

5 **MR. JOHN JENSEN:** No, I did not.

6 **MR. PETER WARDLE:** And did the City have a plan during the
7 procurement period for the possibility that the budget might be exceeded during the bid
8 period?

9 **MR. JOHN JENSEN:** Yes, we did.

10 **MR. PETER WARDLE:** And can you explain to Mr. Commissioner
11 what that plan involved?

12 **MR. JOHN JENSEN:** Well, as you are aware, we had an
13 affordability cap, and we also had a risk transfer ladder for the risk transfer to the tunnel.
14 Bidders were given options in terms of what they strategically chose in their bid to come
15 under the affordability cap to make selections from the risk ladder, and to the extent that
16 various options were chosen, they would be -- proceed through the process in different
17 ways.

18 So, if they were below the affordability cap, and depending on the
19 risk model they chose, they would advance in the selection process, and if they all
20 ended up being above the cap, then they would be in a different part of the process, and
21 the RFP clearly laid out what the City's actions and responsibilities were in each of
22 those stages. So, the City had options all the way through to all of the bids coming in
23 over budget, and we had -- we could make decisions at that point, and the bidders were
24 all aware of that. So, how they wanted to position themselves was up to them in terms
25 of their strategy and their analysis.

26 **MR. PETER WARDLE:** And were there confidential commercial
27 meetings during the procurement period to discuss the affordability cap?

28 **MR. JOHN JENSEN:** We had extensive discussions with the

1 bidders through the entire process in the forms of request for information, commercially
2 confidential meetings, and design presentation meetings where there was ample
3 opportunity to have conversations with the bidders, hear input from the bidders, and to
4 the extent that we heard input, we would evaluate that and possibly make changes to
5 the project agreement moving forward. But we were quite cautious from a fairness
6 perspective. So, to the extent that we heard something from more than one bidder, we
7 took it very seriously, but there was ample opportunity for dialogue and for input through
8 the process.

9 **MR. PETER WARDLE:** And if the bidders had all come in above
10 the affordability cap during the bid process, what were the options that were open to the
11 City at that point?

12 **MR. JOHN JENSEN:** I'm trying to recall all of the options, but there
13 was certainly an option to proceed. There were options to negotiate with a bidder.
14 There was an option, if we chose, to cancel and rebid the project. So, several
15 alternatives were available to us.

16 **MR. PETER WARDLE:** And do you recall, Mr. Jensen, how many
17 of the proponents at the end of the day came in below or above the affordability cap?

18 **MR. JOHN JENSEN:** Well, more than one proponent came in
19 below the affordability cap. I can't recall right now if it was all three, but more than one
20 came below the affordability cap.

21 **MR. PETER WARDLE:** You were asked some questions about the
22 schedule and the changes to the schedule that were made by the City in 2011, and, first
23 of all, who did the city rail office get advice from in connection with the schedule?

24 **MR. JOHN JENSEN:** We would have relied on advice from CTP.

25 **MR. PETER WARDLE:** And when the schedule was changed as
26 outlined in Ms. Schepers report in May 2011, were you aware that that change was
27 taking place?

28 **MR. JOHN JENSEN:** Yes.

1 **MR. PETER WARDLE:** And did you have any concerns about it at
2 the time?

3 **MR. JOHN JENSEN:** No, I did not.

4 **MR. PETER WARDLE:** And did you ever receive advice from any
5 of the consultants who were working with the City at the time that the change to the
6 project's schedule was unrealistic or somehow not achievable?

7 **MR. JOHN JENSEN:** No.

8 **MR. PETER WARDLE:** Going forward, and thinking about the
9 schedule during the procurement period, would it have been your expectation that if any
10 of the proponents had issues with the City's overall schedule that those would have
11 been raised during the procurement period?

12 **MR. JOHN JENSEN:** Yes. Absolutely. They would have been
13 raised through one of the meetings or through the Request for Information process.

14 **MR. PETER WARDLE:** And can you recall, today, whether there
15 were any such concerns raised that were not addressed during that process?

16 **MR. JOHN JENSEN:** I believe any concerns that may have been
17 raised would have been addressed.

18 **MR. PETER WARDLE:** You were asked a lot of questions, Mr.
19 Jensen, by my friend, Mr. Adair, about the issue of service proven, and, in particular, the
20 Alstom vehicle. And I just want to start by asking you to explain to Mr. Commissioner
21 what your level of involvement was in this process.

22 **MR. JOHN JENSEN:** I was the director of the project.

23 **MR. PETER WARDLE:** And with respect to the documents that
24 Mr. Adair showed you dealing with comments, for example, with respect to the Alstom
25 vehicle at the early stage of the procurement process in January 2012, would you have
26 been directly involved in those communications?

27 **MR. JOHN JENSEN:** No.

28 **MR. PETER WARDLE:** And who would have been involved on the

1 City's side in those communications?

2 **MR. JOHN JENSEN:** The chief engineer would be the primary.

3 **MR. PETER WARDLE:** And is that Mr. Gary Craig?

4 **MR. JOHN JENSEN:** That's correct.

5 **MR. PETER WARDLE:** And, Mr. Jensen, is it the case that Mr.
6 Craig passed away earlier this year?

7 **MR. JOHN JENSEN:** Unfortunately, yes.

8 **MR. PETER WARDLE:** And so, with respect to the documents you
9 were shown with respect to the issue of service proven, winter conditions, all of those
10 issues, were you directly involved in any of the discussions that took place between the
11 City and the proponents?

12 **MR. JOHN JENSEN:** Not as a rule.

13 **MR. PETER WARDLE:** With respect to the Alstom vehicle, I'd like
14 to show the witness COW0544752.

15 **COMMISSIONER HOURIGAN:** Just give us that number one more
16 time, slowly.

17 **MR. PETER WARDLE:** COW0544752.

18 **COMMISSIONER HOURIGAN:** It will just take a minute. Hang on.

19 **MR. PETER WARDLE:** Thank you, Mr. Commissioner.

20 All right. And if we just scroll through the first page of this
21 document, Mr. Jensen, just to get the date, you'll see at the top of the page it gives a
22 date of September 10, 2012. Do you remember when the bids closed?

23 **MR. JOHN JENSEN:** It was in and around that time.

24 **MR. PETER WARDLE:** If I....

25 **MR. JOHN JENSEN:** I can't remember the date.

26 **MR. PETER WARDLE:** Okay. I don't think this is controversial, I'm
27 going to suggest.

28 **COMMISSIONER HOURIGAN:** You can lead him on this. It's fine.

1 **MR. PETER WARDLE:** Thank you, Mr. Commissioner.

2 **COMMISSIONER HOURIGAN:** Go ahead.

3 **MR. PETER WARDLE:** I understand it was at the end of
4 September 2012. And is this a design submission from RTG -- if we scroll down on the
5 first page?

6 **MR. JOHN JENSEN:** Yes.

7 **MR. PETER WARDLE:** If we could go to Page 118 of the PDF.
8 So, this is a section -- perhaps we can make the document a little bigger. This is a
9 section that deals with vehicles. Sorry, we need to go back to Page 118. Thank you.
10 All right. And would this be the information that was provided to the City in connection
11 with RTG's bid with respect to the Alstom vehicle?

12 **MR. JOHN JENSEN:** Yes, it would.

13 **MR. PETER WARDLE:** And you'll see that it indicates in the
14 second paragraph:

15 "From the outset that the OLRT did process, the RTG
16 team was intent on finding the right solution for Ottawa's
17 unique needs."

18 Do you see that?

19 **MR. JOHN JENSEN:** I do.

20 **MR. PETER WARDLE:** And then, a couple of sentences down:

21 "For more than six months the RTG team thoroughly
22 reviewed submissions from the world's leading suppliers
23 of rail vehicles and systems. We measured and
24 evaluated their products and performance against the
25 Ottawa challenges, cold-climate operations, state-of-the-
26 art vehicles, and train control that have proven in
27 service, modern low-floor convenience, plus 100
28 kilometre per hour capability, to name just a few."

1 Do you see that?

2 **MR. JOHN JENSEN:** I do.

3 **MR. PETER WARDLE:** And then you'll see, if we go down a
4 couple of paragraphs:

5 "Worldwide, Alston Transportation is a global
6 powerhouse having earned in excess of 8 billion dollars
7 in revenue in the past operating year."

8 And without holding you to a number, Mr. Jensen, from your
9 background and experience in the light rail business, is that an accurate statement?

10 **MR. JOHN JENSEN:** I would say so.

11 **MR. PETER WARDLE:** And then if we go to the next paragraph,
12 you'll see:

13 "The Citadis vehicle is the only 100 percent low-floor
14 vehicle operating at 100 kilometres in the world today.
15 Its sleek urban design is the ideal solution for Ottawa's
16 urban environment."

17 Do you see that?

18 **MR. JOHN JENSEN:** I do.

19 **MR. PETER WARDLE:** And then if we scroll down a little further in
20 the same paragraph:

21 The LXE GE Bogie allows the passenger interior of the
22 car to have all of the accessibility and convenience of
23 100 percent low-floor LRV, but many of the operational
24 and performance advantages of a 70 percent low-floor
25 LRV. This will prove invaluable in winter operating
26 conditions in Ottawa.

27 Do you see that?

28 **MR. JOHN JENSEN:** I do.

1 **MR. PETER WARDLE:** And did you have any concerns, Mr.
2 Jensen, at the time of contract award, that the Alstom vehicle proposed by RTG was not
3 a service proven vehicle that met the requirements of Schedule 15.2, Part 4 of the
4 Project Agreement?

5 **MR. JOHN JENSEN:** I had no concerns.

6 **MR. PETER WARDLE:** Thank you very much. I'd like to -- we can
7 take the share down, and I'd like to go to another issue.

8 You were asked some questions, Mr. Jensen, about the fact that
9 the vehicles were going to be assembled in Ottawa. Do you recall those questions?

10 **MR. JOHN JENSEN:** I recall.

11 **MR. PETER WARDLE:** Okay. And it was suggested to you by Mr.
12 Adair that that required the project, I'm not sure he identifies a specific party to take on a
13 certain degree of risk. Do you recall that?

14 **MR. JOHN JENSEN:** Yes.

15 **MR. PETER WARDLE:** Where did the Canadian content
16 requirements come from with respect to this project, Mr. Jensen?

17 **MR. JOHN JENSEN:** It comes from the Province of Ontario.

18 **MR. PETER WARDLE:** And was it a condition of the Province
19 providing funding for this project?

20 **MR. JOHN JENSEN:** Yes, it was. It was also a federal condition.

21 **MR. PETER WARDLE:** And you gave an answer which you were
22 asked about the risk and you said, "I would expect an internationally qualified company
23 like Alstom to be perfectly capable of setting up a production line in Ottawa.

24 Can you just elaborate on what you meant by that?

25 **MR. JOHN JENSEN:** Well, what I mean is that a company with the
26 experience and the production volume like Alstom would be perfectly able to set up a
27 production facility in any facility that was capable of holding it, a maintenance facility no
28 exception. So there was no reason to be concerned because a manufacturer like that

1 would be able to set up a facility and they set up new facilities all the time. So it's not
2 something that would concern me.

3 **MR. PETER WARDLE:** Now, Mr. Jensen, you were asked some
4 questions about the CAF vehicle and I believe your evidence was you couldn't recall
5 whether it was ruled non-compliant by the City; do you recall that?

6 **MR. JOHN JENSEN:** I recall.

7 **MR. PETER WARDLE:** So first of all, the length of the
8 procurement period here, how would you describe the length and the robustness of the
9 procurement period here in comparison with other projects you've been involved in over
10 the years?

11 **MR. JOHN JENSEN:** I would say that it's comparable.

12 **MR. PETER WARDLE:** Did you have any concerns at the time
13 over the length of the procurement period? And did any of the proponents raise any
14 issues about whether the procurement period was long enough?

15 **MR. JOHN JENSEN:** I don't recall any specific issues coming up
16 on the length of the procurement period. We did a thorough analysis and with input
17 from Infrastructure Ontario. We were quite confident knowing at the time that it was set
18 for the process.

19 **MR. PETER WARDLE:** And I know you don't know this one way or
20 the other but if the CAF vehicle was ruled non-compliant by the City as part of the
21 design process during the procurement, do you have any concerns about the fact that
22 Alstom ended up being RTG's vehicle supplier?

23 **MR. JOHN JENSEN:** No, none whatsoever.

24 **MR. PETER WARDLE:** Can you comment quickly, Mr. Jensen, on
25 why a milestone approach was used with respect to this project?

26 **MR. JOHN JENSEN:** Well, I'm just trying to recall that a milestone
27 was one of the reasons for going to a milestone payment was to line up with the
28 contribution agreements from the provincial and federal governments that paid on

1 eligible costs. And eligible costs tend to be a bit discrete. So milestone payments
2 would line up better with accessing the federal and provincial funding eligible costs as
3 opposed to something like earned value which is more of a pers\centage of project
4 completion. That doesn't mean, in my view, one is better than the other but it seems
5 that the milestone lined up better.

6 And of course, we also consulted with our financial advisors and
7 Infrastructure Ontario to land on the model that we felt was appropriate at the time.

8 **MR. PETER WARDLE:** So turning to a different subject, you were
9 asked some questions about the project agreements. Can you just describe the
10 variation process under the Project Agreement? And please do it quickly, if you can.

11 **MR. JOHN JENSEN:** I'm not sure I can. I'd have to look at it. I
12 can't remember.

13 **MR. PETER WARDLE:** All right. Let me perhaps try to do it this
14 way. Was there a process under the Project Agreement for either the City or the
15 constructor to propose changes to the scope of the work?

16 **MR. JOHN JENSEN:** Yes, there was.

17 **MR. PETER WARDLE:** And I take it that you are not familiar with
18 how that worked out in practice because you were not there during the design and
19 construction phase; is that correct?

20 **MR. JOHN JENSEN:** Correct.

21 **MR. PETER WARDLE:** You were taken by Mr. Adair to your
22 comment about "one throat to choke" And I think you said it's a flippant way of saying
23 that one entity is accountable. And I wonder if you could just elaborate on your views
24 as to the significance in a project of this kind, based on your experience, of having -- of
25 the owner having one point of responsibility.

26 **MR. JOHN JENSEN:** Well, it was part -- it's part of the whole
27 selection process for the best procurement model. The City is best at overseeing
28 projects to ensure that they get what they're looking for whereas the private sector is

1 better equipped to handle all the integration components and all the complexities of
2 bringing all the pieces together.

3 When the pieces are bid separately then the City is responsible for
4 managing all of that integration and is at risk for making sure all the pieces come
5 together. So for a City perspective, having one entity responsible for all the elements of
6 the project and being accountable for them, makes for a much more efficient process
7 and fits better into the City's level of expertise in terms of managing the project going
8 forward.

9 **MR. PETER WARDLE:** With respect to risk transfer, I believe you
10 told my friend that the risks in a DBFM model should be allocated to the party best able
11 to assume those risks. Do you recall saying that?

12 **MR. JOHN JENSEN:** I do.

13 **MR. PETER WARDLE:** And do you have a view, Mr. Jensen, on
14 the appropriateness of transferring geotechnical risk to the proponent in this
15 procurement?

16 **MR. JOHN JENSEN:** Well, I think the appropriateness of
17 transferring the geotechnical risk came into play when we developed a risk ladder for
18 the proponents to be able to choose the level of risk that they were willing to tolerate
19 and that they were willing to price into their projects. So there was an offer of -- there
20 was choice.

21 We also did extensive geotechnical work with the Queen Street
22 alignment, shallowing the tunnel and bringing the alignment in between all of the
23 buildings and basements that were down there. A huge amount of geotechnical
24 information came together and I think that that went a long way to helping the bidders
25 become comfortable with taking on the risk.

26 But I think the key component here is that they were offered a
27 choice in the level of risk that they would take rather than having it imposed.

28 **MR. PETER WARDLE:** Thank you.

1 And were there risks that were assumed -- sorry, that were not
2 allocated to RTG under the Project Agreement, that is, risks that were left with the City
3 of Ottawa?

4 **MR. JOHN JENSEN:** The City of Ottawa retained the land
5 acquisition risks, a number of approvals such as federal land use approvals. They also
6 retained the upper portion of certain uncapped risks like endangered species or
7 archaeological where the bidder was responsible for risks that were foreseeable given
8 the background information that was provided but unforeseen risks would be with the
9 City. So those are just some examples of the risks that the City retained that they're
10 better able to manage.

11 **MR. PETER WARDLE:** And lastly, in your experience -- and we
12 don't have time today to go through your experience -- how usual or unusual is it for a
13 maintenance function to be subcontracted to the manufacturer of the light rail vehicle?

14 **MR. JOHN JENSEN:** I would say it's not unusual.

15 **MR. PETER WARDLE:** Thank you very much. Those are all my
16 questions for you.

17 **COMMISSIONER HOURIGAN:** All right. Thank you, Counsel.
18 Re—examination?

19 **---- RE-EXAMINATION BY MR. JOHN ADAIR:**

20 **MR. JOHN ADAIR:** Thank you, Mr. Commissioner.

21 Just three points, It shouldn't be long, and Mr. Jensen, I know
22 you've been at it for a long time already so I appreciate you being patient as I go
23 through just a few more points here.

24 Mr. Wardle was just asking you, sir, about what the City's plan was
25 for addressing the possibility that the project came in over budget or that the budget had
26 to change, and without going verbatim through the back and forth you had with Mr.
27 Wardle, the answers you gave were to the effect that the City had a number of different
28 alternatives for how to deal with that possibility. Do you recall being asked those

1 questions and giving answers to that effect?

2 **MR. JOHN JENSEN:** I do.

3 **MR. JOHN ADAIR:** And I've stated it fairly, I think?

4 **MR. JOHN JENSEN:** Yes.

5 **MR. JOHN ADAIR:** Sir, if it turns out down the road that the
6 evidence is that the mayor and council, in the 2010 elections and the period
7 immediately following those elections were promising the people of Ottawa that this
8 project would come in at 2.1 billion, promising the people of Ottawa that, then that would
9 severely constrain staff's ability to be creative and come up with different ways to
10 address the project coming up -- coming in over budget, wouldn't it?

11 **MR. JOHN JENSEN:** I would say that it would have an influence,
12 yes.

13 **MR. JOHN ADAIR:** So for example, one of the alternatives you
14 mentioned, I believe, was re-tendering the project if you had to re-tender it, and
15 presumably, if everybody comes in over your affordability cap, you could re-tender the
16 project at a higher affordability cap, would be one of the options that was in your -- that
17 were sort of implicit in your answers for Mr. Wardle; is that fair?

18 **MR. JOHN JENSEN:** It could, yes.

19 **MR. JOHN ADAIR:** And as I say, if it turns out that the elected
20 officials had promised the people of Ottawa that the project would come in at 2.1, re-
21 tendering with a higher budget really wouldn't be an option, would it?

22 **MR. JOHN JENSEN:** We would have to go back and seek
23 approval for any option that was selected, going forward.

24 **MR. JOHN ADAIR:** Right, from those same officials?

25 **MR. JOHN JENSEN:** From whoever -- whichever officials were in
26 place at the time, yes.

27 **MR. JOHN ADAIR:** Okay. And then Mr. Wardle was also asking
28 you, sir, some questions about the schedule, which I had taken you to, the idea of the

1 schedule being accelerated, and he asked you whether you ever received any advice
2 from any of the experts that the accelerated schedule was not achievable, and you said
3 you never received that advice.

4 Do you recall being asked about that and giving that answer?

5 **MR. JOHN JENSEN:** I do.

6 **--- EXHIBIT No. 014 - COM0000016 - by COM**

7 **MR. JOHN ADAIR:** I'm just going to just take you very briefly to
8 one document. It's -- the document number is COM0000016. And these are minutes of
9 a special council meeting, Mr. Jensen, you'll see, from July of 2011, the 14th of July,
10 2011.

11 I'm just going to take you to the -- if we can, please, the fourth
12 page. There are a bunch of whereas clauses that precede the motion that was being
13 proposed, and the last whereas before the words, "Therefore, be it resolved," in the
14 middle of the page there, the last one says:

15 "Whereas there are aggressive timelines attached to
16 this project that must be met in order to achieve
17 council's objectives." (As read)

18 I'm going to suggest to you, sir, that at a minimum, you knew the
19 timelines that were being proposed at that time were aggressive?

20 **MR. JOHN JENSEN:** I agree that the timelines were -- yeah, I
21 agree with that.

22 **MR. JOHN ADAIR:** Okay. And we can take that document down.
23 Thank you.

24 Just one last very quick issue, Mr. Jensen. Mr. Valo was asking
25 you some questions about the manner in which the vehicles would be operated in
26 different conditions, and he put the driving example to you. Do you recall him asking
27 you about that?

28 **MR. JOHN JENSEN:** I do.

1 **MR. JOHN ADAIR:** And the answer you gave was that the vehicle
2 would be operated according to the terms of the contract, correct?

3 **MR. JOHN JENSEN:** Correct.

4 **MR. JOHN ADAIR:** And sir, I'm going to suggest to you, with the
5 greatest of respect, that that right there is exactly the heart of the problem, Mr. Valo
6 suggesting that you can't operate the train during a winter storm the way you can during
7 a clear summer day.

8 And the City's answer to that is, well, it depends on the contract.

9 I'm asking you a long question, but that the heart of the problem
10 here -- from the City's perspective, at least -- is that the City's perspective was, the
11 contract dictates all, and the City wasn't really prepared to consider circumstance. Do
12 you agree with that?

13 **MR. JOHN JENSEN:** I can't speak to how the City behaved or
14 thought at the time of operating the vehicles.

15 **MR. JOHN ADAIR:** Right. But the perspective was that the
16 contract is what it is, and the words on the page are going to be followed, regardless of
17 any circumstances, even obvious ones like winter conditions. If it says on the page, it
18 has to be the same, then it has to be the same. That was the perspective that was
19 being taken, even when the contract was being drafted; is that fair?

20 **MR. JOHN JENSEN:** The contract was drafted to create the best
21 environment and the best program, going forward.

22 **MR. JOHN ADAIR:** Right. And the City's perspective, both in
23 terms of signing the contract, and more importantly, moving forward, was once you had
24 that contract that had been drafted in that manner, you were going to hold RTG to it, no
25 matter what?

26 **MR. JOHN JENSEN:** I can't speak to how the City behaved or
27 managed the contract once I left.

28 **MR. JOHN ADAIR:** Okay. Thank you, sir. Those are all my

1 questions for you.

2 **COMMISSIONER HOURIGAN:** All right. Thank you, Mr. Jensen.

3 You're excused.

4 We're going to take the lunch break to two o'clock. For those
5 people watching online or in the other rooms here, we're back at 2:00 with Riccardo
6 Cosentino from RTG, so we'll take a break til two o'clock. Thank you.

7 **THE REGISTRAR:** Order. All rise. The Commission is adjourned
8 until 2:00 p.m.

9 --- Upon recessing at 12:43 p.m.

10 --- Upon resuming at 2:00 p.m.

11 **THE REGISTRAR:** The Commission is resumed.

12 **COMMISSIONER HOURIGAN:** All right. Good afternoon.

13 As I mentioned before the break, this afternoon's witness is
14 Riccardo Cosentino. So we'll call him up on the video. There you are.

15 Good afternoon, Mr. Cosentino. Just unmute yourself ---

16 **MR. RICCARDO COSENTINO:** Good afternoon.

17 **COMMISSIONER HOURIGAN:** --- if you could, and the Registrar
18 is going to swear you in, or you can affirm an oath, okay?

19 **MR. RICCARDO COSENTINO:** Okay.

20 **THE REGISTRAR:** Do you wish to swear an oath on a Holy
21 document, or a solemn affirmation to tell the truth?

22 **MR. RICCARDO COSENTINO:** A solemn affirmation to tell the
23 truth.

24 **--- RICCARDO COSENTINO, Sworn:**

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

26 **COMMISSIONER HOURIGAN:** All right. Thank you, Mr. Registrar.

27 I'll hear from Commission counsel now. Go ahead.

1 --- EXAMINATION IN-CHIEF BY MS. CHRISTINE MAINVILLE:

2 **MS. CHRISTINE MAINVILLE:** Thank you, Mr. Commissioner.

3 Good afternoon, Mr. Cosentino.

4 **MR. RICCARDO COSENTINO:** Good afternoon.

5 **MS. CHRISTINE MAINVILLE:** Can you hear me properly?

6 **MR. RICCARDO COSENTINO:** I do.

7 **MS. CHRISTINE MAINVILLE:** Okay. I'm going to ask you a few
8 questions, and if you don't understand the question, just let me know and I can
9 rephrase.

10 **MR. RICCARDO COSENTINO:** Sure.

11 **MS. CHRISTINE MAINVILLE:** Okay. First of all, in terms of your
12 background, you have a civil engineering and business background, correct? You have
13 an MBA?

14 **MR. RICCARDO COSENTINO:** That's correct.

15 **MS. CHRISTINE MAINVILLE:** And you began your career working
16 on railway construction in the U.K.?

17 **MR. RICCARDO COSENTINO:** That's correct.

18 **MS. CHRISTINE MAINVILLE:** And later, you worked for
19 Infrastructure Ontario on the procurement of major infrastructure projects, right?

20 **MR. RICCARDO COSENTINO:** That's correct.

21 **MS. CHRISTINE MAINVILLE:** And that was before joining SNC
22 Lavalin in 2010?

23 **MR. RICCARDO COSENTINO:** That's correct.

24 **MS. CHRISTINE MAINVILLE:** And you remain with SNC today?

25 **MR. RICCARDO COSENTINO:** Correct.

26 **MS. CHRISTINE MAINVILLE:** Okay. And in terms of your role on
27 Stage 1 of Ottawa's LRT, you became RTG's bid director in 2012, correct, working on
28 the pursuit of Ottawa's LRT contract?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MS. CHRISTINE MAINVILLE:** And after the contract was awarded,
3 so at financial close, you became a member of RTG's board?

4 **MR. RICCARDO COSENTINO:** That's correct.

5 **MS. CHRISTINE MAINVILLE:** And you still sit on that board today,
6 right?

7 **MR. RICCARDO COSENTINO:** I do.

8 **MS. CHRISTINE MAINVILLE:** Now, RTG is a consortium made up
9 of SNC-Lavalin, EllisDon and ACS Infrastructure, right?

10 **MR. RICCARDO COSENTINO:** That's correct.

11 **MS. CHRISTINE MAINVILLE:** And the public has heard quite a bit
12 about RTG, because the structure of a public/private partnership such as this one is that
13 RTG is, as we've heard a bit about today, the sole point of contact for the City, correct?

14 **MR. RICCARDO COSENTINO:** It's the contractual counterpart,
15 correct.

16 **MS. CHRISTINE MAINVILLE:** Right. But RTG, as is typical in a
17 private/public partnership of this type is, in fact, a small entity, correct?

18 **MR. RICCARDO COSENTINO:** Yeah, legally speaking, it's a
19 general partnership.

20 **MS. CHRISTINE MAINVILLE:** Right, but can you tell us a little bit
21 about what it, in fact, looks like in practice? It's about seven people or so, correct?

22 **MR. RICCARDO COSENTINO:** That's correct, yes. The
23 management team is about seven people overseen by a Board of Directors.

24 **MS. CHRISTINE MAINVILLE:** Right. And what RTG does,
25 effectively, is drop down its contractual obligations to other consortiums and
26 subcontractors?

27 **MR. RICCARDO COSENTINO:** Yes, correct.

28 **MS. CHRISTINE MAINVILLE:** And as we've heard, one of the two

1 main subcontractors is for the design and construction work?

2 **MR. RICCARDO COSENTINO:** That's correct.

3 **MS. CHRISTINE MAINVILLE:** And that is the Ottawa LRT

4 constructors, so OLRTC, right?

5 **MR. RICCARDO COSENTINO:** Correct.

6 **MS. CHRISTINE MAINVILLE:** And that consortium is made up of

7 SNC-Lavalin Constructors (Pacific), EllisDon and Dragados ---

8 **MR. RICCARDO COSENTINO:** That's correct.

9 **MS. CHRISTINE MAINVILLE:** --- correct? And OLRTC, contrary
10 to RTG, is far larger; it's hundreds of people, correct?

11 **MR. RICCARDO COSENTINO:** That's correct.

12 **MS. CHRISTINE MAINVILLE:** And the other main subcontractor is
13 for maintenance, and that is RTM, Rideau Transit Maintenance, right?

14 **MR. RICCARDO COSENTINO:** That's correct.

15 **MS. CHRISTINE MAINVILLE:** And RTM is made up of ACS, SNC
16 and EllisDon?

17 **MR. RICCARDO COSENTINO:** That's correct.

18 **MS. CHRISTINE MAINVILLE:** And so, there are affiliations
19 between the partners of each consortium, but they are separate entities, correct,
20 reporting to separate boards?

21 **MR. RICCARDO COSENTINO:** That's correct.

22 **MS. CHRISTINE MAINVILLE:** Now, OLRTC, the constructor,
23 bears the obligation of delivering the construction element, right? They are the
24 designers and the builders?

25 **MR. RICCARDO COSENTINO:** That's correct.

26 **MS. CHRISTINE MAINVILLE:** And indeed, in the early stages of
27 this project, they were called the design build joint venture, right?

28 **MR. RICCARDO COSENTINO:** That's correct.

1 **MS. CHRISTINE MAINVILLE:** And they were not officially formed,
2 as I understand it, during the procurement stage, but they were involved in preparing
3 the designs?

4 **MR. RICCARDO COSENTINO:** That's correct.

5 **MS. CHRISTINE MAINVILLE:** OLRTC, the constructor, is also in
6 charge of the subcontracts for the construction, right?

7 **MR. RICCARDO COSENTINO:** Yes, that's correct.

8 **MS. CHRISTINE MAINVILLE:** And includes the subcontract for the
9 rolling stock or the vehicles, which was with Alstom?

10 **MR. RICCARDO COSENTINO:** Correct.

11 **MS. CHRISTINE MAINVILLE:** And the other main subcontractor
12 on this project was for the signalling system, effectively, what controls and drives the
13 trains, and that was with Thales, right?

14 **MR. RICCARDO COSENTINO:** That's correct.

15 **MS. CHRISTINE MAINVILLE:** And am I right that OLRTC also had
16 subcontracted the engineering components of this project to -- and the design for the
17 infrastructure, the stations and the non-train components to RTG EJV, which is the
18 engineering joint venture?

19 **MR. RICCARDO COSENTINO:** That's correct.

20 **MS. CHRISTINE MAINVILLE:** Which is another consortium?

21 **MR. RICCARDO COSENTINO:** That's correct.

22 **MS. CHRISTINE MAINVILLE:** Now, am I right that RTG itself has
23 no real insight into those subcontracts, OLRTC's subcontracts for instance, nor the
24 relationship disputes or claims between the constructor and its subcontractors?

25 **MR. RICCARDO COSENTINO:** That's correct.

26 **MS. CHRISTINE MAINVILLE:** And that's typically for a PPP, a
27 three-P contract?

28 **MR. RICCARDO COSENTINO:** That's typical, yes.

1 **MS. CHRISTINE MAINVILLE:** Okay. And so, could you describe
2 for us RTG's oversight role? Is it more in the nature of performing audits of the
3 contractor and the maintainer, or is it more involved than that?

4 **MR. RICCARDO COSENTINO:** Well, so RTG has the contractual -
5 - has the contract with the ultimate client, which is the City of Ottawa. So, we obviously
6 have contractual obligations which we have to deliver under the contract. However, we
7 -- because we have dropped down those obligations, it's an oversight that we have to
8 make sure that our contractual obligations, so we safeguard our shareholders and the
9 interests of our shareholders, as well as the interests of the client in administering the
10 subcontracts with RTM and OLRTC.

11 **MS. CHRISTINE MAINVILLE:** And in practice, how would you
12 discharge those oversight obligations?

13 **MR. RICCARDO COSENTINO:** Yeah, so that's why we have a
14 small team that would -- you know, it's formed. There's a CEO, a CFO. These are just
15 titles that -- there is an overall lead, there's a person in charge of the financial oversight,
16 which is supported by a junior person that helps with the bookkeeping, and then we add
17 a quality function and environmental monitoring function, and then a technical group,
18 two or three people, with site inspectors, and I mean, the main oversight would come
19 through the limited site visit based on the resources available, and then, obviously,
20 monitoring of the reporting that we have to submit to our ultimate client, the City of
21 Ottawa, through our contract. So, mostly, desktop review of the reporting provided to us
22 under the contract, our subcontract that we would pass on to the contract owner, which
23 is the City of Ottawa.

24 **MS. CHRISTINE MAINVILLE:** So, would you describe it as a
25 limited oversight role?

26 **MR. RICCARDO COSENTINO:** Yes, I would.

27 **MS. CHRISTINE MAINVILLE:** And ultimately, then, RTG relies on
28 its subcontractors to deliver on their obligations?

1 **MR. RICCARDO COSENTINO:** That's correct. The financial
2 incentives are also designed to reflect that.

3 **MS. CHRISTINE MAINVILLE:** And the risk is effectively dropped
4 down to them?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **MS. CHRISTINE MAINVILLE:** And we'll come back to talking
7 about the structure of this particular private/public partnership and your time on RTG's
8 board, but if we could talk first about your involvement as RTG's bid director? In terms
9 of the procurement process generally, from your perspective, did the City's procurement
10 process on this project line up with best practises and the type of process you had
11 experienced working with Infrastructure Ontario?

12 **MR. RICCARDO COSENTINO:** Yes, the process followed best
13 practises. It's the process that I would have run when I was at Infrastructure Ontario, so
14 involving dialogue with the proponents, understanding how the proponents were
15 developing their bid, so RTG, how we would be developing our bid, interaction from
16 both a commercial, technical and financial standpoint in order to improve our bid, in
17 order to improve the value -- the offering that we would ultimately submit with our
18 proposal through commercial negotiations, through commercially confidential meetings,
19 CCMs, and then technical consultation under the design presentation meetings, which
20 also involved written feedback from the City and their advisors. So, yeah, in terms of
21 process itself, we follow the best practices.

22 **MS. CHRISTINE MAINVILLE:** Were you aware of any concerns
23 about the fairness of the process, whether from RTG or other proponents?

24 **MR. RICCARDO COSENTINO:** I was not aware, and I didn't have
25 any concern with the fairness of the process.

26 **MS. CHRISTINE MAINVILLE:** And in terms of timelines, was it,
27 from your perspective and based on your experience, more fast paced at all than other
28 procurement processes?

1 **MR. RICCARDO COSENTINO:** It was about as fast paced as the
2 other processes I've been involved, both from the private sector side and the public
3 sector side. That doesn't mean that it was a short -- you know, the timeline was short,
4 but it was inline with what I had observed on other procurements.

5 **MS. CHRISTINE MAINVILLE:** Okay. Now, if we could talk about
6 the schedule for the project itself? Do you recall, first of all, the City's timeline for this
7 project?

8 **MR. RICCARDO COSENTINO:** No.

9 **MS. CHRISTINE MAINVILLE:** Do you recall -- maybe we can bring
10 up the RFQ. Were you involved in the request for qualifications?

11 **MR. RICCARDO COSENTINO:** I left a few weeks after the request
12 for qualifications was released.

13 **MS. CHRISTINE MAINVILLE:** After it was released. Would you
14 have had the opportunity to see it?

15 **MR. RICCARDO COSENTINO:** Probably, yes.

16 **--- EXHIBIT No. 015 - BDO0018525 - by COM**

17 **MS. CHRISTINE MAINVILLE:** Okay. Perhaps we could bring it
18 up? Although, I may have a different number. I have BDO0018525. Thank you.

19 If we could go to page 8 of this document? Do you see there, this
20 is the request for qualifications issued by the City of Ottawa, correct?

21 **MR. RICCARDO COSENTINO:** Correct. I recognize that, yes.

22 **MS. CHRISTINE MAINVILLE:** So, if you -- sorry, page 8 of the
23 document. I apologize. Right here. Thank you. Do you see this being the timeline?

24 **MR. RICCARDO COSENTINO:** Oh, yes. The RFQ timeline.

25 **MS. CHRISTINE MAINVILLE:** Right, and the following is a
26 schedule that the City intends to follow for the selection of pre-qualified respondents, do
27 you see that at the top?

28 **MR. RICCARDO COSENTINO:** Yeah. Yeah, I see that. Yes.

1 **MS. CHRISTINE MAINVILLE:** Okay, thank you. So, if you go
2 down to the very bottom of that page, do you see there the line, "Project Completion
3 and In Revenue Service Date," being spring of 2018?

4 **MR. RICCARDO COSENTINO:** Yeah, I do.

5 **MS. CHRISTINE MAINVILLE:** Does that assist at all in refreshing
6 your memory about what the City's timelines were for the project, at least at that stage?

7 **MR. RICCARDO COSENTINO:** At that stage, yes. Yes, correct.

8 **MS. CHRISTINE MAINVILLE:** So, would you have been aware
9 that the City's aim or goal was to have the project completed by the spring of 2018?

10 **MR. RICCARDO COSENTINO:** At the RFQ stage, yes. Yes.

11 **MS. CHRISTINE MAINVILLE:** Do you recall that changing at all?

12 **MR. RICCARDO COSENTINO:** I've been trying to refresh my
13 memory, and I couldn't do that if there was actually a contractual requirement under the
14 project agreement or under the RFP for us to provide the schedule with a substantial
15 completion date with a certain date. And to the best of my recollection, I don't recall that
16 there was a specific date that we had to complete the project by under the project
17 agreement or under the RFP in order to be compliant. But I -- as I said, I tried to
18 remember it and I couldn't.

19 **MS. CHRISTINE MAINVILLE:** Right, well -- and that was going to
20 be my follow up -- my next question. Was it not up to RTG to put forward a revenue
21 service availability date on the project?

22 **MR. RICCARDO COSENTINO:** That was my general recollection,
23 that we were deciding when the project would be completed.

24 **MS. CHRISTINE MAINVILLE:** Right. And so, to the best of your
25 recollection, RTG would have been the entity that selected the May 24th, 2018 revenue
26 service availability date?

27 **MR. RICCARDO COSENTINO:** That's correct.

28 **MS. CHRISTINE MAINVILLE:** That being the date at which the

1 system was to be complete and accepted by the City as its owner, correct?

2 **MR. RICCARDO COSENTINO:** Correct. Sorry, I was referring -- I
3 was -- in my mind, I was referring to the substantial completion date. This is ---

4 **MS. CHRISTINE MAINVILLE:** Okay.

5 **MR. RICCARDO COSENTINO:** --- the date that we focus on,
6 because that's when the substantial completion payment occurs. So, we pick that as
7 the typical date that drives -- you know, drives a lot of the contractual obligations.

8 **MS. CHRISTINE MAINVILLE:** Okay. There's a large payment ---

9 **MR. RICCARDO COSENTINO:** Yes.

10 **MS. CHRISTINE MAINVILLE:** --- issued at substantial completion
11 where, as the name says, the system is substantially complete, correct?

12 **MR. RICCARDO COSENTINO:** Correct.

13 **MS. CHRISTINE MAINVILLE:** But the project or the system is only
14 handed over at the RSA date when it is effectively completed and becomes available for
15 Revenue Service to the City?

16 **MR. RICCARDO COSENTINO:** That's correct, yes.

17 **MS. CHRISTINE MAINVILLE:** But the -- there is an additional
18 large payment to be issued at the RSA date, is that not the case?

19 **MR. RICCARDO COSENTINO:** That's not my recollection, but I
20 could be wrong.

21 **MS. CHRISTINE MAINVILLE:** Do you recall, however, that it was
22 the RSA date, not the substantial completion date, that was set for May 24th, 2018?

23 **MR. RICCARDO COSENTINO:** That's correct.

24 **MS. CHRISTINE MAINVILLE:** Okay. And so, would that have
25 been informed by the City's timelines?

26 **MR. RICCARDO COSENTINO:** Probably not. No, I don't think it
27 would have because, ultimately, having the consortium -- at the time of putting the bid
28 together it was a consortium. It wasn't a separate legal entity. There would have been

1 a risk analysis, a schedule analysis, in order to understand the feasibility of a particular
2 date. So, even though the indicative date provided by the client, even at RFQ stage, or
3 even at RFP stage, if there was a similar timeline in the RFP, it would have been a
4 consideration, but the due diligence the parties do in terms of ability to achieve that date
5 would then overrule any expectation from the ultimate client.

6 **MS. CHRISTINE MAINVILLE:** Okay. And I understand the
7 companies do a -- use tools to determine what that date should be. Would you typically
8 try to have that be as quickly as can be achieved, or what goes into informing what date
9 you ultimately select?

10 **MR. RICCARDO COSENTINO:** So, it's multiple factors that are
11 coming into determining the completion date. It's time and money closely linked. So,
12 the faster you deliver, the more expensive your construction costs -- your construction
13 will be because, obviously, if you are accelerating, there is a need for additional
14 resources. So, you know, the ultimate trade off is a completion date that is not too early
15 to jeopardize the ability to complete by that date weighted against the additional cost for
16 having a prolonged construction schedule, because the longer the production schedule,
17 there's also these indirect costs that add up during the execution. So, it's a triangulation
18 of factors that determine the completion date and supported by some analytical work
19 and simulations.

20 **MS. CHRISTINE MAINVILLE:** Okay. And so, if I understand you
21 correctly, if it's too fast, it will be very costly, if it takes too long, it would also be very
22 costly, so you try to strike some sort of balance?

23 **MR. RICCARDO COSENTINO:** That's correct. And then if you go
24 too fast, there's also other risk elements. You know, the faster you go -- the shorter the
25 construction period, the most risk you are taking on. So, you are also weighting the risk
26 against those dates and those costs.

27 **MS. CHRISTINE MAINVILLE:** Right. Was this an ambitious
28 timeline at the outset of the project?

1 **MR. RICCARDO COSENTINO:** It would be -- it's a very complex
2 analysis, and it's difficult to reduce it to a binary advice, because these construction
3 schedules have thousands of line items, thousands of activities. There's a lot of
4 interpretation bias. There's assumptions. I think to the best of the ability of the people
5 that put the schedule together, that was the best estimation in order to balance all those
6 considerations that I just mentioned.

7 **MS. CHRISTINE MAINVILLE:** Was there an understanding at the
8 outset of the project within the consortium that the RSA date might not be met?

9 **MR. RICCARDO COSENTINO:** Sorry, could you repeat that?

10 **MS. CHRISTINE MAINVILLE:** Yes. In terms of RTG and OLRTC,
11 because I understand they had some involvement in devising the schedule, was there
12 an understanding that the RSA date might not be met? So, when it is -- when the date
13 was set as the RSA date at the outset of the project, was there an understanding that
14 that date might not be met?

15 **MR. RICCARDO COSENTINO:** There is a risk -- always there is a
16 risk component associated with these estimations. And so, yes, there is always a
17 consideration that for -- of external factors that were not assumed in the original
18 schedule might materialize, it might push out any date or any process. These are very
19 complex processes that last many, many years. This is a contractual process. So
20 there's always an expectation that things could actually not materialize the same way
21 that they schedule it and assume in the original schedules.

22 **MS. CHRISTINE MAINVILLE:** And so is it the case that you don't
23 in the contract effectively guarantee that date?

24 **MR. RICCARDO COSENTINO:** The contract does -- the contract
25 does guarantee that date; it's a fixed price times certain type contract that's why there's
26 always risk provisions that are built in. That's why there's scenario analogies that is
27 done and an attempt by the parties involved in creating the schedule to assess what
28 could go wrong, what's the probabilities that things could go wrong. There's an

1 estimation of the costs that would be incurred if things were to go wrong and an
2 allowance – a risk allowance is typically made in the price. There's also a buffer that is
3 built in to certain activities to mitigate risk. So these are standard scheduling tools and
4 practices very wide spread in the industry but at the end of the day these are still
5 assumptions made by human beings based on the best knowledge and experience and
6 they're never certain, they're just estimations.

7 **MS. CHRISTINE MAINVILLE:** Right. And so you – and when I
8 say “you” I mean the consortium, RTG, guarantees that date subject to facing financial
9 repercussions if it's not met; is that a fair way to put it?

10 **MR. RICCARDO COSENTINO:** That's correct, yes.

11 **MS. CHRISTINE MAINVILLE:** And in terms of the affordability
12 cap and the budget on this project, would you characterize it as sufficient – at the time
13 would you have characterized it as sufficient?

14 **MR. RICCARDO COSENTINO:** We obviously submitted a certain
15 price fix – a fixed price bid so based on the analysis that we got we believe that our
16 estimate was enough to deliver the project. Was the budget, the overall budget
17 enough? It's a difficult question because we're trying to reduce down to one number
18 something that is extremely complex. As I said when I talked about the schedule, you
19 know, there's a lot of assumptions based on personal individual knowledge, personal
20 experiences but we're always talking about – estimation, we're always talking about
21 human beings trying to estimate and forecast something that is five years in the future
22 with a extremely high level of complexity. So it could have been enough. It would have
23 been enough if everything materialized the way that our estimators had estimated and
24 assumed within their schedule and price.

25 **MS. CHRISTINE MAINVILLE:** So you said could have been
26 enough effectively if things went right, went correct, right?

27 **MR. RICCARDO COSENTINO:** (No verbal response)

28 **MS. CHRISTINE MAINVILLE:** Sorry, just for the record you said

1 –

2 **MR. RICCARDO COSENTINO:** I mean I wouldn't characterize it –

3 **COMMISSIONER HOURIGAN:** You can't nod. Mr. Cosentino,
4 you can't nod or shake your head for the record; you have to say "yes" or "no" so we
5 have it; okay?

6 **MR. RICCARDO COSENTINO:** Okay. I would – I think – sorry, I
7 lost the train of thought.

8 **MS. CHRISTINE MAINVILLE:** We were talking about the cap –
9 the budget would be sufficient if everything effectively went according to plan?

10 **MR. RICCARDO COSENTINO:** According to our plan, yes.

11 **MS. CHRISTINE MAINVILLE:** Okay. And so is that to say that it
12 doesn't – it didn't allow for a lot of room – it didn't allow much room for error?

13 **MR. RICCARDO COSENTINO:** It didn't allow for certain things to
14 materialize the way that it actually materialized. So we didn't expect certain things to
15 material. Because our experience, our understanding of the contract, the contract
16 interpretation, our experience with other clients on how the contract would be
17 interpreted, our understanding of, you know, what we have in the contract for
18 supervening events that would, in our mind, put certain risk onto the client rather than
19 on to us. You know, those are all things that we take into account in our price. If this
20 happened, who would bear the cost? And, you know, if our assumption was that
21 according to our interpretation of the contract, if that cost would have been attributed to
22 another party, we would haven't carried that cost, but then if there are disputes on the
23 interpretation of the contract and that cost and that being on our side, then that would
24 not have been taken into account.

25 **MS. CHRISTINE MAINVILLE:** Okay. And we'll come to talk about
26 how the contract was ultimately interpreted, but could you speak to how the affordability
27 cap worked on this procurement and how incentivized meeting that cap was, from your
28 perspective?

1 **MR. RICCARDO COSENTINO:** Yes, so there was an affordability
2 cap and it was a gated process described into the RFP. I believe, based on my
3 memory, that it was actually introduced, not from day one, but through the process. So
4 there was an addendum to the original RFP that introduced the affordability cap and it
5 was spelled out in the evaluation process which basically had a gated approach where
6 components that would dominate the affordability cap in their proposal would not
7 proceed to the next gate of the evaluation. So for us, obviously, at what point we
8 wanted to meet that affordability cap because we wanted our proposal to make it to the
9 next gate review. And I say “ at what point” is because obviously we wouldn’t do that at
10 any cost, so we wouldn’t compromise our internal risk processes, due diligence
11 processes in order to meet that but we obviously wanted to try to get below – and trying
12 to be innovative on our solution and in our interpretation of the contract. Maybe it’s
13 overly optimistic sometimes on the deprovision of the contract, are we optimistic on how
14 the event could or would unfold during the construction period so that we could make –
15 so that, yes, the estimators and the scheduler would make, you know, certain
16 assumptions in developing the schedule and estimate.

17 **MS. CHRISTINE MAINVILLE:** So effectively if you didn’t meet the
18 affordability cap you’d be out of the running; correct?

19 **MR. RICCARDO COSENTINO:** Yes, with a caveat that if none of
20 the proponent met the affordability cap, the City, at its own discretion, would be able to
21 wave that condition and allow all the proponents to move to the next gated process.

22 **MS. CHRISTINE MAINVILLE:** And I take it you wouldn’t know
23 whether the other proponents will meet the affordability cap or not?

24 **MR. RICCARDO COSENTINO:** That’s correct.

25 **MS. CHRISTINE MAINVILLE:** And so am I right that you would be
26 taking quite a risk in not meeting the cap if you could make it work; is that a fair way to
27 put it?

28 **MR. RICCARDO COSENTINO:** That would be; that’s a fair way to

1 put it, yes.

2 **MS. CHRISTINE MAINVILLE:** And based on what was
3 incentivized in the procurement phase, what would RTG or the bidders have understood
4 was of primary importance to the City?

5 **MR. RICCARDO COSENTINO:** We believe that delivering the
6 project within the budget available was of primary importance to the City. Obviously
7 there were other technical specifications that were important but as we engaged in
8 commercial and technical dialogue with the City we were able to understand which area
9 of the reference design or which areas of the contract they were able to move in order
10 to help us in having a more affordable solution.

11 **MS. CHRISTINE MAINVILLE:** You mentioned that RTJ was
12 perhaps overly optimistic in some respects about how the project would unfold or what
13 may or may not material. Can you talk a bit more about that?

14 **MR. RICCARDO COSENTINO:** Yeah, I don't think it's just RTG. I
15 think there's optimism bias. It's a fairly standard bias that every human being has. And
16 it's particularly relevant when it comes to major infrastructure where there is -- there's a
17 lot of unknowns. There's a lot of uncertainty. There's a level of complexity that is
18 difficult to articulate. So human beings in general have a tendency of being optimistic.

19 So this is a bias. It's not something that is punished. It's just a
20 bias. And so when human beings are incentivized to achieve a certain outcome, they
21 are able to rationalize things in a way that allows them to achieve the outcome. And
22 then, you know, optimism bias, it's a well-established issue in major programs because
23 of the level of complexity and the amount of unknown and uncertainty that is present in
24 major programs that obviously whenever you have a high degree of uncertainty,. You
25 can rationalize things in many ways. And you were being pre-disposed to rationalize it
26 with a degree of optimism.

27 **MS. CHRISTINE MAINVILLE:** And you said this is well known.
28 This is in fact based -- am I right -- on the -- is it a Nobel Prize winning research theory?

1 **MR. RICCARDO COSENTINO:** Yes, that's correct. It's called
2 prospect theory. It was developed by Kahneman and Tversky. Kahneman won the Nobel
3 Prize in 2002. And it's being -- I mean, the book is publicly available. It's called, "Thinking
4 Fast and Slow" and there's a particular chapter in that book when prospect theory is applied
5 to major programs. There's lots of academic studies that link optimism bias to the root
6 cause of major programs delay and cost overruns.

7 **MS. CHRISTINE MAINVILLE:** And this is because -- am I right --
8 as you've explained it to the Commission in a previous interview that delays and cost
9 overruns on major projects like this are not uncommon, correct?

10 **MR. RICCARDO COSENTINO:** They are extremely common. I
11 think there's research from an academic Bent Flyvbjerg out of Oxford that has
12 established through peer-reviewed research that, you know, eight of ten linear projects -
13 - so rail projects -- have cost overruns or schedule overruns. This is well-established
14 documented research to a point where -- and it's being publicly available, publicly
15 accepted for over 20 years to a point where other jurisdictions like the U.K. Treasury
16 have an optimism by uplift whenever the major programs are put forward for funding in
17 order to make sure that the right amount of resources are available within the project,
18 and to counter optimism bias, because ultimately this is a bias. So the only way you
19 can remove bias is by having external processes.

20 So I think the theory to counter optimism bias is to have an outside
21 view or the research is called reference class forecasting because sometimes -- a lot of
22 times there's a perception that by building contingency you can estimate the right
23 amount of resources of money that you need for a particular project. But ultimately the
24 contingency are still estimated by the same individuals that created the original
25 estimate. So the contingency has just added to the estimate.

26 The reference class forecasting actually brings an outside view,
27 one that is separate from human biases by looking at the database of similar projects
28 and understanding pretty much benchmarking the project under analysis against many

1 other projects that -- and to see if there is any bias. It could also be codified; the HM
2 Treasury Green Book in the U.K. actually has numbers of optimism bias uplift so they
3 actually codify for asset class how much uplift a project budget needs to be put in
4 order to assess if, without the optimism bias, that project is still a viable project.

5 **MS. CHRISTINE MAINVILLE:** To your knowledge, did anything
6 like this happen on this project?

7 **MR. RICCARDO COSENTINO:** Not to my knowledge. I do not
8 believe this is common in this country.

9 **MS. CHRISTINE MAINVILLE:** In Canada?

10 **MR. RICCARDO COSENTINO:** In Canada.

11 **MS. CHRISTINE MAINVILLE:** In other words, would you say the
12 affordability cap on this project did not account for optimism bias?

13 **MR. RICCARDO COSENTINO:** That's correct. That's my
14 understanding,

15 **MS. CHRISTINE MAINVILLE:** Okay. And one way to explain how
16 optimism bias translates in the context of the pursuit of a bid is that you might not
17 mitigate certain risks that -- or provide for money to cover or account for risks that might
18 arise. And instead you might just be optimistic and consider that that risk might not
19 materialize?

20 **MR. RICCARDO COSENTINO:** That's the definition of optimism
21 bias, yes.

22 **MS. CHRISTINE MAINVILLE:** Okay.

23 **MR. RICCARDO COSENTINO:** That's how it materializes.

24 **MS. CHRISTINE MAINVILLE:** And so at the end of the day
25 effectively you don't price your bid, taking into account all of the risks that can
26 materialize?

27 **MR. RICCARDO COSENTINO:** You -- again, because there is a
28 degree of such activity in risk, and there's a lot of uncertainty, you know, if I can give an

1 example.

2 If you're trying to schedule how long an activity is going to take four
3 years from now and what kind of resources you're going to have, you know, it's really
4 difficult to forecast that far in advance. So human beings just make estimates. And
5 whenever you have an estimate you are subject to optimism bias.

6 This is not just in construction; it applies to everything that the
7 prospect theory -- it wasn't developed for construction. It was just developed for as a
8 general economic theory.

9 **MS. CHRISTINE MAINVILLE:** Thank you. And I apologize. We
10 can take the document down. I should have noted that earlier.

11 Thank you.

12 Did RTG or other proponents to your knowledge provide feedback
13 to the City about its budget for this project or the affordability cap?

14 **MR. RICCARDO COSENTINO:** Yes. We obviously had a constant
15 dialogue with the City. We, you know, provide ideas so we -- again, during the
16 development of our proposal it's a staged approach. So we had preliminary estimate
17 and, you know, as we got in more information as we developed our solution things
18 evolved, crystallized. And so as we were developing our bid we were providing
19 feedback to the City that suddenly it didn't look like the affordability cap was one that
20 was easily met. We needed to have changes to the technical specification. I specifically
21 recall changes about the roof design of the station. That was one way to reduce the
22 costs. So obviously there were changes made through the process in the output
23 specification.

24 You know, I recall -- I specifically recall that the roof design with the
25 reference concept being, you know, a curvature type roof with a lot of glass which is
26 obviously very expensive. So we provide support -- we provided supporting
27 documentation to demonstrate that a roof with less curvature and more squared could
28 provide savings to the project. And allowed us to meet affordability.

1 That was just one example, You know, we had also commercial
2 discussion about changing provisions of the contract that would allow us to interpret the
3 contract in a certain way, again reducing the risk and contingency that we would carry.

4 So it was -- yeah, so the short answer is yes. We had dialogue and
5 we had suggestions to the City because we felt that the affordability cap was not
6 achievable with this set of specifications provided to us the day the RFP was issued..

7 **MS. CHRISTINE MAINVILLE:** Right. So earlier when you
8 indicated that you were able to meet it based on the calculations made on RTG's end,
9 that was subsequent to discussion with the City about the specifications or the
10 requirements on the project, and further to RTG effectively finding ways to reduce costs,
11 correct?

12 **MR. RICCARDO COSENTINO:** That's correct. That's correct.
13 That's why I said it was -- the process followed best practices because that dialogue
14 allowed the development of proposals and development of contractual documentation,
15 and that follows best practices.

16 **MS. CHRISTINE MAINVILLE:** And was one way that the
17 consortium was able to meet, not just the budget, but also the local content requirement
18 or the Canadian content requirement, a plan put forward by Alstom to finish the
19 assembly of the trains in Ottawa at the maintenance and storage facility?

20 **MR. RICCARDO COSENTINO:** Yeah. That was another
21 innovation that we brought. I don't know that that required changes to the contract or
22 the specifications, but certainly, that was an innovation we found added a lot of value by
23 reducing certain costs by assembling -- of adding the final assembly of the vehicles in
24 the maintenance facilities.

25 **MS. CHRISTINE MAINVILLE:** It was a cost-effective way of
26 meeting the local content requirement?

27 **MR. RICCARDO COSENTINO:** That's correct.

28 **MS. CHRISTINE MAINVILLE:** And did -- or did you foresee any

1 issues at the time with having the final assembly of the trains, of the vehicles, completed
2 in Ottawa?

3 **MR. RICCARDO COSENTINO:** Not at the time, no. We -- you
4 know, I think there was some nervousness about having a facility that is being designed
5 for a certain purpose used for a different purpose. I think there might be some
6 consideration, some concerns about -- especially towards the end of the assembly of
7 the vehicles, when the MSF needs to be turned into an operational maintenance facility,
8 how those elements might clash and provide inefficiencies towards the end of the
9 production line. Yeah, I think in general, there was an -- you know, there was a general
10 sense that those were issues that could be overcome.

11 **MS. CHRISTINE MAINVILLE:** And so what you've explained is
12 really because the -- it's called the MSF, the maintenance and storage ---

13 **MR. RICCARDO COSENTINO:** Yeah.

14 **MS. CHRISTINE MAINVILLE:** --- facility, correct -- was to be a
15 maintenance facility, not intended for the manufacturing or assembly of trains, correct?

16 **MR. RICCARDO COSENTINO:** That's correct. And there were
17 some -- I believe there were some technical modification or some element that --
18 physical element that would be modified after the assembly had finished in order to
19 make it more operational, operationally friendly for the intended purpose.

20 **MS. CHRISTINE MAINVILLE:** Okay. And you came to
21 understand, I take it, through your time on RTG's board, that there were ultimately some
22 issues relating to the assembly of trains at the MSF?

23 **MR. RICCARDO COSENTINO:** Yeah. I don't know the specific of
24 the issue, but clearly, I think if we look at -- I mean, if we look at the -- you know, the
25 overall challenges that the project has had, the maintenance facility, assembling the
26 vehicle at the maintenance facility was not as a smooth process as we had hoped and
27 envisioned. And so I can't speak specifically of what clashes that produced or what
28 specific delays, but it certainly was not -- it was not as easy as we expected it to be,

1 mindful that I was a board member, you know, two layers removed from the vehicle
2 assembly, so third-hand information I was receiving as a board member.

3 **MS. CHRISTINE MAINVILLE:** Fair enough.

4 Was another way that RTG sought to reduce costs on the project
5 an effort to reduce the length of the platform at the stations?

6 **MR. RICCARDO COSENTINO:** To the best of my knowledge,
7 recollection, yes. I think that was another innovation, because obviously, if we look at
8 the configuration of the underground stations, especially the underground stations, but
9 any station, you know, the shorter the train, the shorter the platform. And I think on a
10 overground station is, you know, you're just sitting a little bit of platform space, but in an
11 -- in the underground where you have a big cavern for the station itself and a small
12 tunnel for the -- outside the station, you can actually reduce the amount of excavation
13 you need for the cavern to accommodate a smaller platform that would -- that provide
14 both cost and time savings.

15 **MS. CHRISTINE MAINVILLE:** M'hm. And so do you recall that in
16 the period of time around January 2012, that RTG made pre-qualification submissions
17 to the City, including in respect of the rolling stock and signalling system suppliers, and
18 one of those submissions -- before RTG or OLRTC more specifically -- selected its
19 vehicle supplier, they put forward a submission in respect of Alstom and Thales, you
20 know, being the vehicle supplier and the signalling system supplier. Do you recall that?

21 **MR. RICCARDO COSENTINO:** So I had just came back from the
22 project around that time, so I do recall that there was a process where we have solicited
23 proposal from all vehicle manufacturers, and I think the RFP was -- had provision where
24 we had to submit those proposals that we had received to the City. I think in the original
25 RFP document, the City would provide verbal -- written feedback and approval on the
26 submission. I think that changed and they were just going to -- instead of providing
27 approval, they would just provide written feedback for the design presentation
28 submission.

1 I believe we -- so we submitted all the proposals to the City, but at
2 the design presentation meeting, we put forward our selected supplier which was CAF.

3 **MS. CHRISTINE MAINVILLE:** Yes, okay. And so just before going
4 there, and perhaps to assist with your memory, we can bring up the pre-qualification
5 submission at COW0144492.

6 So if we just go down to the bottom of that first page, would you
7 recognize this, Mr. Cosentino, the pre-qualification submission in respect of Alstom and
8 Thales in January 2012?

9 **MR. RICCARDO COSENTINO:** I have seen this document many,
10 many years ago, yes.

11 **MS. CHRISTINE MAINVILLE:** Okay. And maybe, let's go down to
12 page 32. So do you recall that at that stage -- and again, before the vehicle supplier
13 was selected -- what was being put forward was the -- as a vehicle model by Alstom --
14 was the Citadis Dualis?

15 **MR. RICCARDO COSENTINO:** I do recall that, yes.

16 **MS. CHRISTINE MAINVILLE:** Okay. And do you see right at the
17 bottom of that page -- well, where it is -- where we are looking right now on the screen,
18 the proposal was for effectively, three car consists?

19 **MR. RICCARDO COSENTINO:** Yeah, I see that.

20 **MS. CHRISTINE MAINVILLE:** So is that consistent with your
21 recollection, that at that point in time, the concept was three car -- three vehicles,
22 essentially, together, connected together?

23 **MR. RICCARDO COSENTINO:** You are really testing my memory.

24 **MS. CHRISTINE MAINVILLE:** M'hm.

25 **MR. RICCARDO COSENTINO:** I vaguely recall discussions about
26 three carriages which is other configurations.

27 **MS. CHRISTINE MAINVILLE:** Fair enough. And so let's bring this
28 down. As you've referenced, ultimately, though, there's a selection or a committee

1 process that is undertaken by the design build joint venture and CAF is the vehicle
2 supplier that's selected, correct?

3 **MR. RICCARDO COSENTINO:** That's correct.

4 **MS. CHRISTINE MAINVILLE:** And that's put forward to the City,
5 and ultimately, as we've heard, the City rejects that, or at least, notifies the consortium
6 that CAF would not be complying, correct?

7 **MR. RICCARDO COSENTINO:** That's correct.

8 **MS. CHRISTINE MAINVILLE:** And what was your understanding
9 of why CAF would not be complying?

10 **MR. RICCARDO COSENTINO:** There was a requirement for a
11 service-proven vehicle, as defined under the output specifications. The word "service
12 proven" was defined exact finish, and I don't recall, but it had to do with having a certain
13 number of vehicles with certain components that have been in service with the mean
14 distance between failure of a certain amount and documentation to back up MNDPF
15 historic means failure between -- main distance between failures. So, it was a whole,
16 basically, legal explanation of what service problem was, and we were told that the
17 vehicle that we had put forward was not meeting the service program requirement.

18 **CHRISTINE MAINVILLE:** And was RTG's position that it was
19 compliant because the various components of the vehicles were service proven?

20 **MR. RICCARDO COSENTINO:** Yeah, you know, I think that there
21 were -- one issue was the number of trains in service. So, I think that the vehicle that
22 we had put forward was from the bow and there were only eight -- no 10. I think there
23 was a train in Houston that CAF had put forward, but the train ended up being put into
24 service, so we couldn't really provide the required documentation.

25 So, I think the general feeling, based on my recollection is that, yes,
26 we weren't meeting hundred percent of the specifications, but there was -- there was --
27 certainly, in our opinion, they were close enough to meeting. So, it wasn't that we didn't
28 have a vehicle that had never been used before, it just didn't meet the strict definition as

1 drafted in their specifications, which could have been amended or relaxed.

2 **CHRISTINE MAINVILLE:** So, but the City deemed it not to be
3 compliant and so...

4 **MR. RICCARDO COSENTINO:** And rejected, and we -- sorry.

5 **CHRISTINE MAINVILLE:** No, go ahead.

6 **MR. RICCARDO COSENTINO:** Yeah, we had a second -- so there
7 was -- the process envisioned a design presentation meeting where we presented our
8 solution, we got written feedback, and then we had a separate meeting called an ad hoc
9 CCM. Under the RFP, a proponent can request a special confidential meeting where
10 we try to address some of the concerns articulated to us in written feedback from the
11 previous meeting. We had a specialist from CAF coming to meet with the City and
12 walking through quite a detailed why, yes, even though the exact definition of service
13 proven was not met, trying to explain, even though the exact definition was not met, it
14 was overall a vehicle that had been proven, which had a service proven history in other
15 jurisdictions.

16 **CHRISTINE MAINVILLE:** Okay. Was CAF able to participate in
17 these meetings with the City?

18 **MR. RICCARDO COSENTINO:** Yes.

19 **CHRISTINE MAINVILLE:** Okay. So, ultimately, after the City
20 deems it not compliant RTG went to Alstom, correct?

21 **MR. RICCARDO COSENTINO:** That's correct.

22 **CHRISTINE MAINVILLE:** And do you recall Alstom being
23 approached sometime in late June or early July 2012?

24 **MR. RICCARDO COSENTINO:** That's correct.

25 **CHRISTINE MAINVILLE:** And at that point, am I right that RTG is
26 suggesting, perhaps to Alstom, or looking at ways to shorten the platform, the station
27 platform, and is looking for a two-car consist vehicle?

28 **MR. RICCARDO COSENTINO:** I recall some conversation of that

1 nature, but not the specifics.

2 **CHRISTINE MAINVILLE:** Okay. And if we could bring up RTG's
3 ultimate submission, design submission, at COW0544752? Thank you. Do you recall
4 that, the response to the RFP dated September 10, 2012?

5 **MR. RICCARDO COSENTINO:** Yes.

6 **CHRISTINE MAINVILLE:** Okay. If we go to page 57, you will see
7 there, if we go down a little bit -- thank you. Do you recall at this point in time what was
8 put forward was not the Citadis Dualis specifically, but just some evolution of the Citadis
9 as a base model?

10 **MR. RICCARDO COSENTINO:** I vaguely recall a conversation. I
11 did not review the document in its entirety, but I do recall ---

12 **CHRISTINE MAINVILLE:** Okay.

13 **MR. RICCARDO COSENTINO:** --- a conversation along those
14 lines.

15 **CHRISTINE MAINVILLE:** And do you see at the last bullet at the
16 top of the page there that starts "with an integrated alignment"? Do you see that bullet?

17 **MR. RICCARDO COSENTINO:** The one at the top?

18 **CHRISTINE MAINVILLE:** Yes, but the last bullet in the first series.

19 **MR. RICCARDO COSENTINO:** Yes, I do.

20 **CHRISTINE MAINVILLE:** So, do you see here it references a 90-
21 metre-long platform requiring -- oh, sorry, just before that, a two-car vehicle consist
22 fitted to a 90-metre-long platform; do you see that?

23 **MR. RICCARDO COSENTINO:** I do see that.

24 **CHRISTINE MAINVILLE:** So, ultimately, what Alstom puts forward
25 as a proposal is a two-car consist?

26 **MR. RICCARDO COSENTINO:** I see the document. I don't recall
27 the specific ---

28 **CHRISTINE MAINVILLE:** No specific recollection. Do you recall

1 that they were long vehicles? They were very long?

2 **MR. RICCARDO COSENTINO:** So, the only recollection I have is
3 a conversation that we were having about -- to this topic, just to tell you what I do recall.
4 You know, there were discussions internally, and maybe even with the City about, you
5 know, they obviously -- the ends of the trains are the cab drivers, and obviously, one
6 cab driver has to be on the platform, but does the back end of the train, which doesn't
7 really have a driver, could that be within the tunnel? So, there were -- I do recall -- I
8 don't recall the purpose of the discussion. I do recall discussion about how can we get
9 the train to fit in a shorter platform. But why we were having those discussions, I don't
10 recall.

11 **CHRISTINE MAINVILLE:** Okay. Fair enough. And do you recall
12 the City raising any concerns or having any feedback regarding the service proven
13 nature of Alstom's proposed vehicle?

14 **MR. RICCARDO COSENTINO:** There were no concerns. We had
15 to present -- we had a separate -- obviously, we had a design presentation meeting, but
16 we had to present the Alstom vehicle the same way we had done for CAF. And I'm sure
17 there is a written feedback, which I haven't refreshed my memory with, but the -- and
18 the outcome was that Alstom was deemed compliant and we ended up carrying Alstom
19 and submitting a proposal with Alstom vehicles.

20 **CHRISTINE MAINVILLE:** Okay. Was Alstom compliant, from
21 RTG's perspective, in the same way that CAF was deemed compliant in terms of the
22 components of the vehicles perhaps being service proven, but they are not being a
23 service-proven vehicle of the same type and model already out there on the streets?

24 **MR. RICCARDO COSENTINO:** I don't recall. I think all I can say
25 about that is that once we put forward -- you know, we were getting late into the bid
26 because, you know, June, as you mentioned, at that point, all we wanted was, like, a
27 compliance check from the CV, so that we could finalize our bid. So, I never actually
28 reviewed in details the Alstom ---

1 **CHRISTINE MAINVILLE:** Okay.

2 **MR. RICCARDO COSENTINO:** --- submission.

3 **CHRISTINE MAINVILLE:** And, indeed, Alstom was brought in,
4 then, quite a bit later in the day, correct, because of the rejection of CAF as a supplier?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **CHRISTINE MAINVILLE:** Okay. And so, they only had the
7 opportunity to meet with the City once, is that your recollection?

8 **MR. RICCARDO COSENTINO:** Yeah, to be honest, I think they
9 always envisioned to meet with the City once. We only met twice for CAF because of
10 the non-compliance and to seek an opportunity to further elaborate on our initial
11 submission.

12 **CHRISTINE MAINVILLE:** Got it. Okay. Now, we can bring this
13 down. I would like to talk about one of the risks that the City sought to transfer through
14 the procurement, which is the Geotech risk. Do you recall initially there was a desire to
15 transfer 100 per cent of that risk to the private sector?

16 **MR. RICCARDO COSENTINO:** That's correct. That's my
17 recollection.

18 **CHRISTINE MAINVILLE:** And, eventually, a risk ladder was
19 implemented, correct?

20 **MR. RICCARDO COSENTINO:** That's correct.

21 **CHRISTINE MAINVILLE:** And so, in the end, there were three
22 levels of risk from which proponents could select with, effectively, a reward to the
23 proponent who took on the most risk?

24 **MR. RICCARDO COSENTINO:** That's correct.

25 **MS. CHRISTINE MAINVILLE:** And how much incentive would
26 there be, or was there, to take on the full risk?

27 **MR. RICCARDO COSENTINO:** I believe it was a \$18M MPV
28 benefit to the proponent that would take 100 percent of the risk, and then a sliding

1 scale. I don't remember the other number. And I might be wrong. It might be around
2 \$18M, which it's -- obviously the bids are evaluated on an MPV basis, so whatever our
3 MPV number would be in our proposal, we would be discounted by the approximate
4 amount of \$18M.

5 **MS. CHRISTINE MAINVILLE:** Okay. So would characterize that
6 as a significant incentive to take it on?

7 **MR. RICCARDO COSENTINO:** Yes, you know, especially in a
8 price-driven selection process, \$18M, it's a very large incentive.

9 **MS. CHRISTINE MAINVILLE:** A very large?

10 **MR. RICCARDO COSENTINO:** Incentive.

11 **MS. CHRISTINE MAINVILLE:** Incentive, okay. RTG did take on
12 the full risk, correct?

13 **MR. RICCARDO COSENTINO:** That's correct.

14 **MS. CHRISTINE MAINVILLE:** And, at the time, it felt that it could
15 take it on because of its tunnelling technique?

16 **MR. RICCARDO COSENTINO:** Correct, yes. We felt we mitigated
17 some of the risk -- some of the geotechnical risk by the sequential excavation method
18 technique that we adopted.

19 **MS. CHRISTINE MAINVILLE:** And in hindsight, would you say it
20 was too large a risk to take on, or would you disagree with that?

21 **MR. RICCARDO COSENTINO:** I think -- again, it's -- we're talking
22 -- I think we need to define "geotechnical risk". I mean we are talking of the risk of
23 something that nobody actually has visibility. There's a lot of experience. So I think if
24 we understand how a geotechnical ground investigation is done, you have bore holes
25 every so -- at a certain distance from each other. And although you can have certainty
26 where the bore holes is, and you can have professional interpretation of the ground
27 condition between bore holes, but ultimately, you have limited amount of data. And so
28 you are interpreting and you are assuming based on experience, based on technical

1 knowledge. And ground engineering is not an exact science because ground behaves
2 in very different -- in very unpredictable ways, so you always -- again, you're always
3 taking, you know, a calculated risk whenever you are -- where you're accepting
4 unknown risk like geotechnical risk.

5 **MS. CHRISTINE MAINVILLE:** The geotech risk in Ottawa, am I
6 right, was a significant one?

7 **MR. RICCARDO COSENTINO:** It was -- yes, it was a significant
8 one, especially in -- under the Rideau -- I think it's the Rideau Canal where there is a
9 glacial till as a cone with very, very unstable ground conditions. The behaviour of that
10 cone was not completely -- I mean it was -- we had professional experts helping us,
11 mitigating that risk, but again, you are dealing with something that nobody can see and
12 nobody can touch until you actually touch it.

13 **MS. CHRISTINE MAINVILLE:** Right. And would you agree that
14 the contractor is better placed, in any event, so despite how large a risk it is, to take on
15 that risk?

16 **MR. RICCARDO COSENTINO:** I think we need to define what we
17 mean by "risk". So is it the risk -- if we define as the risk associated with the cost and
18 the construction methodology used to manage and mitigate that risk, yes, the contractor
19 is probably best placed since they are the entity that does the physical work. However,
20 if we define risk as the over-risk of the project, so the risk -- the over-risk of the program,
21 sorry. I meant to use the word "program" because program is different than project --
22 the over-risk of the program, which entails the ability to achieve the ultimate outcome of
23 the program, which is to move people from A to B, I think, in order to mitigate the
24 ultimate risk of -- the ultimate risk associated with the outcome of the program, the
25 sponsor is always best able to manage that risk. However, the excavation risk, and the
26 risk associated with the means and method associated with tunnelling, that is the
27 contractor's best position.

28 **MS. CHRISTINE MAINVILLE:** And by the "the sponsor", you

1 mean, in this case, the City of Ottawa?

2 **MR. RICCARDO COSENTINO:** That's correct.

3 **MS. CHRISTINE MAINVILLE:** And you say this -- just so I'm clear,
4 more broadly, in terms of transferring risk to the private sector, would your view be that,
5 you know, at the end of the day, the private sector may be well placed to fix problems
6 that arise, risks that materialize, and the City can seek remedies and be compensated
7 for delays or cost overruns if those risks are not fully mitigated? But you're saying
8 there's a broader risk to the ultimate goal of the project that is not -- that the private
9 sector is not well suited to manage?

10 **MR. RICCARDO COSENTINO:** That's correct. And I think, if I can
11 maybe elaborate, you know, as the private sector under contract, you know, we have a -
12 - we have a duty to mitigate events as they occur but, however, the commercial
13 standard -- it's commercially reasonable standard that we apply to whatever we do. So,
14 ultimately, we can meet the objective of the contract, which are not always aligned with
15 the overall objective of the project sponsor, in this case, the City of Ottawa.

16 And, you know, if the overall objective of the City of Ottawa -- of the
17 project sponsor, or the City of Ottawa in this case, is to have the line open as earlier as
18 possible and able to service the citizens of that particular jurisdiction, the entity that can
19 best mitigate and achieve that outcome is the City, is the project sponsor, because the
20 private sector would basically mitigate the event but the objectives are not completely
21 aligned with the objective of the ultimate user, which is to have the line open as soon as
22 possible. The contractor will mitigate and do what they can but under a commercially
23 reasonable standard.

24 **MS. CHRISTINE MAINVILLE:** Right. Now, the model that was
25 used here was Infrastructure Ontario's model, correct?

26 **MR. RICCARDO COSENTINO:** Correct.

27 **MS. CHRISTINE MAINVILLE:** And they -- their model is geared
28 towards transferring risk?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MS. CHRISTINE MAINVILLE:** Would you say that in this case,
3 however, was there greater effort to transfer risk onto the project company or the private
4 sector than is typical?

5 **MR. RICCARDO COSENTINO:** I think -- I think there was. I think
6 the geotechnical risk is a good example. I believe the project I was involved when I was
7 at Infrastructure Ontario was the Windsor-Essex Parkway. I believe we transferred less
8 risk when it came to geotechnical. And in general, yes, there was -- there was a -- we
9 felt, from our side of the bidding process, that there was a high degree of -- a high
10 degree on me to be able to have a cost certainty, and more certainty about who would
11 bear the cost of things not going according to plan.

12 And again, we're talking about a very complex -- you know, when
13 we talk about a construction project, we're talking about a very complex system. And
14 so, you know, to think that everything is going to go according to plan, it's a bit of a
15 fallacy. Never -- nothing goes according to plan in a complex system. In fact, you can't
16 even predict what goes -- what doesn't go according to plan, so the private -- okay, I'll
17 stop there because I'm not answering your question.

18 **MS. CHRISTINE MAINVILLE:** Effectively, there are unknown
19 risks, and -- right, necessarily, in a complex project like this?

20 **MR. RICCARDO COSENTINO:** Yes.

21 **MS. CHRISTINE MAINVILLE:** Okay. And you had worked
22 previously for Infrastructure Ontario, as we discussed?

23 **MR. RICCARDO COSENTINO:** Correct.

24 **MS. CHRISTINE MAINVILLE:** And so were there -- did you see
25 any additional changes to IO's P3 template that was used for the project agreement in
26 this case?

27 **MR. RICCARDO COSENTINO:** So one example that comes to
28 mind, I mean there were many, but -- you know, because, obviously, we provided a

1 significant amount of commentary to the project agreement that, you know, I think we
2 always try to provide a rationale for our comment by linking it back to a template,
3 because we know that template was bankable and financeable, and it had been beat by
4 other entities before.

5 You know, one particular clause that I remember spending a lot of
6 time on was, you know, the injurious affection risk associated with the project. I think
7 there was an expecta -- and this was something that, when I was at Infrastructure
8 Ontario, we never really tried to pass on to the private sector. An injurious affection --
9 again, I'm not a lawyer, but according to my recollection is, is the risk of having grow the
10 claims brought about the project itself? So -- you know, why was the project -- why was
11 an alignment picked? Why was there a probation as though having-- there was an
12 initial attempt from the City to have RTG or the Consortium at the time, be the first
13 respondent to an injurious affection claims. And so, we had to spend a significant
14 amount of time demonstrating that that was not a fair allocation of risk.

15 And again, you know, from that, that was one of the elements why
16 we felt it was more risk; an attempt to have more risk transferred than traditional PPP
17 contracts that we had seen before.

18 **MS. CHRISTINE MAINVILLE:** Did RTG ultimately take on that
19 risk, the injurious affection risk?

20 **MR. RICCARDO CONSENTINO:** No, I believe we were able to
21 convince the City to alter the provisions to a more standard template.

22 **MS. CHRISTINE MAINVILLE:** In terms of the PSOS, or project
23 specific output specifications, were they more prescriptive than they are typically in a
24 project of this nature?

25 **MR. RICCARDO CONSENTINO:** I think they were prescriptive. I
26 mean, if output based specification or project specific output specification, I mean, the
27 name itself expresses the intent of that particular schedule, which is to provide outputs
28 that need to be achieved so that the private sector proponent can bring innovation. And

1 so, instead of prescribing how things had to be done, output is provided, and how those
2 outputs are met are at the discretion -- are left to the discretion of the private sector
3 proponent, which has been proved to be the best way to bring innovation to a complex
4 project like the Ottawa LRT.

5 So, I don't know if I was trying to compare it to other specifications,
6 but it was certainly prescript, these specifications. There was nothing output based on
7 those specifications.

8 **MS. CHRISTINE MAINVILLE:** And "output based" meaning --
9 you've just explained it, but effectively, they're performance based? The City tells you
10 how they want the system to perform, or any given aspect of the system to perform, and
11 the contractor is to find a way to get there?

12 **MR. RICCARDO CONSENTINO:** Yeah, I mean, I can provide an
13 example, if it's helpful.

14 **MS. CHRISTINE MAINVILLE:** Sure. Briefly, that's helpful.

15 **MR. RICCARDO CONSENTINO:** Yeah, I mean, the -- you know, I
16 think the vehicle is the perfect example. You know, I think the intent is to move a
17 certain amount of passengers at a certain headway, so the time between trains. So,
18 you provide those parameters, and then you let the private sector develop the system to
19 meet that. Then, when you actually look at output based -- the PSOS for this project,
20 you know, the details go into the maximum speed, the acceleration, the acceleration.
21 You know, I think there's even like a specification about where the logo, the safety logo
22 of a specific glass pane, would have to be placed in the right bottom-hand corner, right?
23 So, that's very prescriptive and, obviously, that approach limits what innovation and
24 what know-how from other jurisdictions the private sector proponent can bring to the
25 table.

26 **MS. CHRISTINE MAINVILLE:** And so, were those prescriptive
27 specifications of concern to RTG?

28 **MR. RICCARDO CONSENTINO:** Yes. Yes. They certainly were.

1 I mean, again, we are trying to develop a competitive proposal, a proposal that needs to
2 be -- needs to meet the affordability cap in our mind in order to be successful. And so,
3 we felt that we couldn't really apply our ingenuity because the finish -- you know, the
4 project was too prescriptive. You know, even as I said, when we look at the roof, that
5 we were able to get the City to change the specification for the roof. But, again, it
6 required a physical redrafting of the specification in order to be compliant, which meant,
7 you know, it wasn't about meeting an output which is providing a certain climatic
8 condition of a station, making sure the passenger, you know, were protected from the
9 elements, that we would expect in an output-based specification, those perimeters.
10 How we do it; does the roof need to be curved or straight? That's prescriptive.

11 **MS. CHRISTINE MAINVILLE:** Thank you. Could we speak for a
12 minute about the City's approach to maintenance payments?

13 **MR. RICCARDO CONSENTINO:** Yes.

14 **MS. CHRISTINE MAINVILLE:** Okay. And so, did RTG have
15 concerns about the approach being taken in that regard?

16 **MR. RICCARDO CONSENTINO:** So, we always do, during the big
17 phase, we do what we call a calibration of stress testing in the mechanism in order to
18 understand, you know, how difficult it would be to get to default notices. There's a
19 ladder of amount of penalties that you have to incur before you reach a default scenario.
20 So, we always stress test that. And we felt there was, you know, a fairly punitive
21 approach. We felt that it would have been fairly easy, depending on how the contract
22 would be interpreted to reach those thresholds.

23 However, again, this degree of interpretation in these documents --
24 so we ultimately felt that, sure, if the contract is interpreted this way, it could be a trigger
25 event where penalties are enforced on a punitive basis, but if the contract is interpreted
26 that way, then we'd be okay or we won't reach the full scenarios very quickly.

27 **MS. CHRISTINE MAINVILLE:** And were there discussions about
28 how that would be interpreted?

1 **MR. RICCARDO CONSENTINO:** Again, through the commercially
2 confidential meetings, we provide comments, we have discussions with the authority,
3 but obviously, those discussions are non-binding. So, obviously, we raised a concern,
4 we raised -- we asked for changes, and ultimately, though, you know, if those changes
5 are not applied, we really have no choice but to either pay or no pay. So, it comes
6 down to that. So, ultimately, given the cost and effort involved in putting these
7 proposals together, it's very difficult to walk away because the contract could be
8 interpreted in a certain way. So, again, having optimism bias pitches in, and you try to
9 rationalize that a contract will be interpreted in a favourable way -- not "favourable,"
10 that's not the right word, but in a fair way.

11 **MS. CHRISTINE MAINVILLE:** And so, are you saying that RTG
12 provided feedback on what it deemed to be certain punitive aspects of the maintenance
13 deduction system, or payment system, and ultimately, those were not incorporated; is
14 that correct?

15 **MR. RICCARDO CONSENTINO:** Some have been incorporated;
16 some have not been incorporated. I think my recollection is the overall view was like
17 not a significant portion that we wanted were probably not incorporated.

18 **MS. CHRISTINE MAINVILLE:** And so, from there, what you've just
19 explained, is RTG has to decide, are we to just forge ahead despite the punitive nature
20 of that regime or not?

21 **MR. RICCARDO CONSENTINO:** That's correct. That's the
22 commercial decision that has to be made after all the dialogues with the client have
23 been completed, and it's always a difficult discussion.

24 **MS. CHRISTINE MAINVILLE:** And you've spoken about the -- sort
25 of what goes into putting forward such a bid. I understand it's a significant investment of
26 resources to put forward a bid in a project of this nature?

27 **MR. RICCARDO CONSENTINO:** Yes. It's tens of millions of
28 dollars. The exact figure is probably -- I don't recall, but, you know, certainly more than

1 10 million, if not more than 20 million are completely at risk. The reason is stipend,
2 honorarium, to cover part of that cost for the losing proponent, but it's never enough. I
3 seem to recall, on this project, it was a few million dollars. So, ultimately, you have a lot
4 at stake, and then that's just the financial hard dollars component. There's a very large
5 opportunity cost.

6 So, you know, because you're bidding on this project, that means
7 you're not bidding on some other projects and so you have a very, very big opportunity
8 cost. You know – and by the way, the ten, twenty million dollars I mentioned is just
9 external costs. That doesn't include the corporate resources that are already included
10 in the overheads. We don't normally calculate those without – you know, the cost of
11 developing our design to 20-30 per cent in order to have some degree of certainty of all
12 estimation.

13 **MS. CHRISTINE MAINVILLE:** And, Mr. Cosentino, can I ask,
14 given what you've explained – or assessed to be a fairly punitive maintenance penalty
15 regime, why didn't those contractual incentives work at the end of the day, if you agree
16 with that premise, and you know, let me just say – you know given – I think you'll agree
17 that issues arose during the maintenance phase on this project; correct?

18 **MR. RICCARDO COSENTINO:** That's correct.

19 **MS. CHRISTINE MAINVILLE:** So what would you say about the
20 sufficiency of those incentives or the penalizing nature of the maintenance penalty
21 regime and why wasn't that sufficient by all appearances?

22 **MR. RICCARDO COSENTINO:** So my professional opinion is that
23 – I mean penalties drive behaviours; right, but they're not – they're now going to fix
24 underlying problems. So I think incentives are probably better – ultimately, you know –
25 again, it's what I mentioned before, commercial reasonableness. If addressing the
26 underlying problem is more costly than paying the penalty, that's commercial
27 reasonableness. And so, I guess, my professional view is that the penalties didn't
28 address it because there probably were other underlying issues that incentive or

1 punishment would not allow the private sector to overcome the underlying issue.

2 **MS. CHRISTINE MAINVILLE:** Is it an issue that the penalties then
3 are insufficient?

4 **MR. RICCARDO COSENTINO:** That's an interesting question. I
5 think ultimately how much can you incentivize by punishing? I think that's a
6 philosophical question, but ultimately he also doesn't have the consideration that if the
7 penalty is too high, that is risk adjusted in the initial bid. So if, you know, a proponent –
8 having bid on many of these contracts, and having been on the public side as well, I
9 think what people involved always try to reconcile is that I can put a very high penalty
10 with a high – I can put a very penalty but the proponent will try that, so the penalty
11 doesn't count for free because at a certain point you always make an analysis that
12 some penalties will materialize and so you carry contingency against those penalties.
13 So the higher the penalty, the higher the contingency. However, from the public side, if
14 that event doesn't materialize in the private sector, then that is a windfall. So you're
15 always trying to trade-off when you're setting up these mechanisms to ensure you're not
16 overly punitive because you're going to pay, as a private sector sponsor, you're going to
17 pay for that punitive arrangement. And, here, because the City has an affordability
18 issue, I'm sure they considered that, you know, one, an overly punitive payment
19 mechanism but it's still – you know, it was still punitive because obviously we have
20 suffered the consequences of that.

21 **MS. CHRISTINE MAINVILLE:** And are there implications on the
22 ground when – let's say the maintainer is being effectively punished or penalized too
23 harshly; so can it become counter-productive in terms of what's happening on the
24 ground?

25 **MR. RICCARDO COSENTINO:** Well, yes, it's – you know,
26 ultimately when you apply financial penalties and you're starving the contractor of
27 financial resources, I think we can all appreciate that that doesn't come without
28 consequences. So that's, I guess – I guess that's another reason why you don't overly

1 punitive your penalties too high because you don't want to force somebody into
2 bankruptcy because that is even worse for the overall program. But, yet, there are
3 circumstances when you're starving the contractor of cash.

4 **MS. CHRISTINE MAINVILLE:** Let's shift gears a little bit. Could
5 you talk about what RTG's expectations were going into this project in respect of how
6 the parties would approach it and how they would approach the project agreement in
7 terms of a partnership or collaboration perspective?

8 **MR. RICCARDO COSENTINO:** Yeah, again, as I said before,
9 when you create an estimate, a schedule, when you're pricing a project of this level of
10 complexity you always – you have to bring your experience in order to justify the
11 decision that you make when you're estimating. And so I think that the general
12 expectation based on other jurisdictions, delivering projects in other jurisdiction is that
13 you know, the overall purpose of the project, the overall intent of the project was to have
14 a collaborative approach and issue a resolution approach by the parties because
15 although the risk is being transferred and there is a contract that articulates that risk
16 transfer, these are very complex systems. These are very complex projects and it's
17 really – I think it's a bit of a fallacy that you can articulate every risk and every – and you
18 can draft every element of what could occur on the project and have it priced.

19 So in order to overcome issues, in order to maintain the overall
20 objective of the program like I described before, there's always an element of
21 collaboration and discussion in order to overcome these problems.

22 **MS. CHRISTINE MAINVILLE:** And is that how you expected the
23 City to approach it?

24 **MR. RICCARDO COSENTINO:** Yes, I mean that's, you know, as I
25 articulated before, you know, we felt that, yes, you know – maybe through optimism by
26 us we felt that we would be able to come to the table and come with a joint solution to
27 some of the problems that might have occurred, you know. I mean, you know, it's a
28 technical risk, it was a risk that we took on, but there are, you know, there could have

1 been extenuating circumstances about that risk materializing. So we always felt that
2 there's going to be a dialogue and there's going to be – you know, because we have
3 both common interests and long term partnerships, we were able to figure out a
4 common approach to solving problems in a collaborative way.

5 **MS. CHRISTINE MAINVILLE:** And is that what transpired?

6 **MR. RICCARDO COSENTINO:** I don't believe that's what
7 transpired. Certainly that's not how I felt it transpired. I think there was an expectation
8 from – I mean as it transpired the client expected that they bought a system, they paid
9 for a system, they had a contract that protected them, that transferred the risk and
10 basically it was a one-way street which, again, it's really – it's not how this complex
11 project works because you're not buying – I always use the example, you're not buying
12 a paperclip, you're buying something that is very complex and it's really difficult to
13 articulate upfront all of the elements. So –

14 **MS. CHRISTINE MAINVILLE:** Okay. And so you mentioned a
15 sink hole, for instance. Was this from your perspective or RTG's perspective the most
16 significant event over the course of the project in terms of having an impact on the
17 project?

18 **MR. RICCARDO COSENTINO:** Yeah, absolutely, that was
19 certainly the most significant – it wasn't the only event, but it was the most significant
20 event that occurred on that critical point in the project and at a critical location of the
21 project that really impacted the construction sequencing of the delivery and then it had a
22 knock-on effect on subsequent milestones, lower milestones associated with the
23 project. Yes, so the short answer is yes, there was a most critical event.

24 **MS. CHRISTINE MAINVILLE:** Now, OLRTC, the constructor, is
25 the one ultimately responsible for the schedule, right? They took on that risk?

26 **MR. RICCARDO COSENTINO:** Yes, that's correct.

27 **MS. CHRISTINE MAINVILLE:** And am I right that the carrying
28 companies of the contractor are the ones who are effectively on the hook financially for

1 risks like this when materializing?

2 **MR. RICCARDO COSENTINO:** That's correct.

3 **MS. CHRISTINE MAINVILLE:** And so ultimately the entity that has
4 pledged the most or who is responsible for the delivery and who has the most at stake
5 financially in terms of delays to the project is the contractor, is the constructor, I should
6 say, OLRTC?

7 **MR. RICCARDO COSENTINO:** That's correct.

8 **MS. CHRISTINE MAINVILLE:** And am I right that as delays
9 accumulated the project became more costly?

10 **MR. RICCARDO COSENTINO:** That's correct.

11 **MS. CHRISTINE MAINVILLE:** And so is it correct to say that
12 OLRTC, not RTG, had to inject more cash into the project?

13 **MR. RICCARDO COSENTINO:** That's my understanding, yes.

14 **MS. CHRISTINE MAINVILLE:** Through the parent companies?

15 **MR. RICCARDO COSENTINO:** That's correct.

16 **MS. CHRISTINE MAINVILLE:** And so OLRTC would be quite
17 motivated over time to bring the project to completion?

18 **MR. RICCARDO COSENTINO:** That's correct.

19 **MS. CHRISTINE MAINVILLE:** Do you have any insight into how
20 much OLRTC was being impacted financially as a result of delays on this project?

21 **MR. RICCARDO COSENTINO:** No, I don't.

22 **MS. CHRISTINE MAINVILLE:** Okay. Do you know whether there
23 was a significant financial impact?

24 **MR. RICCARDO COSENTINO:** It depends how you define
25 significant, but it was -- yeah, there was -- in general terms it was -- there was an
26 injection of financial resources into the project original issue.

27 **MS. CHRISTINE MAINVILLE:** Right. And first of all, are liquidated
28 damages to be paid to the City of \$1 million every time a new target RSA date is

1 missed? Do you ---

2 **MR. RICCARDO COSENTINO:** That is correct.

3 **MS. CHRISTINE MAINVILLE:** --- have knowledge of that? Yes?

4 **MR. RICCARDO COSENTINO:** I have knowledge of that, yes.

5 **MS. CHRISTINE MAINVILLE:** And there were daily liquidated
6 damages to be paid out once -- to be clear, once the May 24th, 2018 date was missed,
7 correct?

8 **MR. RICCARDO COSENTINO:** That's correct.

9 **MS. CHRISTINE MAINVILLE:** And are those liquidated damages
10 to e paid by OLRTC to RTG?

11 **MR. RICCARDO COSENTINO:** That's correct.

12 **MS. CHRISTINE MAINVILLE:** And I'm not trying to quiz you but do
13 you recall that those were in the realm of \$124,000 a day?

14 **MR. RICCARDO COSENTINO:** I recall that correctly.

15 **MS. CHRISTINE MAINVILLE:** Okay. And do you recall whether
16 any schedule or financial relief was sought by OLRTC [perhaps through RTG vis-a-vis
17 the City?

18 **MR. RICCARDO COSENTINO:** Sorry. Can you ask that again?

19 **MS. CHRISTINE MAINVILLE:** Yes. What if any schedule or
20 financial release -- relief was sought from the city as a result of the delays or
21 consequences of the delays on the ---

22 **MR. RICCARDO COSENTINO:** Yeah.

23 **MS. CHRISTINE MAINVILLE:** --- constructor?

24 **MR. RICCARDO COSENTINO:** So my role here was as a board
25 member of RTG. You know I didn't have specific firsthand interaction with the City; the
26 management team did that through -- we did collaboration with OLRTC. I had to
27 assume based on the feedback and the reporting through the board meetings I
28 attended that there was another discussion about how can we alleviate the financial

1 pressure that OLTRC is suffering? Is there things we can do to -- is there things that
2 the City can do ? I don't recall the specifics though.

3 **MS. CHRISTINE MAINVILLE:** Okay. Do you -- first of all, we
4 should address this piece to understand what ends up transpiring on this front. The City
5 at a point in time in -- later in 2017 stepped into the shoes of the lenders, correct?

6 **MR. RICCARDO COSENTINO:** Correct.

7 **MS. CHRISTINE MAINVILLE:** And so effectively the City assumed
8 the long-term loan, right, and began paying RTG's lenders directly?

9 **MR. RICCARDO COSENTINO:** Correct.

10 **MS. CHRISTINE MAINVILLE:** And this was in the context of
11 negotiations for the Stage 2 expansion?

12 **MR. RICCARDO COSENTINO:** That's correct.

13 **MS. CHRISTINE MAINVILLE:** Could you just briefly explain the
14 reasoning behind that?

15 **MR. RICCARDO COSENTINO:** Yeah. So the Project Agreement
16 and the lending agreement contemplates -- because obviously there's RTG has an
17 agreement with the City and an agreement with the lenders and as part of the Stage 2
18 negotiation, obviously the City wanted to amend the Project Agreement and therefore
19 RTG would have to amend the lending agreement in order to account for the expansion
20 of the system.

21 The expansion of the system would entail more O&M services
22 provided through RTG and RTM to account for the expansion That change would have
23 required approval from the lenders and also would have required -- in order for the
24 lenders to approve, they would have required to be in a no better, no worse position
25 financially and from a risk perspective, which in turn would have -- they would have
26 requested for RTG to inject more equity into the project to rebalance what we call the
27 sensitivity of he operational gearing of the loan.

28 So my understanding is that obviously there was no appetite from

1 the City to have a lender's consent fee and potentially additional equity injection
2 because obviously the injection would require a return on the investment. That would
3 have increased the costs of the Stage 2.

4 So my understanding is that the City decided not to follow what's
5 envisioned in the project agreement which is basically if you can't accommodate the
6 lender's requests or the lender's requirement, you can always terminate lenders under
7 the compensation of termination provision in the Project Agreement. Obviously that
8 would have been quite expensive because that's a make whole provision where the
9 lenders would have to be kept whole and paid for future loss of interest or loss of profit
10 in their case.

11 So the City decided to assume the debt from the long-term lenders
12 and keep the lending agreement in place with RTG. However, they stepped into the
13 shoes of the bond holders and had a separate assumption agreement with the bond
14 holders where they would keep them -- they would keep paying them over the term of
15 the loan but then they would step into their shoes and have a direct agreement instead
16 of the long-term.

17 **MS. CHRISTINE MAINVILLE:** Okay. Thank you for that. And was
18 that unusual?

19 **MR. RICCARDO COSENTINO:** Very unusual. You know, in my
20 experience, I have never seen that before.

21 **MS. CHRISTINE MAINVILLE:** It was unprecedented to your
22 understanding?

23 **MR. RICCARDO COSENTINO:** To my understanding, yes.

24 **MS. CHRISTINE MAINVILLE:** What would be the implications of
25 such a move?

26 **MR. RICCARDO COSENTINO:** Well, there's a -- you know, this
27 agreement, this structure, this non-recourse project finance PPP structures are
28 designed in order to balance the interests of all the parties involved and there is

1 alignment, this partial alignment amongst the interests of the various parties. But there
2 is never a perfect alignment. And that misalignment, alignment of interest is what keeps
3 the equilibrium in the relations between the parties, in this case RTG, the City and the
4 lenders. And that tension between the three parties in the triangle, is what has been
5 tested over the last 30 years to be the most optimal structure to drive the best behaviour
6 and incentives.

7 So by removing the long-term lenders and basically aligning
8 completely aligning the interests of the long-term lenders with the interests of the City,
9 you're now tinkering with a structure that was in equilibrium and you're removing the
10 equilibrium.

11 **MS. CHRISTINE MAINVILLE:** And concretely, perhaps, for the
12 public and for us, for our benefit, what concrete implications would you say this had on
13 the project. Are you able to point to anything specifically?

14 **MR. RICCARDO COSENTINO:** I can point to an example. So I
15 think we're talking about the example of, you know, if the contractor is not able to
16 achieve substantial completion or revenue service availability -- I can't remember which
17 date, but the lender's longstop date, and the contractor's not able to certify that on a
18 monthly basis, draws are stopped. So the short-term lender, long-term lenders don't
19 allow any draws to be taken by the contractor to fund the construction activities.

20 I specifically remember talking to one of the short-term lenders and
21 it was indicated to me that -- we had requested to them -- we had a request to the
22 lenders, and I specifically was talking to that particular lender. I was asking particular
23 lender if they would consider waiving the draw-stop. We weren't asking to waive the
24 default because we were meeting the long-stop -- the long-stop date -- the lender's
25 long-stop date.

26 I was just asking if they could waive the draw-stop in order to have
27 more cash flowing down to the contractor and allow the contractor to continue
28 performing the activity without additional financial pressure. And I remember that

1 particular lender is telling me that, you know, they were going to be happy to consider
2 but that the City, as a long-term lender, was not really willing to do that.

3 I mean, at the end of the day, I don't know what happened. That's
4 what that particular lender told me on that day. They said that the City wasn't going to
5 waive. All I know is that we never -- you know, that draw-stop condition was never
6 waived, but I don't know -- I can't confirm if what I was told by that particular lender is
7 correct or not.

8 **MS. CHRISTINE MAINVILLE:** And do you -- were you provided,
9 perhaps by your counsel, correspondence in respect of this issue since you were
10 interviewed by the Commission?

11 **MR. RICCARDO COSENTINO:** Yes.

12 **MS. CHRISTINE MAINVILLE:** And do recall that the city attended
13 a meeting with RTG and the other lenders and the MSF in respect of this issue?

14 **MR. RICCARDO COSENTINO:** Yes, I recall that.

15 **MS. CHRISTINE MAINVILLE:** And you recall Ms. Marian Simulik
16 who was the City Treasurer, correct, at the time?

17 **MR. RICCARDO COSENTINO:** Yes, correct.

18 **MS. CHRISTINE MAINVILLE:** You're aware that her recollection is
19 that the other lenders perhaps were not interested and the City would have otherwise
20 been prepared to agree to waive at least the default, any default that RTG could have
21 been held to?

22 **MR. RICCARDO COSENTINO:** Yes, I -- yeah, I've seen the
23 recommendation and I do recall even her saying that. I think where I was -- I've been
24 struggling with is he said/she said because I had a long-term -- a long-term partner -- a
25 long-term -- no, I don't want to say long-term lender but a long-term relationship lender
26 telling me one thing and then the client telling me another thing. So I really don't -- I
27 don't know who was correct. It would have been good if minutes from the meeting of
28 the votes that was taken by taken by the lender had been published, but all I can say is

1 what I was advised by the short-term lender that I was talking to.

2 **MS. CHRISTINE MAINVILLE:** Right. At the end of the day, you're
3 not privy to what discussions are taking place between the City and the other lenders,
4 correct?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **MS. CHRISTINE MAINVILLE:** But what you've said is there was
7 no waiver of the certification that would have allowed RTG to draw additional funds.

8 **MR. RICCARDO COSENTINO:** That's correct.

9 **MS. CHRISTINE MAINVILLE:** Okay. And that remained the case
10 throughout the rest of the project?

11 **MR. RICCARDO COSENTINO:** Until substantial completion, yes.

12 **MS. CHRISTINE MAINVILLE:** Okay. You were on RTG's Board
13 as well when a decision was made to ask the lenders -- and so that would include the
14 City -- to consent to reduced liquidated damages to be paid by OLRTC to RTG?

15 **MR. RICCARDO COSENTINO:** That's correct.

16 **MS. CHRISTINE MAINVILLE:** Do you recall that RTG does not
17 ultimately reduce those liquidated damages?

18 **MR. RICCARDO COSENTINO:** That's correct.

19 **MS. CHRISTINE MAINVILLE:** And I just want to clarify. Is that
20 because RTG ultimately decided that it wouldn't. or it could not?

21 **MR. RICCARDO COSENTINO:** I think it's a continued -- so I think
22 it started with a request to the lenders to reduce their liquidated damages for the
23 component of lost internal rate of return for RTG. I think when that request was verbally
24 rejected -- and I do recall being briefed at the board by Antonio about -- Antonio Estrada
25 -- about the conversation that he had with the City of Ottawa, that they would not
26 consider that reduction. I think, ultimately, we stopped pursuing that because other
27 costs materialized from OLRTC towards to RTG, and I think the recommendation that
28 was provided to me at this meeting refreshed my memory that we had insurance -- we

1 had additional insurance policy that we had not included in the calculation of the
2 liquidated damages to OLRTC.

3 So at the end, through the passage of time, new information
4 became available and we realized that we couldn't offer that discount to OLRTC in any
5 case. But that was not -- I can't remember the amount of time between us making the
6 verbal request to the time that we stopped pursuing, but I think it was -- it was certainly
7 weeks.

8 **MS. CHRISTINE MAINVILLE:** Okay. So at the end of the day,
9 RTG decided it could not provide relief to OLRTC in respect of the liquidated damages
10 that were owed by OLRTC to RTG?

11 **MR. RICCARDO COSENTINO:** Yeah. And if I can elaborate, it's
12 because -- so what we were trying to waive is obviously -- is lost return associated with
13 the investment that RTG made, the equity investment, and so we felt that we should
14 also participate in the financial challenges that the project had and sort of waive that
15 profit in favour of OLRTC. But then when additional costs materialized, we realized,
16 "Okay, not only are we going to waive the profit, but we also incur additional costs
17 because the insurance cost is an obligation of RTG." If we also have to incur that, then
18 I don't think it's an appropriate -- it doesn't reflect the appropriate risk connotation
19 between RTG and OLRTC.

20 **MS. CHRISTINE MAINVILLE:** Okay. I only have a few more
21 minutes with you, Mr. Cosentino, so let me just address briefly with you the trial-running
22 period.

23 **MR. RICCARDO COSENTINO:** Yes.

24 **MS. CHRISTINE MAINVILLE:** As a member of RTG's Board, you
25 were being kept informed during trial running of what was happening at high level but on
26 a near daily basis, correct?

27 **MR. RICCARDO COSENTINO:** That's correct.

28 **MS. CHRISTINE MAINVILLE:** And so you were aware of the

1 challenges that were being encountered during that period?

2 **MR. RICCARDO COSENTINO:** I was not too -- yeah, the
3 recollection is vague but, at the time, I was reading all the briefing that I was sent -- that
4 were sent to me as a board member.

5 **MS. CHRISTINE MAINVILLE:** And you're aware that there was a
6 change in the requirements during the trial- running period in terms of the requirements
7 to be met to achieve the trial-running criteria?

8 **MR. RICCARDO COSENTINO:** That's correct. I was aware of
9 that, those changes, specifically, the vehicle numbers, and other parameters.

10 **MS. CHRISTINE MAINVILLE:** And what was the reason for those
11 changes, to your understanding?

12 **MR. RICCARDO COSENTINO:** I mean there were -- at the time,
13 we knew that there were challenges in -- well, we didn't have the right -- you know,
14 there were issues with acceptance of the vehicle, if I remember correctly, and so it was
15 difficult to have 15 vehicles, so I think, you know, there was an understanding of
16 changing that to 13. In general, I mean there were challenges in meeting the
17 parameters that were established by the project team and there was, you know, a
18 collaborative effort without compromising the safety of the system to find a way to have
19 an expeditious trial running.

20 **MS. CHRISTINE MAINVILLE:** Right. So fair to say there was
21 some difficulty achieving the metrics that had been set a bit earlier, and so the metrics
22 were amended?

23 **MR. RICCARDO COSENTINO:** That was my understanding, and
24 is my understanding today, yes.

25 **MS. CHRISTINE MAINVILLE:** And am I right that it was known,
26 then that there would be additional pressure on maintenance following RSA?

27 **MR. RICCARDO COSENTINO:** I certainly -- I personally had that
28 understanding, and I think, as a Board, we had that understanding. Obviously, you

1 know, the system -- you know, whatever metrics are decided for trial running, there is
2 still a specification that has to be met for the revenue service availability, which
3 obviously it will be in force. So, any compromise in satisfying that the system is going to
4 perform according to the specification would be borne by RTM.

5 **MS. CHRISTINE MAINVILLE:** Right. And am I right that RTG's
6 Board was concerned about having RTM in the room? They wanted RTM in the room
7 for these discussions in order, perhaps, to protect the maintainer's interests?

8 **MR. RICCARDO COSENTINO:** Yeah, again, I think my
9 recollection is, and I was not in Ottawa, you know, I was in Toronto. I was remote. But,
10 you know, it is a fast-paced environment, trial running and, you know, there are many,
11 many things happening at the same time. So, you also don't want to start enforcing
12 bureaucracy in order to preserve rights. So, the best way we had to make sure that we
13 weren't going to be an impediment to the trial running, but at the same time that parties
14 were satisfied that there weren't too many compromises to be made, it was to have
15 RTM in the room.

16 **MS. CHRISTINE MAINVILLE:** But given the affiliations between
17 the companies, so RTM, OLRT, CRTG, would that not create, at some level, a bit of a
18 conflict of interest?

19 **MR. RICCARDO COSENTINO:** Could you rephrase that again?

20 **MS. CHRISTINE MAINVILLE:** Well, if RTM -- let me give you an
21 example. If RTM were to say, you know, if the parent companies ultimately are telling
22 us they want to go into service, you know, we will make it work, as opposed to pushing
23 back because there will be additional pressure on maintenance, are they going to be the
24 ones who are going to stand in the way?

25 **MR. RICCARDO COSENTINO:** I think -- I think there was -- I think
26 at that point, there is a collaboration effort. I mean, I think all the parties had a common
27 interest to achieve -- that's why I caveat because I am not compromising safety without
28 -- without giving up on that particular component. But, yeah, they could -- you know,

1 ultimately, you know, in these companies, it is three different divisions of the same
2 company. So, you have an equity division, an O&M division, and a construction
3 division, and ultimately, it is three separate profit/loss accounts and people are
4 responsible for those profit/loss accounts. So, the person responsible for maintenance
5 five years down the line is never going to be able to say, "Well, I didn't make a profit this
6 year. I didn't deliver the results I was supposed to deliver because of the decision that
7 was made five years ago." That is never going to be an excuse accepted by any
8 corporation. So, I think people are empowered to carry out their obligation as a dutiful
9 employee, which is to protect the element of the work that they are responsible for.

10 **MS. CHRISTINE MAINVILLE:** Did you expect that revenue service
11 was going to be challenging?

12 **MR. RICCARDO COSENTINO:** After the sink hole, yes. I mean, I
13 think there was a general -- you know, having had the sink hole, having had all the
14 sequencing work in the tunnels, having had all sorts of other challenges on the project,
15 having not been able to achieve substantial completion of whatever the first attempt at
16 that particular milestone, it was clear that it was going to be a challenging process.
17 There was a lot of other sequence work that had to be reconciled that didn't reflect the
18 initial estimate and the initial -- you know, when you asked me was the price enough,
19 well -- was the price enough or was the schedule enough? Well, yes, but then you now
20 are doing other sequencing work. You now have to rearrange your construction
21 schedule. And so, that doesn't come without consequences. So, yeah, having seen
22 what was happening, I knew it wasn't going to be a simple process, a straightforward
23 process.

24 **MS. CHRISTINE MAINVILLE:** And would you say that everybody
25 was incentivized to, or eager perhaps, to get to revenue service availability?

26 **MR. RICCARDO COSENTINO:** Yes.

27 **MS. CHRISTINE MAINVILLE:** Yes, which would have contributed
28 to the challenges that were ultimately faced?

1 **MR. RICCARDO COSENTINO:** Yes, I mean, you know, the
2 incentives were there, and the contractor would have, once achieving revenue service
3 availability, the short-term lenders are paid, the \$124,000 equity damage stops, so the
4 contractor has that. The City had the incentive of opening the system. You know, so
5 those were the incentives and, you know, RTG, because we had limited ability to
6 intervene, for us, it was making sure that the long-term repercussions of those decisions
7 would not be too onerous to the remaining parties, because at that point, ORTC, after
8 revenue service finishes, they have the work period, but their obligation -- the majority of
9 their obligation are expired or completed. And so, we wanted to try and make sure that
10 to the best of our ability and our means that not too many compromises were made.

11 **MS. CHRISTINE MAINVILLE:** And you touched on this a bit
12 earlier, but who then should be looking after the end user of the system and ensuring
13 that the system is fully ready for service from your perspective?

14 **MR. RICCARDO COSENTINO:** Well, in this case, in this particular
15 case, I mean, the City and the operator, right? I mean, they are ultimately the
16 customer-facing entities. The City and OC Transpro as the entity that interfaces with
17 the customer. Sorry, am I not understanding the question?

18 **MS. CHRISTINE MAINVILLE:** Well, doesn't RTG ultimately
19 undertake to provide a reliable system that is ready at revenue service availability to the
20 City?

21 **MR. RICCARDO COSENTINO:** So, RTG has signed a project
22 agreement and then we have dropped down those obligations to RTM. So, RTM is
23 ultimately the entity that has the financial incentives through the security package, so
24 the letter of credit and the guarantees to make sure that the system is properly
25 maintained and available for service.

26 **MS. CHRISTINE MAINVILLE:** Mm-hmm, but if I follow through,
27 then, on this, RTG has to deliver this, but the City has to accept the system, correct, as
28 being complete?

1 **MR. RICCARDO COSENTINO:** Yes. And OC Transpro, as well as
2 the operator, because ultimately all RTG and RTM are doing are making sure that the
3 system is available, but we are not operating it. So, the customer-facing component is
4 not with RTG or RTM, it is with the City and OC Transpro.

5 **MS. CHRISTINE MAINVILLE:** Is this what you were referencing
6 earlier by talking about the overall risk transfer and who ---

7 **MR. RICCARDO COSENTINO:** That's correct.

8 **MS. CHRISTINE MAINVILLE:** Can you just explain that briefly?

9 **MR. RICCARDO COSENTINO:** Yeah, I mean, ultimately, you
10 know, I think you have to look at the obligations of the private sector or the RTG had on
11 the contract, which is to make the service available. But, you know, we have to do that
12 within, again, the commercial reasonableness test, which doesn't mean that at all costs
13 we are going to mitigate the impact of events. However, we are not the entity that has
14 to interface with the customer. We are not the entity that has to interface with the
15 taxpayer. So, ultimately, the city and OC Transpro are the ones that bear the program
16 risk to have, you know, passengers suffering, consequences of the project being late.

17 **MS. CHRISTINE MAINVILLE:** Okay. And we are going to go to a
18 break. I've kept you here for two hours, but if I could ask my last question? From your
19 perspective, is a P3 contract well suited for a project of this level of complexity?

20 **MR. RICCARDO COSENTINO:** It can be. I think what we have to
21 understand is what a P3 is. A P3 is a fixed price, date certain construction contract or
22 maintenance contract with financing layers on top of it. I think we need to -- the
23 question that I think is important to answer is, is lump sum, turn key nature of a P-3 the
24 right element for a program -- a project of this complexity? And I think it can be,
25 however, if everything tends to transfer 100 percent of the risk to one single party in
26 something this complex, then that is not the right tool because ultimately, you can't
27 transfer -- never transfer 100 percent of the risk.

28 So I think the -- I'm sorry, I have to say, it depends.

1 **MS. CHRISTINE MAINVILLE:** Thank you.

2 Mr. Commissioner, I apologize for going a bit over time.

3 **COMMISSIONER HOURIGAN:** All right. We'll take the afternoon
4 break, 15 minutes.

5 **MS. CHRISTINE MAINVILLE:** Thank you.

6 Thank you, Mr. Cosentino.

7 **MR. RICCARDO COSENTINO:** Thank you.

8 **THE REGISTRAR:** Order. All rise. The Commission will recess
9 for 15 minutes.

10 --- Upon recessing at 4:02 p.m.

11 --- Upon resuming at 4:16 p.m.

12 **THE REGISTRAR:** The Commission is resumed

13 **--- RICCARDO COSENTINO, Resumed:**

14 **COMMISSIONER HOURIGAN:** All right. The first party to let the
15 examinations after the Commission is the City of Ottawa.

16 **MR. PETER WARDLE:** Thank you, Mr. Commissioner.

17 I've been unable to start my video, and I have the message that the
18 host has stopped it.

19 **COMMISSIONER HOURIGAN:** The host has stopped it? Is that
20 what you said?

21 Oh, I see it now.

22 **MR. PETER WARDLE:** Thank you.

23 **--- CROSS-EXAMINATION BY MR. PETER WARDLE:**

24 **MR. PETER WARDLE:** Mr. Cosentino, I am Peter Wardle. I am
25 counsel for the City of Ottawa.

26 I want to just start where you started with respect to the
27 procurement process, and I just want to start with your role. You were bid director for
28 RTG on the project, correct?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MR. PETER WARDLE:** And I'm taking this from your interview.
3 Your role was to bring the overall proposal together, leveraging the expertise of the
4 construction contractor, and O&M contractor in all the legal, technical, and financial
5 advisors that are available to the consortium ---

6 **MR. RICCARDO COSENTINO:** That's correct.

7 **MR. PETER WARDLE:** And can we agree that your company,
8 SNC, and the other members of the consortium that made up RTG are large,
9 sophisticated entities?

10 **MR. RICCARDO COSENTINO:** Yes.

11 **MR. PETER WARDLE:** And you had all the resources you needed
12 from those three companies to develop a comprehensive and realistic proposal; isn't
13 that correct?

14 **MR. RICCARDO COSENTINO:** Yes.

15 **MR. PETER WARDLE:** And you said in your formal interview, your
16 team did risk analysis, correct?

17 **MR. RICCARDO COSENTINO:** That's correct.

18 **MR. PETER WARDLE:** You did schedule analysis, correct?

19 **MR. RICCARDO COSENTINO:** Correct.

20 **MR. PETER WARDLE:** You used all the tools that are used in the
21 industry to understand the risk, correct?

22 **MR. RICCARDO COSENTINO:** That's correct.

23 **MR. PETER WARDLE:** And that would include the use of Monte
24 Carlo analysis or some other form of software, correct?

25 **MR. RICCARDO COSENTINO:** Correct.

26 **MR. PETER WARDLE:** And just for the public and the
27 Commissioner, that is a simulation-based risk modelling technique that produces
28 expected values and confidence intervals, correct?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MR. PETER WARDLE:** And it's just one of many risk analysis tools
3 that are used by contractors to guard against optimism bias; is that correct?

4 **MR. RICCARDO COSENTINO:** That's not correct.

5 **MR. PETER WARDLE:** Has RTG produced its risk analysis in
6 connection with its proposal on the Ottawa Project?

7 **MR. RICCARDO COSENTINO:** Sorry, can you ask that again?

8 **MR. PETER WARDLE:** Has RTG produced to the Commission its
9 risk analysis in connection with its bid?

10 **MR. RICCARDO COSENTINO:** Produced to?

11 **MR. PETER WARDLE:** The Commission, Mr. Cosentino.

12 **MR. RICCARDO COSENTINO:** I -- I assume so. I have not
13 checked all the documents.

14 **MR. PETER WARDLE:** All right. And is it correct that you were not
15 asked any questions during your formal interview by the Commission about RTG's risk
16 analysis? You were never shown that document, right, sir?

17 **MR. RICCARDO COSENTINO:** That's correct.

18 **MR. PETER WARDLE:** Can we agree that optimism bias in the
19 construction sector is not a new concept?

20 **MR. RICCARDO COSENTINO:** Which jurisdiction? Canada, I
21 assume?

22 **MR. PETER WARDLE:** I am just talking about optimism bias
23 generally at this point. It's not a new concept, sir?

24 **MR. RICCARDO COSENTINO:** Agreed.

25 **MR. PETER WARDLE:** You said yourself it's been around for at
26 least 20 years; isn't that right?

27 **MR. RICCARDO COSENTINO:** In theory, yes.

28 **MR. PETER WARDLE:** Well, in fact, it goes back to a report by

1 Mont MacDonald in the U.K. in 2002; isn't that correct?

2 **MR. RICCARDO COSENTINO:** That's correct.

3 **MR. PETER WARDLE:** And it's used by the U.K. Treasury for
4 guidance in policy -- for policy makers in something called the "Green Book", correct?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **MR. PETER WARDLE:** And if we looked at the Green Book today
7 -- and I don't have time to pull it up -- it discusses optimism bias and some of the risk
8 management tools that can be used to account for it, correct?

9 **MR. RICCARDO COSENTINO:** That's correct.

10 **MR. PETER WARDLE:** Like Monte Carlo analysis, correct?

11 **MR. RICCARDO COSENTINO:** I don't have the Green Book in
12 front of me, but I assume you're correct.

13 **MR. PETER WARDLE:** And isn't it the case that the concept of
14 optimism bias was certainly out there in the world, that you were aware of it, at the time
15 this project was developed?

16 **MR. RICCARDO COSENTINO:** I was not aware of it at the time.

17 **MR. PETER WARDLE:** Well, isn't it the case that Professor
18 Flyvbjerg's work goes back to the 1990s?

19 **MR. RICCARDO COSENTINO:** That's correct.

20 **MR. PETER WARDLE:** And isn't it the case that his first book
21 "Megaprojects and Risk: An Anatomy of Ambitions" was published in 2003?

22 **MR. RICCARDO COSENTINO:** It's probably correct.

23 **MR. PETER WARDLE:** And the book you referred to by Daniel
24 Kahneman, "Thinking Fast and Slow", that dates from 2011?

25 **MR. RICCARDO COSENTINO:** That's correct.

26 **MR. PETER WARDLE:** So isn't it correct that sophisticated parties
27 like SNC and the other proponents could have and did direct their minds to optimism
28 bias by conducting risk analysis in connection with their bids?

1 **MR. RICCARDO COSENTINO:** Risk analysis doesn't help
2 optimism bias.

3 **MR. PETER WARDLE:** And isn't it the case, sir, that you and your
4 proposal team did interact with the City of Ottawa with respect to the affordability cap,
5 correct?

6 **MR. RICCARDO COSENTINO:** That's correct.

7 **MR. PETER WARDLE:** And you did, in your evidence earlier this
8 afternoon, indicate to my friend that -- and you gave the example of the architectural
9 details of the routes, the stations, right?

10 **MR. RICCARDO COSENTINO:** That's correct.

11 **MR. PETER WARDLE:** And that's an example where RTG thought
12 that the City was being unrealistic and came back with a proposal as to how to reduce
13 the cost of those routes, correct?

14 **MR. RICCARDO COSENTINO:** That's my recollection, correct.

15 **MR. PETER WARDLE:** And isn't it the case that the City listened
16 to what you had to say and made changes to those details to make them cheaper to
17 build?

18 **MR. RICCARDO COSENTINO:** That's correct.

19 **MR. PETER WARDLE:** Can we also agree, sir, that RTG and
20 OLRTC had complete control, as you said yourself during your interview, on what
21 substantial completion date to select?

22 **MR. RICCARDO COSENTINO:** That's correct.

23 **MR. PETER WARDLE:** In the bid period, RTG developed the
24 design for this project to 20 to 30 per cent, correct?

25 **MR. RICCARDO COSENTINO:** Correct.

26 **MR. PETER WARDLE:** And that involved a significant amount of
27 due diligence, correct?

28 **MR. RICCARDO COSENTINO:** Correct.

1 **MR. PETER WARDLE:** And you ensured that you got comments
2 from the maintenance team on the design, correct?

3 **MR. RICCARDO COSENTINO:** Correct.

4 **MR. PETER WARDLE:** So, that there was a whole life approach to
5 the bid, correct?

6 **MR. RICCARDO COSENTINO:** Correct.

7 **MR. PETER WARDLE:** And that's because the project co, in this
8 case RTG, was responsible for rectifying defects and deficiencies in design and
9 construction for the entirety of the 30-year maintenance term, correct?

10 **MR. RICCARDO COSENTINO:** That's correct.

11 **MR. PETER WARDLE:** And I think you have testified that there
12 was a process, and you described the City's process for this procurement as being best
13 practice, correct?

14 **MR. RICCARDO COSENTINO:** Correct.

15 **MR. PETER WARDLE:** There was a process to have design
16 presentation meetings to develop a component, present it, and get feedback, correct?

17 **MR. RICCARDO COSENTINO:** Correct.

18 **MR. PETER WARDLE:** And with respect to the geotechnical risk
19 ladder, you and the other two proponents were given three choices, correct?

20 **MR. RICCARDO COSENTINO:** Correct.

21 **MR. PETER WARDLE:** You could choose no geotechnical risk,
22 you could choose some risk, or you could choose all of the risks, and there were
23 financial consequences for each choice, right?

24 **MR. RICCARDO COSENTINO:** Financial incentives, yes.

25 **MR. PETER WARDLE:** Financial incentives, correct?

26 **MR. RICCARDO COSENTINO:** Correct.

27 **MR. PETER WARDLE:** Same rules for everyone, Mr. Cosentino,
28 right?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MR. PETER WARDLE:** And all three proponents were large,
3 sophisticated entities, correct?

4 **MR. RICCARDO COSENTINO:** Correct.

5 **MR. PETER WARDLE:** And your team included a company, ACS
6 Dragados, with huge experience in contracting around the world and a known
7 specialization in complex tunneling, correct?

8 **MR. RICCARDO COSENTINO:** Correct.

9 **MR. PETER WARDLE:** And, in fact, in the proposal you chose the
10 sequential excavation method, and you were comfortable that that would mitigate some
11 of the risk associated with geotechnical conditions, correct?

12 **MR. RICCARDO COSENTINO:** That's correct.

13 **MR. PETER WARDLE:** So, isn't it the case, sir, that the best party
14 to bear the geotechnical risk in this project was the consortium?

15 **MR. RICCARDO COSENTINO:** To the extent -- yes, to the extent
16 that we are talking about the consequences of geotechnical event occurring during the
17 process, yes.

18 **MR. PETER WARDLE:** Right. It certainly wasn't the City of
19 Ottawa, right?

20 **MR. RICCARDO COSENTINO:** That's correct.

21 **MR. PETER WARDLE:** And RTG and OLRTC obtained insurance
22 to cover off some of those risks, isn't that right?

23 **MR. RICCARDO COSENTINO:** I have to -- I think so.

24 **MR. PETER WARDLE:** Well, you think so. You surely haven't
25 forgotten about the insurance element, right?

26 **MR. RICCARDO COSENTINO:** I don't recall all the elements of
27 the insurance program; it was a comprehensive one.

28 **MR. PETER WARDLE:** Right. You recall, do you not, that RTG

1 and OLRTC spent \$10 million on insurance premiums and allocated some of that risk to
2 the insurer; isn't that what happened?

3 **MR. RICCARDO COSENTINO:** Yes.

4 **MR. PETER WARDLE:** And then after the sink hole, you made an
5 insurance claim, correct?

6 **MR. RICCARDO COSENTINO:** OLRTC did. OLRTC did.

7 **MR. PETER WARDLE:** OLRTC. In fact, I think, sir, all of the
8 companies that made up OLRTC made insurance claims. And that claim was settled,
9 correct?

10 **MR. RICCARDO COSENTINO:** Correct.

11 **MR. PETER WARDLE:** And there was a \$40 million payment
12 made by the insurers for direct costs, correct?

13 **MR. RICCARDO COSENTINO:** Correct.

14 **MR. PETER WARDLE:** And a \$74 million payment by the insurers
15 on top of that, correct?

16 **MR. RICCARDO COSENTINO:** Correct.

17 **MR. PETER WARDLE:** And doesn't the project agreement include
18 representations and warranties that RTG has the experience and background to carry
19 out a project like this?

20 **MR. RICCARDO COSENTINO:** I'm sure there are.

21 **MR. PETER WARDLE:** I am going to suggest to you, sir, and I
22 don't want to be unfair, I don't quarrel with the general proposition of optimism bias, but
23 I am going to suggest to you, sir, that it is really just a way of obfuscating these issues
24 that developed on this project; isn't that the case?

25 **MR. RICCARDO COSENTINO:** No, it is not the case.

26 **MR. PETER WARDLE:** For example, if the Commission concluded
27 that OLRTC abdicated its responsibility with respect to systems integration and that
28 affected the schedule, we can't put that down to optimism bias, can we?

1 **MR. RICCARDO COSENTINO:** No.

2 **MR. PETER WARDLE:** If there were cracked wheels from an
3 Alstom wheel supplier, that can't be put down to optimism bias, can it?

4 **MR. RICCARDO COSENTINO:** No.

5 **MR. PETER WARDLE:** If there was a derailment caused by failure
6 to tighten bolts, that is nothing to do with optimism bias, is it Mr. Cosentino?

7 **MR. RICCARDO COSENTINO:** No, that event does not.

8 **MR. PETER WARDLE:** And in respect of the U.K. Treasury
9 Department's imposition of an optimism bias uplift, would you agree with me that this is
10 a requirement imposed by the funders at the time a funding agreement is entered into?

11 **MR. RICCARDO COSENTINO:** That's correct.

12 **MR. PETER WARDLE:** And you are not aware of what
13 arrangements were in place between the province and the federal government and the
14 City of Ottawa, isn't that right?

15 **MR. RICCARDO COSENTINO:** That's correct.

16 **MR. PETER WARDLE:** With respect to the procurement of
17 vehicles, Mr. Cosentino, can we agree first of all that there was a definition of service-
18 proven vehicle in one of the schedules, Schedule 15.4 of the -- sorry, 15.2 part 4, I
19 believe, of the project agreement?

20 **MR. RICCARDO COSENTINO:** Agreed.

21 **MR. PETER WARDLE:** And this was one of the City's
22 requirements, correct?

23 **MR. RICCARDO COSENTINO:** That's correct.

24 **MR. PETER WARDLE:** And you are not suggesting, as I
25 understand your evidence, that the City was unreasonable in having a requirement that
26 the vehicle be service proven, correct?

27 **MR. RICCARDO COSENTINO:** I think it was necessary.

28 **MR. PETER WARDLE:** Right, it was a necessary requirement.

1 And the RTG construction team initially put forward a number of combinations with
2 vehicle suppliers including Alstom, Siemens, and CAF, correct?

3 **MR. RICCARDO COSENTINO:** That's correct.

4 **MR. PETER WARDLE:** And that was in around January of 2012?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **MR. PETER WARDLE:** So, right from the outset, one of the
7 vehicles that RTG brought to the table for the design presentation meetings and all of
8 the things you have talked about during the procurement process was the Alstom
9 Citadis vehicle; isn't that right?

10 **MR. RICCARDO COSENTINO:** Yes.

11 **MR. PETER WARDLE:** And you said in your evidence today that
12 the CAF vehicle, which RTG preferred, was put forward at a design presentation
13 meeting and you got feedback from the City of Ottawa, right?

14 **MR. RICCARDO COSENTINO:** That's correct.

15 **MR. PETER WARDLE:** And do you recall that there was a project
16 underway in Houston involving that vehicle?

17 **MR. RICCARDO COSENTINO:** I do recall, yes.

18 **MR. PETER WARDLE:** And do you recall that there were some
19 problems with that project?

20 **MR. RICCARDO COSENTINO:** I don't recall that.

21 **MR. PETER WARDLE:** Okay. Do you recall that that was one of
22 the City's concerns?

23 **MR. RICCARDO COSENTINO:** I do not recall that.

24 **MR. PETER WARDLE:** In any event, is it not correct that RTG
25 couldn't satisfy the City of Ottawa that the CAF vehicle met those requirements?

26 **MR. RICCARDO COSENTINO:** That's correct.

27 **MR. PETER WARDLE:** And that was the City's requirement and,
28 as you've said, it wasn't an unreasonable requirement to have, right?

1 **MR. RICCARDO COSENTINO:** It was -- yeah, correct.

2 **MR. PETER WARDLE:** And one of the reasons for these design
3 presentation meetings is to put forward ideas and see if there is a meeting of the minds,
4 right?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **MR. PETER WARDLE:** And, ultimately, and we've seen some of
7 the documents, after the CAF vehicle was rejected, RTG went back to the Alstom
8 vehicle and put forward a detailed design submission in September 2012 based on that
9 vehicle, isn't that right?

10 **MR. RICCARDO COSENTINO:** That's correct.

11 **MR. PETER WARDLE:** I want to turn to the City, the arrangements
12 the City made with the long-terms lenders in 2017. And first of all, Mr. Cosentino, can
13 we agree that in terms of sheer size, economic clout and resources, SNC-Lavalin, ACS,
14 Dragados, and Ellis Don are clearly a match for the City of Ottawa?

15 **MR. RICCARDO COSENTINO:** Sorry, could you ask that again?

16 **MR. PETER WARDLE:** I'll do it a little more slowly. Can we agree
17 that in terms of sheer size, economic clout and resources, SNC-Lavalin, ACS, Dragados
18 and Ellis Don are clearly a match for the City of Ottawa?

19 **MR. RICCARDO COSENTINO:** No, I wouldn't say that.

20 **MR. PETER WARDLE:** Wasn't it the case that the City became --
21 stepped into the shoes of the long-term lenders in connection with Stage 2, and in
22 particular, the need to retain RTG, and really and specifically, RTM, as a maintainer for
23 the expanded system?

24 **MR. RICCARDO COSENTINO:** Yes, that was the negotiation for
25 the Stage 3, yes.

26 **MR. PETER WARDLE:** And are you aware that the long-term
27 lenders wanted an equity infusion from the City as a price of providing their consent?

28 **MR. RICCARDO COSENTINO:** That's not my understanding, no.

1 **MR. PETER WARDLE:** And I am advised that the long-term
2 lenders wanted an equity infusion in the neighbourhood of \$50 to \$100 million.

3 **MR. RICCARDO COSENTINO:** That's ---

4 **MR. PETER WARDLE:** That's your understanding?

5 **MR. RICCARDO COSENTINO:** That's the risk establishing the
6 sensitivity of the operational leverage of the project, yes, not to provide consent.

7 **MR. PETER WARDLE:** Okay. But you agree that regardless of
8 why the lenders wanted the equity infusion, the number they had in mind was
9 somewhere between \$50 and \$100 million?

10 **MR. RICCARDO COSENTINO:** It would be -- I don't recall the
11 number, but there would be a specific number because it's proven by the financial
12 model.

13 **MR. PETER WARDLE:** All right. Can you agree with me that it
14 was a pretty large number?

15 **MR. RICCARDO COSENTINO:** I don't -- I wouldn't define it large,
16 no.

17 **MR. PETER WARDLE:** All right. And for the City to simply pay out
18 the lenders, as you said yourself, would require a make-whole payment; right?

19 **MR. RICCARDO COSENTINO:** That's correct.

20 **MR. PETER WARDLE:** In other words, the City would have had to
21 pay all the interest that it would have paid to the lenders, but with a 30-year term;
22 correct?

23 **MR. RICCARDO COSENTINO:** Correct.

24 **MR. PETER WARDLE:** And the City, for its own commercial
25 reasons, I'm going to suggest, decided to assume the long-term lenders' loans to
26 OLRTC in return for issuing new debentures to the long-term lenders. Isn't that what
27 happened?

28 **MR. RICCARDO COSENTINO:** Yeah, to RTG, not OLRTC, but

1 correct.

2 **MR. PETER WARDLE:** And isn't it the case, sir, that the City has
3 never exercised any of the rights it obtained under the Credit Agreement?

4 **MR. RICCARDO COSENTINO:** I would have to think about that.

5 **MR. PETER WARDLE:** All right. You certainly have no evidence
6 that it ever did; right?

7 **MR. RICCARDO COSENTINO:** No; correct.

8 **MR. PETER WARDLE:** Okay. And you have seen the letter we
9 wrote with respect to Ms. Simulik's evidence; correct?

10 **MR. RICCARDO COSENTINO:** Correct.

11 **MR. PETER WARDLE:** And you saw the email from the deputy
12 treasurer of the City in the spring of 2017, relating to the request for a waiver of
13 liquidated damages? Do you recall seeing that?

14 **MR. RICCARDO COSENTINO:** I recall seeing that, but I think it
15 was a waiver of the default, not the liquidated damages.

16 **MR. PETER WARDLE:** Right. Let's turn it up for a second. It's
17 COW053 -- sorry, COW0593605.

18 **COMMISSIONER HOURIGAN:** Just stand by, Counsel, we're just
19 going to try to find it somewhere else.

20 (SHORT PAUSE)

21 **--- EXHIBIT No. 016 - COMH0000001 - by COM**

22 **MR. PETER WARDLE:** I think that's the letter, including the
23 attachments. Could we scroll down to the attachment, which is the email from the
24 deputy treasurer, please?

25 So perhaps I could just stop at page 4 for one second,
26 Mr. Cosentino, page 5. Do you see the letter, and this is the letter with respect to the
27 proposed ---

28 **MR. RICCARDO COSENTINO:** Yeah.

1 **MR. PETER WARDLE:** --- reduction in liquidated damages. Do
2 you recall this? And this is going from OLRTC up to RTG? Do you recall this?

3 **MR. RICCARDO COSENTINO:** Yeah.

4 **MR. PETER WARDLE:** If we go further down. And just, sorry, the
5 date of that letter, if we go back up, apologies, May 23, 2018, do you see that?

6 **MR. RICCARDO COSENTINO:** Yeah.

7 **MR. PETER WARDLE:** And if we go down, hopefully it's the next
8 attachment. Do you see an email trail? And I'm not going to have the time to read all of
9 it, but you'll see that the deputy treasurer indicates to the representative of the
10 administrative agent that the City is prepared to support the request of consent; correct?

11 **MR. RICCARDO COSENTINO:** That's correct.

12 **MR. PETER WARDLE:** And so whether RTG needed more time,
13 wanted more time, changed its mind about this, you're not suggesting that the City
14 oppose this request from RTG; correct?

15 **MR. RICCARDO COSENTINO:** I have the briefing I received for
16 employee Estrada when I was a board member, and I have this letter, and there are two
17 competing, very -- two competing explanations.

18 **MR. PETER WARDLE:** So that may be true, sir, but do you have
19 anything to dispute the fact that as the deputy treasurer says here:

20 "We are prepared to support the request of consent."

21 (As read)

22 **MR. RICCARDO COSENTINO:** Yeah, I can see that on the letter,
23 yes.

24 **MR. PETER WARDLE:** Okay. And similarly, with respect to what
25 happened in January of 2019, can I suggest to you that, first of all, there was a
26 consortium of short-term lenders ---

27 **MR. RICCARDO COSENTINO:** That's correct.

28 **MR. PETER WARDLE:** --- correct?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MR. PETER WARDLE:** And any request for waivers from RTG
3 required their consent; correct?

4 **MR. RICCARDO COSENTINO:** That's correct.

5 **MR. PETER WARDLE:** And you told me about a conversation you
6 had with one of the short-term lenders, you told us about a conversation you had with
7 one of the short-term lenders; right?

8 **MR. RICCARDO COSENTINO:** That's correct.

9 **MR. PETER WARDLE:** But you also recall Ms. Simulik making the
10 statement that she says, or she will say, and I indicated in my letter she would state
11 about the City's position; right? You recall her stating that at the meeting?

12 **MR. RICCARDO COSENTINO:** I do.

13 **MR. PETER WARDLE:** Let me turn quickly in the remaining time
14 to the -- a couple of other issues. The payment mechanism. Can you agree with me,
15 sir, that during the cease confidential commercial meetings and during the procurement
16 process there were no comments by RTG to the City on the payment mechanism?

17 **MR. RICCARDO COSENTINO:** That's not my recollection, but I
18 have not checked, so I'll take your word.

19 **MR. PETER WARDLE:** And is it not the case in any event that
20 regardless of the size of the penalty, as you said so yourself, the contractor is going to
21 price for that in their bid?

22 **MR. RICCARDO COSENTINO:** Potentially, yes.

23 **MR. PETER WARDLE:** Well, it's not potentially. In this case, you
24 saw the payment mechanism, you reviewed it, and you priced it into your bid; isn't that
25 not -- is that not the case?

26 **MR. RICCARDO COSENTINO:** RTM did. The company
27 representing RTM and the consortium did, yes.

28 **MR. PETER WARDLE:** Right, but you're the one preparing the bid.

1 You're the bid director. You're reviewing the payment mechanism as part of RTT's bid.
2 You would have priced that into the bid; isn't that right?

3 **MR. RICCARDO COSENTINO:** No, I would have not done that.

4 **MR. PETER WARDLE:** I was a little unclear about your comment
5 about revenue service availability. First of all, my friend asked you some questions
6 about who was ultimately looking after the end user of the system; do you recall those
7 questions?

8 **MR. RICCARDO COSENTINO:** Yes.

9 **MR. PETER WARDLE:** And isn't it the case that throughout the
10 design and construction period, it is OLRTC that has the primary responsibility for
11 designing and constructing the system to meet the City's specifications.

12 **MR. RICCARDO COSENTINO:** That's correct.

13 **MR. PETER WARDLE:** And there's always an incentive from the
14 very beginning of the project where everyone, but particularly for the constructor, to get
15 to revenue service availability; isn't that right?

16 **MR. RICCARDO COSENTINO:** Could you define an incentive?

17 **MR. PETER WARDLE:** Well, that is the final payment under the
18 contract; right? In this case, it was \$200 million.

19 **MR. RICCARDO COSENTINO:** Yeah, there's a contractual
20 obligation to make a payment. I wouldn't define it as an incentive, but, yes.

21 **MR. PETER WARDLE:** Right. And so that -- I'm going to call it an
22 incentive to meet that date is there from the moment the contract is signed; isn't that the
23 case?

24 **MR. RICCARDO COSENTINO:** Correct.

25 **MR. PETER WARDLE:** And there are payments then after that
26 \$200 million payments, there are payments that go on throughout the balance of the
27 maintenance term; correct?

28 **MR. RICCARDO COSENTINO:** That's correct.

1 **MR. PETER WARDLE:** And just to close off, sir, you said
2 repeatedly that the affordability cap did not account for optimism bias; correct?

3 **MR. RICCARDO COSENTINO:** Correct.

4 **MR. PETER WARDLE:** But would you not agree with me that if the
5 evidence shows that two or three of the bidders came in underneath the affordability
6 cap, it suggests that, in fact, the budget for this project was fairly priced by the City of
7 Ottawa?

8 **MR. RICCARDO COSENTINO:** No, I have no basis to state that.

9 **MR. PETER WARDLE:** Well, do you disagree with that
10 proposition, sir?

11 **MR. RICCARDO COSENTINO:** I do.

12 **MR. PETER WARDLE:** All right. Those are all my questions.
13 Thank you very much.

14 **COMMISSIONER HOURIGAN:** All right. The next party is Alstom.

15 **MR. MICHAEL VALO:** Your Honour.

16 **--- CROSS-EXAMINATION BY MR. MICHAEL VALO:**

17 **MR. MICHAEL VALO:** Good afternoon, Mr. Cosentino. My name's
18 Michael Valo. I'm one of the lawyers for Alstom in this inquiry. I've been given I think
19 about 10 minutes to ask you a few questions, so I will try to be brief.

20 Mr. Cosentino, in your interview on 13 Main and again today, you
21 explained to Commission Counsel that because of difficulties achieving some of the
22 metrics during trial running that RTG and the City agreed to revise the requirements to
23 make it achievable, so long as it could be done safely; do you recall that?

24 **MR. RICCARDO COSENTINO:** Yes.

25 **MR. MICHAEL VALO:** And in answer today to one of Ms.
26 Mainville's questions, you actually said one of the challenges at the time was getting
27 vehicles accepted; do you recall that?

28 **MR. RICCARDO COSENTINO:** I do recall that.

1 **MR. MICHAEL VALO:** Were you aware, sir, that the City signed all
2 of the final acceptance certificates for the vehicles in June of 2019?

3 **MR. RICCARDO COSENTINO:** I don't recall the specific, but it
4 could be.

5 **MR. MICHAEL VALO:** Anyway, you explain that getting RCA was
6 something that both OLRTC and the City wanted; right?

7 **MR. RICCARDO COSENTINO:** Yes, that's what I said.

8 **MR. MICHAEL VALO:** For OLRTC, it meant ending daily -- the
9 daily accrual of delay-liquidated damages?

10 **MR. RICCARDO COSENTINO:** Correct.

11 **MR. MICHAEL VALO:** And it also meant a significant lump sum
12 payment; right?

13 **MR. RICCARDO COSENTINO:** That's correct.

14 **MR. MICHAEL VALO:** And we heard today from Mr. Jensen. I
15 don't know if you saw his evidence, sir, but we heard from him that that payment was
16 actually more than \$200 million. Does that accord with your recollection?

17 **MR. RICCARDO COSENTINO:** I haven't checked that but sounds
18 about right.

19 **MR. MICHAEL VALO:** Okay. And the other key point I think you
20 made to Commission Counsel was that achieving RSA would result in taking out of the
21 short-term lenders.

22 **MR. RICCARDO COSENTINO:** That's correct.

23 **MR. MICHAEL VALO:** And for the City, the City was keen to meet
24 its commitment to the public, to open the system on time?

25 **MR. RICCARDO COSENTINO:** Correct.

26 **MR. MICHAEL VALO:** So that's OLRTC and the City's
27 perspective. And then as I understand it, you told Commission Counsel in your
28 interview, and I think you gave the same evidence today, but I'll just quote from your

1 interview then because I have that available to me, you said that,

2 "From RTG's standpoint, safety aside, you know, we
3 were keenly aware that whatever happened, if
4 anything was -- you know, any compromises that
5 were made during that phase would be absorbed by
6 RTM. Again, we as RTG dropped down, or our main
7 concern is, is RTM in the room. Is RTM aware of
8 what's happening, because ultimately, whatever
9 decision is made now will have repercussions for
10 RTM. If you make compromises, if you move one
11 side something is going to have to give." (As read)

12 Do you recall ---

13 **MR. RICCARDO COSENTINO:** Yeah.

14 **MR. MICHAEL VALO:** --- giving that evidence?

15 **MR. RICCARDO COSENTINO:** I do.

16 **MR. MICHAEL VALO:** And the reason for that is because RTG's
17 an umbrella organization. It's responsible not just for the design build of the asset
18 through its subcontract with OLRTC, but, of course, the 30-year maintenance of the
19 system through its subcontract with RTM; is that right?

20 **MR. RICCARDO COSENTINO:** That's correct.

21 **MR. MICHAEL VALO:** And RTM's maintenance contract is more
22 or less a lump sum contract; isn't it?

23 **MR. RICCARDO COSENTINO:** That's correct.

24 **MR. MICHAEL VALO:** So at the time it entered into the
25 maintenance contract with RTG, RTM had to forecast its cost to perform the
26 maintenance work 30 years down the line.

27 **MR. RICCARDO COSENTINO:** Thirty-five (35).

28 **MR. MICHAEL VALO:** Thank you, sir, 35 years down the line.

1 And that forecast, or that budget, would be based I guess on the specifications in the
2 PA and the requirements for maintenance services under the PA as well; is that right?

3 **MR. RICCARDO COSENTINO:** That's correct.

4 **MR. MICHAEL VALO:** And based on those PA specifications,
5 RTM would have had an expectation as to the kind of system it would be receiving.

6 **MR. RICCARDO COSENTINO:** That's correct.

7 **MR. MICHAEL VALO:** In other words, RTG committed to turn over
8 to RTM a completed, commission tested and integrated system; isn't that right?

9 **MR. RICCARDO COSENTINO:** That's correct.

10 **MR. MICHAEL VALO:** And RTM would have had certain
11 expectations with respect to the quality level of the system at the time of turnover based
12 on that contract, that PA; right?

13 **MR. RICCARDO COSENTINO:** Subject to the contract between
14 RTG and RTM, yes.

15 **MR. MICHAEL VALO:** Yes. So coming back to the point of all
16 this, based on RTG's commitments and RTM's expectations, RTM would have planned
17 for specific resource levels, for example, the number of technicians it would have
18 required, in order to executive its maintenance services. And that, of course, would
19 have informed its budget and its price to RTG.

20 **MR. RICCARDO COSENTINO:** Yes, that's a fair statement.

21 **MR. MICHAEL VALO:** And I think that's why you explained to
22 Commission Counsel it was so important for RTG to have RTM in the room when you
23 made the compromise with the City to get to RSA, Revenue Service Availability,
24 because you were concerned, as I understand it, that RTM might -- and I'm going to
25 quote from your evidence, might come back and claim against RTG for not providing the
26 system as we committed in the dropdown contract; is that right?

27 **MR. RICCARDO COSENTINO:** That's correct.

28 **MR. MICHAEL VALO:** Now the claim you were worried -- the

1 claim that you're talking about, that you're worried about, I guess what we're talking
2 about really is the need, potentially, for more resources or more people because the
3 system isn't in the condition that it was expected to be in.

4 **MR. RICCARDO COSENTINO:** That could be one issue, yes.

5 **MR. MICHAEL VALO:** Right. There might be extra unanticipated
6 work with the system that's not fully commissioned, fully tested and integrated, and you
7 might need more maintainers, for example, because the system's not fully debugged.

8 **MR. RICCARDO COSENTINO:** Correct.

9 **MR. MICHAEL VALO:** And typically, in your experience, in
10 circumstances like that, when you're a lump-sum maintenance contractor, you would be
11 entitled to a change order or a variation of pay for those extra resources that were not
12 budgeted.

13 **MR. RICCARDO COSENTINO:** Yes.

14 **MR. MICHAEL VALO:** Now I guess there's a second concern in
15 this case as well because the PA provides for deductions for things like quality and
16 service failures, and vehicle availability, so that if the system isn't provided as
17 committed, there's a potential risk that the maintainer will incur deductions it otherwise
18 would not have incurred if the system had been turned over as committed; right?

19 **MR. RICCARDO COSENTINO:** Correct.

20 **MR. MICHAEL VALO:** So you wanted the maintainer in the room
21 and aware of what was happening so that they understood the risk that they were taking
22 on board?

23 **MR. RICCARDO COSENTINO:** That's correct.

24 **MR. MICHAEL VALO:** And from your perspective I think you
25 explained to counsel, that, for you, is the mitigation that you needed to satisfy yourself
26 or RTG that we could take this step?

27 **MR. RICCARDO COSENTINO:** Correct.

28 **MR. MICHAEL VALO:** And in fact all those risks we just talked

1 about, those ultimately materialized when the system went into service; didn't it?

2 **MR. RICCARDO COSENTINO:** To a certain extent, yes.

3 **MR. MICHAEL VALO:** Are you aware, sir, that in the first month of
4 revenue service, September/October of 2019 the City levied more than \$15 million
5 dollars in deductions against RTG?

6 **MR. RICCARDO COSENTINO:** Yes.

7 **MR. MICHAEL VALO:** And RTG passed those down on to RTM;
8 right?

9 **MR. RICCARDO COSENTINO:** Yes.

10 **MR. MICHAEL VALO:** And are you aware, sir, whether that 15
11 million dollars is in excess of RTG's monthly service payment?

12 **MR. RICCARDO COSENTINO:** I believe it is, but I don't have the
13 number in front of me.

14 **MR. MICHAEL VALO:** And the excess of that deduction against
15 the service payment, is that carried over to the next month?

16 **MR. RICCARDO COSENTINO:** Yes.

17 **MR. MICHAEL VALO:** So that deduction has – there's the risk
18 associated with a deduction of that size of wiping out not just one month of payments,
19 but future payments as well?

20 **MR. RICCARDO COSENTINO:** That's correct.

21 **MR. MICHAEL VALO:** Now, I presume you're aware also that just
22 as RTG dropped its obligations down to RTM, RTM in turn dropped the bulk of its
23 maintenance obligations down to Alstom?

24 **MR. RICCARDO COSENTINO:** I don't know that; I'm not privy to
25 those documents.

26 **MR. MICHAEL VALO:** Well, I don't have the documents or the
27 time to walk through all of them but I can tell you, for example, do you know Mr. Slade,
28 Matthew Slade?

1 **MR. RICCARDO COSENTINO:** I do.

2 **MR. MICHAEL VALO:** Who is Matthew Slade, sir?

3 **MR. RICCARDO COSENTINO:** He was involved with the project
4 during the construction phase. He's now working for Ellis Don. I think he's an RTM
5 board member.

6 **MR. MICHAEL VALO:** And he was project director of OLRTC at
7 one point; is that right?

8 **MR. RICCARDO COSENTINO:** Correct, yes.

9 **MR. MICHAEL VALO:** So he's someone who would have this
10 information?

11 **MR. RICCARDO COSENTINO:** Yes.

12 **MR. MICHAEL VALO:** So just for the sake of the record, I'm going
13 to read you a quote from Mr. Slade, just as a short-cut to getting there. This comes
14 from his interview with commission counsel on May 4 and it's at page 108 from line 19
15 to 23. And what Mr. Slade is – and I'm going to quote now:

16 “The bulk of maintenance work is actually subcontracted to Alstom
17 for the infrastructure as well as the vehicles.”

18 So that is just to orient us into context here. So in fact Alstom, not
19 RTM have the obligations, right? Because they've been flowed down under the
20 maintenance sub-contract operating under your theory of things?

21 **MR. RICCARDO COSENTINO:** Correct.

22 **MR. MICHAEL VALO:** And so if those deductions are flowed
23 down from RTG to RTM and then in turn to Alstom, its Alstom that's taking on that risk;
24 right?

25 **MR. RICCARDO COSENTINO:** According to what you're saying,
26 yes.

27 **MR. MICHAEL VALO:** So one view of things is that RTM is
28 actually insulated in some respects from these deductions and these excess resource

1 costs, because it's Alstom that's picking up the tab for the extra work and for the risk of
2 reductions; would you agree?

3 **MR. RICCARDO COSENTINO:** Yes.

4 **MR. MICHAEL VALO:** So now coming back to what we were
5 discussing earlier, in thinking about the risk of entering into revenue service before the
6 system is ready, and the concern that you expressed about compromising the system
7 that's being turned over to your maintainer, surely Alstom would have the same concern
8 as RTM, wouldn't it?

9 **MR. RICCARDO COSENTINO:** Yes.

10 **MR. MICHAEL VALO:** And Alstom, as the party obligated to
11 perform the bulk of maintenance services, would you agree that they ought to have
12 been in the room and consulted in the same way you consulted RTM?

13 **MR. RICCARDO COSENTINO:** Based on what you told me
14 about the contractual relations between the party, yes.

15 **MR. MICHAEL VALO:** Right. Because Alstom ultimately is the
16 one committing the resources and incurring the costs; right?

17 **MR. RICCARDO COSENTINO:** Yes.

18 **MR. MICHAEL VALO:** And as far as you understand, it's true,
19 isn't it, that neither RTG, nor RTM, nor the City considered it important enough to
20 include Alstom in this discussion about entering RSA thoroughly; did they?

21 **MR. RICCARDO COSENTINO:** I can only speak for RTG, and I
22 was not aware as a board member of the contractual relation between RTM and Alstom.

23 **MR. MICHAEL VALO:** And as far as you are aware, Alstom
24 wasn't "in the room" in the same way RTM was when you had those discussions?

25 **MR. RICCARDO COSENTINO:** I never inquired because I don't
26 have a contractual relation with Alstom.

27 **MR. MICHAEL VALO:** All right. Thank you, Mr. Cosentino, those
28 are all my questions for this afternoon.

1 Thank you.

2 **COMMISSIONER HOURIGAN:** All Right, the next party is
3 Infrastructure Ontario.

4 **MS. JULIE PARLA:** Good afternoon, Commissioner, Julie Parla
5 for Infrastructure Ontario. We do not have any questions for this witness.. Thank you.

6 **COMMISSIONER HOURIGAN:** All right. The next party is STV.

7 **--- CROSS-EXAMINATION BY MR. JAMES DORIS:**

8 **MR. JAMES DORIS:** Good afternoon, Mr. Costentino, my name is
9 James Doris.

10 **MR. RICCARDO COSENTINO:** Good afternoon.

11 **MR. JAMES DORIS:** I am here on behalf of STV Inc. Just a
12 couple of questions with respect to the vehicle selection issue.

13 Am I right, sir, that after CAP vehicle was determined to be in non-
14 compliance because it was not service-proven, was it important to RTG that the vehicle
15 put forward to replace the CAP was service-proven?

16 **MR. RICCARDO COSENTINO:** Yes.

17 **MR. JAMES DORIS:** And RTG would not want to take any risks
18 that the replacement vehicle would also be determined to be non-compliant because it
19 was service-proven?

20 **MR. RICCARDO COSENTINO:** Correct.

21 **MR. JAMES DORIS:** Would you agree, sir, that when it put
22 Alstom 4 as the replacement vehicle provider, RTG was satisfied that the Alstom vehicle
23 was service-proven?

24 **MR. RICCARDO COSENTINO:** Yes, we were seeking feedback
25 from the City.

26 **MR. JAMES DORIS:** But you wouldn't have put forward Alstom as
27 a replacement vehicle unless RTG itself was satisfied or believed that the Alstom
28 vehicle was service-proven?

1 **MR. RICCARDO COSENTINO:** There were no other vehicles
2 available. We didn't have a choice.

3 **MR. JAMES DORIS:** But you'd agree, sir, that at that time that
4 RTG believed that the Alstom vehicle was service-proven?

5 **MR. RICCARDO COSENTINO:** Yes.

6 **MR. JAMES DORIS:** And putting Alstom forward, am I right, sir,
7 that RTG was also satisfied that Alstom would be able to satisfy the project
8 specifications put forward by the City?

9 **MR. RICCARDO COSENTINO:** Yes.

10 **MR. JAMES DORIS:** Thank you, sir, those are my questions.

11 **COMMISSIONER HOURIGAN:** All right. Province of Ontario is
12 next.

13 **MR. ADAM MORTIMER:** Good afternoon, Adam Mortimer with
14 the Province. We have no questions for the witness. Thank you.

15 **COMMISSIONER HOURIGAN:** Thales is next.

16 **MS. JENNIFER McALEER:** Good morning – or good afternoon,
17 Mr. Commissioner, Jennifer McAleer, counsel for Thales. We have no questions for this
18 witness.

19 **COMMISSIONER HOURIGAN:** All right. RTG-EJV?

20 **MR. MICHAEL VRANTSIDIS:** Good afternoon, Mr. Commissioner,
21 Michael Vrantsidis here for RTG-EJV. We also have no questions for this witness.

22 **COMMISSIONER HOURIGAN:** All right. Next is Transportation
23 Action Canada.

24 **--- CROSS-EXAMINATION BY MR. DAVID JEANES:**

25 **MR. DAVID JEANES:** So I just have five minutes on this, I think.
26 Mr. Cosentino, you said in the transcript of your testimony, you
27 mentioned that RTG didn't choose the alignment, the alignment was something
28 determined by the City. You also, I think, said that you felt that the City didn't have to

1 be so prescriptive with its specifications, that the vehicle specification was extremely
2 prescriptive, that there were not many suppliers providing low-floor 100km per hour
3 vehicles; is that correct, what I've said so far?

4 **MR. RICCARDO COSENTINO:** Yes.

5 **MR. DAVID JEANES:** And in fact you felt that there was no need
6 for low-floor if it was to be a segregated right-of-way and that the fact that it was low-
7 floor imposed the requirement for small wheels which was perhaps inconsistent with the
8 higher speed that the City was looking for?

9 **MR. RICCARDO COSENTINO:** Yes, that was my statement.

10 **MR. DAVID JEANES:** Yeah, did you raise those issues with the
11 City to suggest that a different specification, of perhaps remaining with the common 70
12 per cent low-floor would have been a better solution for the City's needs?

13 **MR. RICCARDO COSENTINO:** I believe we did.

14 **MR. DAVID JEANES:** Okay. I want to just talk about the Citadis
15 Dualis which was proposed, because my understanding is the vehicle actually supplied
16 the Citadis spirit that differs in many ways from the Citadis Dualis. The cars have quite a
17 different configuration and the boggy used is not the excije boggy but it's a newly patented
18 boggy with significant differences called Ipronam that was developed specifically to meet
19 Ottawa requirements, particularly for floor leveling at the platforms and things like that.
20 So there was a significant technological change between the initial vehicle proposal and
21 what was actually delivered; is that correct?

22 **MR. RICCARDO COSENTINO:** Yes, you're testing the limit of my
23 technical knowledge, but for the terms, yes, I tend to agree.

24 **MR. DAVID JEANES:** Well, I'll be returning to that question with
25 other witnesses.

26 With respect to the cost savings in the design of stations, you have
27 referred several times to the design of the station roofs. You also referred to going for a
28 shorter platform, reducing it to about 90 meters. And I wonder if perhaps there were

1 other changes as well? Certainly some people find it's a bit unusual to have
2 unidirectional escalators in many locations around the system, and I'm wondering
3 whether that was a cost saving that you were involved in the negotiation of or whether
4 that was part of the City's specification.

5 **MR. RICCARDO COSENTINO:** I don't recall.

6 **MR. DAVID JEANS:** No. Okay.

7 With respect to the alignment that the City have provided, did that
8 affect the ability to design for 100 kilometre per hour operating speed? We know that
9 there are many fairly sharp curves in the system. There are many grades and so on.
10 Did you feel that if you'd had a better alignment that it would have been easier to
11 achieve the City's objective of a higher operating speed?

12 **MR. RICCARDO COSENTINO:** That goes beyond my engineering
13 knowledge. I am a ---

14 **MR. DAVID JEANS:** Okay. That's fine. Just the tunnelling
15 method -- you've referred to the sequential tunnelling method versus using a boring
16 machine. And I presume that this decision was advised by your technical expertise
17 particularly with Dragados. But do you -- in retrospect, is it possible that a boring
18 machine approach might have been more appropriate to Ottawa's somewhat
19 unpredictable geotechnical situation?

20 **MR. RICCARDO COSENTINO:** Again, limited to my engineering
21 knowledge, I don't think so. I think the excavation method had a lot of added benefits.
22 And I think it was still the right solution. You still would have to move through that
23 glacial till and I don't think it would have been a pressurized TBM, but again, testing my
24 technical engineering knowledge.

25 **MR. DAVID JEANS:** Yeah. Well, I certainly understand that the
26 sequential tunnelling method provided a lot of advantages, particularly with excavating
27 station caverns and things like that that would be complicated with a boring machine.

28 The -- just going back because I think I have maybe a minute or so

1 that I can still do. The platform length thing -- we heard earlier that the advice -- the
2 initial advice from the City's consultants was that the trains should be extendable up to
3 120 metres to meet 2021 requirements and 150 metres to meet 2031 requirements and
4 yet we have a situation where the platform length has been reduced to 90 metres with
5 some possible expansion at a cost in the future.

6 But that seems to be a fairly drastic reduction from what the original
7 consultants had indicated as needed to meet the capacity needs 10 and 20 years out,
8 never mind 50 years which I presume is a period where we would hopefully still be
9 using the same tunnel.

10 **MR. RICCARDO COSENTINO:** Sorry, the question is?

11 **MR. DAVID JEANS:** Yeah. No, I'm just -- the question -- the
12 reduction to 90 metres length may have some costs, but I'm wondering where it was
13 perhaps a drastic reduction in terms of the long-term capacity requirements of the
14 system.

15 **MR. RICCARDO COSENTINO:** I don't recall those conversations.
16 I do seem to recall something related to headway and a meeting capacity through other
17 means but that was a long time ago..

18 **MR. DAVID JEANS:** Yeah. Well, I know that one of the exhibits
19 that we've seen today suggested that a headway of 105 seconds, a minute 45 seconds
20 would be the ultimate target which is much much closer headways than the system is
21 operating right now. So yeah, I mean, perhaps you're right there. Perhaps there was
22 some discussion that that was an alternative.

23 Okay. I think I've used up my time so thank you very much. I
24 appreciate that.

25 **MR. RICCARDO COSENTINO:** Thank you.

26 **COMMISSIONER WILLIAM HOURIGAN:** All right. Thank you.

27 So next is RTG.

28 RTG, are you there?

1 **MR. JEAN-CLAUDE KILLEY:** Yes. Good afternoon,
2 Commissioner. I'm unable to start my video but I was able to start my audio.

3 **COMMISSIONER WILLIAM HOURIGAN:** Right. Just proceed on
4 that basis. That's fine.

5 **MR. JEAN-CLAUDE KILLEY:** I think we've got it now.

6 Thank you. Good afternoon, Mr. Cosentino.

7 In response to one of Mr. Wardle's ---

8 **COMMISSIONER WILLIAM HOURIGAN:** Please state your name
9 for the record.

10 **MR. JEAN-CLAUDE KILLEY:** Yes, Jean-Claude Killey, counsel
11 for RTG.

12 --- CROSS-EXAMINATION BY MR. JEAN-CLAUDE KILLEY:

13 **MR. JEAN-CLAUDE KILLEY:** You gave an answer to Mr. Wardle
14 in response to one of his questions that risk analysis doesn't help optimism bias. Do
15 you recall that?

16 **MR. RICCARDO COSENTINO:** I do.

17 **MR. JEAN-CLAUDE KILLEY:** Why not?

18 **MR. RICCARDO COSENTINO:** Because risk analysis -- again,
19 risk is about assumptions and so it's still individuals making assumptions, even a Monte
20 Carlo analysis with all the precision that provides is still a bunch of assumptions inputted
21 into the model so the output of the extensive simulation is only as good as the
22 assumptions going in. And it's statistical analysis and is never -- the risk analysis is not
23 perfect.

24 **MR. JEAN-CLAUDE KILLEY:** Mr. Wardle for the City also asked
25 you to confirm that a series of problems or alleged problems with the project could not
26 be attributed to optimism bias -- cracked wheels, et cetera. Do you recall that?

27 **MR. RICCARDO COSENTINO:** Yes, I do.

28 **MR. JEAN-CLAUDE KILLEY:** Is there any aspect of this project

1 that you consider may have been influenced by optimism bias?

2 **MR. RICCARDO COSENTINO:** Well, it is established through the
3 research that it was put forward to me by Mr. Wardle that optimism bias is the root
4 cause of program delays and cost overruns. And it's not cause so I think what Mr.
5 Wardle point out were causes of delays.

6 However, if the literature and the research says that the optimism
7 bias is the root cause, because ultimately if the project or program doesn't have the
8 adequate resources, financial resources to be delivered, it will create a downfall, a
9 waterfall of issues that -- and these issues being the causes that he identified that will
10 impact the overall delivery and the overall budget of the project.

11 So optimism bias is not a cause, as the root cause.

12 **MR. JEAN-CLAUDE KILLEY:** Okay. Thank you. You were
13 asked both by Commission counsel and Mr. Wardle about the assumption of
14 geotechnical risk. I have some notes of your answers but let me simply get to the
15 question.

16 Is there or was there an aspect to the geotechnical risk in this case
17 that you would say the contractor was not in the best position to take on?

18 **MR. RICCARDO COSENTINO:** It was the consequences
19 associated with the risk which is the consequences overall problem, an overall problem
20 impact to the ultimate users of the system. So although the geotechnical risk, as I said
21 in my previous answer, means and methods and quantification of the costs,
22 quantification of the time, is something that the private sector could take, what the
23 private sector could not take as a risk is the consequences of one of those risks
24 materializing. It can take some of the financial consequences and under the contract
25 we have an obligation to mitigate the consequences arising from the risks we have
26 taken. But those mitigations are not infinite. There's a limit to the -- there's a limit to the
27 mitigation that we put in place and ultimately those mitigations will never take into
28 consideration all of the expectation that the ultimate users and ultimately, the citizens of

1 Ottawa have delivered with regards to the program.

2 **MR. JEAN-CLAUDE KILLEY:** Thank you. Mr. Wardle asked you
3 about payment mechanism and pricing that into the bid. I think that you did not agree
4 that you were involved in such an exercise.

5 You also, in response to your questions to Commission counsel,
6 you mentioned discussions during the procurement process with the City, how some
7 elements of the project agreement would be applied. Do you recall that evidence?

8 **MR. RICCARDO COSENTINO:** I do.

9 **MR. JEAN-CLAUDE KILLEY:** Did any of those discussions relate
10 to the payment mechanism?

11 **MR. RICCARDO COSENTINO:** To me, to the best of my
12 recollection, yes, we had discussion for the commercial confidential meeting. I do seem
13 to recall there was even a commercial confidential meeting related to the payment
14 mechanism with the City financial advisors as well as Infrastructure Ontario. And so
15 there were certain discussions around payment mechanism, interpretation of certain
16 provisions, and we most likely expressed our concern. We sent out the application and
17 we were walked through how in the mind of the advisor City, the payment would have
18 been applied.

19 **MR. JEAN-CLAUDE KILLEY:** Has RTG's experience in how the
20 City applies a payment mechanism been consistent with what it understood from those
21 discussions?

22 **MR. RICCARDO COSENTINO:** No. It's more punitive.

23 **MR. JEAN-CLAUDE KILLEY:** I was about to ask, in what way it
24 has not been consistent.

25 **MR. RICCARDO COSENTINO:** It has been more punitive than we
26 expected it to be.

27 **MR. JEAN-CLAUDE KILLEY:** The last topic, Mr. Cosentino, and
28 then I will be concluded. This relates to the refusal by City and/or the lenders to waive

1 default in relation to the senior creditors' long-stop date, and Mr. Wardle took you to the
2 letter outlining Ms. Simulik recollection of all of that. But I think your evidence to
3 Commission counsel was that there was ultimately no waiver granted at that point in
4 time, which was January 2019; is that right?

5 **MR. RICCARDO COSENTINO:** That's correct.

6 **MR. JEAN-CLAUDE KILLEY:** And no waiver granted thereafter?

7 **MR. RICCARDO COSENTINO:** That's correct.

8 **MR. JEAN-CLAUDE KILLEY:** And what was the consequence to
9 RTG of there being no waiver of that default?

10 **MR. RICCARDO COSENTINO:** It meant that we couldn't draw
11 down for additional financial resources to pay OLRTC, which meant OLRTC had to
12 draw from the parent company through cash injection from the parent companies,
13 applying significant financial pressure onto OLRTC.

14 **MR. JEAN-CLAUDE KILLEY:** And is that, in fact, what OLRTC
15 did?

16 **MR. RICCARDO COSENTINO:** I believe it is.

17 **MR. JEAN-CLAUDE KILLEY:** Okay. Thank you. Those are my
18 questions.

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

20 Re-examination?

21 **MS. CHRISTINE MAINVILLE:** Just clarifying two points, Mr.
22 Commissioner.

23 **--- RE-EXAMINATION BY MS. CHRISTINE MAINVILLE:**

24 **MS. CHRISTINE MAINVILLE:** Mr. Cosentino, Mr. Valo for Alstom
25 mentioned deductions, maintenance deductions being carried over month to month ---

26 **MR. RICCARDO COSENTINO:** Correct.

27 **MS. CHRISTINE MAINVILLE:** --- indicating that those deductions
28 therefore don't simply impact RTM and thereby, Alstom on any given month, but also

1 future payments to them as well, right? Do you recall that?

2 **MR. RICCARDO COSENTINO:** Yes, yes.

3 **MS. CHRISTINE MAINVILLE:** And I just want to clarify, it's my
4 understanding that the issue of carrying over those deductions is a matter of -- or a
5 subject to dispute between RTG and the City; is that correct?

6 **MR. RICCARDO COSENTINO:** That's correct, right.

7 **MS. CHRISTINE MAINVILLE:** And so in terms of your counsel's
8 question just now about the payment mechanism having been applied in a more
9 punitive manner than what was expected, is that one example of what you mean by
10 that?

11 **MR. RICCARDO COSENTINO:** Yes, it is.

12 **MS. CHRISTINE MAINVILLE:** Okay. And so just to be ---

13 **MR. RICCARDO COSENTINO:** Well ---

14 **MS. CHRISTINE MAINVILLE:** Yeah, please go ahead.

15 **MR. RICCARDO COSENTINO:** All is more punitive, but is also not
16 in accordance with our experience on other projects.

17 **MS. CHRISTINE MAINVILLE:** And so to be clear, RTG's position -
18 - and I take it, RTM's position -- would be that those deductions are not supposed to be
19 carried out for month to month?

20 **MR. RICCARDO COSENTINO:** That's correct. The overage would
21 not have to be carried over month to month, yes.

22 **MS. CHRISTINE MAINVILLE:** Which is distinct from the failure
23 points regime where failure points are accumulated and can be carried over? They're
24 accumulated over time as a result of maintenance failures or shortcomings or
25 performance shortcomings, correct?

26 **MR. RICCARDO COSENTINO:** That's correct.

27 **MS. CHRISTINE MAINVILLE:** And that failure point system
28 ultimately can lead to a default?

1 **MR. RICCARDO COSENTINO:** That's correct.

2 **MS. CHRISTINE MAINVILLE:** Okay. And I just want to clarify a
3 question or a response you gave to counsel for STV.

4 You indicated that once RTG and OLRTC went to Alstom as it's
5 rolling stock or vehicle supplier, that I believe you indicated you were seeking feedback
6 from the City about whether it meant the service proven requirement?

7 **MR. RICCARDO COSENTINO:** That's correct.

8 **MS. CHRISTINE MAINVILLE:** And so I just wanted to be clear,
9 because you said we were seeking feedback from the City. That feedback was in
10 relation to whether Alstom's proposed vehicle was service proven, right?

11 **MR. RICCARDO COSENTINO:** Yeah. I mean, we submitted -- we
12 went through the design presentation process which included a feedback which was a
13 component of the service proven, yes.

14 **MS. CHRISTINE MAINVILLE:** Okay. And what was that feedback
15 from the City?

16 **MR. RICCARDO COSENTINO:** That it was service proven and it
17 was compliant. Overall feedback was compliant, which also meant that the vehicle was
18 service proven because that was part of the compliance check.

19 **MS. CHRISTINE MAINVILLE:** Okay. And was there much
20 discussion on that issue? Was there much back and forth?

21 **MR. RICCARDO COSENTINO:** No. I mean, there were -- to be
22 honest, there was a mention in my previous response, there were no other vehicles
23 because all -- the service proven was just one categories, but all of the other vehicles
24 available in the market didn't meet the other specifications, so even if they were service
25 proven, they would have met -- they would have not met the low floor, the acceleration,
26 the speed. So there was really no other vehicle that could meet those specifications.

27 **MS. CHRISTINE MAINVILLE:** And at that point in time, was RTG
28 the preferred proponent or were other proponents still in the running?

1 **MR. RICCARDO COSENTINO:** No, there were other -- we're still
2 in the RFP process and there were other proponents in the running.

3 **MS. CHRISTINE MAINVILLE:** Who would have put forward other
4 vehicle suppliers?

5 **MR. RICCARDO COSENTINO:** That's correct. It was ---

6 **MS. CHRISTINE MAINVILLE:** Okay.

7 **MR. RICCARDO COSENTINO:** --- just one solution per proponent.

8 **MS. CHRISTINE MAINVILLE:** Thank you. Those are all my
9 questions.

10 **COMMISSIONER HOURIGAN:** All right, thank you, Counsel.

11 Thank you, Mr. Cosentino. You're excused.

12 We'll start tomorrow at 9:00 a.m. with the examination of Mr. Rob
13 Pattison from Infrastructure Ontario.

14 So we're done til tomorrow at 9:00.

15 Thank you, all.

16 **THE REGISTRAR:** All rise. The hearing is now closed for the day
17 and will resume tomorrow at 9:00 a.m.

18 --- Upon adjourning at 5:22 p.m.

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CERTIFICATION

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