

Ottawa Light Rail Commission

Ken Rubin
on Thursday, May 19, 2022



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6	OTTAWA LIGHT RAIL COMMISSION
7	KEN RUBIN
8	MAY 19, 2022
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15	--- Held via Zoom Videoconferencing, with all
16	participants attending remotely, on the 19th day of
17	May, 2022, 2:00 p.m. to 5:00 p.m.
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1 COMMISSION COUNSEL:

2 Kate McGrann, Co-Lead Counsel Member

3 Mark Coombes, Litigation Counsel Member

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5 PARTICIPANTS:

6 Ken Rubin

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8

9 Also Present:

10 Deana Santedicola, Stenographer/Transcriptionist

11 Alidh Gray, Virtual Technician

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INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE/LINE NO.
1	April 22, 2022 submission of Ken Rubin.....	6/22
2	May 19, 2022 submission of Ken Rubin.....	67/2

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

INDEX OF UNDERTAKINGS

The documents to be produced are noted by U/T and appear on the following page/line: [None]

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages: [None]

1 -- Upon commencing at 2:13 p.m.

2

3 KEN RUBIN; AFFIRMED.

4 MARK COOMBES: Mr. Rubin, just as we
5 begin today, I am going to read something that we
6 have put on the record before every interview we
7 have conducted, and that is as follows:

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

12 This will be a collaborative interview
13 such that my co-Counsel, Ms. McGrann, may intervene
14 to ask you certain questions. This interview is
15 being transcribed, and the Commission intends to
16 enter this transcript into evidence at the
17 Commission's public hearings either at the hearings
18 or by way of procedural order before the hearings
19 commence.

20 The transcript will be posted to the
21 Commission's public website, along with any
22 corrections made to it, after it is entered into
23 evidence. The transcript, along with any
24 corrections later made to it, will be shared with
25 the Commission's participants and their Counsel on

1 a confidential basis before being entered into
2 evidence.

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

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

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

1 So, Mr. Rubin, just at the outset, I'll
2 just explain that the reason for us interviewing
3 you today is to obtain evidence that is relevant to
4 assisting the Commission in fulfilling our mandate,
5 okay, and that mandate, broadly speaking, is to
6 inquire into the commercial and technical
7 circumstances that led to the OLRT Stage 1
8 breakdowns and derailments and we are to produce a
9 report containing our findings, conclusions and
10 recommendations.

11 So we have received a couple of
12 documents from you, your submissions, and I am just
13 going to put up one of those documents to start,
14 just so we have it on the screen with us.

15 And do you recognize that document,
16 sir?

17 KEN RUBIN: Yes, that is my April 22nd
18 submission.

19 MARK COOMBES: Okay, so we are going to
20 mark that as an exhibit to this transcript, so we
21 can have that put into evidence.

22 EXHIBIT NO. 1: April 22, 2022
23 submission of Ken Rubin.

24 MARK COOMBES: Just before I get into
25 more detail about the submissions you have made, I

1 want to ask you just a few questions just to give
2 us some background on yourself, for the
3 Commission's purposes.

4 You have described yourself in that
5 document as an Investigative Researcher and
6 Community Activist/Advocate.

7 Can you tell us what that means? What
8 do you do? Like give me the ambit of your
9 community activism and investigative research.

10 KEN RUBIN: Well, for over 55 years, I
11 have been researching a variety of topics,
12 including transportation issues, here in Ottawa
13 primarily. And it means either sometimes using
14 freedom of information, interviews or other
15 techniques, and it is usually publicly motivated
16 and public interest-orientated on a wide range of
17 topics.

18 But one of the things I put in the
19 April 22nd brief, because I thought, you know,
20 people might say, Well, why -- I mean, one thing is
21 it is obvious that I did engage in -- well, I was
22 interested in the issue in 2012 when the LRT was
23 approached, but by 2016, I did more than that. I
24 started to put in freedom of information requests.

25 I am probably the most frequent user in

1 Canada of FOI, but it isn't the only research
2 technique used. On the same side, I come out of a
3 background of working with non-government
4 organizations, citizen groups, including here in
5 Ottawa, over the years, many, many groups over the
6 years, the Federation of Community Associations,
7 Transport Canada Action, Ecology Ottawa. You name
8 it, I have probably been involved in that with
9 them, and including filing access requests.

10 But I think that one of the things that
11 I do want to make clear, because some people might
12 say, Well, Ken, why are you engaged in this
13 Commission, although you are given limited
14 standing, to mainly talk about Freedom of
15 Information and you have some expertise in that,
16 but you probably know nothing about engineering or
17 rail systems and all the rest.

18 And I go, Well, you know, I enter into
19 a lot of different fields of conversation, and no,
20 I am not an engineer, but does an engineer know
21 some of the public policy issues connected to the
22 LRT or to the issue at hand?

23 And so I feel very comfortable and
24 confident that I do have -- like I do -- that I
25 will be and am a credible witness. You know, I

1 mean, some of the people at RTG who have appealed
2 some of the things I have said have made it known
3 that, well, I am just an ordinary guy and they have
4 got important commercial information. Why do I
5 want it?

6 Well, motivation isn't what counts in
7 this particular situation. What counts is years of
8 experience and seeing how public policy is made and
9 transmitted.

10 And I think, you know, in the summary
11 that I did on April 22nd, I was trying to convey,
12 you know, in part, at least in the transportation
13 area, what an investigative researcher and
14 community activist does, because I am going to make
15 no -- I am going to say that I am an activist, that
16 I do have opinions, but I do also -- you know, a
17 researcher has to look at both sides, has to look
18 at the issues, and sometimes dig because people
19 want to hide things from you. People want to not
20 tell you the whole truth, and that is what I am
21 interested in finding out.

22 And certainly the LRT, with all its
23 problems -- and I mean, I started before the
24 operational side where there were problems, but
25 remember some of the things that I found, you know,

1 and I wasn't expecting them necessarily on the
2 construction side, were shocking to me because some
3 of them showed some pretty shoddy workmanship and
4 miscommunications and what have you.

5 And so, you know, it is not something
6 that I pre-judged the situation, but you know, I
7 certainly found things which, you know, made the
8 media or made people concerned, and I am still
9 finding things about LRT that makes me concerned.

10 So I don't know. I am trying to answer
11 the question because how can -- I mean, probably
12 even my mother didn't know what I did. It is not
13 an area in Canada where we have a lot of people who
14 are full-time or more or less full-time, even
15 though some of the work I do as a consultant.

16 But I can tell you in this area,
17 although the media in a few cases have given me
18 some remuneration for my time and the documents I
19 have gotten, I am an independent, and anybody who
20 feels that I am not an independent will just have
21 to check my track record.

22 So I am just trying to set a bit of a
23 flavour. I mean, I could go on, for instance, and
24 say, to use an example in the transportation area,
25 Well, how come, Ken, you got involved in air safety

1 and why did you spend six years? It is not your
2 vested interest. You weren't one of the relatives
3 whose crew members got killed in the NationAir
4 case. Why did you spend six years doing that?
5 Because I believe that safety, including LRT
6 safety, is a very important issue in Canada, that
7 it is sometimes faulty and overlooked.

8 And that is when Transport Canada did
9 that report and tried to hide it, and I had to
10 appeal and try and go all the way to the Federal
11 Court of Appeal. And then I got it and it did show
12 that there were serious problems with the
13 maintenance of the airline, and I did share it with
14 the Canadian crew members' families who died in the
15 Saudi Arabian crash. Then it becomes maybe more
16 apparent what kind of role I perform.

17 I don't have to be the expert on
18 everything, but I go to the heart of things and I
19 look at them and I try and help out or I try and do
20 things.

21 This is the most expensive project in
22 Ottawa's history, and you know, when I first got
23 involved, workers occasionally would approach or I
24 would hear things about the LRT cutting corners in
25 the construction or the LRT, you know, and this is

1 before it was even operating it wouldn't work, and
2 then once it was starting to operate, then people
3 would say, Well, why can't we use the LRT?

4 So it is not like I am
5 Johnny-come-lately on this issue. I have been
6 engaged in Ottawa on transportation issues since at
7 least 1971, but it is one of many issues that I
8 have been engaged in.

9 MARK COOMBES: Can you explain to me,
10 sir, how -- the involvement in your investigation
11 of the OLRT project, at least Stage 1, which is
12 what we are focussed on.

13 KEN RUBIN: Right.

14 MARK COOMBES: What is your involvement
15 in the investigation? You know, what techniques
16 are you using? I understand from reviewing your
17 submission it is primarily Freedom of Information
18 requests, but what other sort of techniques are you
19 applying?

20 KEN RUBIN: Right, well, I certainly
21 talk to officials, union people, people who are
22 engaged or were engaged in the LRT process, people
23 at university who are engineers who made -- who did
24 studies was what was being done, or other people
25 who are just expert witnesses at inquiries or

1 engineers, for instance, who understand complex
2 projects, who understand what, for instance,
3 non-conformance reports mean.

4 So I haven't, you know, made this my
5 full-time passion, but I have spent many hours over
6 the course of several years looking at the LRT
7 because I think it is a very significant public
8 project, but also one that leaves many questions
9 and many, many unanswered avenues.

10 And so I am not through with looking at
11 it, but I have certainly put in the effort and the
12 techniques that have been primarily FOI, if we can
13 call it, Freedom of Information Act. But, you
14 know, when you are looking at things it is not all
15 tunnel vision. You try and -- you get a flavour of
16 things and you ask questions of other people and so
17 on.

18 Unfortunately, part of the problem in
19 this exercise is that you don't -- I didn't get
20 enough answers, and I got a lot of stalling and
21 secrecy. And so it even makes you more determined
22 to get at what is really happening.

23 So, you know, what you have in my --
24 particularly my April 22nd submission is where I
25 tried to document it. Like I have right -- a box

1 here in the back of me of what this entails, and in
2 fact, I have the most recent thing that I have
3 gotten, that the RTG just dropped a few days ago on
4 minor deficiencies that I would dearly love to
5 explain at one point because I see what the name of
6 the game is.

7 So I am not -- if I can focus on what
8 you said, it has been a long road and it is not
9 over, but I think I have produced some material
10 that the media has been interested in and I think
11 the LRT Inquiry will be.

12 And I think it wasn't me, it was the
13 province who determined that things were in pretty
14 bad shape and that an inquiry was needed.

15 So I certainly pressed for an inquiry
16 and I feel that an inquiry is needed because there
17 is so many unanswered questions, and the bottom
18 line and reality that I am seeing is that,
19 unfortunately, I don't think a lot of the
20 underlying problems are always correctable.

21 And although this may be getting away
22 from your question, particularly the trains, I
23 mean, I am certainly coming to the conclusion, and
24 not as a technical person, they chose the wrong
25 train and we have got to live with it because they

1 bought them. They chose the wrong model, which is
2 the P3 consortium, and lacks monitoring and so on,
3 and they have to live with that.

4 They chose many avenues of things the
5 wrong way, and unfortunately, you can't go and
6 correct train tracks that you put in with sharp
7 curves and now, when you have to slow down, if you
8 did the engineering in the right way, you can't go
9 back. When I see, and I wonder about it, and I
10 have looked at over a thousand non-conformance
11 reports and a lot of them are City-initiated and it
12 took me awhile to even find if this was a way that
13 they are describing problems, because the City
14 wouldn't tell me.

15 But when you looked at them and you see
16 welding problems, when you see girders, you know,
17 having to be replaced, when you see improperly
18 poured concrete, you start say, Well, wait a
19 minute, what is that going to amount to in the
20 future? Is the life cycle of one of these projects
21 and the stations and the rail infrastructure and
22 the overhead and so on, is it all going to work out
23 well?

24 And I have my doubts that -- because
25 there seems to be some shoddy construction.

1 Cutting corners seems to sometimes be occurring,
2 and I think we may pay for that, but the fact is I
3 can't solve, nor maybe will the Inquiry, the fact
4 that they chose the wrong train. They did certain
5 things with the track system. They did other
6 things in a certain way.

7 But I think what I am here to talk
8 about and what you have to go into with a lot of
9 other people is this unfortunate situation which
10 has led to some safety issues and some lack of
11 service in LRT and many other things.

12 And I think we just -- I would like to
13 see things being made the best of, but I think it
14 is not so much pointing the finger. There are so
15 many areas that one could look to blame people, but
16 I think that unfortunately, you know, the human
17 nature and all the rest, we got this wrong and we
18 didn't do the best we could in the construction, in
19 the operation and the continued maintenance of the
20 LRT system.

21 So I mean, that is where I am coming
22 from, but I have specific evidence that I have
23 collected, including, you know, the most recent,
24 which I would like to talk about.

25 MARK COOMBES: Sure. And we will get

1 to those specific topics definitely.

2 VIRTUAL TECHNICIAN: So sorry to
3 interrupt. I really apologize. I just didn't hear
4 the witness consent to this being recorded, so I
5 just wanted to touch base really quickly before I
6 had begun recording. It is just for the assistance
7 of the transcriptionist, to make sure she can get
8 everything correctly.

9 KEN RUBIN: Oh, no, that is perfectly
10 okay. I mean, my main occupation is as a
11 transparency advocate and expert, regardless of
12 what the subject matter is, so you know, why
13 wouldn't I want to consent to that?

14 I mean, part of the problem is -- so
15 yes to answer, but if I am going to --

16 VIRTUAL TECHNICIAN: Wonderful. I am
17 just going to start it now. Sorry to interrupt, I
18 apologize.

19 KEN RUBIN: Oh, okay. But one of the
20 things that I think that I have to say is that
21 because of the lack of transparency, and that is
22 what I am documenting, we are where we are today.

23 Because people have a -- don't trust
24 the LRT system and its breakdowns, we are
25 today -- because, for instance, there was no

1 mechanism put in place where if there is this joint
2 partnership that the City and RTC agreed to prior
3 consent to release the documentation, instead I
4 have to try and go, you know, piece by piece to try
5 and get certain information.

6 And that is part of the problem. There
7 is many other problems, like the wrong selection of
8 trains and so on, but one of the underlying
9 problems of all of this is the absolute
10 confidentiality undertakings in the agreements and
11 the too great reliance on the self-policing by RTG.

12 And when the mechanisms were put in
13 place in part to have some sort of oversight, what
14 it seems to me, if it be non-conformance reports or
15 these deficiency reports, use of the Alstom
16 Independent Certifier, they weren't adequate enough
17 and we are living with it as a result.

18 MARK COOMBES: So I want to ask you a
19 question, Mr. Rubin, about -- I just wanted to
20 clarify, and you touched on this in what you have
21 said already, apart from being remunerated for
22 media appearances, you are essentially self-funding
23 your investigative efforts, so you are paying for
24 your FOI requests and any other evidence you have
25 uncovered so far?

1 KEN RUBIN: Yes, I am, and the way I
2 would characterize a few instances, primarily
3 through the Ottawa Citizen, is, you know, they may
4 not remunerate me for my full-time and so on, but
5 you know, for the documentation there is a modest
6 call it honorarium.

7 But you know, on a large part of this,
8 including my willingness to come forward and come
9 here, everything is voluntary. And I operate this,
10 in a lot of ways, some people if I was a lawyer
11 would call it pro bono work, but I call it by what
12 the nature of my occupation is, which is unusual in
13 Canada. It is a Public Interest Action Researcher
14 and one who deeply cares about what goes on in the
15 community.

16 MARK COOMBES: I want to ask you some
17 specific questions about some specific elements of
18 your report, if you don't mind, if we --

19 KEN RUBIN: No, that is fine.

20 MARK COOMBES: -- just drill down on
21 the details. So the first section of your report
22 is your "FOI Experiences and Results", and the
23 first topic you have mentioned is "Stalling" and
24 "Secrecy".

25 KEN RUBIN: Uhm-hmm.

1 MARK COOMBES: For people who are maybe
2 not as well-versed in the FOI process as you are,
3 can you just give me a brief overview of the
4 request-making process?

5 KEN RUBIN: Sure.

6 MARK COOMBES: So what does that
7 process look like and how does it start?

8 KEN RUBIN: Well -- and this process is
9 done not only in the City of Ottawa, but other
10 cities in Ontario and across the country, and
11 provincially and federally, even internationally.
12 There is over 130 -- no, it is much more than that,
13 Freedom of Information Acts in the world, and what
14 it is is you get the right to review some records,
15 not all records. There is exemptions that can be
16 applied.

17 You put in your -- if there is an
18 application fee, an application or several
19 applications and you try to be specific, and you
20 wait. Federally it can be three years where you
21 wait. And parties can appeal, like the RTG did in
22 this case.

23 And so you might have to go to a review
24 process, if you don't get the records you want,
25 exemptions, or because the third party objects.

1 So for the average citizen - and these
2 Acts are not used by most of the public - it is
3 pretty complicated and too many exemptions to
4 contend with.

5 But if you are putting it in, and I
6 encourage people to do that, you know, there
7 is -- on the internet now there is lists of which
8 departments you can apply for, what their ground
9 rules are, if there is an application fee. I mean,
10 initially it is supposed to be a 30-day response,
11 which in most cases never happens.

12 And then, you know, you get some
13 records and then you have the right to appeal.

14 So the three elements of Freedom of
15 Information are public right to access, some
16 exemptions, supposedly limited, but my opinion is
17 they are not, and then the right to review, usually
18 through -- in this case, in Ontario, you go through
19 the Information and Privacy Commissioner
20 provincially and on the municipal level.

21 And I have done this for 40-odd years
22 and even before that for 15 years with governments,
23 but this is a more formal process to get some
24 records.

25 Some records you can't get at all.

1 Others you try to get. There is discretionary and
2 mandatory exemptions that are applied.

3 MARK COOMBES: I want to ask you a
4 question about one statement you make in this
5 section that says that you are:

6 "[...] still seeking from 2019
7 what is billed as a minor 93 page,
8 case-by-case, list of 'minor'
9 deficiencies."

10 Now I'll get to the list of minor
11 deficiencies in a second, but what I am asking you
12 is how do you know to request that? Where are you
13 finding out -- do you have to make a request for a
14 minor deficiency list or where is it that is coming
15 from?

16 KEN RUBIN: Yeah, well, you know, this
17 is part of the problem with the dance that you play
18 as a member of the public with government agencies,
19 because unfortunately, unless it is something they
20 want released or want to do public relations on,
21 publicity on, they don't tell you.

22 So I can reassure you that, you know,
23 when I first heard about LRT and possible problems,
24 that I approached the City and I used the word
25 "irregularities", and tell me this and that. Oh,

1 no, no, we don't have anything. That is too broad.
2 And I pressed and I was able to find out a little
3 bit, and one of the things they said, Well, we have
4 what we call -- which apparently is true in most
5 big construction projects, we have non-conformance
6 reports.

7 Well, nobody told me that. I mean, I
8 had to dig, dig, dig. And for sure nobody told me
9 about deficiency reports. That just happened to be
10 part of a package that I was offered in 2019, but
11 then RTG objected.

12 The municipality is most unhelpful in
13 terms of telling you what the building blocks of
14 records are, and when they say - and I know I just
15 comment on that in my May 19 submission - that they
16 have submitted to you over 500,000 documents, that
17 is millions of pages, I go, Oh, isn't that
18 interesting, because I have only been told a minor
19 slice of things. And everything I have had to
20 fight for. Nobody told me -- and I will
21 concentrate on the minor deficiencies, because, as
22 I said, the word "minor", when someone uses the
23 word "minor" in government, I go, Hmm, what does
24 that really mean?

25 Well, sir, the other week I got them,

1 and here they are, the 94 pages. And believe you
2 me, some of them aren't minor.

3 But what are these deficiency reports?
4 Because, you know, the term "non-conformance
5 report", I finally figured out, there is over a
6 thousand of them over from 2013 to present, and I
7 am asking for more. I found out other kinds of
8 reports, like situation or status reports that they
9 give to the provinces. But nobody tells you these
10 things.

11 So these deficiency reports, from what
12 I now gather, including the last day or two, are a
13 one-time effort. They are not -- remember when I
14 started off by saying, you would think that they
15 would build in regular monitoring kinds of
16 vigilance in this process. No, a lot of it is
17 self-policing.

18 So what it amounts to is, if I
19 understand it correctly, and nobody has explained
20 this to me and I hope you will get witnesses who
21 will in terms of the documents, apparently Altus, a
22 company was contracted to be the Certifier firm,
23 and they were paid by both the City and RTG.

24 And they issued -- and I under FOI only
25 got one report in 2019. I think the Ottawa Citizen

1 may have gotten one or two others. I think they
2 were only done annually. But as part of this
3 process, and not in the report I got, they did at
4 least this one time, as these documents say in the
5 94 pages -- they don't even say Altus. They say on
6 each page "Issued by the Independent Certifier July
7 31st, 2019".

8 There is pages and pages. There is
9 hundreds of deficiencies, some of which I would not
10 describe as "minor".

11 But that is -- so why did the RTG want
12 this kept secret? Because it has got embarrassing
13 information about maybe minor problems with safety
14 or, you know, or some wires, some unusual ones,
15 electric live wires, not too amusing, all kinds of
16 situations about LRT, that as I understand the
17 Certifier wanted corrected.

18 And you know, why did the RTG, all of a
19 sudden before the Inquiry, drop it? Because I
20 think they realized it was an untenable position.

21 Now, the municipality is partly to
22 blame because they are not explaining to the
23 public, or to you maybe, I hope they will, how
24 these record building blocks work, which ones are
25 for like communicating between the transport

1 service managers and RTG, what progress reports are
2 expected from RTG. You know, all of these
3 reports -- I mean, some of them were pretty random,
4 but they should have some categorization.

5 But there is nothing that I have seen
6 so far that explains this whole maze of records.

7 And on the corporate side -- because
8 this is a joint project and I have dealt with
9 corporate disclosures and sometimes through like
10 Ontario Securities Commission or other agencies you
11 can get private -- or through their annual reports
12 or their messaging, you can get their documents.
13 Or sometimes, you know, they are given to the
14 municipality or the government agency, and they
15 usually object to them, to their release.

16 So -- but they too have a record system
17 and they too have certain checks and balances, you
18 know, an audit committee, communications between
19 their executives and their shareholders and all
20 kinds of documentation.

21 And then, you know, there are
22 consultants that are hired, and you will see
23 throughout this process - and I don't know if I had
24 the names of all of them handy - that the City has
25 had to turn to certain consultants to try and look

1 at certain of the problems that have come about.

2 And Altus had a special role, but they
3 recently hired for the Altus train situation a set
4 of Pennsylvania consultants.

5 So there is all these different actors
6 who come into play, and you know, what I do is I
7 look for the records, because without -- and part
8 of the problem that you are always going to
9 experience, and it is a serious problem, is that,
10 you know, it doesn't matter if it is a municipal
11 level or federal or whatever, but there is a
12 tendency not to record these things. And so, you
13 know, Joe says to Jim, Here is your instructions.
14 Delete them or we are doing this orally.

15 And so the duty to document is not a
16 sure thing under any form of legislation, and it
17 becomes apparent to me that there are gaps in
18 records but that is because there is no
19 requirement. They might say there is directives,
20 but that is a legal force that requires them,
21 compels them to always record the information and
22 how they arrived at certain decisions and the
23 background notes to them.

24 Federally, for instance, there is a lot
25 more briefing notes, a lot more inter-ministerial

1 correspondence. Here it is not either as
2 comprehensive or instructionist system, but still
3 it is pretty obscure to me and opaque, and that to
4 me is a problem because when it is opaque or you
5 don't record everything, then as a member of the
6 public or someone trying to apply scrutiny to these
7 things, you know that you are not getting the
8 complete picture, and you know, that is one reason
9 we are having an Inquiry because the picture is
10 very incomplete.

11 MARK COOMBES: I have a question for
12 you about the third paragraph of this page. It
13 says:

14 "[...] RTG applied much
15 pressure, many objections and won
16 'must be kept' confidential
17 concessions from the City of
18 Ottawa."

19 Do you have specific examples of how
20 they applied that pressure? What led you to make
21 that statement?

22 KEN RUBIN: Well, sometimes it is
23 subtle and, you know, off the record, you know,
24 done orally, but you know, it becomes really
25 apparent when the City won't talk to you about

1 certain things because a third party disallows it,
2 and it becomes even more apparent when RTG in this
3 case appeals to the Information Commissioner.

4 It is my application, but they are the
5 ones who appeal.

6 MARK COOMBES: That is part of the FOI
7 process.

8 KEN RUBIN: Correct.

9 MARK COOMBES: That in other words, you
10 learn that there is an appeal?

11 KEN RUBIN: Correct. Well, under the
12 Act, it is supposed to be -- and I call it special
13 privileges of corporations, but it is supposed to
14 be information that has a commercial
15 confidentiality quality to it, so it might be
16 supplied by RTG or Alstom or whatever or it might
17 be something that they communicated between the
18 parties which they have then the right, which I
19 don't think they should have but they do under
20 legislation, to object to it, to take it to Court
21 or to take it to the Information Commissioner, and
22 they do that considerably a lot and it gives them
23 delay privileges.

24 In the end, though, the municipality
25 has to or the province and the Federal Government

1 has to determine if that material is releasable,
2 but nine tenths is nine tenths, and so if the
3 commercial entity objects to it, they are going to
4 listen.

5 For instance, you know, here is a
6 blooper. So when RTG claimed that concrete pouring
7 and all their shoddy work in certain instances
8 there, that I got some documentation, was a trade
9 secret, well, that is a stretch. I mean, you know,
10 there is not many unknown techniques in concrete
11 pouring.

12 And so the Commission -- and the
13 municipality should have called them out for that,
14 because, you know, there are certain ground rules
15 as to what is or isn't commercial confidentiality.

16 MARK COOMBES: I understand. And when
17 you make reference in the next paragraph to --
18 that:

19 "The city of Ottawa [...]
20 simply hides behind the consortium
21 and the legalities of the FOI Act."
22 Do you have a specific example of that?

23 KEN RUBIN: Well, you know, it is so
24 hard to, you know, prove the direct connection, but
25 when you are sensitive to your clientele -- and I

1 am not their clientele, although I am a taxpayer,
2 it is the consortium who is their main clientele,
3 they are going to go to the extra length to make
4 sure that their information is protected. I mean,
5 some of it perhaps should be, of course.

6 And so when I have to wait like on the
7 deficiency documentation three years to even find
8 out what the documents are, that to me I put at the
9 feet of the municipality.

10 In other words, if they had - and in
11 some jurisdictions this is done - simply prepared
12 for my 2019 application what they call in the
13 States a Vaughn Index, which the Information
14 Commissioner, when you are in the appeal process,
15 calls a record inventory.

16 If they had just prepared a record
17 inventory and said, Listen, there is three
18 documents -- type of documents in that request,
19 one -- and the other two which I only got in 2022.
20 One was on some testing they did, and the other one
21 I have got it there. It escapes me, sorry, for the
22 moment, but it is in my '22, it's the NCR reports.
23 And then the third was deficiency.

24 Well, if they just prepared a simple
25 chart record, document-type record, that one

1 exists, it is releasable or partially releasable,
2 documentation two was on the testing, releasable
3 and actually there was no exemptions in that, and
4 then documentation that was exempt but the nature
5 of it is it was deficiency reports by the
6 Independent Certifier and we deny it all to you on
7 section 20 or section 13 commercial confidentiality
8 grounds, that makes things clearer and, when you
9 are appealing it, then you know what you are
10 appealing.

11 Now, the third party can sneak in
12 there, as I say, because they are notified, and
13 object without you still knowing what it is.

14 So the municipality I think should have
15 an obligation to tell you offhand what it is that
16 you are applying for, what records are at stake,
17 and what status they are.

18 And so one of the things I do like
19 about the Ontario Information Commissioner is if
20 you appeal and you don't know what the records are
21 by that point in time, the mediator will come in,
22 because they have a mediating process, and try and
23 resolve the issues between you and the municipality
24 or the third party.

25 And then they will say, Well, let's

1 prepare this record index, because every party
2 becomes more intelligible if you know what you are
3 appealing, because sometimes you are not even told
4 that much.

5 So I wasn't told by the municipality
6 anything, and I feel this is -- and in the
7 deficiency case, it becomes even more apparent
8 because I have put in, as I have mentioned in the
9 April 22nd briefing, the other one is the May 18th
10 or 19th I'm calling it submission, on the
11 deficiency thing I said, Okay, so let me put in a
12 follow-up one in March of this year and see what
13 other deficiency reports there are.

14 So did the FOI officer have any
15 obligation to tell me anything? No, he said -- he
16 asked me, Well, what do you mean by deficiency
17 reports? He is putting the onus back on me. Well,
18 sorry, there is a duty to serve, just like there is
19 a duty to document.

20 And when officers and municipality
21 people don't tell you what it is about, well, of
22 course you are going to get suspicious and you are
23 not going to know.

24 So this went back and forth to the
25 point where I said, Well, it is going to be at

1 least like what I got before, which is this FOI
2 2019 545 file, and he said, Oh, okay, that is fine.
3 So guess what the result was that I got just this
4 week from that March request? He said, Oh, sorry,
5 that was -- he didn't say one-time effort. I am
6 making that conclusion. He said, The Certifier did
7 no more reports, one-time effort only.

8 So I am going, wait a minute. If I was
9 an FOI Officer and I have a duty to serve, I would
10 say to people, Don't bother putting in your \$5
11 application. We know that there was no more
12 deficiency reports done by the Certifier.

13 So this is the problem that I am always
14 running up against. You know, people in the
15 governments are sworn to a code of silence, you
16 know, the oath to, you know, allegiance and all of
17 that, and it is real. It is very real. I get into
18 an elevator, particularly in this government town,
19 and nobody talks because they know who I am.

20 I mean, this is a serious problem where
21 people don't willingly give information, and if
22 they do, it is in the form of PR and half-truths or
23 sanitized statements.

24 Now, City Council has a role in all of
25 this to perform, and they get a series of

1 documentation. And they did get some
2 documentation, which I looked at which are public
3 documents so I don't apply for them, on the LRT,
4 but I don't think you would find any Councillor
5 telling you that they got enough information,
6 adequate information about this whole project as it
7 went along.

8 In fact, in some cases, as I have said,
9 they were given days to do that, and in one case
10 that I came across where the Federal Government was
11 pouring in millions of dollars to the LRT,
12 admittedly Stage 2, they took -- the Mayor wanted
13 the money and Council said they could move ahead
14 March, whatever that was, 2019, I believe.

15 And so the Federal Minister obliged
16 them by the same day approving millions of dollars
17 and then it was passed, because they couldn't go
18 ahead otherwise, you know, with the motion and the
19 project.

20 So I mean, maybe this is the way
21 government works, but it is not the way I want it
22 to work, and it is not the way I should find out
23 that it does work, if I can find out about it.

24 So I think I am trying to explain to
25 you, it is a cat and mouse game, but it is also --

1 you know, the deck is stacked against the public or
2 a person like me applying. I am just a fairly good
3 little cat, and I am not willing to accept no for
4 an answer. And all of these Acts have numerous
5 ways of saying no and are not what I call full Acts
6 or first generation Acts, they give you very
7 limited rights to know things.

8 And so if your Councillor asks a
9 question in a Council meeting or the staff person
10 there, will they get the whole answer? Does the
11 staff report contain everything? Well, I would say
12 no because I have seen how these systems work. I
13 am not trying to disparage every public servant or
14 every documentation.

15 I mean, what they did is they entered
16 into an arrangement with a consortium, maybe
17 blind-sided in a way, that allowed them a great
18 degree of confidentiality, allowed them, the
19 consortium, a great degree of take command work,
20 and they said, Good-Bye, you know, you do it.

21 We have some limited checks and
22 balances, but on the whole, you know, you do it.
23 And then when they started getting problems, well,
24 who gets called into the office, at least for
25 public show? Alstom with the Mayor. Well, that is

1 not good enough. That is not how a regular
2 consistent way of verifying and checking how the
3 work is done should be done.

4 And I mean, I have seen situations
5 where government agencies are dealing with
6 particular projects are better than other projects,
7 because not only are there millions of dollars
8 being put forward, but there is some -- there is a
9 different sense that, you know, we better make sure
10 those taxpayer dollars are being well spent.

11 And because they are complex and they
12 are technical things, well, we better have our
13 independent engineers or whatever it is to check
14 these things.

15 So I mean, one of the things that
16 astounds me, and I have heard from more than one
17 party, is in the case of the Alstom trains, which I
18 didn't admittedly apply for many FOI documents, is
19 that they didn't have on staff an appropriate
20 engineer who even understood what an Alstom train
21 was. And which Alstom train, the Citadis Spirit,
22 did they choose? A train that some European
23 countries I gather rejected. So they came to North
24 America and tried to, I guess the word is, flog it
25 or sell it or pitch it. And they succeeded in this

1 particular City.

2 But they didn't have on staff the
3 proper people to assess, the right engineers to
4 assess these things. I can't assess it. All I
5 know is when I see things about the bogie
6 suspension, which is the suspension mechanism on
7 this train, and about the low floor level, I read,
8 oh, winter conditions, Ottawa, maybe not the best
9 choice to be made. Alstom has quite a few around
10 the world trains.

11 And so I know who is sleeping at the
12 switch, to use an expression, and how am I going to
13 find out about this? And one of the things that I
14 did see, as you will see in the documentation, was
15 the warranties because they may be expired by now
16 because these were started to be purchased, I am
17 not sure if it was way back in 2012, but it was
18 certainly before the system became operational.

19 So once you have got them, you are
20 stuck with them.

21 Well, what does the warranty entail?
22 So all I know is one of the unions at City Hall
23 asked me the case of buses where they had cracks in
24 the engine, what happened and what happened to the
25 warranty, and you know, it was during a municipal

1 election year, well, sort of nobody wanted to talk
2 about what happened to the warranty. Well, here in
3 the Alstom case, there were warranties but I am
4 being denied any knowledge of them.

5 And although I have seen many
6 warranties that are not worth the paper they are
7 written on, I have seen others that you can go back
8 and say, Listen, it says here that your
9 serviceability, the product shouldn't break down,
10 and it is a ten-year warranty on this, five years
11 on this. You know, you have got a car and you have
12 got a warranty, and some of it it is not clearly
13 stated.

14 So all the point that I am trying to
15 make is, when you can't see these records or when
16 the people who are supposed to be in charge or have
17 the technical expertise and the public
18 responsibility are asleep at the switch and it is
19 such a basic part of the LRT, it makes you wonder
20 why we did this.

21 I mean, one of the things that I am
22 curious about that I can say is that in 2012 there
23 was a different Transportation Manager. I believe
24 that Transportation Manager - and you can check
25 this for yourself - may have had a connection. He

1 was fired, but the reasons were never given. But
2 he might have had a connection with a certain train
3 company.

4 So I am not going to make allegations.
5 I am just saying sometimes this isn't just
6 incompetent engineering or oversight. It is
7 buddy-buddy system where you are doing things.

8 You know, SNC-Lavalin, one of the
9 consortium members, well-known people to do these
10 kind of big projects, but sometimes they haven't
11 done that great or sometimes they have been called
12 out for taking bribes on the side.

13 Alstom is in a different category, but
14 some of the partners, and Don Ellis is a well-known
15 construction firm, so some of them maybe were doing
16 their jobs, but together there didn't seem to be
17 that great coordination.

18 But part of the problem is, if you are
19 going to do a P3, you are going to have to rein
20 these people in. You are going to have to manage
21 it. If you don't, you are asking for trouble
22 because their main motivation is a profit motive.
23 Yes, they should have technical competent staff.

24 And one of the reasons I first got
25 involved in this is because some people came to me,

1 and they wouldn't identify themselves, and said,
2 Well, RTG is scrambling, you know, to get this
3 construction going because some of their engineers
4 left. They were concerned that there was too many
5 cutting corners, that they weren't being heard and
6 their technical and engineering objections to what
7 was being done.

8 MARK COOMBES: I do have a specific
9 question for you about that, Mr. Rubin. So I
10 noticed in that section of your report, you say:

11 "[...] applied to the city FOI
12 office after being told that there
13 were corners being cut in the LRT
14 construction [...]"

15 And I think you answered it there for
16 me, but I just want to be specific, you were told
17 by someone who wouldn't identify themselves.

18 KEN RUBIN: Yes.

19 MARK COOMBES: So how were you told
20 that?

21 KEN RUBIN: Well, verbally, but I
22 mean -- and here is the thing, I was told by
23 another party who knows engineers that he
24 heard -- sorry, I shouldn't -- the person heard
25 that RTG was desperately looking for project

1 engineers.

2 So I mean, the two seemed to coincide.
3 Some people often discuss they needed to recruit
4 new people.

5 MARK COOMBES: Are you willing to
6 disclose to us the names of those people that told
7 you those things?

8 KEN RUBIN: I would prefer not to. I
9 protect my sources.

10 MARK COOMBES: I want to ask you about
11 the warranties that you brought up as well, because
12 I just want to be quite specific, you know, as a
13 factual basis, leaving aside the question of
14 whether those warranties should be public or not,
15 but do you have any specific knowledge of whether
16 those warranties either led to or did not lead to
17 any of the issues that the Commission is
18 investigating, namely the breakdowns and
19 derailments?

20 KEN RUBIN: Good question. I don't
21 know if any of the terms were applied, or if they
22 are still operative, because as you know, even if
23 you look at the car analogy, I mean, you know, the
24 warranty is limited to five years and good-bye
25 after that.

1 So if you purchase them but didn't use
2 them for a few years, well, that is your problem
3 that you agreed to that kind of warranty.

4 And because I am a consumer advocate, I
5 have seen these kind of warranties, particularly
6 with the Automobile Protection Association where
7 the car industry has them. And they also have
8 these secret car warranties because they know
9 certain things break down, and you know, they want
10 to go after it.

11 I mean, you and I may have had Sears
12 warranties on our appliances and sometimes, you
13 know, you had a breakdown and you used them, but at
14 least you knew what the terms were. You knew that,
15 you know, certain things were covered 'x' years and
16 certain things weren't.

17 And, you know, home warranties is
18 another area where a lot of people say, Well, we
19 have got a new home, but it wasn't done properly,
20 and then they go and they look at the warranty and
21 they find out it is a very weak warranty and it
22 doesn't give them the proper recourse that they
23 want.

24 So warranties, and I am not an expert
25 on them, I mean, it seems that it is a buyer beware

1 game. Some of them have put -- like, you go to a
2 car dealership nowadays and, you know, you have got
3 the normal one-year warranty, and they'll try and
4 sell you the extra five years. They are working on
5 the probability that, you know, they won't have to
6 do any major fixes under that warranty, and so
7 they'll make money still, even if you pay, you
8 know, five years more for that, six more years for
9 the warranty.

10 And the Alstom thing, you would hope
11 that those warranties would be worth the paper they
12 are written on, but whether, to answer your
13 question, they were ever used or cited in some of
14 the repairs or requests done, I have no idea. And
15 quite honestly, from what I understand from
16 warranties, I mean, there would be other grounds
17 for saying, you know, do -- prepare -- repair these
18 or look at this than warranties, because warranties
19 are something after the fact, that sort of extend
20 things at a certain point. They don't
21 necessarily -- they are not the main trade practice
22 interacting between the purchaser and the seller.
23 I mean, they are an important part, but they are
24 not the only part.

25 So I don't know when the City

1 approached them with particular problems, did they
2 use the agreement, the RTG agreement or Alstom
3 agreement, or were there warranties a feature of
4 them? Because the agreements I would say are more
5 important in some respects than the warranties.

6 But the warranties would be a good
7 thing to know about.

8 MARK COOMBES: Let me ask you a
9 question about the NCR reports that you obtained
10 through the FOI process.

11 KEN RUBIN: Yes.

12 MARK COOMBES: So in your briefing
13 here, you say:

14 "All in all I filed nine FOIs
15 from 2016 up to 2019 and received
16 data on 998 NCR reports."

17 [As read.]

18 KEN RUBIN: Right.

19 MARK COOMBES: Now, have you reviewed
20 those reports?

21 KEN RUBIN: I have, and only in a few
22 instances the City, you know, I could think of
23 about ten they didn't do them. I should also add
24 that I have an FOI in from March asking for any
25 other NCR reports, including Stage 2 ones, because

1 it is normal, as I'm discovering for like
2 provincial highway projects or these big
3 engineering projects, to do this kind of a report.

4 MARK COOMBES: Can you just tell me
5 what those reports entail?

6 KEN RUBIN: Yeah, sure.

7 MARK COOMBES: Like are they written at
8 a high level? Are they detail-oriented? What do
9 these reports look like?

10 KEN RUBIN: Yeah, one part of them is
11 about three or four pages and they would identify,
12 say it is the Lyon Street Station, and part of the
13 problem was there was a welding problem there, and
14 so they would have the date and somebody who signed
15 off.

16 So that, you know, they followed a
17 fairly standard practice, and they would have a
18 number, so I was able to put a number against
19 where. You know, it might have been the
20 maintenance yards. In the beginning it was like
21 the highways that they were revamping, but it was
22 primarily about the LRT or particular parts of it.

23 Then there would be -- which I was -- I
24 saw but then was denied when I tried to get them,
25 about ten or so pages of technical attachments,

1 which would sort of tell you more they would be
2 supportive to the NCR. So if it was the welding in
3 the Lyon Street Station, it might have the
4 subcontractor say, Well, I did this or that or here
5 is what was corrected, because the whole idea of a
6 non-conformance report is -- and a lot of these are
7 City-initiated, and the City, of course, never
8 wanted to admit to that, to me that, you know, 50
9 percent of them are they are initiated and not by
10 RTG.

11 MARK COOMBES: And that was the
12 question I was going to ask you about these reports
13 too, because you say in your brief:

14 "A big revelation was that a
15 large percentage of the reports had
16 been City-initiated."

17 [As read.]

18 So why is that a big revelation to you?

19 KEN RUBIN: Well, because you
20 normally - "normally", what is normal - would think
21 that, you know, they are going to RTG as part of
22 the deal to say, Well, can you tell me instances
23 that you did -- and maybe the word "shoddy" work,
24 but there was work that was incomplete and
25 something went wrong, a girder, an oil spill,

1 whatever it might be, that the steps were
2 improperly put, there was slippage on the platform.

3 And so you would get the -- you would
4 have these reports, and so you would think, well,
5 they primarily would come from RTG reporting these
6 problems. And then what happens is there would be
7 corrective action that is undertaken, and you would
8 go, okay, so the City would be involved in that.

9 But in this instance, a lot of the
10 reports were initiated from, you know, the City
11 calling the inspections or on-site people looking
12 at things by the City. Like, for instance, a lot
13 of the welding reports I looked at were
14 City-initiated, that were going around and saying,
15 you know, the torquing or the rusting or whatever
16 it might be was improperly done.

17 I mean, one of the most amazing things
18 was, you know, to realize that some of these
19 reports you couldn't correct things. So the water
20 seepages in the tunnel that we spoke to, which was
21 a big decision to undertake, aren't correctable.
22 It is just, you know, the sump pumps will go, the
23 leakage will occur, and whether there is chemicals
24 in that mix I don't know, because I got other
25 documentation. But that came about finding that

1 out through a non-conformance reporting that I had
2 made. I'll tell you, when you look at the
3 deficiency reports of the Independent Certifier,
4 you'll see over a dozen of them, they might be from
5 a roof, not in the tunnel, the LRT station roof,
6 there is leaks. Oh, my goodness. Well, maybe, you
7 know, this is a certain percentage. When we build
8 there is always going to be these problems.

9 But from a plumbing perspective, I
10 mean, although they want perfection, they sure
11 don't want to know that certain things were done
12 maybe not as well as they could be done and in a
13 shoddy fashion.

14 MARK COOMBES: Now, these NCR reports,
15 two further questions on them for you. Number one,
16 do they contain any information about the
17 resolution of those issues or are these reports
18 just raising the issues that they raised?

19 KEN RUBIN: They are primarily the
20 latter. The idea is that, you know, I did ask in
21 my FOI, Well, give me the corrective reports, but
22 this is what I settled on. The technical
23 attachments at times would tell you some things
24 about the corrective action.

25 And as I say, although I got them

1 initially, a fair sampling of them, the Information
2 Commissioner decided I, on a public interest
3 compelling reason to get the NRC main reports, but
4 that they were too technical. Having looked at a
5 lot of them, I disagree. I find that they are very
6 helpful.

7 Yes, they may be a little embarrassing
8 to the companies, but on the whole, they are
9 saying, Well, we applied 'x' widget to 'y' thing,
10 and you know, here is a map or a diagram. They are
11 not -- they are not -- they are helpful because
12 they show you the problem was being taken care of.

13 And so it would be more reassuring for
14 me and the public to have this kind of report as
15 well.

16 MARK COOMBES: Anything raised in any
17 of those NCR reports you have reviewed that would
18 have been related to any of the breakdowns and
19 derailments that the City system has endured?

20 KEN RUBIN: Not mainly. There was a
21 few, if I recall, on the tracks, problems with
22 them. It wasn't primarily a feature of them, which
23 I found kind of interesting.

24 But remember, most of them were done on
25 the construction side, so that operationally, it

1 appeared that the trains were the wrong fit, so I
2 don't think the NRC reports would have taken care
3 of that.

4 But on the other hand, when I applied
5 for it and it didn't go through because of the
6 amount of money they wanted, the City reports,
7 called observation reports, right, that are
8 mentioned in my April 22nd submission, those -- and
9 they had over 110,000 pages, including photographs.
10 I think those would have revealed more about --
11 because I saw a few pictures that the City used for
12 publicity. They would have shown the trains and
13 the tracks.

14 This is before the system primarily was
15 operational. But I don't know. That is part of
16 the thing. I don't know what verification, what
17 kinds of -- other kinds of records were done to
18 assess, for instance, those trains and tracks,
19 because it doesn't become apparent that there was
20 many, at least in the records that I applied for.

21 But those building blocks I know, and
22 many other building blocks I don't know and it
23 concerns me because it would reassure me and the
24 public to know that the proper documentation was in
25 place, the proper verification analysis was

1 continually done.

2 I don't have that evidence.

3 MARK COOMBES: So another issue that
4 you say is revealed in the NCR reports is
5 improperly poured or mixed or cured concrete.

6 KEN RUBIN: Right.

7 MARK COOMBES: Any sense that any of
8 that led to any of the problems that have happened
9 so far with the system, or is your concern that
10 they will cause future -- that will cause future
11 problems?

12 KEN RUBIN: I think it is primarily the
13 latter, because although it became clear that if
14 you left in the wooden structure, you didn't --
15 that somebody didn't find it, you know, that it
16 would be a problem. So fortunately that was found.

17 But when you did certain girder
18 arrangements and poor routing or platforms that
19 weren't quite lined up, you wonder, you know, with
20 respect to whether down the road that would be a
21 problem.

22 And I asked an engineering friend, I
23 said, So how could you ever find out about this?
24 How could you do that? He said, You can't, because
25 there is no x-ray equipment that will go through

1 the concrete and tell you that something inside is
2 a little shaky.

3 So I mean, the only reference that I
4 can give you of reading the reports, I think I got
5 it under the federal Act, you know, here in town
6 the Macdonald-Cartier Bridge had a series of
7 problems and they had engineers do assessments of
8 the problems and, you know, because there was
9 corrosion and other things at that point in time.

10 And you know, there has been a lot of
11 cases -- not studies, but instances of bridges
12 collapsing because they were improperly built. But
13 the Macdonald-Cartier Bridge was at a point where
14 you could visibly see some of these structural
15 problems which could have led to the bridge
16 collapsing which is kind of serious which has in a
17 few instances back to that.

18 Now, I am not going to make any
19 allegations that it is that shoddy that it would
20 collapse, but what I would say is if things aren't
21 well done and you can't get at them, you can't
22 x-ray and say, Oh, yeah, there is a thing that I
23 better take care of or else ten years down the road
24 it won't be good, when you don't know a hundred
25 percent whether everything was done properly, and I

1 know, like, you know, in the case of that airport
2 parkway bridge that they had to tear down, it was
3 because the concrete was done and the design and
4 everything wrong.

5 So I mean, there they had a clear-cut
6 example of what was done wrong, and so on.

7 So no, I guess it just makes me
8 feel -- and feeling isn't good enough, but it makes
9 you wonder, will these last their life cycle? Will
10 something collapse on the platform or along the way
11 on the train rail system, and so on? And it is not
12 a pleasant feeling. But it would be a better
13 feeling if these things were all put forward and
14 transparent.

15 Nothing is perfect. These systems
16 aren't built a hundred percent for perfection, but
17 they shouldn't -- and I am not saying a hundred
18 percent fail proof safe, but they have to meet
19 minimum standards.

20 So when, for instance, the RTG and
21 their lawyers said at one point to the Information
22 Commissioner in their presentation, Oh, we can't
23 tell Mr. Rubin anything about these because they
24 are trade secrets, well, no, wait a minute, if you
25 poured the damn concrete wrongly, you poured it

1 wrongly, or if you are claiming that you have got a
2 special kind of concrete, which isn't true from all
3 I have gathered, well, let's hope that it is super
4 stronger or better.

5 So I am left with, because part of the
6 whole construction of this whole system relies on
7 concrete, relies on girders, relies on, you know,
8 doing it properly structurally, you hope that is
9 right. So in the deficiency reports, when I see
10 things like roofs leaking and stuff like that, I go
11 drip, drip, drip, hmmm, what is that going to do to
12 the integrity of that structure say at Hurdman,
13 which is where some of the reports were
14 mentioning --

15 MARK COOMBES: Is there any --

16 KEN RUBIN: Go ahead.

17 MARK COOMBES: Is there any sense that
18 any of that -- another thing you mentioned and you
19 are following up on now is the leaking, right, of
20 the stations. Any sense that any of that has led
21 to any of the breakdowns of the system, or again,
22 is that more of a prospective concern, you know, if
23 it is leaking now, what is it going to do in the
24 future?

25 KEN RUBIN: Yes, I would say so. I

1 mean, you might have experts who might tell you
2 more. I mean, I think where the problem becomes
3 more obvious, which I didn't get much
4 documentation, is in the trains. When you get a
5 train running off the tracks or when you get
6 breakdowns, you have got to say, Is it the train
7 that is wrong? Is it the track that is wrong? Was
8 the track built wrong?

9 Why do operators when they come around
10 certain curves, why do they have to slow down? Ah,
11 I think there is an engineering solution to that, I
12 have been told, and that is if you build it in the
13 right -- I don't know how -- curvature, you won't
14 have to slow down.

15 I mean, another party said to me, and
16 this is kind of basic, they said, Why did they lay
17 the track in certain places where on one side there
18 is population and on another side, you know, there
19 is the Rideau Canal? So there is none. That makes
20 no sense, because the whole idea of an LRT is, you
21 know, you should be near dense populations.

22 So I mean, at another point I have
23 raised the whole question of, when people
24 plan -- remember, we had other earlier versions,
25 north-south, and so on, of train systems that

1 weren't effective and were building it out in
2 certain directions. Had someone thought through
3 the density of these places and planned it
4 properly?

5 I mean, I also raised the question of
6 why does it always be in the planning that the LRT
7 isn't done with the public or public spaces in mind
8 rather than just condo development, high-rise
9 development being right at the LRT.

10 So those are public policy concerns,
11 maybe not so much about the inefficiencies or
12 problems with the LRT, but they reflect a
13 certain -- just like the P3 arrangement reflected,
14 which leads to self-policing, it reflects a certain
15 attitude towards the developers can do it best, the
16 developers can benefit best.

17 Well, what about the public? What
18 about them doing well?

19 So when Ecology Ottawa approached me to
20 help them do an audit of the environmental
21 conditions around LRT stations, I thought, well,
22 that is interesting. Somebody is thinking in
23 advance, well, how will it work for bikes or for
24 air quality or whatever? And I am going, yeah, did
25 the City think about that? I don't think so.

1 So this is part of the problem. When
2 you talk about planning, an LRT is meant to be a
3 valuable public transit system, and if you are
4 going to have a valuable, you put it in the right
5 places. Whether you build a tunnel, I am not too
6 sure it should have been done, but you do it
7 engineering-wise and planning-wise in the way that
8 is going to help your passengers, help your City
9 tax dollars and help the people get from A to B.

10 And now, for instance, with pandemic
11 and the change of things, well, maybe that wasn't
12 foreseen, but other things were foreseen in the
13 planning and I don't think they were taken
14 advantage of.

15 And other things should have been
16 foreseen in the engineering of the system and
17 weren't. I mean, the train is absolutely
18 run -- the tracks are so strange. I mean, even the
19 overhead electrical things I saw -- I got a bit in
20 testing and so on, and I wondered did somebody
21 really -- did they -- I mean, I would ask them, did
22 you have a single electrical engineer on staff?
23 Like did you? Because I wonder if they had the
24 right specialists in the right place or consulted
25 with the right people, or actually may not have

1 made certain selections, including the train that
2 they bought, because that train --

3 MARK COOMBES: Right, let me ask you
4 about the train model, because I want to just drill
5 down on some of your opinions that you expressed in
6 this report about the Citadis Spirit.

7 So you say that:

8 "Instead of an off-the-shelf
9 proven model, Alstom introduced for
10 North America a new untested model,
11 Citadis Spirit, with an untested
12 suspension bogie undercarriage
13 system."

14 [As read.]

15 Where did you get that information?
16 How do you know that the model was untested? How
17 do you know it was not used in North America?

18 KEN RUBIN: Well, I think it is fairly
19 common knowledge that it was untested. It was
20 introduced here first. I think -- I am not too
21 sure if Toronto or some other cities have taken it
22 up. I mean, Bombardier and others have other
23 models and they have other models.

24 Where I got some of it is I talked to
25 some engineers. Whether they are credible or not,

1 I don't know. And I looked at the patent that I
2 think is filed with the Americans for the
3 suspension bogie.

4 And you know, it is like all I can
5 think of is car suspensions and the more modern and
6 sophisticated it gets with the electronics and
7 everything else, the more likely that it could
8 break down and it is not the old standby mechanics.
9 And with the low floor in winters, like to me that
10 is a no-brainer, you could be asking for problems.

11 So I am not a technical person. I
12 totally do not think that I will ever say that I am
13 an expert, but sometimes I ask questions. That is
14 what I do as a researcher. And I come up with
15 something is wrong here. I mean, yes, it takes a
16 lot of lead time to make your purchase decisions,
17 so you have to get the trains before you even put
18 them on the tracks and you have to build the
19 tracks.

20 But I am saying, did they have the
21 right people to assess these things? Did they
22 know? And maybe they couldn't know because they
23 were relying on tests from -- that might have been
24 conducted in Europe.

25 But you know, I think one thing worth

1 checking out is were any of these trains rejected
2 by, for instance, Saint Petersburg in Russia? Were
3 any of these trains tried out in other European
4 jurisdictions and people saw through them and
5 didn't buy them? Like that would be an interesting
6 thing for me to know. I just don't have the
7 resources to look at every angle.

8 But something -- well, when you buy
9 them, you can't just say, Oh, well, we'll try
10 another train model. I don't know if the gauge and
11 everything else lends itself to what you have
12 purchased, and I think purchased more for Stage 2,
13 maybe Stage 3.

14 Remember, we were running on a mixed
15 system so that the diesel on the trains at Trillium
16 or O-Train is a different model, and it seems to
17 not have the same level of problems. Well, I don't
18 know if it is the undercarriage or the suspension
19 is different or not. I mean, eventually they want
20 to amalgamate them. And the train gauge I think is
21 different.

22 So I am not the expert who can
23 determine these things, but I sure as heck would
24 want to know why I'm stuck with a second-class
25 train system.

1 MARK COOMBES: All right, and on that
2 topic you say in the report:

3 "The Alstom train model chosen
4 creates a gigantic and costly and
5 not entirely correctable problem."

6 [As read.]

7 Can you give me the basis of your
8 opinion that it is not entirely correctable? Where
9 are you getting that -- what facts are you basing
10 that opinion on?

11 KEN RUBIN: Well, I am basing it on
12 what perhaps some engineers have told me, but it is
13 also that it has been breaking down a lot, I mean
14 the doors, the mechanics, and you know, the
15 undercarriage system.

16 And I don't know if they are totally
17 correctable because of the low floor, because of
18 the suspension system is a fairly new patent, i.e.,
19 untested too.

20 So you can't just say, Here, give me
21 back -- you know, I don't know what the warranty
22 says. I don't think it says you can trade this in
23 for a better model. So I am saying -- you know, I
24 am saying -- I am not saying. I am saying maybe
25 the Commission and Inquiry should tell us the truth

1 as to whether or not we have been taken or whether
2 we are stuck with it and so we have to live with
3 it.

4 And one thing is absolutely clear to me
5 is Alstom and the level of technical support they
6 have had here in Ottawa hasn't been that great. I
7 mean, you shouldn't have to run to your best
8 technicians in Europe if you know you are selling
9 it primarily in North America.

10 So I mean, maybe the jury is still out,
11 but there appears to be a serious problem at hand
12 and we have, what, at least over 30 of these, if
13 not more of these cars, and probably more on order.

14 And somebody better say, well, we -- I
15 won't call it bought a lemon, but we bought
16 something which you have got to do certain things
17 about and in Ottawa weather conditions or in Ottawa
18 period, and I don't think you can trade them in.
19 You know, a good consumer, and I work with Phil
20 Edmundson who does the "Lemon" car book every year,
21 and sometimes, you know, you go back to the
22 dealership and you say, I have got a lemon and I
23 want it replaced. I don't think you can do that in
24 this case unfortunately.

25 MARK COOMBES: I want to ask you a few

1 more questions just about this report before we
2 move on and get your other supplementary submission
3 into the record as well.

4 But tell me about the train track
5 curves. You have got the opinion in here that:

6 "The train track curves on the
7 LRT line can and do contribute to
8 poor service."

9 [As read.]

10 What is the basis of that opinion?

11 KEN RUBIN: Well, I think the basis is,
12 at least in media reports, and I think from
13 directives from the City itself, is that operators
14 are told to slow down on certain curves.

15 Now, that is not just for safety. It
16 is because of the way those curves were engineered.
17 So I am saying, well, maybe they could have
18 been -- in hindsight they could have been
19 engineered differently.

20 So I mean, what is an LRT system? It
21 is supposed to be quick. It is not supposed to
22 slow down because you created certain conditions,
23 and maybe that is because of the land that was
24 available, or expropriations, I don't know, but
25 there seems to be a problem when you have to tell

1 your operators slow down.

2 I mean --

3 MARK COOMBES: You also say:

4 "There have been concerns and
5 admissions that the track system
6 itself had sharp curves."

7 [As read.]

8 Is that again from what you have seen
9 in media reports or are you speaking to anybody
10 else that --

11 KEN RUBIN: I thought the
12 media -- yeah, I thought the media reports quoted
13 some of the transportation management of the City
14 of Ottawa. So I mean, that is a pretty solid
15 basis.

16 MARK COOMBES: Sure. I just wasn't
17 sure. You had spoken before about perhaps, you
18 know, speaking with engineering friends or things
19 like that about the opinions.

20 KEN RUBIN: Well, I have talked a bit
21 about that, and I don't know, there is a degree of
22 incredibility among.

23 So I can't judge it, and I have never
24 identified and I don't know if it would be easy,
25 how many of these kind of curves there are. I have

1 seen the LRT, like where it gets to the University
2 of Ottawa and it curves around. It could be one
3 place. But you know, I have not gone and actually
4 seen, well, this is 'x', 'y', 'z' places that are
5 places that you want.

6 But you know, when you get a train
7 leaving the tracks, it could be the tracks, it
8 could be the curve, it could be a lot of things.
9 So I haven't done the investigation into that.

10 And in fact, I am glad we have the
11 Transportation Safety Board that -- at least in
12 this area, because in other parts of the LRT system
13 they don't enter into it, but in this case, when a
14 train derailment occurs, it is a serious situation
15 where people's lives could be in danger.

16 And so it is good to know that we have
17 in Canada a system that looks at this.

18 MARK COOMBES: Thanks Mr. --

19 KEN RUBIN: Yeah.

20 MARK COOMBES: I am just going to go
21 off the record for a second because I see the
22 reporter has turned on her camera.

23 [Discussion Off The Record.]

24 MARK COOMBES: So, Mr. Rubin, I want to
25 take you now to your second -- to the supplementary

1 submission, so I am going to pull up another
2 document and ask you to identify it.

3 KEN RUBIN: Yes, that is the second
4 submission. It is a much smaller one.

5 MARK COOMBES: Okay, we are going to
6 mark that as Exhibit 2 to this interview.

7 EXHIBIT NO. 2: May 19, 2022 submission
8 of Ken Rubin.

9 MARK COOMBES: I want to just -- I will
10 ask you to just comment on that generally, but
11 specifically I wanted to ask you some questions
12 about some of the minor deficiencies.

13 And I know you had spoken about it a
14 little bit earlier, but it says, you have put in
15 this report:

16 "While the majority of the
17 hundreds of deficiencies listed in
18 the ninety-four received pages seem
19 minor, not all are."

20 Can you give me an example of some of
21 the deficiencies that you do not consider to be
22 minor?

23 KEN RUBIN: Well, when there is water
24 still leaking into the tunnel or roof leakages or
25 where there is platforms, where there is gaps, they

1 are all fixable, I hope, but I don't consider them
2 minor.

3 And I don't have the report in front of
4 me. In one case, and I would have to check it, the
5 report cited it was major. It didn't say it was
6 minor.

7 But most of them -- yeah, I mean, you
8 know, Hurdman, page 40, concourse corrosion due to
9 water salt. Well, what does that mean? Exposed
10 conduit by elevator. Does it say which place?

11 I am just going to look at the actual
12 reports, because that is where I have got them.

13 There is a lot of places where they say
14 the security is not complete for the stations or
15 communication systems, the cameras and so on.

16 And they say, they use the expression
17 "Fire inspections to be arranged for any
18 outstanding non-occupancy related deficiencies that
19 needs discipline." Well, I don't see the fire
20 inspections. Water leakage, water leakage.

21 [Court Reporter intervenes for
22 clarification.]

23 I am trying to answer correct the
24 question, though.

25 Yeah, there is one here, exposed pipes

1 at the end of the platform on Tunney's.

2 MARK COOMBES: I suppose what I am
3 trying to ask you, Mr. Rubin, is from our
4 perspective, for our purposes, do you have any
5 sense, anything disclosed in those minor
6 deficiencies that could have led to the problems
7 that the system has experienced so far in terms of
8 breakdowns and derailments? Maybe not
9 specifically. Maybe that is a difficult question
10 to answer.

11 KEN RUBIN: Yeah, I mean, like that
12 is -- I don't know about derailments and
13 breakdowns.

14 No, but if I was, you know, like the
15 media reports about slippage at some of the
16 stations, if I was in a station, I would be not
17 that comfortable sitting waiting on that platform
18 or whatever, and one of them talks about exposed
19 live wires.

20 I mean, there is a host of things that
21 are more in connection with stations and, you know,
22 the snow wasn't -- was drifting close to the fare
23 boxes, the edge of the platform was slippery. Like
24 those are things that I guess it is good to point
25 out, but it might be too late in a few instances,

1 in a few of the --

2 MARK COOMBES: Another item in your
3 supplementary submission I want to follow up on, on
4 the second page, you say:

5 "The City of Ottawa FOI
6 indicates that Altus never did
7 follow up deficiency reports after
8 July 31, '19."

9 [As read.]

10 This is just you relaying a fact that
11 the FOI officer at the City has told you that there
12 are no further deficiency reports?

13 KEN RUBIN: That's right, but when I
14 look at these 93, 94 pages and I go, oh, this is
15 kind of interesting because other than the
16 Independent Certifier and the non-conformance
17 reports, what other verifications has there been
18 done consistently? And I am not finding them.

19 And that concerns me because you want a
20 system with a lot of moving parts to be constantly
21 checked, constantly verified, not just relying on
22 RTG or their maintenance group.

23 And I don't get that feeling, nor do I
24 see any records.

25 So I -- you know, if the City -- and I

1 know FOI people are reluctant to talk and so on.
2 With any duty to document and duty to serve, they
3 would say, Oh, yeah, but there is a different type
4 of deficiency report that we have been doing.

5 So part of the problem is the gap in
6 the duty to serve, but part of the problem is I
7 rather suspect from what I have seen that there is
8 inadequate monitoring for safety, for things that
9 could lead to breakdowns and derailments.

10 And that is a problem to me.

11 MARK COOMBES: I am just going to ask
12 Ms. McGrann if she has any specific questions for
13 you?

14 KEN RUBIN: I can't hear her.

15 KATE McGRANN: Not at the moment, but
16 thank you for checking.

17 MARK COOMBES: So just before we -- I
18 think we are going to conclude a little bit early,
19 Mr. Rubin, because that is all the questions I have
20 for you on your submissions and your submissions
21 are going to be part of the record and they will
22 speak for themselves.

23 Part of the Commission's mandate, the
24 Commissioner has been tasked with making
25 recommendations to the government for future

1 projects of this nature. Do you have any
2 recommendations for how -- that the Commissioner
3 may include in his report?

4 KEN RUBIN: Well, funny you should
5 mention that, that is going to be what I am going
6 to talk about at my public presentation because,
7 you know, even though it is maybe premature, I
8 mean, I would like to see what evidence you come up
9 with and what the witnesses say and following that.

10 I feel from my past experience in
11 regulatory matters and so on that there is some
12 obvious gaps, and I am going to just characterize
13 this by saying that I have consistently, throughout
14 this interview, said verification is inadequate.
15 So I am going to try and make some suggestions how
16 to improve that.

17 I also feel that the City needs to step
18 up more and have a much broader LRT mandate because
19 if they are going to rely on RTG, I think they are
20 relying on the wrong party. And in fact, I will be
21 saying that they should get a different maintenance
22 service provider.

23 But I also, obviously from what I have
24 said, I am going to say that you are not going to
25 do this without improved FOI laws, because right

1 now I am at, as is the public, a real disadvantage
2 because there is far too much secrecy.

3 So I mean, that is perhaps an obvious
4 recommendation, but I am going to be pretty
5 specific and blunt about Alstom, RTG, but also
6 certain actors at the City who I think should go
7 away, who have lost their credibility, or certain
8 mechanisms within the City, the Planning Committee,
9 the Transit Committee, that can be improved.

10 And you know, this just comes from my
11 overall way of dealing structurally with when I see
12 a problem, well, what is the solution. And so, you
13 know, I am not trying to tailor what I have said to
14 it necessarily or what might come up in the
15 hearings, but just from my experience, I see gaps,
16 serious gaps and in things where the City has been
17 caught sleeping at the switch and doesn't have the
18 proper mechanisms in place.

19 And you know, the two parties in court
20 right now, the two parties aren't seeing eye to
21 eye, something has to be done about that obviously.

22 And I feel that whether what I am going
23 to say in my public presentation goes beyond your
24 terms of reference or not I don't know, but I am
25 saying that if I was wanting to, to use the

1 expression, engineer a better system, I would need
2 proper management which isn't there, proper
3 verification which is definitely not there from all
4 that I have seen, and better transparency.

5 So I mean, I am not getting rid of the
6 whole cart, but that is essentially what I would
7 say, because I feel the public wants to hear not
8 from me necessarily but they want to have the
9 Commission have some guidance from people in the
10 public as to, Well, I stood on that platform and
11 got frustrated and I had to take the bus and I was
12 scared and I don't trust it and I don't want to go
13 on it anymore.

14 Well, what can we do in this City to
15 make it more reasonable for people to feel that
16 they want to use the system and it isn't always
17 going to break down, that it isn't always going to
18 be something that I don't know what happened.

19 So I am trying to create some ideas,
20 which you may or may not accept, but I don't know
21 who else is going to do that, but I am stepping
22 forward.

23 But I am available throughout, and I am
24 not -- on a volunteer basis and I am not really
25 trying to come across as someone who is anti-City,

1 anti-RTG totally. I just feel that they have let
2 us down big time, and there is a lot of fiascos
3 here, and there wouldn't be an Inquiry if, you
4 know, this was the case, because it is not just me
5 who has seen some incredible happenings in this
6 process along the road and it is not over yet
7 because there is certain parts that are there
8 structurally and they want to do more parts and an
9 O-Train and Trillium part.

10 So they better do better, because they
11 are not doing very well.

12 MARK COOMBES: Okay, well, we do
13 obviously invite further submissions from you,
14 either in writing or, you know, we'll see you at
15 the public meetings also.

16 KEN RUBIN: Thank you.

17 MARK COOMBES: But otherwise, thank you
18 for your time today, we appreciate it, and
19 obviously all of your information that you have
20 given today will be part of our evidence, part of
21 the public record, so we thank you for taking the
22 time today.

23 KEN RUBIN: I agree, and may the public
24 win on this one.

25 MARK COOMBES: Thank you.

1 KATE McGRANN: Have a good afternoon.

2 MARK COOMBES: Okay, we can go off the
3 record now.

4 KEN RUBIN: Okay.

5

6 -- Adjourned at 3:46 p.m.

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1 REPORTER'S CERTIFICATE

2
3 I, DEANA SANTEDICOLA, RPR, CRR,
4 CSR, Certified Shorthand Reporter, certify:

5 That the foregoing proceedings were
6 taken before me at the time and place therein set
7 forth;

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

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

15
16
17
18 Dated this 19th day of May, 2022.

19
20 

21 _____
22 NEESONS, A VERITEXT COMPANY,

23 PER: DEANA SANTEDICOLA, RPR, CRR, CSR
24
25

WORD INDEX

< \$ >
\$5 34:10

< 1 >
1 3:4 6:7, 22
12:11
110,000 51:9
13 32:7
130 20:12
15 21:22
18th 33:9
19 1:8 3:7
23:15 67:7 70:8
1971 12:7
19th 1:16
33:10 77:18

< 2 >
2 3:7 35:12
45:25 61:12
67:6, 7
2:00 1:17
2:13 4:1
20 32:7
2009 5:10
2012 7:22
38:17 39:22
2013 24:6
2016 7:23 45:15
2019 22:6
23:10 24:25
25:7 31:12
34:2 35:14
45:15
2022 1:8, 17
3:4, 7 6:22
31:19 67:7
77:18
22 3:4 6:22
31:22
22nd 6:17 7:19
9:11 13:24
33:9 51:8

< 3 >
3 61:13
3:46 76:6
30 63:12
30-day 21:10
31 70:8
31st 25:7
33(6) 5:9

33(7) 5:22
< 4 >
40 68:8
40-odd 21:21

< 5 >
5 5:24
5:00 1:17
50 47:8
500,000 23:16
545 34:2
55 7:10

< 6 >
6/22 3:5
67/2 3:8

< 9 >
93 22:7 70:14
94 24:1 25:5
70:14
998 45:16

< A >
absolute 18:9
absolutely
58:17 63:4
accept 36:3
74:20
access 8:9
21:15
Act 5:10, 23, 25
13:13 29:12
30:21 53:5
Action 8:7
19:13 48:7
49:24
activism 7:9
activist 9:14, 15
Activist/Advocat
e 7:6
actors 27:5
73:6
Acts 20:13
21:2 36:4, 5, 6
actual 68:11
add 45:23
adequate 18:16
35:6
Adjourned 76:6
admissions 65:5
admit 47:8
admittedly

35:12 37:18
advance 57:23
advantage 58:14
advised 5:23
advocate 17:11
43:4
AFFIRMED 4:3
after 4:22
41:12 42:25
43:10 44:19
70:7
afternoon 76:1
agencies 22:18
26:10 37:5
agency 26:14
ago 14:3
agree 75:23
agreed 18:2
43:3
agreement 45:2,
3
agreements
18:10 45:4
Ah 56:10
ahead 35:13, 18
55:16
air 10:25 57:24
airline 11:13
airport 54:1
Alidh 2:11
allegations 40:4
53:19
allegiance 34:16
allowed 36:17,
18
Alstom 18:15
29:16 36:25
37:17, 20, 21
38:9 39:3
40:13 44:10
45:2 59:9 62:3
63:5 73:5
Altus 24:21
25:5 27:2, 3
70:6
amalgamate
61:20
amazing 48:17
ambit 7:8
America 37:24
59:10, 17 63:9
Americans 60:2
amount 15:19
51:6

amounts 24:18
amusing 25:15
analogy 42:23
analysis 51:25
angle 61:7
annual 26:11
annually 25:2
answered 41:15
answers 13:20
anti-City 74:25
anti-RTG 75:1
anybody 10:19
65:9
anymore 74:13
apart 18:21
apologize 17:3,
18
apparent 11:16
27:17 28:25
29:2 33:7 51:19
apparently 23:4
24:21
appeal 11:10,
11 20:21 21:13
29:5, 10 31:14
32:20
appealed 9:1
appealing 32:9,
10 33:3
appeals 29:3
appear 3:20, 24
appearances
18:22
appeared 51:1
appears 63:11
appended 5:7
appliances
43:12
application
20:18 21:9
29:4 31:12
34:11
applications
20:19
applied 20:16
22:2 28:14, 20
41:11 42:21
50:9 51:4, 20
apply 21:8
28:6 35:3 37:18
applying 12:19
32:16 36:2
appreciate 75:18
approach 11:23

approached
7:23 22:24
45:1 57:19
appropriate
37:19
approving 35:16
April 3:4 6:17,
22 7:19 9:11
13:24 33:9 51:8
Arabian 11:15
area 9:13
10:13, 16, 24
43:18 66:12
areas 16:15
arranged 68:17
arrangement
36:16 57:13
arrangements
52:18
arrived 27:22
aside 42:13
asked 5:12
33:16 38:23
52:22
asking 22:11
24:7 40:21
45:24 60:10
asks 36:8
asleep 39:18
assess 38:3, 4
51:18 60:21
assessments
53:7
assistance 17:6
assisting 6:4
Association
43:6
Associations
8:6
astounds 37:16
attachments
46:25 49:23
attending 1:16
attitude 57:15
audit 26:18
57:20
Automobile 43:6
available 64:24
74:23
avenues 13:9
15:4
average 21:1
awhile 15:12
< B >

back 14:1 15:9
33:17, 24 38:17
39:7 53:17
62:21 63:21
background 7:2
8:3 27:23
bad 14:14
balances 26:17
36:22
base 17:5
basic 39:19
56:16
basing 62:9, 11
basis 5:1
42:13 62:7
64:10, 11 65:15
74:24
beginning 46:20
begun 17:6
believe 11:5
24:1 35:14
39:23
benefit 57:16
best 16:13, 18
38:8 57:15, 16
63:7
better 37:6, 9,
12 53:23 54:12
55:4 62:23
63:14 74:1, 4
75:10
beware 43:25
big 23:5 40:10
46:2 47:14, 18
48:21 75:2
bikes 57:23
billed 22:7
bit 10:22 23:3
58:19 65:20
67:14 71:18
blame 16:15
25:22
blind-sided
36:17
blocks 23:13
25:24 51:21, 22
blooper 30:6
blunt 73:5
Board 66:11
bogie 38:5
59:12 60:3
Bombardier
59:22
bono 19:11

book 63:20
bother 34:10
bottom 14:17
bought 15:1
59:2 63:15
box 13:25
boxes 69:23
break 39:9
43:9 60:8 74:17
breakdown
43:13
breakdowns 6:8
17:24 42:18
50:18 55:21
56:6 69:8, 13
71:9
breaking 62:13
bribes 40:12
Bridge 53:6, 13,
15 54:2
bridges 53:11
brief 7:19 20:3
47:13
briefing 27:25
33:9 45:12
broad 23:1
broader 72:18
broadly 6:5
brought 42:11
buddy-buddy
40:7
build 24:15
49:7 56:12
58:5 60:18
building 23:13
25:24 51:21, 22
57:1
built 53:12
54:16 56:8
bus 74:11
buses 38:23
buy 61:5, 8
buyer 43:25

< C >
call 13:13 19:6,
11 23:4 29:12
31:12 36:5
63:15
called 30:13
36:24 40:11
51:7
calling 33:10
48:11

calls 31:15
camera 66:22
cameras 68:15
Canada 5:25
8:1, 7 10:13
11:6, 8 19:13
66:17
Canadian 11:14
Canal 56:19
car 39:11
42:23 43:7, 8
44:2 60:5 63:20
care 50:12
51:2 53:23
cares 19:14
cars 63:13
cart 74:6
case 11:4
20:22 21:18
29:3 33:7 35:9
37:17 38:23
39:3 54:1
63:24 66:13
68:4 75:4
case-by-case
22:8
cases 10:17
21:11 35:8
53:11
cat 35:25 36:3
categorization
26:4
category 40:13
caught 73:17
certain 4:14
16:4, 6 18:5
26:17, 25 27:1,
22 29:1 30:7,
14 40:2 43:9,
15, 16 44:20
49:7, 11 52:17
56:10, 17 57:2,
13, 14 59:1
63:16 64:14, 22
73:6, 7 75:7
certainly 9:22
10:7 12:20
13:11 14:15, 23
38:18
CERTIFICATE
77:1
Certified 77:4,
13
Certifier 18:16
24:22 25:6, 17

32:6 34:6, 12
49:3 70:16
certify 77:4
change 58:11
characterize
19:2 72:12
charge 39:16
chart 31:25
check 10:21
37:13 39:24
68:4
checked 70:21
checking 37:2
61:1 71:16
checks 26:17
36:21
chemicals 48:23
choice 38:9
choose 37:22
chose 14:24
15:1, 4 16:4
chosen 62:3
circumstances
6:7
Citadis 37:21
59:6, 11
cited 44:13
68:5
cities 20:10
59:21
citizen 8:4
19:3 21:1 24:25
City 15:13 18:2
20:9 22:24
24:23 26:24
28:17, 25 30:19
34:24 38:1, 22
41:11 44:25
45:22 47:7
48:8, 10, 12
50:19 51:6, 11
57:25 58:8
64:13 65:13
70:5, 11, 25
72:17 73:6, 8,
16 74:14
City-initiated
15:11 47:7, 16
48:14
civil 5:14
claimed 30:6
claiming 55:1
clarification
68:22
clarify 18:20

clear 8:11
52:13 63:4
clear-cut 54:5
clearer 32:8
clearly 39:12
clientele 30:25
31:1, 2
close 69:22
co-Counsel 4:13
code 34:15
coincide 42:2
Co-Lead 2:2
collaborative
4:12
collapse 53:20
54:10
collapsing
53:12, 16
collected 16:23
come 8:2
10:25 19:8
27:1, 6 32:21
48:5 56:9
60:14 72:8
73:14 74:25
comes 73:10
comfortable
8:23 69:17
coming 14:23
16:21 22:14
command 36:19
commence 4:19
commencing
4:1
comment 23:15
67:10
comments 77:9
commercial 6:6
9:4 29:14 30:3,
15 32:7
COMMISSION
1:6 2:1 4:15
6:4 8:13 26:10
30:12 42:17
62:25 74:9
Commissioner
21:19 29:3, 21
31:14 32:19
50:2 54:22
71:24 72:2
Commission's
4:10, 17, 21, 25
7:3 71:23
committee

<p>26:18 73:8, 9 common 59:19 communicated 29:17 communicating 25:25 communication 68:15 communications 26:18 Community 7:6, 9 8:6 9:14 19:15 companies 50:8 company 24:22 40:3 77:22 compelling 50:3 compels 27:21 competent 40:23 complete 28:8 68:14 complex 13:1 37:11 complicated 21:3 comprehensive 28:2 concentrate 23:21 concern 52:9 55:22 concerned 10:8, 9 41:4 concerns 51:23 57:10 65:4 70:19 concessions 28:17 conclude 71:18 conclusion 14:23 34:6 conclusions 6:9 concourse 68:8 concrete 15:18 30:6, 10 52:5 53:1 54:3, 25 55:2, 7 conditions 38:8 57:21 63:17 64:22 condo 57:8 conducted 4:7 60:24</p>	<p>conduit 68:10 confident 8:24 confidential 5:1 28:16 confidentiality 18:10 29:15 30:15 32:7 36:18 connected 8:21 connection 30:24 39:25 40:2 69:21 consent 17:4, 13 18:3 consider 67:21 68:1 considerably 29:22 consistent 37:2 consistently 70:18 72:13 consortium 15:2 30:20 31:2 36:16, 19 40:9 constantly 70:20, 21 construction 10:2 11:25 15:25 16:18 23:5 40:15 41:3, 14 50:25 55:6 consultant 10:15 consultants 26:22, 25 27:4 consulted 58:24 consumer 43:4 63:19 contain 36:11 49:16 containing 6:9 contend 21:4 continually 52:1 continued 16:19 contracted 24:22 contribute 64:7 conversation 8:19 convey 9:11 Coombes 2:3 4:4 6:19, 24 12:9, 14 16:25</p>	<p>18:18 19:16, 20 20:1, 6 22:3 28:11 29:6, 9 30:16 41:8, 19 42:5, 10 45:8, 12, 19 46:4, 7 47:11 49:14 50:16 52:3, 7 55:15, 17 59:3 62:1 63:25 65:3, 16 66:18, 20, 24 67:5, 9 69:2 70:2 71:11, 17 75:12, 17, 25 76:2 coordination 40:17 corners 11:24 16:1 41:5, 13 corporate 26:7, 9 corporations 29:13 correct 5:4 15:6 29:8, 11 48:19 68:23 correctable 14:20 48:21 62:5, 8, 17 corrected 25:17 47:5 corrections 4:22, 24 5:7 corrective 48:7 49:21, 24 correctly 17:8 24:19 correspondence 28:1 corrosion 53:9 68:8 costly 62:4 Council 34:24 35:13 36:9 Councillor 35:4 36:8 COUNSEL 2:1, 2, 3 4:25 countries 37:23 country 20:10 counts 9:6, 7 couple 6:11 course 13:6 31:5 33:22 47:7</p>	<p>Court 11:11 29:20 68:21 73:19 covered 43:15 cracks 38:23 crash 11:15 create 74:19 created 64:22 creates 62:4 credibility 73:7 credible 8:25 59:25 crew 11:3, 14 Crown 5:15 CRR 77:3, 23 CSR 77:4, 23 cured 52:5 curious 39:22 curvature 56:13 curve 66:8 curves 15:7 56:10 64:5, 6, 14, 16 65:6, 25 66:2 cut 41:13 cutting 11:24 16:1 41:5 cycle 15:20 54:9 < D > damn 54:25 dance 22:17 danger 66:15 data 45:16 date 46:14 Dated 77:18 day 1:16 24:12 35:16 77:18 days 14:3 35:9 deal 47:22 dealership 44:2 63:22 dealing 37:5 73:11 dealt 26:8 Deana 2:10 77:3, 23 dearly 14:4 decided 50:2 decision 48:21 decisions 27:22 60:16 deck 36:1</p>	<p>declaration 4:10 deemed 5:11 deeply 19:14 deficiencies 14:4 22:9, 11 23:21 25:9 67:12, 17, 21 68:18 69:6 deficiency 18:15 22:14 23:9 24:3, 11 31:7, 23 32:5 33:7, 11, 13, 16 34:12 49:3 55:9 70:7, 12 71:4 definitely 17:1 74:3 degree 36:18, 19 65:21 delay 29:23 Delete 27:14 denied 39:4 46:24 dense 56:21 density 57:3 deny 32:6 departments 21:8 derailment 66:14 derailments 6:8 42:19 50:19 69:8, 12 71:9 describe 25:10 described 7:4 describing 15:13 DESCRIPTION 3:3 design 54:3 desperately 41:25 detail 6:25 detail-oriented 46:8 details 19:21 determine 30:1 61:23 determined 13:21 14:13 developers 57:15, 16 development</p>
--	--	---	---	--

<p>57:8, 9 diagram 50:10 died 11:14 diesel 61:15 different 8:19 27:5 37:9 39:23 40:13 61:16, 19, 21 71:3 72:21 differently 64:19 difficult 69:9 dig 9:18 23:8 direct 30:24 directions 57:2 directives 27:19 64:13 disadvantage 73:1 disagree 50:5 disallows 29:1 discipline 68:19 disclose 42:6 disclosed 69:5 disclosures 26:9 discovering 46:1 discretionary 22:1 discuss 42:3 Discussion 66:23 disparage 36:13 document 6:15 7:5 13:25 27:15 33:19 67:2 71:2 documentation 18:3 19:5 26:20 30:8 31:7 32:2, 4 35:1, 2 36:14 38:14 48:25 51:24 56:4 documenting 17:22 documents 3:12, 19 6:12, 13 10:18 23:16 24:21 25:4 26:12 31:8, 18 35:3 37:18 document-type 31:25 doing 11:4 27:14 40:7, 15</p>	<p>55:8 57:18 71:4 75:11 dollars 35:11, 16 37:7, 10 58:9 Don 40:14 doors 62:14 doubts 15:24 dozen 49:4 drifting 69:22 drill 19:20 59:4 drip 55:11 drop 25:19 dropped 14:3 due 68:8 duty 27:15 33:18, 19 34:9 71:2, 6 < E > earlier 56:24 67:14 early 71:18 easy 65:24 Ecology 8:7 57:19 edge 69:23 Edmundson 63:20 effective 57:1 effort 13:11 24:13 34:5, 7 efforts 18:23 election 39:1 electric 25:15 electrical 58:19, 22 electronics 60:6 elements 19:17 21:14 elevator 34:18 68:10 Ellis 40:14 embarrassing 25:12 50:7 encourage 21:6 endured 50:19 engage 7:21 engaged 8:12 12:6, 8, 22 engine 38:24 engineer 8:20 37:20 58:22 74:1 engineered 64:16, 19</p>	<p>engineering 8:16 15:8 40:6 41:6 46:3 52:22 56:11 58:16 65:18 engineering- wise 58:7 engineers 12:23 13:1 37:13 38:3 41:3, 23 42:1 53:7 59:25 62:12 entail 38:21 46:5 entails 14:1 enter 4:16 8:18 66:13 entered 4:22 5:1, 6 36:15 entirely 62:5, 8 entity 30:3 environmental 57:20 equipment 52:25 errors 5:5 escapes 31:21 essentially 18:22 74:6 establish 5:14 Europe 60:24 63:8 European 37:22 61:3 eventually 61:19 evidence 4:9, 16, 23 5:2, 6, 17, 21, 25 6:3, 21 16:22 18:24 52:2 72:8 75:20 example 10:24 30:22 54:6 67:20 examples 28:19 executives 26:19 exempt 32:4 exemptions 20:15, 25 21:3, 16 22:2 32:3 exercise 13:19 exhibit 6:20, 22 67:6, 7 EXHIBITS 3:1</p>	<p>exists 32:1 expected 26:2 expecting 10:1 expensive 11:21 experience 9:8 27:9 72:10 73:15 experienced 69:7 Experiences 19:22 expert 11:17 12:25 17:11 43:24 60:13 61:22 expertise 8:15 39:17 experts 56:1 expired 38:15 explain 6:2 12:9 14:5 35:24 explained 24:19 explaining 25:22 explains 26:6 Exposed 68:9, 25 69:18 expressed 59:5 expression 38:12 68:16 74:1 expropriations 64:24 extend 44:19 extra 31:3 44:4 eye 73:20, 21 < F > fact 14:2 16:2, 3 35:8 44:19 66:10 70:10 72:20 facts 62:9 factual 42:13 fail 54:18 fair 50:1 fairly 36:2 46:17 59:18 62:18 families 11:14 fare 69:22 fashion 49:13 faulty 11:7 feature 45:3 50:22</p>	<p>Federal 11:10 27:11 29:25 35:10, 15 53:5 federally 20:11, 20 27:24 Federation 8:6 fee 20:18 21:9 feel 8:23 14:16 33:6 54:8 72:10, 17 73:22 74:7, 15 75:1 feeling 54:8, 12, 13 70:23 feels 10:20 feet 31:9 fiascos 75:2 fields 8:19 fight 23:20 figured 24:5 file 34:2 filed 45:14 60:2 filing 8:9 finally 24:5 find 15:12 23:2 31:7 35:4, 22, 23 38:13 43:21 50:5 52:15, 23 finding 9:21 10:9 22:13 48:25 70:18 findings 6:9 fine 19:19 34:2 finger 16:14 Fire 68:17, 19 fired 40:1 firm 24:22 40:15 fit 51:1 fixable 68:1 fixes 44:6 flavour 10:23 13:15 flog 37:24 floor 38:7 60:9 62:17 focus 14:7 focussed 12:12 FOI 8:1 13:12 18:24 19:22 20:2 24:24 29:6 30:21 33:14 34:1, 9 37:18 41:11 45:10, 24 49:21</p>
---	---	---	--	--

<p>70:5, 11 71:1 72:25 FOIs 45:14 follow 70:3, 7 followed 3:13 46:16 following 3:12, 20, 24 55:19 72:9 follows 4:7 follow-up 33:12 force 27:20 foregoing 77:5, 12 foreseen 58:12, 16 form 27:16 34:22 formal 21:23 forth 33:24 77:7 fortunately 52:16 forward 19:8 37:8 54:13 74:22 found 9:25 10:7 24:7 50:23 52:16 freedom 7:14, 24 8:14 12:17 13:13 20:13 21:14 frequent 7:25 friend 52:22 friends 65:18 front 68:3 frustrated 74:11 fulfilling 6:4 full 36:5 full-time 10:14 13:5 19:4 funny 72:4 future 15:20 52:10 55:24 71:25</p> <p>< G > game 14:6 35:25 44:1 gap 71:5 gaps 27:17 67:25 72:12 73:15, 16</p>	<p>gather 24:12 37:23 gathered 55:3 gauge 61:10, 20 generally 67:10 generation 36:6 gigantic 62:4 girder 47:25 52:17 girders 15:16 55:7 give 7:1, 8 20:3 24:9 34:21 36:6 43:22 49:21 53:4 62:7, 20 67:20 given 5:3, 16 8:13 10:17 26:13 35:9 40:1 75:20 gives 29:22 giving 5:21 glad 66:10 good 36:2 37:1 42:20 45:6 53:24 54:8 63:19 66:16 69:24 76:1 Good-Bye 36:20 42:24 goodness 49:6 government 22:18 23:23 26:14 29:25 34:18 35:10, 21 37:5 71:25 governments 21:22 34:15 Gray 2:11 great 18:11 36:17, 19 40:11, 17 63:6 ground 5:12 21:8 30:14 grounds 32:8 44:16 group 70:22 groups 8:4, 5 guess 34:3 37:24 54:7 69:24 guidance 74:9 guy 9:3</p>	<p>< H > half-truths 34:22 Hall 38:22 hand 8:22 51:4 63:11 handy 26:24 happened 23:9 38:24 39:2 52:8 74:18 happening 13:22 happenings 75:5 happens 21:11 48:6 hard 30:24 hear 11:24 17:3 71:14 74:7 heard 22:23 37:16 41:5, 24 hearings 4:11, 17, 18 73:15 heart 11:18 heck 61:23 Held 1:15 help 11:19 57:20 58:8, 9 helpful 50:6, 11 hide 9:19 11:9 hides 30:20 high 46:8 high-rise 57:8 highway 46:2 highways 46:21 hindsight 64:18 hired 26:22 27:3 history 11:22 Hmm 23:23 hmmm 55:11 home 43:17, 19 honestly 44:15 honorarium 19:6 hope 24:20 25:23 44:10 55:3, 8 68:1 host 69:20 hours 13:5 human 16:16 hundred 53:24 54:16, 17 hundreds 25:9 67:17</p>	<p>Hurdman 55:12 68:8</p> <p>< I > i.e 62:18 idea 44:14 47:5 49:20 56:20 ideas 74:19 identified 65:24 identify 41:1, 17 46:11 67:2 important 9:4 11:6 44:23 45:5 improperly 15:17 48:2, 16 52:5 53:12 improve 72:16 improved 72:25 73:9 inadequate 71:8 72:14 include 72:3 including 7:12 8:4, 9 11:5 16:23 19:8 24:12 45:25 51:9 59:1 incompetent 40:6 incomplete 28:10 47:24 incredibility 65:22 incredible 75:5 incriminate 5:13 independent 10:19, 20 18:16 25:6 32:6 37:13 49:3 70:16 INDEX 3:1, 17, 22 31:13 33:1 indicates 70:6 industry 43:7 inefficiencies 57:11 information 7:14, 24 8:15 9:4 12:17 13:13 18:5 20:13 21:15, 19 25:13 27:21 29:3, 14, 21 31:4, 13 32:19</p>	<p>34:21 35:5, 6 49:16 50:1 54:21 59:15 75:19 infrastructure 15:21 initially 21:10 50:1 initiated 47:9 48:10 inquire 6:6 Inquiries 5:10 12:25 inquiry 5:10, 17 14:11, 14, 15, 16 16:3 25:19 28:9 62:25 75:3 inside 53:1 inspections 48:11 68:17, 20 instance 5:15 10:23 13:1, 2 17:25 27:24 30:5 48:9, 12 51:18 54:20 58:10 61:2 instances 19:2 30:7 45:22 47:22 53:11, 17 69:25 instructionist 28:2 instructions 27:13 integrity 55:12 intelligible 33:2 intends 4:15 interacting 44:22 interest 11:2 19:13 50:2 interested 7:22 9:21 14:10 interesting 23:18 50:23 57:22 61:5 70:15 interest- orientated 7:16 inter-ministerial 27:25 internationally 20:11 internet 21:7</p>
---	---	--	--	---

interrupt 17:3, 17
intervene 4:13
intervenes 68:21
interview 4:6, 8, 12, 14 67:6 72:14
interviewing 6:2
interviews 7:14
introduced 59:9, 20
inventory 31:15, 17
investigating 42:18
investigation 12:10, 15 66:9
Investigative 7:5, 9 9:13 18:23
invite 75:13
involved 8:8 10:25 11:23 40:25 48:8
involvement 12:10, 14
irregularities 22:25
issue 7:22 8:22 11:6 12:5 52:3
issued 24:24 25:6
issues 7:12 8:21 9:18 12:6, 7 16:10 32:23 42:17 49:17, 18
item 70:2
items 3:13

< J >

Jim 27:13
jobs 40:16
Joe 27:13
Johnny-come-lately 12:5
joint 18:1 26:8
judge 65:23
July 25:6 70:8
jurisdictions 31:11 61:4
jury 63:10

< K >

Kate 2:2 71:15 76:1
KEN 1:7 2:6 3:5, 8 4:3 6:17, 23 7:10 8:12 10:25 12:13, 20 17:9, 19 19:1, 19, 25 20:5, 8 22:16 28:22 29:8, 11 30:23 41:18, 21 42:8, 20 45:11, 18, 21 46:6, 10 47:19 49:19 50:20 52:6, 12 55:16, 25 59:18 62:11 64:11 65:11, 20 66:19 67:3, 8, 23 69:11 70:13 71:14 72:4 75:16, 23 76:4
kept 25:12 28:16
killed 11:3
kind 11:16 40:10 43:3, 5 46:3 50:14, 23 53:16 55:2 56:16 65:25 70:15
kinds 24:7, 15 25:15 26:20 51:17
knew 43:14
knowing 32:13
knowledge 39:4 42:15 59:19
known 9:2
knows 41:23

< L >

lack 16:10 17:21
lacks 15:2
land 64:23
large 19:7 47:15
late 69:25
laws 72:25
lawyer 19:10
lawyers 54:21
lay 56:16
lead 42:16 60:16 71:9
leads 57:14

leakage 48:23 68:20
leakages 67:24
leaking 55:10, 19, 23 67:24
leaks 49:6
learn 29:10
leaves 13:8
leaving 42:13 66:7
led 6:7 16:10 28:20 42:16 52:8 53:15 55:20 69:6
left 41:4 52:14 55:5
legal 27:20
legalities 30:21
legislation 27:16 29:20
lemon 63:15, 20, 22
lends 61:11
length 31:3
level 21:20 27:11 38:7 46:8 61:17 63:5
liability 5:14
life 15:20 54:9
LIGHT 1:6
limited 8:13 21:16 36:7, 21 42:24
lined 52:19
listed 67:17
listen 30:4 31:17 39:8
lists 21:7
Litigation 2:3
live 14:25 15:3 25:15 63:2 69:19
lives 66:15
living 18:17
long 14:8
looked 15:10, 15 35:2 48:13 50:4 60:1
looking 13:6, 10, 14 41:25 48:11
looks 66:17
lost 73:7
lot 8:19 10:13 13:20 14:19 15:11 16:8

19:10 24:16 27:24, 25 29:22 43:18 47:6 48:9, 12 50:5 53:10 60:16 62:13 66:8 68:13 70:20 75:2
love 14:4
low 38:7 60:9 62:17
LRT 7:22 8:22 9:22 10:9 11:5, 24, 25 12:3, 22 13:6 14:11 16:11, 20 17:24 22:23 25:16 35:3, 11 39:19 41:13 46:22 49:5 56:20 57:6, 9, 12, 21 58:2 64:7, 20 66:1, 12 72:18
Lyon 46:12 47:3

< M >

Macdonald-Cartier 53:6, 13
made 4:22, 24 5:7 6:25 9:2, 8 10:7, 8 12:23 13:4 16:13 38:9 49:2 59:1 77:9
main 17:10 31:2 40:22 44:21 50:3
maintenance 11:13 16:19 46:20 70:22 72:21
major 44:6 68:5
majority 67:16
making 34:6 71:24
manage 40:20
management 65:13 74:2
Manager 39:23, 24
managers 26:1
mandate 6:4, 5 71:23 72:18

mandatory 22:2
map 50:10
March 33:12 34:4 35:14 45:24
Mark 2:3 4:4 6:19, 20, 24 12:9, 14 16:25 18:18 19:16, 20 20:1, 6 22:3 28:11 29:6, 9 30:16 41:8, 19 42:5, 10 45:8, 12, 19 46:4, 7 47:11 49:14 50:16 52:3, 7 55:15, 17 59:3 62:1 63:25 65:3, 16 66:18, 20, 24 67:5, 6, 9 69:2 70:2 71:11, 17 75:12, 17, 25 76:2
material 14:9 30:1
matter 17:12 27:10
matters 72:11
Mayor 35:12 36:25
maze 26:6
McGrann 2:2 4:13 71:12, 15 76:1
means 7:7, 13
meant 58:2
mechanics 60:8 62:14
mechanism 18:1 38:6
mechanisms 18:12 73:8, 18
media 10:8, 17 14:10 18:22 64:12 65:9, 12 69:15
mediating 32:22
mediator 32:21
meet 54:18
meeting 36:9 77:10
meetings 75:15
Member 2:2, 3 22:18 28:5

<p>members 11:3, 14 40:9 mention 72:5 mentioned 19:23 33:8 51:8 55:18 mentioning 55:14 messaging 26:12 millions 23:17 35:11, 16 37:7 mind 19:18 57:7 minimum 54:19 Minister 35:15 minor 14:4 22:7, 8, 10, 14 23:18, 21, 22, 23 24:2 25:10, 13 67:12, 19, 22 68:2, 6 69:5 minute 15:19 34:8 54:24 miscommunicati ons 10:4 mix 48:24 mixed 52:5 61:14 model 15:1 59:4, 9, 10, 16 61:10, 16 62:3, 23 models 59:23 modern 60:5 modest 19:5 moment 31:22 71:15 money 35:13 44:7 51:6 monitoring 15:2 24:15 71:8 mother 10:12 motion 35:18 motivated 7:15 motivation 9:6 40:22 motive 40:22 mouse 35:25 move 35:13 64:2 moving 70:20 municipal 21:20 27:10 38:25</p>	<p>municipality 23:12 25:21 26:14 29:24 30:13 31:9 32:14, 23 33:5, 20 < N > names 26:24 42:6 NationAir 11:3 nature 16:17 19:12 32:4 72:1 NCR 31:22 45:9, 16, 25 47:2 49:14 50:17 52:4 near 56:21 necessarily 10:1 44:21 73:14 74:8 needed 14:14, 16 42:3 needs 68:19 72:17 NEESONS 77:22 new 42:4 43:19 59:10 62:18 ninety-four 67:18 no-brainer 60:10 non- conformance 13:3 15:10 18:14 23:5 24:4 47:6 49:1 70:16 non-government 8:3 non-occupancy 68:18 non- typographical 5:7 normal 44:3 46:1 47:20 normally 47:20 North 37:23 59:10, 17 63:9 north-south 56:25 noted 3:19, 23 notes 27:23, 25 77:13</p>	<p>noticed 41:10 notified 32:12 nowadays 44:2 NRC 50:3 51:2 number 46:18 49:15 numerous 36:4 < O > object 5:24 26:15 29:20 32:13 objected 5:11 23:11 objections 28:15 41:6 objects 20:25 30:3 obligation 32:15 33:15 obliged 35:15 obscure 28:3 observation 51:7 obtain 4:9 6:3 obtained 45:9 obvious 7:21 56:3 72:12 73:3 occasionally 11:23 occupation 17:10 19:12 occur 48:23 occurring 16:1 occurs 66:14 offered 23:10 offhand 32:15 office 36:24 41:12 officer 33:14 34:9 70:11 officers 33:20 officials 12:21 off-the-shelf 59:8 oil 47:25 old 60:8 OLRT 6:7 12:11 ones 25:14, 24 29:5 45:25 one-time 24:13 34:5, 7 one-year 44:3 on-site 48:11</p>	<p>Ontario 20:10 21:18 26:10 32:19 onus 33:17 opaque 28:3, 4 operate 12:2 19:9 operating 12:1 operation 16:19 operational 9:24 38:18 51:15 operationally 50:25 operative 42:22 operators 56:9 64:13 65:1 opinion 21:16 62:8, 10 64:5, 10 opinions 9:16 59:5 65:19 opportunity 5:3 orally 27:14 28:24 order 4:18 63:13 ordinary 9:3 organizations 8:4 O-Train 61:16 75:9 OTTAWA 1:6 7:12 8:5, 7 12:6 19:3 20:9 24:25 28:18 30:19 38:8 57:19 63:6, 17 65:14 66:2 70:5 Ottawa's 11:22 outset 6:1 outstanding 68:18 overall 73:11 58:19 overlooked 11:7 oversight 18:13 40:6 overview 20:3 < P > p.m 1:17 4:1 76:6 P3 15:2 40:19</p>	<p>57:13 package 23:10 PAGE/LINE 3:3, 20 pages 3:24 23:17 24:1 25:5, 8 46:11, 25 51:9 67:18 70:14 paid 24:23 pandemic 58:10 paper 39:6 44:11 paragraph 28:12 30:17 parkway 54:2 part 9:12 13:18 17:14 18:6, 13 19:7 22:17 23:10 25:2 27:7 29:6 39:19 40:18 44:23, 24 46:10, 12 47:21 51:15 55:5 58:1 71:5, 6, 21, 23 75:9, 20 partially 32:1 participants 1:16 2:5 4:25 5:6 particular 9:7 37:6 38:1 45:1 46:22 particularly 13:24 14:22 34:18 43:5 parties 20:21 29:18 73:19, 20 partly 25:21 partners 40:14 partnership 18:2 parts 46:22 66:12 70:20 75:7, 8 party 20:25 29:1 32:11, 24 33:1 37:17 41:23 56:15 72:20 passed 35:17 passengers 58:8 passion 13:5 patent 60:1 62:18</p>
--	--	--	---	---

pay 16:2 44:7
paying 18:23
Pennsylvania
27:4
people 7:20
8:11 9:1, 18, 19
10:8, 13 12:2,
21, 22, 24 13:16
16:9, 15 17:23
19:10 20:1
21:6 33:21
34:10, 14, 21
38:3 39:16
40:9, 20, 25
42:3, 4, 6 43:18
48:11 56:23
58:9, 25 60:21
61:4 71:1 74:9,
15
people's 66:15
percent 47:9
53:25 54:16, 18
percentage
47:15 49:7
perfect 54:15
perfection
49:10 54:16
perfectly 17:9
perform 11:16
34:25
period 63:18
perjury 5:20
person 5:16
14:24 36:2, 9
41:24 60:11
perspective
49:9 69:4
Petersburg 61:2
Phil 63:19
photographs
51:9
picture 28:8, 9
pictures 51:11
piece 18:4
pipes 68:25
pitch 37:25
place 5:20
18:1, 13 51:25
58:24 66:3
68:10 73:18
77:6
places 56:17
57:3 58:5 66:4,
5 68:13

plan 56:24
planned 57:3
planning 57:6
58:2, 13 73:8
planning-wise
58:7
platform 48:2
54:10 69:1, 17,
23 74:10
platforms 52:18
67:25
play 22:17 27:6
pleasant 54:12
plumbing 49:9
point 14:5
32:21 33:25
39:14 44:20
53:9, 13 54:21
56:22 69:24
pointing 16:14
policy 8:21 9:8
57:10
poor 52:18 64:8
population
56:18
populations
56:21
position 25:20
possible 22:23
posted 4:20
poured 15:18
52:5 54:25
pouring 30:6,
11 35:11
PR 34:22
practice 44:21
46:17
prefer 42:8
pre-judged 10:6
premature 72:7
prepare 33:1
44:17
prepared 31:11,
16, 24
Present 2:9
24:6
presentation
54:22 72:6
73:23
presenters 77:9
pressed 14:15
23:2
pressure 28:15,
20

pretty 10:3
14:13 21:3
26:3 28:3
65:14 73:4
primarily 7:13
12:17 13:12
19:2 46:22
48:5 49:19
50:22 51:14
52:12 63:9
prior 18:2
Privacy 21:19
private 26:11
privileges 29:13,
23
pro 19:11
probability 44:5
problem 13:18
17:14 18:6
22:17 27:8, 9
28:4 34:13, 20
40:18 43:2
46:13 50:12
52:16, 21 56:2
58:1 62:5
63:11 64:25
71:5, 6, 10 73:12
problems 9:23,
24 11:12 14:20
15:13, 16 18:7,
9 22:23 25:13
27:1 36:23
45:1 48:6 49:8
50:21 52:8, 11
53:7, 8, 15
57:12 60:10
61:17 69:6
procedural 4:18
proceedings
5:15, 19 77:5
process 12:22
20:2, 4, 7, 8, 24
21:23 24:16
25:3 26:23
29:7 31:14
32:22 45:10
75:6
produce 6:8
produced 3:13,
19 14:9
product 39:9
profit 40:22
progress 26:1
project 11:21
12:11 13:8

26:8 35:6, 19
41:25
projects 13:2
15:20 23:5
37:6 40:10
46:2, 3 72:1
proof 54:18
proper 38:3
43:22 51:24, 25
73:18 74:2
properly 43:19
53:25 55:8 57:4
prosecution
5:20
prospective
55:22
protect 42:9
protected 31:4
Protection 43:6
prove 30:24
proven 59:9
provider 72:22
province 14:13
29:25
provinces 24:9
provincial 46:2
provincially
20:11 21:20
public 4:10, 17,
21 5:9 7:16
8:21 9:8 13:7
19:13 21:2, 15
22:18, 20 25:23
28:6 35:2 36:1,
13, 25 39:17
42:14 50:2, 14
51:24 57:7, 10,
17 58:3 72:6
73:1, 23 74:7,
10 75:15, 21, 23
publicity 22:21
51:12
publicly 7:15
pull 67:1
pumps 48:22
purchase 43:1
60:16
purchased
38:16 61:12
purchaser 44:22
purpose 4:8
purposes 7:3
69:4
Pursuant 5:9

put 4:6 6:13,
21 7:18, 24
13:11 15:6
18:1, 12 20:17
31:8 33:8, 11
37:8 44:1
46:18 48:2
54:13 58:4
60:17 67:14
putting 21:5
33:17 34:10

< Q >
quality 29:15
57:24
question 5:11,
24 10:11 14:22
18:19 22:4
28:11 36:9
41:9 42:13, 20
44:13 45:9
47:12 56:23
57:5 68:24 69:9
questions 3:14
4:14 7:1 13:8,
16 14:17 19:17
49:15 60:13
64:1 67:11
71:12, 19
questions/requests
3:23
quick 64:21
quickly 17:5
quite 38:9
42:12 44:15
52:19
quoted 65:12

< R >
R/F 3:23
RAIL 1:6 8:17
15:21 54:11
raised 49:18
50:16 56:23
57:5
raising 49:18
random 26:3
range 7:16
read 4:5 38:7
45:17 47:17
59:14 62:6
64:9 65:7 70:9
reading 53:4
real 34:17 73:1

reality 14:18
realize 48:18
realized 25:20
really 13:22
17:3, 5 23:24
28:24 58:21
74:24
reason 6:2
28:8 50:3
reasonable
74:15
reasons 40:1, 24
reassure 22:22
51:23
reassuring
50:13
recall 50:21
receivable 5:17
received 6:11
45:15 67:18
recognize 6:15
recommendation
73:4
recommendation
s 6:10 71:25
72:2
record 4:6
10:21 25:24
26:16 27:12, 21
28:5, 23 31:15,
16, 25 33:1
64:3 66:21, 23
71:21 75:21
76:3
recorded 17:4
77:10
recording 17:6
records 20:14,
15, 24 21:13, 24,
25 23:14 26:6
27:7, 18 32:16,
20 39:15 51:17,
20 70:24
recourse 43:22
recruit 42:3
reference 30:17
53:3 73:24
reflect 57:12
reflected 57:13
reflects 57:14
REFUSALS 3:22
refused 3:14, 23
regardless
17:11

regular 24:15
37:1
regulatory 72:11
rein 40:19
rejected 37:23
61:1
related 50:18
68:18
relations 22:20
relatives 11:2
relaying 70:10
releasable 30:1
32:1, 2
release 18:3
26:15
released 22:20
relevant 6:3
reliance 18:11
relies 55:6, 7
reluctant 71:1
rely 72:19
relying 60:23
70:21 72:20
remember 9:25
24:13 50:24
56:24 61:14
remotely 1:16
remunerate 19:4
remunerated
18:21
remuneration
10:18
repair 44:17
repairs 44:14
replaced 15:17
63:23
report 6:9 11:9
19:18, 21 24:5,
25 25:3 36:11
41:10 46:3
47:6 50:14
59:6 62:2 64:1
67:15 68:3, 5
71:4 72:3
reporter 66:22
68:21 77:4
REPORTER'S
77:1
reporting 48:5
49:1
reports 13:3
15:11 18:14, 15
23:6, 9 24:3, 8,
11 26:1, 3, 11
31:22 32:5

33:13, 17 34:7,
12 45:9, 16, 20,
25 46:5, 9
47:12, 15 48:4,
10, 13, 19 49:3,
14, 17, 21 50:3,
17 51:2, 6, 7
52:4 53:4 55:9,
13 64:12 65:9,
12 68:12 69:15
70:7, 12, 17
request 22:12,
13 31:18 34:4
request-making
20:4
requests 7:24
8:9 12:18
18:24 44:14
required 5:22
requirement
27:19
requires 27:20
research 7:9
8:1
Researcher 7:5
9:13, 17 19:13
60:14
researching
7:11
resolution 49:17
resolve 32:23
resources 61:7
respect 52:20
respects 45:5
response 21:10
responsibility
39:18
rest 8:17 16:17
result 18:17
34:3
Results 19:22
revamping
46:21
revealed 51:10
52:4
revelation 47:14,
18
review 5:4
20:14, 23 21:17
reviewed 45:19
50:17
reviewing 12:16
rid 74:5
Rideau 56:19
rights 36:7

road 14:8
52:20 53:23
75:6
role 11:16 27:2
34:24
roof 49:5 67:24
roofs 55:10
routing 52:18
RPR 77:3, 23
RTC 18:2
RTG 9:1 14:3
18:11 20:21
23:11 24:23
25:11, 18 26:1,
2 28:14 29:2,
16 30:6 41:2,
25 45:2 47:10,
21 48:5 54:20
70:22 72:19
73:5
RUBIN 1:7 2:6
3:5, 8 4:3, 4
6:1, 17, 23 7:10
12:13, 20 17:9,
19 18:19 19:1,
19, 25 20:5, 8
22:16 28:22
29:8, 11 30:23
41:9, 18, 21
42:8, 20 45:11,
18, 21 46:6, 10
47:19 49:19
50:20 52:6, 12
54:23 55:16, 25
59:18 62:11
64:11 65:11, 20
66:19, 24 67:3,
8, 23 69:3, 11
70:13 71:14, 19
72:4 75:16, 23
76:4
rules 21:9
30:14
run 58:18 63:7
running 34:14
56:5 61:14
Russia 61:2
rusting 48:15

< S >
safe 54:18
safety 10:25
11:5, 6 16:10
25:13 64:15

66:11 71:8
Saint 61:2
salt 68:9
sampling 50:1
sanitized 34:23
Santedicola
2:10 77:3, 23
Saudi 11:15
scared 74:12
scrambling 41:2
screen 6:14
scrutiny 28:6
Sears 43:11
second-class
61:24
secrecy 13:21
19:24 73:2
secret 25:12
30:9 43:8
secrets 54:24
section 5:9, 22,
24 19:21 22:5
32:7 41:10
Securities 26:10
security 68:14
seeking 22:6
seepages 48:20
selection 18:7
selections 59:1
self-funding
18:22
self-policing
18:11 24:17
57:14
sell 37:25 44:4
seller 44:22
selling 63:8
sense 37:9
52:7 55:17, 20
56:20 69:5
sensitive 30:25
series 34:25
53:6
serious 11:12
27:9 34:20
53:16 63:11
66:14 73:16
servant 36:13
serve 33:18
34:9 71:2, 6
service 16:11
26:1 64:8 72:22
serviceability
39:9

<p>set 10:22 27:3 77:6 settled 49:22 shaky 53:2 shape 14:14 share 11:13 shared 4:24 5:5 shareholders 26:19 sharp 15:6 65:6 shocking 10:2 shoddy 10:3 15:25 30:7 47:23 49:13 53:19 Shorthand 77:4, 13 show 11:11 36:25 50:12 showed 10:3 shown 51:12 side 8:2 9:24 10:2 26:7 40:12 50:25 56:17, 18 sides 9:17 signed 46:14 significant 13:7 silence 34:15 simple 31:24 simply 30:20 31:11 single 58:22 sir 6:16 12:10 23:25 sitting 69:17 situation 9:7 10:6 16:9 24:8 27:3 66:14 situations 25:16 37:4 sleeping 38:11 73:17 slice 23:19 slippage 48:2 69:15 slippery 69:23 slow 15:7 56:10, 14 64:14, 22 65:1 smaller 67:4 SNC-Lavalin 40:8 sneak 32:11</p>	<p>snow 69:22 solemn 4:9 solid 65:14 solution 56:11 73:12 solve 16:3 somebody 46:14 52:15 57:22 58:20 63:14 sophisticated 60:6 sorry 17:2, 17 31:21 33:18 34:4 41:24 sort 12:18 18:13 39:1 44:19 47:1 sources 42:9 spaces 57:7 speak 71:22 speaking 6:5 65:9, 18 special 27:2 29:12 55:2 specialists 58:24 specific 16:22 17:1 19:17 20:19 28:19 30:22 41:8, 16 42:12, 15 71:12 73:5 specifically 67:11 69:9 spend 11:1, 4 spent 13:5 37:10 spill 47:25 Spirit 37:21 59:6, 11 spoke 48:20 spoken 65:17 67:13 stacked 36:1 staff 36:9, 11 37:19 38:2 40:23 58:22 Stage 6:7 12:11 35:12 45:25 61:12, 13 stake 32:16 stalling 13:20 19:23</p>	<p>standard 46:17 standards 54:19 standby 60:8 standing 8:14 start 6:13 15:18 17:17 20:7 started 7:24 9:23 24:14 36:23 38:16 starting 12:2 stated 39:13 statement 22:4 28:21 statements 34:23 77:8 States 31:13 Station 46:12 47:3 49:5 69:16 stations 15:21 55:20 57:21 68:14 69:16, 21 status 24:8 32:17 Stenographer/Tra nscriptionist 2:10 stenographically 77:10 step 72:17 stepping 74:21 steps 48:1 stood 74:10 strange 58:18 Street 46:12 47:3 stretch 30:9 stronger 55:4 structural 53:14 structurally 55:8 73:11 75:8 structure 52:14 55:12 stuck 38:20 61:24 63:2 studies 12:24 53:11 stuff 55:10 subcontractor 47:4 subject 17:12 submission 3:4, 7 6:18, 23 12:17 13:24 23:15 33:10</p>	<p>51:8 64:2 67:1, 4, 7 70:3 submissions 6:12, 25 71:20 75:13 submitted 23:16 subtle 28:23 succeeded 37:25 sudden 25:19 suggestions 72:15 summary 9:10 sump 48:22 super 55:3 supplementary 64:2 66:25 70:3 supplied 29:16 support 63:5 supportive 47:2 suppose 69:2 supposed 21:10 29:12, 13 39:16 64:21 supposedly 21:16 suspect 71:7 suspension 38:6 59:12 60:3 61:18 62:18 suspensions 60:5 suspicious 33:22 switch 38:12 39:18 73:17 sworn 34:15 system 16:5, 20 17:24 26:16 28:2 38:18 40:7 50:19 51:14 52:9 54:11 55:6, 21 58:3, 16 59:13 61:15, 25 62:15, 18 64:20 65:5 66:12, 17 69:7 70:20 74:1, 16 systems 8:17 36:12 54:15 56:25 68:15 < T ></p>	<p>tailor 73:13 takes 60:15 talk 8:14 12:21 16:7, 24 28:25 39:1 58:2 71:1 72:6 talked 59:24 65:20 talks 34:19 69:18 tasked 71:24 tax 58:9 taxpayer 31:1 37:10 tear 54:2 technical 6:6 14:24 37:12 39:17 40:23 41:6 46:25 49:22 50:4 60:11 63:5 Technician 2:11 17:2, 16 technicians 63:8 technique 8:2 techniques 7:15 12:15, 18 13:12 30:10 tells 24:9 tend 5:13, 14 tendency 27:12 tenths 30:2 ten-year 39:10 term 24:4 terms 23:13 24:21 42:21 43:14 69:7 73:24 testing 31:20 32:2 58:20 tests 60:23 Thanks 66:18 thing 7:20 14:2 27:16 33:11 41:22 44:10 45:7 50:9 51:16 53:22 55:18 60:25 61:6 63:4 things 7:18 8:10 9:2, 19, 25 10:7, 9 11:18, 20, 24 13:14, 16 14:13 15:4 16:5, 6, 11, 13</p>
---	--	---	--	--

<p>17:20 23:3, 19 24:10 27:12 28:7 29:1 32:8, 18 36:7 37:12, 14, 15 38:4, 5, 13 39:21 40:7 42:7 43:9, 15, 16 44:20 48:12, 17, 19 49:11, 23 53:9, 20 54:13 55:10 58:11, 12, 15, 19 60:21 61:23 63:16 65:18 66:8 69:20, 24 71:8 73:16 thinking 57:22 third 20:25 28:12 29:1 31:23 32:11, 24 thought 7:19 57:2, 21 65:11, 12 thousand 15:10 24:6 time 10:18 25:4 32:21 53:9 60:16 75:2, 18, 22 77:6, 9 times 49:23 today 4:5 6:3 17:22, 25 75:18, 20, 22 today's 4:8 told 23:7, 8, 18, 20 33:3, 5 41:12, 16, 19, 22 42:6 56:12 62:12 64:14 70:11 topic 19:23 62:2 topics 7:11, 17 17:1 Toronto 59:21 torquing 48:15 totally 60:12 62:16 75:1 touch 17:5 touched 18:20 town 34:18 53:5</p>	<p>track 10:21 16:5 56:7, 8, 17 64:4, 6 65:5 tracks 15:6 50:21 51:13, 18 56:5 58:18 60:18, 19 66:7 trade 30:8 44:21 54:24 62:22 63:18 train 14:25 15:6 16:4 27:3 37:20, 21, 22 38:7 40:2 54:11 56:5, 6, 25 58:17 59:1, 2, 4 61:10, 20, 25 62:3 64:4, 6 66:6, 14 trains 14:22 18:8 37:17 38:10 51:1, 12, 18 56:4 60:17 61:1, 3, 15 transcribed 4:15 77:11 transcript 4:16, 20, 23 5:4, 5, 8 6:20 77:13 transcriptionist 17:7 transit 58:3 73:9 transmitted 9:9 transparency 17:11, 21 74:4 transparent 54:14 Transport 8:7 11:8 25:25 transportation 7:12 9:12 10:24 12:6 39:23, 24 65:13 66:11 trial 5:18 Trillium 61:15 75:9 trouble 40:21 true 23:4 55:2 77:12 trust 17:23 74:12 truth 9:20 62:25</p>	<p>trying 9:11 10:10, 22 28:6 35:24 36:13 39:14 68:23 69:3 73:13 74:19, 25 tunnel 13:15 48:20 49:5 58:5 67:24 Tunney's 69:1 turn 26:25 turned 66:22 type 31:18 71:3 typos 5:4 < U > U/T 3:19 Uhm-hmm 19:25 unanswered 13:9 14:17 uncovered 18:25 undercarriage 59:12 61:18 62:15 underlying 14:20 18:8 understand 12:16 13:1, 2 24:19 25:16 30:16 44:15 understood 37:20 undertake 48:21 undertaken 3:12 48:7 UNDERTAKINGS 3:17 18:10 unfortunate 16:9 Unfortunately 13:18 14:19 15:5 16:16 22:19 63:24 unhelpful 23:12 union 12:21 unions 38:22 university 12:23 66:1 unknown 30:10 untenable 25:20 untested 59:10, 11, 16, 19 62:19 unusual 19:12 25:14</p>	<p>user 7:25 uses 23:22 < V > valuable 58:3, 4 variety 7:11 Vaughn 31:13 verbally 41:21 verification 51:16, 25 72:14 74:3 verifications 70:17 verified 70:21 verifying 37:2 VERITEXT 77:22 versions 56:24 vested 11:2 Videoconferenci ng 1:15 vigilance 24:16 Virtual 2:11 17:2, 16 visibly 53:14 vision 13:15 voluntary 19:9 volunteer 74:24 < W > wait 15:18 20:20, 21 31:6 34:8 54:24 waiting 69:17 wanted 17:5 18:19 25:17 35:12 39:1 47:8 51:6 67:11 wanting 73:25 wants 74:7 warranties 38:15 39:3, 6 42:11, 14, 16 43:5, 8, 12, 17, 24 44:11, 16, 18 45:3, 5, 6 warranty 38:21, 25 39:2, 10, 12 42:24 43:3, 20, 21 44:3, 6, 9 62:21 water 48:19 67:23 68:9, 20 ways 19:10 36:5</p>	<p>weak 43:21 weather 63:17 website 4:21 week 23:25 34:4 welding 15:16 46:13 47:2 48:13 well-known 40:9, 14 well-versed 20:2 wide 7:16 widget 50:9 willing 36:3 42:5 willingly 34:21 willingness 19:8 win 75:24 winter 38:8 winters 60:9 wires 25:14, 15 69:19 witness 5:10, 13, 16 8:25 17:4 witnesses 12:25 24:20 72:9 won 28:15 wonder 15:9 39:19 52:19 54:9 58:23 wondered 58:20 Wonderful 17:16 won't 28:25 44:5 53:24 56:13 63:15 wooden 52:14 word 22:24 23:22, 23 37:24 47:23 words 29:9 31:10 work 10:15 12:1 15:22 19:11 25:24 30:7 35:22, 23 36:12, 19 37:3 47:23, 24 57:23 63:19 workers 11:23 working 8:3 44:4 workmanship 10:3 works 35:21</p>
---	---	--	---	---

world 20:13
38:10
worth 39:6
44:11 60:25
writing 75:14
written 39:7
44:12 46:7
wrong 14:24
15:1, 5 16:4, 17
18:7 47:25
51:1 54:4, 6
56:7, 8 60:15
72:20
wrongly 54:25
55:1

< X >

x-ray 52:25
53:22

< Y >

yards 46:20
Yeah 22:16
46:6, 10 53:22
57:24 65:12
66:19 68:7, 25
69:11 71:3
year 33:12
39:1 63:20
years 7:10 8:5,
6 9:7 11:1, 4
13:6 20:20
21:21, 22 31:7
39:10 42:24
43:2, 15 44:4, 8
53:23

< Z >

Zoom 1:15