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Standing Committee on Public Accounts

Comité permanent des comptes publics

2018 Annual Report, Auditor General:

Ministry of Transportation

Metrolinx

Infrastructure Ontario

Rapport annuel 2018, vérificatrice générale :

Ministère des Transports

Metrolinx

Infrastructure Ontario

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Mercredi 1er mai 2019

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON PUBLIC ACCOUNTS

COMITÉ PERMANENT DES COMPTES PUBLICS

Wednesday 1 May 2019

Mercredi 1er mai 2019

The committee met at 1231 in room 151.

2018 ANNUAL REPORT, AUDITOR GENERAL

MINISTRY OF TRANSPORTATION

METROLINX

INFRASTRUCTURE ONTARIO

Consideration of section 3.07, Metrolinx—LRT construction and infrastructure planning.

The Chair (Ms. Catherine Fife): Good afternoon, everyone. My name is Catherine Fife. I am the committee Chair for the public accounts committee, and I'd like to call the Standing Committee on Public Accounts to order.

We are here today to begin consideration of Metrolinx—LRT construction and infrastructure planning, section 3.07 of the 2018 annual report of the Auditor General. We are joined by officials from the Ministry of Transportation, Infrastructure Ontario and Metrolinx. Thank you all for being here today to answer the committee's questions.

I would invite you each to introduce yourselves for Hansard before you begin speaking. You will have 20 minutes collectively for an opening presentation to the committee. We will then move into the question-and-answer portion of the meeting, where we will rotate back and forth between government and official opposition caucuses in 20-minute intervals. This session, we will begin with the government side first. Please go ahead.

Mr. John Lieou: Thank you, Madam Chair. Good afternoon, Chair and members of the committee. My name is John Lieou. I'm the assistant deputy minister of the Ministry of Transportation's policy and planning division. I'm here on behalf of Shelley Tapp, our deputy minister.

I'm here today with Phil Verster and Ehren Cory. Phil is CEO of Metrolinx, and Ehren is CEO of Infrastructure Ontario. I know that Phil has prepared some opening remarks to share with the committee about how his agency is implementing the Auditor General's recommendations from the LRT construction and planning audit. At that, I'll turn it over to Phil.

Mr. Phil Verster: Good afternoon, Madam Chair, Auditor General and members of the committee. Thank you very much for the opportunity for us to be here today to discuss these particular audit sections. We're very pleased to be here. We have a very positive approach with the Auditor General. Every session with the Auditor General and every audit with the Auditor General's team is an opportunity for us to get perspectives and benchmarking of the things we do. The audit reports that are in front of this committee now today are more examples of beneficial work between the two teams. It's a great start for us, and it's great to work with the Auditor General on these issues. So we're very open today on a lot of the types of issues that are on the table.

Similar to what I did at my appearance last year, I'll talk really openly about the things that are going on in our organization, the changes we've made and how we are constantly improving our operations from a position of where we are to where we want to be. Looking for that continuous improvement is a fundamental part of what we do.

What I'd like to point to is that, from when this audit was done, we're going to share with you today the very specific actions we have taken to address the issues that have been identified. The issues in the Auditor General's report are very, very good. Some of them are challenging—about the techniques and processes we're using. You'll see quite a lot of questions about P3s and how P3s work relative to other procurement tools. This is sometimes a philosophical debate and is very often a very hard economical and financial and commercially important discussion. But different perspectives can be held on that, and we're going to do everything possible today to clarify some of your questions in that area particularly.

There's something else underlying what the Auditor General has identified which we would just like to address right up front. We've spent a lot of time in Metrolinx over the last 18 months to work at improving the governance of our activities, to improve the accuracy of financial reporting, to improve the control of projects, the control of contractors. Since my arrival, the team has changed significantly, we've changed processes significantly, we've implemented things like KPIs in the organization.

I can tell you, if I look at how the organization operates now, it is dramatically different to where it was in the past. What you'll see from our response today is that Ehren's team in Infrastructure Ontario is sort of a hand-in-glove partner with Metrolinx in delivering these. Eighteen months ago, I dare say, the two teams sat on opposite sides of whatever table they were at. That degree of collaboration and maximizing the commercial knowledge, the procurement knowledge and the way of working throughout the teams is part of this change in governance and how we get large, complicated projects delivered and over the line. Linking that to the governance discussion, when we do governance reviews of our projects Ehren and his team sit side by side with our team and we make sure we get the best decisions for the province. I think that's really important for us in terms of how we work.

At a totally different level, you'll see one of the audit reports in front of you, which was, again, very helpful, from the Auditor General's team, on how long-term planning works, how regional transportation plans are put together, how communities are consulted and how stakeholders play, participate and contribute to the longer-term plans. We'll share with you today what we're doing with regional round tables, where I, three or four times a year, get the CAOs and city managers of the different regions, as well as large cities, in a room together to talk about everything from a prioritization framework, to pipelines for projects and all of the things that the Auditor General has pointed out as things that are really important for the region. I think that just confirms the benefit of these audits and why we put such a high value on what the Auditor General shares with us.

When you think about most of the topics that we look at today, you'll see that there is a critical part of conversation to be had on value for money. This is a significant topic today, about how P3 contracts work, how the settlement on Eglinton worked and how we addressed that. We anticipate that we'll have a lively discussion and feedback on that. I would like to start by just making sure that we are of the same understanding of how these contracts really work.

There is no single answer to how a contract method is selected. There's no right way and wrong way. Different contract and procurement techniques apply for different scopes of work. When you have large, complicated projects with huge degrees of system integration and huge degrees of, let's call it transfer-of-risk challenges, it is essential that you, as a procurement entity and agency, understand what risks are best transferred to the public sector. In the Auditor General's work that she has done in this case, she's challenging us to figure out whether we succeed with our transfer-of-risk equation.

Not to put too fine a point on it, if we try to transfer risk to the private sector that the private sector can't manage, we will get an unaffordable bid back. So we cannot ever be in a space where we say all of the risk can be transferred, because that won't be value for money. That's why when you look very carefully at our IO, which manages this very critical part together with ourselves, and our own input, the IO process—Ehren will talk through that during the day. To make sure that we've got the right procurement method, the right understanding of risk and the right understanding of risk transfer is so crucial to the overall procurement process.

In the case of Eglinton, we'll talk through that. We had a claim in excess of $1 billion of total cost estimate. We had an internal risk-assessed value of what we think our exposure was, which the Auditor General has reflected is $568 million, and then we had a settlement position which was $237 million, which was less than half of what we had estimated our true exposure to be.

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None of this is a failure in our contracting mechanism. None of this is a failure in budget. The project is still on program, on schedule and on budget, because we do a value-for-money and a risk assessment, prior to contract placement, on the risks that are not cost-effective to transfer in the procurement process.

We keep contingency available, and Ehren and myself will both point you to that. We had anticipated that costs like this would come to the project, and that is the purpose of a program-wide post-contract contingency.

I think it's really important to establish those as principles, and I'm sure we're going to have more of a conversation around that today.

There's a particular issue in terms of techniques for defending claims such as this. In the audit reports, you'll see a very good timeline that the Auditor General's team has highlighted in terms of the intricacies of a negotiation.

Again, to just share that with you—and during the questioning, we may get more time to do so—when you think of these negotiations, the way I have described it to others is that it's like a full-body experience. It's not just a little bit of commercial activity here and a little bit of an argument there. We've got lawyers involved. We've got schedulers involved to think about how the programs work. We've got technical resources involved. We've got third-party external legal advice involved. We've got claim management contractors involved. Over a period of seven or eight months, Ehren and myself both were intensely involved, and we led the reviews of the claim position. So when we get to that, we'll discuss that with you in more detail.

Maybe if I bring this to a close on the latter half of the conversation, we use the services of what we call an owner's engineer, because organizations such as ourselves, even though we have large capital programs, want to avail of technical knowledge and technical skills that are available across the world. When we need a specialist for six weeks to work on a topic, or six months, even, we do not appoint those specialists ourselves. We use these services through what are called owner's engineer facilities. During the discussion today, we'll share with you how that works and how we've set up the contracts to deliver that during the time of these programs.

With that, Madam Chair, thank you very much for an opportunity to give an introductory statement.

The Chair (Ms. Catherine Fife): Thank you very much. Any other contributions from either—Ehren?

Mr. John Lieou: No, not for now.

Mr. Ehren Cory: Not for now. Thank you.

The Chair (Ms. Catherine Fife): Okay, that's good. That was only just over 10 minutes. We'll now go to the government side. Who will begin? MPP Miller.

Mr. Norman Miller: Thank you for coming in today. I'm going to ask a couple of questions and then pass it on to MPP Surma.

For someone not involved in this on a regular basis, it is really complicated. I guess my question is, are you aware of any major capital projects in the world that are being managed exclusively by public service employees, not by consultants, on any other big projects like the ones you're talking about?

Mr. Phil Verster: Ehren will respond to that. I'll just make a few opening comments.

The methodology we're using, the P3 methodology, is used very widely for complex capital programs such as what we have here. The issue is not really whether techniques such as this are used or not used by other organizations. The real question is, what is the inherent capability of the organization to deliver a contract with the resources at their disposal?

If I take a direct comparative from a previous learning experience, a previous career experience, it would be with my previous employer, Network Rail, where I worked for many years.

Network Rail has a capital program that's probably three to four times as large as ours, with 30,000 employees and lots of inbuilt knowledge and skills within the organization. Organizations such as that, with inbuilt knowledge, then think very carefully: Do we do a design-bid-build contract, very similar to what the TTC wants to do their subways according to, or do you follow totally different commercial techniques such as early contractor engagement, or even alliancing contracts, where you don't transfer all of the risk to a third party, where you share the risk and approach it on an emergent risk management basis? All of these options are at our disposal, and any of these can be used, but there is a mixture of those, and very often you pick the right mix for what the project type is and what your organization's capabilities are.

If Ehren could perhaps just add to that.

Mr. Ehren Cory: Just briefly first, I'm Ehren Cory. I'm the president and CEO of Infrastructure Ontario. Thank you for having me back again.

Thank you for the question. I would say that I know of none, at least in the developed world, where the public sector is truly, from end to end, executing the project. Let me say a bit more about what I mean. The boots-on-the-ground construction: We wouldn't imagine that there's a publicly owned Ontario construction corporation building these things. I don't know of jurisdictions that do that. You're going to use contract labour; you're going to use skilled trades. So you're obviously tapping into the private market. You're similarly going to tap into the private market for engineering and technical expertise in doing the detailed design work on these projects.

So your question becomes then: How do you contract with the private sector? Where do you draw the line between public and private? What risks do you keep on the public side, which risks does the private sector take, and which ones do you have to share together because you each have a stake in them, or because they're too big for the private sector to have taken them?

Mr. Norman Miller: Thank you for that.

I want to go to recommendation number 3 in the auditor's report, where she's talking about connections, and specifically: "To have transit projects planned and built with the greatest benefit to the greater Toronto and Hamilton area ... as a whole, we recommend that Metrolinx:

"—develop an action plan to identify and address the growing connectivity needs of the GTHA regional transportation network as a whole, given that previously envisioned connections have been lost with changes in light rail transit project plans."

In terms of the Eglinton Crosstown LRT, I believe that there was originally envisioned a connection to the airport that was dropped. Have you improved connections since this report?

Mr. Phil Verster: Yes. The core of that recommendation is how efficient and effective we can make our regional transportation plan. The regional transportation plan has got 70-odd different schemes in it, over the next 20 to 25 years—up to 2041, so it's slightly more than 25 years—that plot out what the schemes are to create a frequent rapid-transit network across the region, and to give that overall connectivity between different modes of travel, whether it's a bus rapid transit, a light rail transit solution, a subway solution, or heavy rail such as GO. That's a fairly extensive plan.

I think what's important, and before I get to the second half of your question—an important recommendation by the Auditor General is that we put in place a pipeline system that makes sure that there is prioritization framework. We need to catch up, as a region, on some of the builds. So what does the overall pipeline look like to make sure we pull the right schemes as quickly as possible?

In a separate conversation, what we should get to is how business cases work and the rigour we've brought to business cases to make sure we understand what are the high-value business cases in which we build first of all.

In terms of the second half of your question, where you referred to Eglinton, Eglinton is a massively important and transformational project for the city. It's fantastic. One of the things I often feel we don't succeed in is to actually convey to people what it looks like in some of these—I've got a photo slide deck that shows a massive amount of work that's happening underneath Toronto's feet. We've got every chance of Crosslinx succeeding to complete their program by 2021, because they are the entity and we've created the right environment for them to succeed in.

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A very important announcement made by Minister Yurek on the 10th of April, as well as by the Premier, was that the extension of Eglinton West into the Etobicoke region, and from there with connectivity to the airport, is now part of the four highest-priority subway schemes that the province is going to upload. This is very exciting.

I have to say immediately that that project will have two phases. The second phase will be connection to the GTAA and to the airport itself, and we will be negotiating very carefully with the GTAA on the value of that extension and how we incorporate their part in it.

The really important thing here is that the connectivity we are creating brings huge economic value and brings great value for the airport, and we're going to make sure that we get the right balance of value for the province as well.

Does that answer your question?

Mr. Norman Miller: Yes, thank you. I'll pass it on to MPP Surma.

Miss Kinga Surma: Thank you for being here. It brings great value to my constituents, if I can say that.

In the introduction, you spoke about the transfer of risk and unaffordable bids. Can both of you elaborate on that for the committee and maybe reference past examples where that's happened or occurred in your experience, if it has?

Mr. Phil Verster: To be very clear on this transfer-of-risk discussion, if we use a very practical example, it would be the RER-GO expansion, which we are right in the middle of now and right on the cusp of going to market with, clearly. To give you a sense of it, everything we have done in the lead-up to the RFQ process and engaging with the market through the RFQ process and then leading into the RFP process—the request for proposals, which is really where the rubber hits the road—all of the conversations with the market are about transfer of risk. If you must crystallize a single thought out of the procurement process on a very complicated transit project, it's all just about this one thing: transfer of risk. The reason why that's at the core and the kernel of it is, transfer of risk determines who's going to pay if stuff doesn't get delivered on time.

I'll give you an example of something that I think didn't work, which we fixed. It's a close-to-home example, which all of you are familiar with. It is on Eglinton, for the province to have proceeded to buy rolling stock from Bombardier and then place a contract for the build of Eglinton over here. What that does is it makes the province piggy in the middle, really, for dealing with two different parties. What we call system integration risk therefore sits with the province.

So Bombardier starts to fail in their delivery. The contract over here says, "Well, we're going to be ready. You now need to pay big penalties to us because you're not getting Bombardier to deliver." If we don't have the right levers on Bombardier, which we didn't have a year ago, Bombardier can forever not deliver and we pay—and I'm just making up numbers; I can't give you the real contract numbers, which are confidential. But Bombardier pays us sort of $1,000 a day for being late, but we have to pay Crosstown over here or CTS over here something like half a million a day for being late. That type of lack of system integration is really the lesson we should learn. That's a transfer-of-risk issue which was wrong.

Just to give you comfort on that, though, when I joined here in October 2017, this was one of my first, biggest risks I thought we had to fix. We engaged Bombardier and very intensely negotiated with them, and by December of 2017 we had signed a revised agreement with them to reduce their contract value, reduce the fleet size, and to lift the liabilities that they pay for being late to be the same as they would have been here.

We fixed that, but we fixed that through a very painful, difficult negotiation, and you'll see the Auditor General, in her report, referenced that and talked about that somewhat. It was a different aspect of the negotiation. Ehren would follow up on that, so just in response to that question, if we now look at what we're doing on the GO expansion procurement, we're not doing that. We're not separating the procurement of the rolling stock separate from the procurement of the assets. In the past, people have done things like this, and not only here, in other parts of the world as well, and this nearly always turns out to be a better way than it is to bundle it all up together and not have it separate.

Mr. Ehren Cory: I appreciate the question. I think that you can fail either way, not sharing and transferring risk enough, and trying to go too far the other way. Let me give examples, one of each. A lot of traditional construction fails to get the contractor properly incentivized and properly on-risk. What happens is you get big cost overruns or delays, and there's not much recourse for the public sector.

We've seen that in other projects in Canada, other levels of government, for sure. You might think of the Yonge-Spadina subway extension, for instance, which—not our project. The city has done it and I don't know the numbers, but I think it was delayed quite a bit. It was quite a bit over budget and there's not a lot of recourse, because in that situation if the contractor hits a delay or a snag there's not a lot of risk on that. So that's what happens if you don't create a risk-sharing mechanism where they're maximally—if that's a word—incentivized to deliver.

Let's go to the other extreme. Let's say, and there are examples of this, too, where big schemes fail in other parts of the world where you try and get overly aggressive on risk transfer. Example: contamination in the soils. You say to the contractor, "That's all your problem. Anything you find, anything you hit, anything that happens is all on you." They're either going to bid an astronomical number, or not bid because they say, "That could be company-bankrupting if there's stuff we don't know about. There could be contamination upstream, off-property that we can't possibly know about. You can't make us take that." So they either walk away, or they bid an astronomical price. That's what happens if you try and go too far with the risk transfer.

There are examples, not in our jurisdiction but in other parts of the world, where that's happened and then, afterwards, the contractor—it's kind of a too-big-to-fail situation, because afterwards the contractor says, "I'm dead here. I can't possibly handle this risk and so you have to help bail me out." There are examples in South America of that happening, for instance.

Miss Kinga Surma: Great, thanks. How much time do I have left?

The Chair (Ms. Catherine Fife): There are almost six minutes left.

Miss Kinga Surma: Okay, great. Are there any lessons learned from dealing with partial and unacceptable designs on the Eglinton Crosstown LRT project that can be applied to Metrolinx's other LRT projects?

Mr. Phil Verster: When you think of how the designs and the whole P3 mechanism work—and sometimes this is not really well understood, and I apologize that we don't always explain this well enough so I'll try to do this as well and, please, if anyone wants to just get clarity for my question, ask for that.

You see, because it's a P3, a public-private partnership, during the design phase and the delivery phase, up to the point of substantial completion—on Eglinton, for your reference, "substantial completion" is really when it's good to run, so that's September 2021—we don't own the asset. We don't own any part of the process. Equity owns it. Debt bondholders have invested in it for a period of time. Equity is in there. Once the project is completed, they get paid by us, they go and pay off the bondholders, and equity makes money from the process. That's the nature of the market. That's how it works.

But the point is, while they're going through the cycle of designing and managing the schedule, we cannot interfere in that process and say, "Well, hang on, the design shouldn't be like this. It should be like that," because what we're doing is we're then muddling up the risk transfer process. They've taken the risk to build it; they've taken the risk to design it; they've taken the risk to construct it on time. So it's really crucially important in this process that we have the right level of transparency of where they are so that we can know when to intervene and do the right thing. When you read the Auditor General's report, the Auditor General says that. The Auditor General challenges us to say, "Make sure you've got more levers and tools to actually see what goes on."

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How it works is, once the project is let and there's a design, you expect the design process to be iterative. I think there are good indications, numbers of how many times have designs been not correct. Well, the designs are now at a level of—I think it's above 80% complete and approved. Designs don't all have to be done on time, and designs are iterative so some are going to get sent back.

But if the contractor decided, "I'm going to do something really novel and I'm going to design it in a way which is truly going to be very cost-effective," and they submit it and they fail with the submission and have to change and design something else, this is the beauty of a P3, that cost—that risk of a design not working—is borne by them. Because we don't do the design up front to 100% degree and say, "Go and build it"—that's a design-bid-build contract.

So your question is a really challenging one for organizations to get their head around because you need to be able, on a P3, to sort of see the trend, to see the direction of travel. You need to figure out what are the real problems with the design. Is it a design, technical problem or is it the process problem for permits, licences and approvals? If it is permits, licences and approvals, then you need to look at a different part of the contract and go and figure out, "Hang on, is there responsibility or a risk transfer in our direction where we need to go and work with the city or with municipalities to fix it?"

I think the lessons we've learned—forgive me for that introduction, but it's important for us to clarify that. But the lessons we've learned from Eglinton specifically for other LRTs is that as an organization, Metrolinx's CPG team which is led by Matt Clark—a very competent member of my SMT. Matt is over here; Matt, if you can put your hand up. Matt, together with Charl van Niekerk, who is a very competent person from Ehren's team, the two of them are leading this delivery. We need to at times lean in, is the expression that I have. There's a contract, yes—

The Chair (Ms. Catherine Fife): One minute.

Mr. Phil Verster: There's a contract, but, yes, let's figure out how both parties help each other to make sure you get things fixed and over the line. That means we are more efficient together with the project company who is the P3 delivery agent and our own teams to get things done.

Miss Kinga Surma: Okay. I'm not sure I have enough time for an extra question.

The Chair (Ms. Catherine Fife): You have 45 seconds.

Miss Kinga Surma: Okay. I know you mentioned also in your introduction that you have been consulting with other regions. Has Metrolinx consulted with local transit authorities in Peel region and Hamilton in order to determine the cost of disruptions due to future LRT constructions? If you don't have enough time to answer—

The Chair (Ms. Catherine Fife): Maybe you'll have 20 seconds to think about that.

We'll probably go to the next question set on that, Mr. Verster. Also, we've never heard "piggy in the middle" in Hansard, which you referenced earlier. I just want to remind you that will be in Hansard for all time.

Mr. Phil Verster: Thank you.

The Chair (Ms. Catherine Fife): Now we will move to the official opposition. Who is beginning? MPP Bell.

Ms. Jessica Bell: Thank you for coming in today. I have some questions about the Eglinton Crosstown. One of the questions that I had was: So a settlement was paid of $237 million. Were there other changes to the project scope or contractor responsibilities as a result of that settlement, and if so, what were they?

Mr. Phil Verster: In broad terms, there were no changes to the fundamental scope of delivery. However, as part of the settlement agreement, we wrapped in—originally there were 26 or 27 different loose issues of disagreement. These would have been smaller, contributory claim positions. If I give you a practical example, we have to rebuild a church on one site location. There was a disagreement on what proportion of the cost is for us to contribute etc.

Fundamentally, no change in the scope of delivery. But what we did with the settlement on the main terms of the contract, which was mainly around things such as permit licences and approvals, is we settled a whole range of items under the banner of a single-scope settlement. That's common practice; that is a practice in all jurisdictions. The purpose of that is very simply to get to a point where you've just done this huge negotiation, you've created an opportunity to take all of the issues that have built up, some of it related to the main heads of claim or not, and you just clean it all up and make sure you have a contract position to add on from at that point in time. So the broad scope was still where it needed to be and broad delivery was where it needed to be.

Ms. Jessica Bell: I'm under the impression that it was delayed by a year.

Mr. Phil Verster: No. If I could help with that: As a tactical claim position, you would typically find that claimants would come and say, "This is all very difficult. All of the root causes of the claim that we've got are going to have this type of cost impact and that type of schedule impact." That's why, when we talk about the negotiation being an eight- or nine-month intense exercise, we actually go through their claim. They had a claim that it was going to be delayed by a year. We went through that meticulously—very meticulously—and we went through a couple of months where we pointed out weaknesses in their schedule reporting and in their schedule that show that the year—"No, we've looked at your schedule." It's thousands of lines of activities they have on the schedule. We reviewed it from our side very thoroughly and said, "No, there's not a year's delay. You need to explain this better. If you can't explain this better, there's no way your claim of over $1 billion is sustainable." That is why we negotiated the effective impact and cost impact as well as the time impact back to where it is now. And where it is now is they'll deliver the original delivery timeline. The original delivery timeline is restated, not adjusted, so there's no leeway in the substantial completion date.

I'll just qualify that a little bit with a point about a clawback that we've got—

The Chair (Ms. Catherine Fife): Before you do, Mr. Verster, I think the AG actually had a comment on your question.

Ms. Bonnie Lysyk: Yes, I just wanted to draw the member to page 342 of the report. We do indicate that Metrolinx agreed to accept later delivery dates for the pedestrian bridges adjacent to the existing West Don River Bridge and a Salvation Army building. As Mr. Verster was going to continue, of the $237 million, $100 million of that was classified as an incentive and acceleration compensation, to be clawed back if the AFP consortium did not achieve substantial completion on or before September 29, 2020. Just to supplement that response.

Mr. Phil Verster: Yes, thank you very much for that, Auditor General. So of the substantive scope, the items that are listed out there are part of that wrap-up of different loose items that we've got. Neither of those two components—I appreciate the correction. Neither of those two items of scope are substantive to the completion and the operation of the railway. Those were practical decisions we had to make in order to get those delivered as part of the scope.

Ms. Jessica Bell: Okay, thank you.

Mr. Phil Verster: I can just respond to the clawback, perhaps.

Ms. Jessica Bell: So you're saying there's no change in scope? There was no change in scope, in summary?

Mr. Phil Verster: No material change to the substantive scope to deliver an LRT.

Ms. Jessica Bell: Did any station get cut?

Mr. Phil Verster: No.

Ms. Jessica Bell: Okay.

Mr. Phil Vester: So that's all there. Then, as a further mechanism, we have a clawback that we have built into the contract. We've said we will settle for the $237 million, but in stages of payment; if substantial completion is not reached, value as part of the original settlement will be recovered. Ehren can talk to that.

Mr. Ehren Cory: Yes. As Phil said previously, we saw that the exposure we had to the claim was in excess of $500 million. Our goal was to settle that for as little as possible. Since part of the settlement was fundamentally about getting them back on schedule—

Ms. Jessica Bell: Thank you. I think I have enough information on that. So what I'm hearing is that generally you're saying that you stayed in scope and you essentially stayed on time. Is that what you're saying?

Mr. Ehren Cory: Yes.

Ms. Jessica Bell: Okay. So I have another question. The whole idea of this kind of project is that you do want to transfer the risk over to the private sector to build, to stop a situation where you have taxpayers pay $237 million in a settlement claim.

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Is this the first time that a P3 project, an AFP project, has led to a settlement claim of this size in Ontario?

Mr. Ehren Cory: I just want to come back to the fundamental premise of the question, because you said it perfectly: The goal is to transfer—and the AG used this language in her report as well—the maximum feasible risk transfer in a contract. So just to start from a place where we're all on the same page—

Ms. Jessica Bell: I do want you to answer the question, though: Is this the first time that a settlement of this nature has been paid?

Mr. Ehren Cory: I will.

Ms. Jessica Bell: Thank you.

Mr. Ehren Cory: In all of our projects, we set aside what's called a post-contract contingency to handle for changes that happen post the signing of the contract. Those include the risks that we've retained. So as we start, we do a risk register; we know what risks we've retained.

Depending on the nature of the project, the post-contract contingency would be in the range of between 5% and 15%. That's what we did on this project. This is a civil project through a downtown core; you can imagine that our contingency would be at the high end of that range. If you think of construction projects, that's still not a very large contingency amount. The reason for that is because quite a bit of the risk—not all, but quite a bit—has been passed to the private sector.

So we maintain a post-contract contingency between 5% and 15%. The settlement agreement which we did—the $237 million—is well within that contingency. That's why we say that, yes, we signed a settlement agreement, but we are still on budget. That's how those two statements can both be true.

To answer your question: Absolutely, on all of our projects, or many of them, there is use of post-contract contingency. We publish a track-record report every year that looks at all of our projects. Of the projects we've completed to date, 95% of them have been completed within the project budget, which means we didn't use up the contingency. There are a few of the projects in our history where we've used the full contingency. So, yes, it happens. This is a large project so the quantums are big; in the percentage terms of the project, it's within the PCC, the post-contract contingency.

Ms. Jessica Bell: Would you say this is the biggest settlement that has been paid on a P3 in Ontario with taxpayers' money, even though you originally set up the contract and you gave the consortium a premium to do the project and to transfer the risk? Would you say this is the biggest settlement?

Mr. Ehren Cory: I would say, in dollar terms, yes.

Ms. Jessica Bell: One of the surprising things that I noticed when I read the Auditor General's report was the Auditor General's concern that the exact costs that the consortium would have incurred to justify the $237 million—or maybe it was $1 billion—weren't sufficient and that the settlement was at least somewhat based on a theoretical assessment of risk.

Why did you make that settlement if they did not provide sufficient evidence to justify that settlement?

Mr. Phil Verster: When you read the auditor's report, in that particular section the auditor refers to some of her opening comments, which is a rejection of the position of the project company. In the claim dynamic, in claim mechanisms, that's how it works; we go very clear, right up front, to make sure we secure sufficient information to give us an understanding of exactly what the basis and the essence of a claim is, and we push the project company to be clear in their quantification of the claim as well as in establishing legal liability—to what extent legal liability is ours or theirs.

So I think what you referred to is, we have a very strong opening position where we very, very clearly declare to the project company that their initial submissions weren't clear enough at all on the cost allocation.

The second half of your question, which is really crucial, is the reference to how we decide internally on what we see is the value of the claim and what the extent of our liability is. When we go through the procurement process and we set up the risk transfer, the risk transfer—and I'll go back to the example of contaminated soil, because it's a very visual and very helpful type of claim to understand. You then—

Ms. Jessica Bell: Respectfully—

Mr. Phil Verster: Could I just finish?

Ms. Jessica Bell: Okay. We don't have a lot of time. I would really like you to focus less on the contaminated soil example and more about the specific project of the Eglinton Crosstown.

Mr. Phil Verster: No, no. This is a particular part of the claim. So do you want me to continue?

Ms. Jessica Bell: Okay. Yes. So this is contaminated soil related to the Eglinton Crosstown?

Mr. Phil Verster: Yes, absolutely.

Ms. Jessica Bell: My apologies.

Mr. Phil Verster: Absolutely, and this pertains to your question of how do we work out what the exposure is.

If you look at contaminated soil, which was a big part of this claim, there was a very clear, during the contractual stages, when we signed the contract between the parties—if we transfer all of the risk for contaminated soil without owning some of the accountability, the project would be unaffordable. Then, when we do transfer some of the risk, to decide which part of the risk is actually being transferred, and which part is retained by us really lies in the facts of the project. There, it's got to do with what summaries and details are available to tell us what volume of soil has been removed, what volume of soil had to be remediated; was it to be envisaged or inferred at the time that the soil has been contaminated; and to what strength does the contract stand up to a legal challenge.

So we have a whole raft of complex commercial issues to consider on that one item, which was part of this claim, and to think very carefully about how we then make a cross allocation and say, "Right. If their total claim for contaminated soil was around"—and let's use any indicative number—"$300"—and it was significantly larger than that—"and we take a view that we have an 18% liability for that, then that would mean, in our pay settlement position, we'll have a value of $54." We'll say: "Having looked at that claim position, this is what it translates to in a settlement value."

The really important part that we've taken away from the Auditor General's report is a very clear request by the Auditor General that our documentation around these decisions should be clearer and more indicative. The content of your question about information at our disposal and how we make those decisions is therefore mixed up very firmly in what the facts of the case are and what the legal position within the contracts is.

The Chair (Ms. Catherine Fife): Okay. MPP Bell, I just want to let you know that there are six minutes left.

Ms. Jessica Bell: Okay, great. Thank you very much.

I would like to just turn to one of the AG's findings around how changes to scope can lead to delays and cost overruns when we're talking about building transit projects in our region.

Mr. Phil Verster: Yes.

Ms. Jessica Bell: One of her recommendations, or the Auditor General's team's recommendations, was to work with municipalities to do that upfront planning, essentially—so to come up with a plan together, or at least respectfully, before you move on.

I am concerned about the new transit plan that has been introduced because it does significantly change some of the plans that the city, and the province, have moved forward on over the last few years. I'm wondering: Have you done an estimate on the cost overruns or delays associated with changing the plans specifically related to the Ontario relief line and so on?

Mr. Phil Verster: If I could just ask for clarification—or just say the bit that I do not fully follow from your question is the part where you say that the current plan that has been announced is a significant change from the plans that exist, because—

Ms. Jessica Bell: No, I think the question is around: Has Metrolinx or the Ministry of Transportation done an assessment on the cost of changing the plans?

Mr. Phil Verster: Yes. So if I, then, respond to the first part and then to the question as well: You suggested that the plans that have been announced is a significant change; it's not. It's part of the regional transportation plan to have a downtown Relief Line South and a downtown Relief Line North. It's part of the regional transportation plan to have Eglinton West and to have a Yonge North subway extension. So the announcement recently is not a significant change from what was already envisaged.

But the second half of your question is a really important thing as well, and I'd like to respond to that specifically.

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As late as yesterday, we had a thorough and extensive meeting with the TTC and the city of Toronto on the work they have done on the downtown Relief Line South and downtown Relief Line North as a first precursor meeting on how we will proceed on the Ontario line. The assessment about what has been done to date, and to what extent there is transferrable value in the work that has been done, is currently ongoing.

If I give you a practical sort of railway person's perspective, I would say that there is probably very, very little in terms of what the TTC has done which would be wasted. Everything the TTC has done—I'll give you a practical example. In their recent going-to-market on an inquiry of tunnel-boring machine, they have exactly the same principal strategy as we would have, and that is to take the tunnel-boring machines off the critical path by exploring with the market options, and then change specifications during the bid cycle.

I think that what is probably more important for us to focus on is how we can maximally expedite and speed up the delivery of these programs.

What is really encouraging for us is that Rick Leary and his team and organization are doing excellent work to run the TTC. We want to contribute to that process by working with their teams to take the build phases of the new build and see how we can deliver that more quickly, with a different mix of decisions, whether those are decisions on technology or whether those decisions are on procurement choices that we exercise.

In all of that, I think the focus currently between all of the organizations that are involved is to see how we get this done as quickly as possible, for the benefit of Toronto.

Ms. Jessica Bell: I was at the announcement that the Ford government made about the new lines.

The Chair (Ms. Catherine Fife): One minute.

Ms. Jessica Bell: John Tory wasn't even present.

I'd like to request two things. The city of Toronto has 61 questions for Metrolinx to answer on the new transit plan, including basic questions such as what the ridership patterns are, how much it will cost and when the transit lines will be rolled out. My request to you is—and my question—when will those answers be given to the city, and can those answers be given to this—I request that these answers be given to this standing committee as well.

The Chair (Ms. Catherine Fife): I just want to let you know, MPP Bell, that after we finish with the delegations, we go in camera and that will be part of our report-writing process. Then that's a discussion that is made by the committee as a whole. Okay?

Ms. Jessica Bell: Thank you.

The Chair (Ms. Catherine Fife): There's only five seconds left, so we're going to go to the next question set, going back to the government side: MPP Surma.

Miss Kinga Surma: I'm going to repeat the question that I asked previously: Has Metrolinx consulted with local transit authorities in Peel region and Hamilton in order to determine the cost of disruptions due to future LRT construction?

Mr. Phil Verster: Absolutely. The whole methodology of delivering Hamilton and Hurontario LRTs is based, during the procurement, on a cycle of activity which is local to each of those two regions.

Our project teams that we've put together include the municipalities, so we've got joint teams. It's really important to do it like that because we don't know the local environment, local choices, local decisions, local plans and local communities as well as those municipalities do.

When you look at the whole cycle of delivery—even though we are not yet at the final bidder selection stages, our methodology of delivery, between Ehren's team and my team, is to work together right from the early RFQ phases into the RFP cycle, and to work together with municipalities as well.

Now, there are difficult choices; I just have to say this. There's no way one can build transit to the extent that we are building it without having an impact on communities, and that impact is understood. Even though one can discuss the impact of extensive build finality—for example, roads and traffic are affected for a period of time—even though one can explain it beforehand, communities really need to be consulted on this during the build stages and informed of what the choices are.

We work with our contractors to minimize those impacts and to do things as effectively and as efficiently as possible. A significant part of our communications organization is about supporting the projects with community communications. Our project teams—Matt's project teams—have a responsibility as well to work with the project company that's delivering to look at constructability choices. I'll give you a simple example. If you're going to block off a road for a period of time to construct something, make sure you block it off for the minimum amount of time and that you get the maximum amount of work done in the windows of time you've got. All of those types of challenges we deal with during the project delivery phase.

Mr. Ehren Cory: If I could add just one tangible example, because I think it goes to the root of what Phil is describing: We have this concept—Eglinton was the first time we tried it, and we've kept working on it since—around lane rentals. I've talked to some committee members about this in the past, I think. In the contract, what we've done is we've actually put a price on shutting lanes—a couple of different prices: at peak time in traffic; off-peak; and left-hand-turn lanes different than through-lanes.

The point of that is when a bidder bids, they also have to bid for how many hours they're going to close those lanes. It puts tension on them. They have to essentially buy that capacity. So if they bid $1 billion and they bid, "We're going to close these number of lanes for this many hours," we add to the price they've bid a cost of that. It's the cost of disruption. We're trying to add it so that when they bid, they're actually incentivized to design a plan that does what Phil said: close the lanes for the minimum amount of hours and get out of the way.

I think what people hate the most is driving past a construction site where there's no construction activity but there's also no traffic. It's the worst. There's a pile of dirt in the right-hand lane and you can't use the lane but there's no one using it. We actually put a price on that. It's calculated as part of their bid score. Then, once the winner wins, they use those hours, but if they go over, they actually owe us money and they would have to pay us. Think of it like a fine; that's not the right word for it, but they would have to pay us a fee for the lanes that they've used over and above their allocation.

Again, that's all designed so that if they can close a lane for four months and they get it done in three—reopen it and get it back into traffic and productive use.

Miss Kinga Surma: A question on that: Is that funding also used, let's say, for bus rerouting or anything like that, or is that separate?

Mr. Phil Verster: That's separate, yes.

Mr. Ehren Cory: But that is also part of the cost of doing a project like this.

Mr. Phil Verster: It is.

Mr. Ehren Cory: You're absolutely right. You have to factor for that as well.

Miss Kinga Surma: Okay. How does Metrolinx keep the local community informed about the progress of a project and any issues that come up related to the project delivery? How do you manage that?

Mr. Phil Verster: We have what we call community teams that deal with extensive communication. To give an example again—and Eglinton feels like the most pertinent example—we have a local office in the local community. When we say "communicate with a community," it's all different shapes and all different forms.

I've been to community events on Eglinton a couple of times. We rented a school hall and had the whole build in different stages demonstrated on big placards across the room with different individuals standing and talking to different local interest groups, individuals or leaders about where we are with the build. We talk very openly about what the challenges are with the build and what the issues are, and we give the community a sense of what's happening in the future. That degree of personal contact and having a walk-in office conveys a lot of comfort to the community itself.

I want to start with that as the first idea because then there are all of the other channels you have as well. We have emails, blanket letter drops—all of that. We try to make those as effective as possible and as impactful as possible. But in a world where people receive many emails every day, I'm not always convinced that all of these other channels really work as well as personal contact. We are constantly looking at new ideas to figure out how we get our communications with communities better. More town hall meetings on core issues are really important, and allowing that opportunity for people to ask questions and to be in the room with us as project teams is really important.

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We've learned that, and we've seen that, and we do more of that now on projects, and the decisions we get from those types of presence is much better.

Miss Kinga Surma: Okay, great. I'll ask my last question: What protections will be put into the AFP contracts for the Hurontario and Hamilton LRT projects to prevent types of delays or issues that have characterized the Eglinton Crosstown LRT?

Mr. Ehren Cory: There are a number of things, and the Auditor General's report points to some of them, and I'll just highlight a few.

First, we have increased the level of scrutiny and early warning we're getting on schedule. You mentioned both cost and schedule, but schedule is the one where we think we have the most improvement to make, and we have built this into Finch/Hurontario/Hamilton to make sure that we're getting frequent enough updates on their schedule, so that we have early enough indication of where they may be falling behind.

To Phil's point, that might necessitate us leaning in. We have to be careful not to take risk back on us, but there might be times where they're stuck on something where we can help without taking risk back but we can help them overcome obstacles. If they're having trouble getting an approval from a municipality, we can talk to the municipality and say, "You are delaying our program. We need your assistance on this." For us to do that, better schedule indication—we've started tracking their schedules and digging into them on a level of detail that we did not previously. That's the biggest change, I'd say. That's like an early warning indicator for us of where they're starting to fall behind.

As the Auditor General points out, you can often, in the details of a schedule, start to see a little slippage. They're still on track—capital "on time," if you know what I mean—but you can start to see micro-slippage, and that starts to tell you where they're running into trouble. Either we can ask them, "What are you doing about that? How are you remediating it? Is there anything we can do to help? Is any of that on our side of the risk bench?"—in which case, we really want to jump on it. So that's the biggest change we've made.

Mr. Phil Verster: If I can add to that: This is not in the Auditor General's report, but it's part of some of the other governance actions we have taken to improve how we control and see visibility.

There's a very pragmatic approach, and what I would call a best-practice approach, in other jurisdictions, and that is to manage your programs by what is called earned value. When you look at earned value and actual value, you can build up two very important key performance indicators. One is a cost performance indicator, and the other one is a schedule performance indicator.

The very simple concept here is, if you look at the cost of a project, you don't really know where the schedule is. They're either on schedule and they've overspent, or they are in front of schedule. Even though they've spent more at that point in time, they may be ahead of schedule, so it's okay for them to have spent more because they're ahead of schedule.

When you think of earned value to actual value, we create ratios such as that that give us a KPI or an SPI that tells us better where the program is.

I'll just say, in the spirit of positiveness, that we didn't use that as well as can be done in this jurisdiction. Matt and myself are massively committed to implementing it. We've implemented it on Eglinton, and the Eglinton conversations on cost performance and schedule performance are now all around CPI and SPI. These are tough conversations with them.

Also, something that didn't exist before is that their top team didn't come—Metrolinx and IO didn't sit with the top team as we do now. They come now every month. Their CEO, together with his team—they bring a whole phalanx of people together with them, to explain to us where they are with their permits licensing approvals, CPI, SPI and all of that. We go through very thorough discussions to review where they are.

I think, and I'm fairly confident, that this fits into what the Auditor General envisaged when she said, "Figure out what mechanisms you can overlay on this and still achieve the right risk transfer in the P3 project."

So just a last tail-end to that conversation is, part of what Matt is doing is to take the earned value and the use of CPI and SPI and roll it out across the rest of our programs. We are very adamant that this is a best-practice method, and it's very good. It gives you really good insight into what's going on in their projects.

The Chair (Ms. Catherine Fife): Okay. We're going to move to MPP McDonell. Just to give you an idea, there's eight minutes left in this question cycle.

Mr. Jim McDonell: Thank you.

Can you explain how the design submission process for a P3 DBFM contract like the Eglinton street crossover—

The Chair (Ms. Catherine Fife): Mr. McDonell, can you please just—thank you.

Mr. Jim McDonell: —is intended to work, and how it's different than a traditional construction project?

Mr. Phil Verster: Okay. When we go out to market on a P3, we get a solution bid back to us from the bidders. Based on the solution that is being bid to us, we have a very good and substantive idea of what the design concepts are. But during the design cycle, we do design reviews to the extent that we want to have visibility of the extent to which the designs are getting completed and to the extent that the designs, most importantly, are getting approval from the different entities that affect the design.

I'll give you a practical example again, where we have the Eglinton LRT interfaced to the Eglinton subway, the Line 1 subway, at Eglinton station. There are very crucial considerations in terms of not only the design of the system solutions but, physically, the Eglinton LRT is actually running underneath the subway at that point of the network, because the subway was a relatively shallow-built subway. So part of the design submissions in cases like that are to provide systems. We have got a very complicated jacking-in engineering system that keeps the subway, for any deviation up to what you'd call three business cards on top of each other—any deviation to that extent jacks it automatically correct, the alignment, again.

So here's the point: When you think of how these designs work and the design process works, there are the obvious things such as, "I said I was going to design a station like this; this is how I am designing it," which we would look at and check to see if it is compliant with the outputs that were intended for the project. We'll do that level of design, to make sure we get what we asked for. But then there's a second, deeper level of critical design, and that is, how are you constructing it, and what permits have you got, what licences and approvals have you got, to actually deliver what you said you're going to deliver, and how are you going to deliver that?

There are several levels of these design choices. Some of it involves third parties. We make sure we're in the room, even with our third-party submissions, to therefore carefully ensure that what was bid is delivered.

But here's the thing: The really important test of delivery is not really our view. We participate in that process to guide and support. But in the end, there's a separate entity called the independent certifier, or IC, and the independent certifier is a third party that says—it's not as if we get to the end of the program and someone says, "We have completed it," and we say, "No, you haven't." An independent third party certifies whether the work and the scope have been done according to what was originally bid and procured.

Mr. Jim McDonell: In the Eglinton LRT, was there a consideration to a subway-type system and the differences in cost? Typically, what's the difference: 50%, 30%? Like, the difference between going with the subway answer versus an LRT.

Mr. Phil Verster: Eglinton is an interesting example. Both Ehren and myself have views on this, so Ehren would add to that.

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Again, I'd refer you just to the Auditor General's report—and credit to the Auditor General for the very thorough review that she did. In the report, she included choices and how choices are made between different types of transit technologies.

The big distinction between the big choices you have is that if you're going to move substantial volumes of people—up to, say, 25,000 to 30,000 people per hour in a peak period—you're probably in the space of an end-to-end subway through a busy city; while, if you are moving lesser numbers of people with a different economic objective potentially, such as, instead of moving people from point A to point B as single-journey destination, you want to move people to multiple intermediate stops, building an LRT is a slower mode of transport with definitely less capacity but providing more opportunities for people to get on or get off.

Your question is at the heart of the difficult choices that agencies must make, together with communities, on what solution is the right solution. What I can share with you is a very pragmatic view that goes as follows: LRTs are very often huge local economic drivers. If they are used to connect people across a community with different opportunities to go to work or travel from home and if they get vehicles, such as buses, off the road and allow others who are travelling to different destinations to have shorter journeys, the economic benefits of LRTs are huge and significant.

When you think of subways, subways are about mass transit from point A to point B with probably longer distances if you think of how people travel, with less opportunities to get off at multiple intermediate stops.

The brunt of your question around Eglinton is—Eglinton is talked about as an LRT because it is aboveground at the eastern end of the alignment, but on the western end of the alignment, it's substantially underground. Is it an LRT? Is it a subway?

The Chair (Ms. Catherine Fife): One minute.

Mr. Phil Verster: It's somewhere in between. But the point is, you have to agree with communities and with government what the government's needs are and what government's objectives are of an investment such as that—and what government's policy is. We do business cases that say, "Look, you can either use this mechanism or that mechanism, and that mechanism is the best." But in the end, the decisions of what investment must be made are appropriately made by elected officials who say, "Well, this is our policy. This is how we'd like to proceed."

Mr. Jim McDonell: I guess to finish off with a comment: When you drive down some of that area, the space left for aboveground transportation is very limited.

I'll wait for the next time.

Mr. Phil Verster: We can take that forward.

The Chair (Ms. Catherine Fife): Thank you very much. Moving on to the official opposition: MPP Bell.

Ms. Jessica Bell: I must say, it is a little concerning sometimes hearing some of these answers, because we trust you to use our taxpayer dollars as best as you can and to build the right transit projects. The feeling I am getting is that the consortium in some ways has more control over Metrolinx than Metrolinx has over them. I do hope that you do everything you can to hold these consortia to account and keep them on schedule, because you're paying their bills.

My question is around the Hurontario LRT. There was a recent change. I was under that impression that the funding envelope for that was about $1.4 billion; correct me if I'm wrong. My questions are: Is the funding envelope the same, and what was the reason for cutting the Mississauga loop?

Mr. Phil Verster: If I can respond, I'll respond to all two parts of your question. If I miss anything, please advise me.

Ms. Jessica Bell: Yes, I'm specifically referring to the Hurontario LRT. So the funding envelope hasn't changed and then what's the—

Mr. Phil Verster: I follow that, but I need to respond to your introduction, because your introduction has sort of—I just want to be clear that there is no ambiguity. We are following our contracts to the letter of the law. Our contracts are vigorously commercially enforced. The inference that I think you've made is one which I don't understand, personally. When we make decisions such as a $237-million settlement, we don't make that on a whim; we make that in a thorough process. It's taken through both our boards, which are acknowledged people with board commitments across the rest of the industries with insight and knowledge. We follow full governance. We keep our ministries fully informed. This is not done in a way that fits the definition that you gave where you suggested the project company just demands and we just comply. It's definitely not the case.

If I go to the second part of your question, on Hurontario, we have a process, together with IO, where we assess in anticipation of doing a project what a project is going to cost. There's an approved funding envelope, very similar, along the lines that you've referred to. The value that's often registered with communities is sort of the capital construction cost value, but obviously, the value of a contract is much more than that in the sense that there's a 20- or 30-year maintenance contract with everything, and all of that goes in there, but I understand the value you referred to.

What I can indicate is that we have seen trends in cost, in the market, and I can share very clearly with you—from conversations we've had with many other parties, so this is in the public domain—that we've seen an increase in what we think the estimated cost for the Hurontario LRT would be, and we had to take a prudent view on what capacity needs to be built now and what capacity can be added in the future. The loop at Square One is one of those aspects of the Hurontario LRT which can be delivered later, which will definitely add huge and significant value to the LRT overall but which is not, by our measurement and our definition of what we expect as ridership and demand, required in the short term.

Ms. Jessica Bell: I just want to clarify, then: The funding envelope stayed the same at about $1.4 billion, but we got no loop out of it. That was removed. Is that a reasonable summary?

Mr. Phil Verster: Absolutely. That's correct. For now, and even as I say that, we still haven't gotten bids back from the market on the Hurontario, and so removing the loop was one way to phase the work to the right time in the future, for the cost to be incurred at the right time in the future. We still don't know what the bids are going to be from the market because that process is still in market. There may still be a challenging conversation somewhere in the future about what the actual market comes back and bids for us.

I can just say, I've personally become really involved in the Hurontario project. There are significantly different challenges there than what we envisaged originally, with utilities and third-party utilities, all of which are contributing to the cost structure. That is why these projects have two-stage approvals, and this is why we get so involved with early works: to understand what the exact cost profile is going to be.

Ms. Jessica Bell: I want to thank you for that answer. I have some questions around some of the work the Auditor General did around consultants and the use of consultants within Metrolinx. I'm under the impression that one company was ordered three contracts, that the company ran out of money early and that the Auditor General had some concerns about the quality of the work the consultant was doing.

I'm also under the impression that a vendor performance review was done on this consultant in August 2018. Can you provide a summary of what that vendor performance review found? It may be on a scale of one to 10, with 10 being great and one being really not great—how this consultant performed.

Mr. Phil Verster: The consultant in question, CH2M Hill and now Jacobs, is performing very well.

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If I could again just clarify some of your earlier introductory comments: I think the terminology was used that a contractor was awarded three contracts. If I could just phrase it slightly differently, three contracts were competitively tendered separately in the market, those three contracts were competitively bid for and were awarded, over the different periods of time that they were in the market, to a successful bidder. I think that's really important, as a first step of clarification.

Secondly—again, forgive me; I'm just responding to the words. I just want to clarify the position maybe, because I just want to make sure I understand the question well. So the company—

Ms. Jessica Bell: The question is around the vendor performance review and how—

Mr. Phil Verster: No, no, but hang on—if I could just clarify, because we need to get to the vendor part. You said that the company ran out of money. The company didn't run out of money; the contracts were awarded for values that were anticipated at the time. These contracts are let on a basis of having a scope that can be extended because the type of—these aren't really consultants under the definition of what many parts of government would understand as consultants; these are engineers in their own engineering companies that are grouped under the category of consultants. These are engineers with specific knowledge bases that we don't have access to in our daily operations.

When we let these contracts, a dynamic feature of these contracts is that they are variable. They are set up with upset limits and for the scope adjustment that's possible over the life of a contract. That's a feature of these contracts. These contracts aren't based on: On day 1, you define you're going to buy 273 hours of consulting—I just made that number up in the context of the example. It's not a fixed-hour contract or a fixed-output contract; it's a variable contract of engineering resources as they are required over time.

Ms. Jessica Bell: Right. I guess what confuses me is that in the Auditor General report they had some concerns about this consulting company underperforming. There was a vendor performance review done in 2018, and I'm curious if that vendor performance review found that this company was performing very well or that you shared the Auditor General's concerns about the performance of this company.

Mr. Phil Verster: Yes, so, very positively and openly, I'll share with you that I don't think Metrolinx have always managed quite a lot of the sign-off of scope of this company as well as we could have. The Auditor General has pointed that out in the report, and we've put processes in place where the sign-off of the hours worked and the scope of work being done have been tightened and improved. I can also say that I sat down with Jacobs right at the beginning of 2017, when I joined in 2017, and made sure that Jacobs understood what we expect from them in their delivery going forward. I would say that the vendor performance management is an important part of what we've implemented. Jacobs, against our vendor performance management system, is performing well. What I would hold our hand up for is, as an organization, in the last 18 months, Metrolinx has gotten a lot better at managing these contracts.

I'll bluntly call it out: We didn't even have the right level of commercial capability, I would say, within Metrolinx 18 months ago, which we have now, which over the last 18 months we've put in place. Now I have a vice-president that looks after a commercial team that does nothing else but look at all of the commercial issues in the CPG teams, and that includes the performance of vendors. So in a very positive sense, I'd say that, again, things that the Auditor General finds in her audits are very much aligned with the type of improvements we have been making over the last 18 months.

Ms. Jessica Bell: One of the things that concerns me—and I do hope that this government looks into this in greater detail—is that I am also under the impression that this company, Jacobs, was approved for an additional large contract earlier this year. Is that so?

Mr. Phil Verster: That's not approved yet, but we intend to extend the contract. As I say, we intend to extend the contract for a specific scope and for a period of time, in full accordance with what the procurement rules are under which the contract has been set up—

Ms. Jessica Bell: Was it a sole-source bid?

Mr. Phil Verster: No, it wasn't.

Ms. Jessica Bell: Okay. So it was a competitive bid?

Mr. Phil Verster: As I said in the beginning, it was three competitively bid contracts.

Ms. Jessica Bell: This is the most recent one this year?

Mr. Phil Verster: This is three competitively bid contracts.

Ms. Jessica Bell: I'm pleased to hear that. I'm also—

Mr. Phil Verster: Can I just pick up on that? I want to just make sure that this is understood.

Ms. Jessica Bell: Yes.

Mr. Phil Verster: Even though it's fully within our procurement mandate to extend these contracts, we did two really important things before we came to the decision on how to proceed. The first one was, we did a competitive market assessment of what all of the other players in this part of the market in terms of engineering can deliver, should we go to market. The comprehensive indication from all of our market assessment that going out to the market here will create more uncertainty and risk for the programs and projects because these are engineering—embedded engineers in our process rather than come up with a competitive solution, and because—

Ms. Jessica Bell: But you can see my point, though, that the Auditor General has said that this company was underperforming for not a short period of time, and then a contract was approved or is about to be approved for this company to continue to work in Metrolinx—

Mr. Phil Verster: That's not correct

Ms. Jessica Bell: —even though the Auditor General has expressed some concerns about the quality of its work.

Mr. Phil Verster: I can just be really clear. It's not correct to say this company is underperforming.

Ms. Jessica Bell: Well, in the Auditor General's report they did say that they were not performing that well.

Mr. Phil Verster: If I could answer the question. Jacobs is not underperforming on its contract in terms of what it's delivering for us as the owner's engineer. We did a competitive market assessment, and on a competitive market assessment the market players that are available in the market to bid this would not deliver a more cost-competitive outcome. That's the first study that was done, to make sure that extending the contract is the right decision.

The Chair (Ms. Catherine Fife): Thank you, Mr. Verster. The Auditor General would like to comment, because it's a point—

Ms. Bonnie Lysyk: I would like to clarify. I think, during the course of the audit, it was identified by Metrolinx staff themselves that there were performance issues, and I think then when the 2018 review was done, there was confirmation that there were some performance issues. The audit was done and the report was issued in December 2018. The audit was done in 2018. Subsequent to that, I'm not sure what has resulted and that's likely the context of how you're answering the question, but at the time of the audit that was determined.

As well, there's a difference between tendering and extending contracts. Within our report, we talk about which contracts were tendered and extended and then which ones were tendered. I think for clarity, section 4.5 in the report deals with the difference between the extension and the tendering issue.

Ms. Jessica Bell: Thank you very much.

Mr. Phil Verster: And so if I follow through with the second half of the question, we benchmarked our cost for all of what we call "soft" services, which is the owner's engineer, engineering support, project management and the procurement of contracts, and we benchmarked that against the FDA or American practice that was recorded on 51 contracts over a period of something like 1974 to 2008, over a 34-year period. The average that agencies spent on those soft costs is around 15.1%, and in our case we are spending around 5.2%, about a third of that level of cost.

The point of that is that we'd like to give a sense that in the bigger scheme of how we do this, by procuring our contracts competitively, managing the costs on those contracts against a benchmark that is applicable to North America, we are well within what is common practice.

The last thought on control over Jacobs: We meet with Jacobs and the senior management of Jacobs every month. My head of the CPG team, together with Ehren and myself, meet regularly, therefore, to make sure that all of the strategic choices they make and the issues they may have that are affecting how they deliver the contract are delivered in exactly the same way as we would sit down with a third-party contractor.

Ms. Jessica Bell: How much more time have I got?

The Chair (Ms. Catherine Fife): You have just under four minutes.

Ms. Jessica Bell: Okay, great. Another question I have is around the change to how transit projects are selected by Metrolinx. To summarize, the business-led approach would essentially mean that—and this is me summarizing—some stations are fast-tracked if capital projects can be covered by the developer in return for the sell-off of air rights and the right to build on public land. That's just a simple summary.

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There are a lot of projects that are currently unfunded right now—

Mr. Phil Verster: Yes, that's correct.

Ms. Jessica Bell: There are 75 that are that are currently unfunded. I've been on the transit file for many years and I've seen a lot of projects announced, but that doesn't mean that they're funded.

One of my concerns when I saw this new business approach is: What happens to projects that don't have a strong business case but would significantly increase ridership and benefit the maximum number of Ontarians, which is one of the recommendations that the Auditor General had? What happens then, when it comes to prioritization?

Mr. Phil Verster: When you talk about the 75 projects—I'd just like to get the facts slightly clearer.

Ms. Jessica Bell: Yes, thank you.

Mr. Phil Verster: Seventy-five projects are what are in the regional transportation plan for 2041. They're not all unfunded. Several of those projects are funded. But because it's a plan till 2041—

Ms. Jessica Bell: I just want to clarify. Correct me if I'm wrong, but in this report, it says, "Metrolinx has developed a prioritization framework that evaluates the business case potential of the 75 unfunded transit projects in the RTP."

Mr. Phil Verster: What we'll do on that is, we'll come back to you and clarify exactly how many of those are funded and how many of those are unfunded.

Ms. Jessica Bell: Okay.

Mr. Phil Verster: What needs to be considered is that those are projects that are anticipated up to 2041, with different changes in the influx of people living in the region, integrated with what the other transit plans are, what our road planning is, what growth projections are and what business growth projections are. Therefore, when you see a number, even if that number is 75 unfunded projects, not all of those are intended to be funded at this stage because some of them happen in the future. That's the purpose of the regional transportation plan.

Ms. Jessica Bell: Yes, I can see that.

The Chair (Ms. Catherine Fife): One minute.

Mr. Phil Verster: The critical part of what we do with business case analysis—our business case analysis has four sections to it, and we have business cases during four stages of any program. In the business case analysis, very typically, the two things that drive a business case in a positive direction are an increase in ridership and a reduction in journey time. Those are the two biggest drivers that affect business cases.

As a general answer to your question about schemes that move large amounts of people, you typically find that any of the transit schemes that move large amounts of people are schemes that will typically have a benefit-cost ratio larger than 1, meaning that the economic benefits of that scheme exceed the cost if it's larger than 1.

Your question was about currently unfunded schemes that—

The Chair (Ms. Catherine Fife): Thank you, Mr. Verster. We're going to move on to the next, but maybe you can come back to that.

This next question cycle will be 18 minutes to the government side and 18 minutes to the official opposition. I understand you're going to continue, Mr. McDonell? Then I have MPP Barrett and then MPP Ghamari. Please divide that 18 minutes so that everyone gets a chance to speak, okay? Thanks.

Mr. Jim McDonell: Just a quick one. I know of a similar project in a different city. The turnover was very undetermined. Originally it was set up, I believe, for a year ago last winter; then it was April, September and November, and it's still not turned over. It's an LRT project. The result of that was the city trying to differentiate when the new workforce would come on for the trains versus the buses, and the extent of the cost of that.

Is there a confidence level that the date determination for, say, the Eglinton LRT is set in place and it will happen as projected? In that case, although we heard reassurance over and over again how it was on schedule, you're now a year and a half late, and those are huge costs for the city to absorb.

Mr. Phil Verster: Very clearly, if you consider how we do these agreements up front on operations—

Mr. Jim McDonell: In this case, a month before, they'd be confirmed, and then three months later they still hadn't happened. Each time they were being confirmed, and now they're undetermined. They're still rolling ahead—

Mr. Phil Verster: Right. So if you consider how we prepare for the introduction of an LRT in a city, Eglinton is a good example, as you point out. We're in the process now of finalizing what we call the O&M contract with the TTC, which will be the operator. The TTC, therefore, has full visibility of what our plans are for completion of the infrastructure as well as of the rolling stock.

To be specific, we have TTC employees based at Mount Dennis, at our maintenance facility, who are first-hand involved in seeing and experiencing and also being involved in the tests as much as they would like to be, in the testing of, for example, how the yard operations work and how the fleet works and the crew training. All of that happens as a lead-up to the eventual implementation. In the O&M agreements, which we establish with the TTC, it very clearly defines who has got what accountability and how this operation will be managed over the 30-year life cycle.

I think our method of doing this is pretty robust. About six or seven months ago, I started the process with Hamilton Hurontario and with both Mississauga and Brampton on the Hurontario line, as well as with the city of Toronto, on these O&M discussions to make sure that accountabilities and responsibilities and who does what is really clear. I'm relatively comfortable that we're in the right place.

Mr. Ehren Cory: I don't want to use time, but just briefly to add to Phil's answer, I think three things. We're two and a half years out, in the case of the Crosstown, from completion and things can still, between now and then, go wrong in schedule. To be clear, we can't sit here today and guarantee that it will be on time. There are weather events, skilled trades etc.

Mr. Jim McDonell: My question is the contingencies around that. In this case, you're two months before the turnover.

Mr. Ehren Cory: That's right, exactly.

Mr. Jim McDonell: And you're now 15 months after and it's still—I mean—

Mr. Ehren Cory: Exactly.

Mr. Jim McDonell: There's no excuse for that, as far as I can see. Meanwhile, the city is paying the bus drivers—

Mr. Ehren Cory: Have already got drivers and—

Mr. Jim McDonell: —an extra year and a half, plus the train people and the trains are sitting there waiting to work.

Mr. Ehren Cory: Right. Our whole scheme is around making sure, as we track towards that substantial completion in the fall of 2021, starting, really, a year out—a bit more than a year out—that there's a set of critical path activities: testing of the trains, getting drivers hired and trained up on the TTC side. Our job is, if they're running late, we can slow down those things early enough that you haven't hired up and have people sitting. That's what we need to do.

The way we are now tracking schedule, using earned value and being on top of exactly where they're at in their schedule, will give us early warning to make sure we don't ramp up our costs—all of us, I mean, including the TTC; all of us on the public sector side don't ramp up our costs and then sit waiting.

The Vice-Chair (Ms. Peggy Sattler): MPP Barrett.

Mr. Toby Barrett: Thank you for testifying. We wish you all the best. I may not have time to find out what all the budget figures are, but I wanted to ask about source of revenue. Metrolinx: Is it primarily the Ontario taxpayer? What is the breakdown? I know sometimes it's federal money we can expect, and fares.

Mr. Phil Verster: Are we referring to capital costs or operating expenditures?

Mr. Toby Barrett: Well, both. How about operating? I know capital is going to vary, depending on what you're buying.

Mr. Phil Verster: Yes. Capital costs and funding for projects vary. Some of it comes from local government, some of it comes from the provincial government, some of it comes from the federal government, depending on the scheme and how it's agreed and how it fits with the regional transportation plan and how it's decided upon in terms of preferences.

In terms of our operating costs, we operate roughly on a 60% revenue funded from our GO operations and our Presto operations and our UP operations, and therefore, a subsidy that varies. I think in the last year it was 38%—between 38% and 40% as an overall subsidy line.

Mr. Toby Barrett: That's from Ontario?

Mr. Phil Verster: Yes, from the government.

Mr. Toby Barrett: And the TTC—I should know this. What's the mix with Toronto transit?

Mr. Phil Verster: I cannot comment on that, sir.

Mr. Toby Barrett: In the testimony, I think Infrastructure Ontario mentioned tapping into the private market. I think you mentioned Metrolinx brings huge economic value. A number of years ago, I was talking to subway builders. Their company has been building subways in the city of London, England, for 150 years, and in New York City.

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I'm rural. I have virtually no transit. When I'm at a gas station, people worry about where their gas taxes are going and are they paying for Toronto subways. Sometimes, I'm stuck for an answer. But talking to the London and New York City company people, they said, "It's competitive. We'll have a couple of routes on the go. We decide whether to go to this build, to this stop or to that stop, depending on what the developers are willing to throw in for their condos and apartments."

How much revenue do we anticipate coming from—I'm thinking of some of this overseas hot money that comes in to build condos. What's their skin in the game? Because they, in my view, reap a huge economic benefit. Depending where a new stop opens, you're delivering their customers.

Mr. Phil Verster: So both of us will respond to that. We've recently launched a joint team that will look after maximizing what we get from transit-only development. But we've not waited and we've already closed two big, substantive agreements. On Mimico, in exchange for air rights over our station, we are securing roughly $20 million of refurbishment. We'll refurbish Mimico station with no cost to the taxpayer. We will also build Woodbine as a replacement for Etobicoke North at a cost of anything between $90 million to $136 million.

We have a pipeline, which Ehren's and my joint team are looking at, of several more opportunities. It's not easy to put an anticipated value—to answer your question—from TOD. Yes, we have good ideas and yes, we have estimates, but we've shared that with the ministry and we'll continue to share that when it becomes more publicly known. The fact of the matter is there is an opportunity here. We don't want to oversell the opportunity, as well, because there's an extent to which—

Mr. Toby Barrett: You mean, negotiating with developers?

Mr. Phil Verster: That's right; negotiating with developers. There is a real opportunity here. There are also other questions on equity in the sense that when we build a station and we have a development right on top of the station, we can secure some value from that development. But what about the building that's right next door to it and the one that's just two doors away from it? This is where other challenges such as land value capture and broader policy issues come into play. We're working very closely with government to make sure we get the right balance amongst all of those things.

But the premise of your question is absolutely correct. There is huge value here, and we're going after it.

Mr. Toby Barrett: Okay.

Mr. Ehren Cory: And I would just add that, historically, I think we have missed some of that opportunity when previous transit has been built in our jurisdiction. If you go out and announce the line, announce exactly where the stations are going to be and announce that you're using all public funding, and then say to the developer, "Would you like to pay some money for that," it's not as productive a conversation. So we are changing that.

As Phil said, we have the team, and the pipeline we're looking at is, how do you create competition amongst developers? How do you get them engaged earlier? Because if you don't get to them early in the planning process for the line, you miss some of the opportunity. When we look at, for instance, the subway builds, that's one of the first things we're looking at.

Mr. Toby Barrett: Okay, thank you.

The Vice-Chair (Ms. Peggy Sattler): MPP Ghamari.

Ms. Goldie Ghamari: Thank you, gentlemen, for being here today. It's been very, very informative. I just have a few questions. Most of the topics have been discussed already. Just for my understanding, because I do come from a trade law background—contracts and all that are so important to me—why hasn't Metrolinx just fined the contractor large sums of money whenever it misses a milestone? In the future, how could Metrolinx hold them to account in order to ensure that they're finishing a project on time?

Mr. Phil Verster: So Ehren's team manages the contracts. From a practical, owner's perspective, I'll just give the context of the answer. It's all defined, really, in the ownership model. The ownership model of a P3 procurement is we don't own the asset and, therefore, we don't own the schedule. The schedule is not ours.

We make stage payments when the schedule's completed, and substantial completion is an agreed date. Substantial completion typically has a huge payment linked to it, and—

Ms. Goldie Ghamari: Sorry. How could you hold them to account, then, in order to finish the project?

Mr. Phil Verster: We're going to give you that example now, so I can follow through.

Ms. Goldie Ghamari: Okay.

Mr. Phil Verster: At substantial completion, if we don't make that huge payment of substantial completion because they're not complete, they incur huge costs of interest rate payments against the amount of money that they've borrowed against, that they would get at substantial completion.

At substantial completion, the asset transfers to us. Up to then, equity and private business own the development, own the schedule, own the program—it gives them all of the degrees of freedom to put more effort in and to put more focus on design and come with more innovations on it. But if they don't hit the substantial completion date, it is hugely expensive for them, so there's a natural incentive in the procurement structure. You don't have to have a liquidated damages mechanism early in the contract, because in the end, if the independent certifier says, "Everything you promised to build is not there. You've not built it," the cost comes home to roost.

Mr. Ehren Cory: I would just add that that's true in the biggest way at substantial completion, but it's true every month in the Eglinton project where we're making construction period payments. If they're behind, they're getting less of those payments. It's the opposite of a fine, if you will. We're just not making payment. They are bearing the interest costs of that, because in their original model, they were getting paid X million in the month of March for work they've completed; they got less than that because they're behind. If that's the case, then they would be carrying those financing costs. Instead of a fine model, we hold the money and only pay on completion, and that puts the incentive on them.

Mr. Phil Verster: And even those payments are certified by an independent certifier.

Mr. Ehren Cory: By the IP, correct.

Mr. Phil Verster: It's not as if the contractor says, "I've done all of this work" and we just pay them. There's a contractual third-party, independent certifier that certifies the work.

Ms. Goldie Ghamari: Okay. Thank you. Just one final question: In your response to the Attorney General, you said that you would be developing a prioritization framework for projects identified in the 2041 RTP in consultation with municipalities. Could you just give me a bit of a status update on that? Has that occurred? What steps have you taken to do that?

Mr. Phil Verster: Absolutely. We've put together what we call a regional round table of all of the large cities and regional municipalities with large transit projects, and we've presented at the meeting. Before the last meeting—and I can't give you the exact date now, but it's several weeks ago—we presented the prioritization framework to them.

The prioritization framework very much builds on business case analysis and this benefit-cost ratio principle, the economic benefits versus the cost, but it also picks up on the question that I think we had earlier, which was about what the wider benefits are, which is not necessarily a factor in the benefit-cost ratio. If there are, for example, social benefits of any of these schemes, our prioritization framework, therefore, shows which projects bring the largest economic benefit and which other projects bring a social benefit, which is not necessarily translated into huge economic benefits.

Ms. Goldie Ghamari: Those are my questions. I just wanted to make a quick comment, though. I was looking at the summary status table with some of the undertakings that you've said that you were going to be working on, and I just wanted to comment that I personally appreciate the fact that most of these are either already completed or that there's a set timeline in place, getting on track to completion.

I just wanted to thank you for that, because it is a marked difference from some of the hearings that I've seen earlier, when it was with the previous government and a lot of things were still outstanding or there was not even a response. I just wanted to thank you for everything you're doing, working with the Auditor General to meet those recommendations.

Mr. Phil Verster: Thank you very much.

The Chair (Ms. Catherine Fife): Thank you. There's still two minutes. MPP Parsa, do you have a question?

Mr. Michael Parsa: Two minutes?

The Chair (Ms. Catherine Fife): Yes.

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Mr. Michael Parsa: The question I have is on—thanks again for being here—the Eglinton Crosstown LRT. The Auditor General noted that in 2010 the western portion of the LRT was dropped and this harmed the original vision of the connection to the airport. Can you just comment on this?

Mr. Phil Verster: The Eglinton Crosstown, as I understand it, was never envisaged to be a solution in itself. It was always envisaged as the first part, and a really important part, of an overall transit solution that could include Eglinton West and could include Eglinton East. Clearly, the decisions, then, that get made on whether we do end up building Eglinton West or Eglinton East will be made at the time after the Eglinton Crosstown is completed and the further forward visibility is there of what the growth is in the market, what ridership there needs to be, and the like.

If I get the gist of your question right, you can see now that the government has made the policy decision. There's a requirement to extend on Eglinton West, and it fits with the Crosstown initial build.

Mr. Michael Parsa: Okay. Thank you.

Do I still have time—

The Chair (Ms. Catherine Fife): You have 40 seconds.

Mr. Michael Parsa: Okay.

The next one here would be, how will the transit-oriented development save costs to Ontario taxpayers?

Mr. Phil Verster: Transit-oriented development: Every dollar we get from an agreement with developers for some exchange of value is a benefit for taxpayers. Our whole strategy is to develop a procurement method and a build method that doesn't hold up the transit build but also maximizes what developers can do either on our property or connected to our property. That's our strategy.

The Chair (Ms. Catherine Fife): Thank you very much. That concludes the question set from the government side. Moving to the final question set for the official opposition that is 18 minutes: MPP Bell.

Ms. Jessica Bell: Thank you.

I do want to go back to the questions that I had earlier around Metrolinx's business case approach or business-oriented approach to transit development. You were talking about that. I do want to just summarize a little bit. I see—correct me if you see it differently—two different ways of looking at business case. The one business case I see is, if you can get a developer to build a station for low or no cost, any return—or you give them access to the air rights and maybe access to build on public land. That's one element of business case. But then I think a different piece to that is ridership and journey time, which can have a business case but is a slightly different way of looking at it.

I guess my question is, what happens to projects—or more specifically, what projects are under threat of not proceeding because they maybe don't meet the business case argument of you can't find a developer to build a station but have benefits in terms of ridership and meeting the needs of Ontarians, which is a recommendation in the Auditor General's report?

Mr. Phil Verster: Right. Thank you very much. That's a really, really important question for clarification.

To be really clear, when a business case is done, where the funding comes from does not sway the economic benefits or costs. So when we do a business case—and the classic example would be GO expansion, which clearly shows that the vast proportion of economic benefits from a business case come from the ridership benefits and ridership time. The time people save by using public transit that either runs faster for existing riders or provides ridership options on transit, where we can move people from other modes onto transit, those benefits are the biggest economic drivers.

When we make a decision on who funds the station, we do a business case for a station—we assume that it's funded from somewhere, but we say, "What is the impact of this station on the network?" Whether it's privately funded or whether it's publicly funded, in economic terms, in economic benefit, it doesn't really make a difference.

Ms. Jessica Bell: You're telling me it doesn't make any difference in Metrolinx's planning on what they build first and what they build—

Mr. Phil Verster: Let me follow through. In terms of the benefit-cost ratio, where the funding comes from does not make a difference. Each of our business cases has got four sections to it. The four sections are, firstly, a strategic section that says, "Does something fit for strategic reasons other than economic reasons?" The second section is, "What are the economic benefits?" That's neutral of our transit benefits to the economy. Then there's a third section, which is, "What's the financial impact?" Who funds the station and then drives the cost is the financial impact. And then the fourth part of the business case is, "What is the operational case?"

So to come back to your question about who—

Ms. Jessica Bell: What projects are under threat of not proceeding?

Mr. Phil Verster: Who funds it? Clearly, "Who funds it?" is really important for us. We try to maximize that because there is a financial impact.

Just in terms of your question, separate the idea of a business case. The business case is a tool we use to look at the economics of something. We won't even consider building something if the business case doesn't work and the business case doesn't justify that this part of the network has a station on it.

Then there's a second part of the strategy on deciding how we approach the actual build, and that is to minimize the taxpayers' exposure, which is different from the economic analysis. That part of minimizing the taxpayers' contribution is where transit-oriented development comes in.

Ms. Jessica Bell: Okay. What I'm hearing from you is that projects are not impacted by the opportunity of having a developer build a station at a discounted cost. You're telling me that that has no impact on what gets built first and what gets built second.

Mr. Phil Verster: I'd like to answer just in terms of what our strategy is. We've got a very strong focus to secure value from transit-oriented development.

If a station has economic value in a part of the network where there is a funder that wants to fund it, that really wants the station to be built there—and I can give you a practical example. There are some stations in the Toronto area which may not have huge TOD development opportunities, where the city of Toronto says, "Well, given our other considerations of the strategic part of the business case, whether there's a strong economic business case or a strong financial case for it or not, we, as a funder, want to invest in that station," as the city has indicated in the past, then, as long as that station's location does not detract from the economic value of what we have on that line, we will build that station. So that's a choice of the funder.

What we will do in our business case analysis is that we will go through the business case and explain and share with the funder whether the case has a benefit-cost ratio that makes investment beneficial economically for the transit system. If it is or it isn't, we'll still say to the funder, "These are the choices. This is the impact on the network." But, for example, we'll say to our shareholder, "We recommend that this has a big economic impact," or we'll say, "This has an economic impact, which is X." The choice of who builds a station where still lies with the funder.

Clearly, if the economic business case is strong and the financial interest of the market and developers are strong in different parts of a city, and they say, "We'd like to invest in that because it is a real business opportunity," that is our preference.

I just want to make a distinction: Sometimes we think that transit-oriented development opportunities are only in the high-density, high-compact parts of cities. Very often it could be out in the region. For example, on the Kitchener line, we've had developers approach us that are considering development opportunities far outside of cities, but we can build a community around the station. So there are many different types of solutions that can present themselves.

Ms. Jessica Bell: Right. That is actually one of the things that sometimes concerns me, because one of my concerns is that a station might be built in an area that is farm fields, first, over an area that is very densely populated that clearly has a strong ridership demand and has a lot of latent ridership—people are giving up and taking Uber instead—and the station in the farm fields would be built before the station that would actually dramatically increase ridership far more quickly. I'm concerned by this approach, that it would lead to that reprioritization. Can you confirm for me clearly that that is not happening?

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Mr. Phil Verster: Yes. I would strongly recommend that—we can definitely have a separate conversation on how we do the business case methodologies, very publicly published, in terms of how we make decisions on stations.

I don't share your concern on the example you've referred to, farm fields versus—

Ms. Jessica Bell: Well, let me give you—

Mr. Phil Verster: Can I just—

Ms. Jessica Bell: Okay.

Mr. Phil Verster: We're not good at explaining, and I apologize for that.

When you look at how business cases work for stations in particular, in very simple terms, a massive driver of the business case is how many people are physically on the train at the point of reaching the station. Because when you stop the train there and you have 2,000 people on the train that's delayed for five minutes, you have a huge delay that can, in an economic value, count as negative. If only 10 people get on the train—and I'm just using an example—the economic benefit of 10 people getting a journey from that station is vastly outweighed by the negative impact it has on journey time.

So my earlier comment about stations and business cases hinging very much on journey times and numbers of people is sort of encapsulated in that example. Therefore, there's a natural dynamic when we evaluate service plans and when we evaluate ridership and impact on journey time that manifests itself in our business cases.

Ms. Jessica Bell: One of my concerns, and this happened I think before your time, with the previous government, is that stations were approved essentially behind closed doors. It was private. Kirby and Lawrence East GO stations were approved even though the ridership demand—the studies that Metrolinx had done indicated that ridership on those lines would actually decrease because it would increase journey time. So my fear is that moving to this model could result in future Kirby and Lawrence East situations happening again.

My question to you is, what processes are you putting in place to make sure those kinds of closed-door decisions don't happen?

Mr. Phil Verster: We have totally revamped the business case process. We have published it to its full extent on our website. We published an update; if you look carefully at the Auditor General's report again, the Auditor General picked up a number of assumptions on some of the economic variables, which we've adjusted and incorporated, and decisions we make on business cases we make as a board in public session. The reason why we do that is to give that transparency to it.

Can I just say one more thing? Business cases are crucially important. Personally, for me, they are really important for reasons which may be different to how other people think about that. A business case is often used as a decision-making tool and then sort of put on the shelf and kept on the shelf. For me, a business case is actually something that lives with a project from the decision-making stage right through to the post-implementation evaluation phase. So for five to 10 years, the business case must be alive so that it helps the project teams and the delivery teams throughout the cycle of build to make the right decisions on scope, trade-off and things that must be done during the project, because projects start off with an anticipation of benefits and costs and there are decisions they must make during the life cycle of the project. When someone comes back and says, "Well, we can't buy that parcel of land. Maybe we should have a smaller parking garage," that has huge economic consequences, which, if different parts of the organization make that decision, can have the wrong consequences. So business cases are crucially important for actually leading the project delivery over its lifetime.

Ms. Jessica Bell: One mechanism that I think would be useful, to ensure the decisions Metrolinx makes around new transit projects, would be to improve the transparency of Metrolinx, and that would include publishing ridership studies, publishing the business case analysis—and not just slide shows, but the more detailed, granular studies. Is that something that you could commit to?

Mr. Phil Verster: I'll confirm to you what we actually publish around business cases. If you don't mind, if I can just ask—Leslie, can you confirm what we publish on business cases already? I thought we published—

Ms. Leslie Woo: We do publish all the business cases—

The Chair (Ms. Catherine Fife): Would you mind please coming up, because now you're part of the Hansard, so you'll have to introduce yourself, and then you can say what you just said. And then you can just stay there, if you wish.

Ms. Leslie Woo: Thank you. Leslie Woo. I'm chief planning and development officer and chief development officer at Metrolinx and Infrastructure Ontario.

To the question of, "What do we publish from a business case standpoint?", we publish—and it has been an evolution, because we started with one type of business case in the early 2000s. As Phil mentioned, we have evolved. We have a four-stage business case model. We now publish progressively, through all those instances, all the business cases. We have the initial business case and the preliminary design business case. We just recently published the full business case for the GO expansion. We've yet to do, are about to do, our first-ever in-service business case, which is after a project is completed, and we track through. Because we've introduced this in the last year, our goal is now to move towards making sure that all that information is accessible and public, and we post it online.

Ms. Jessica Bell: Has the impact on ridership been published on the new Mimico station and the new WEG station?

Ms. Leslie Woo: It is embedded in the full business case of the GO expansion program.

Ms. Jessica Bell: So those specific ridership figures are released in terms of how it would change ridership?

Ms. Leslie Woo: I'll have to check if there is an actual table with the exact numbers, but the accounting for a station at Mimico, which is an existing station—it's not a new station—is included in the service reference concept in the full GO business case.

Ms. Jessica Bell: Thank you. One of my questions is also concerning GO electrification. I'm under the impression that Metrolinx is no longer 100% committed to GO electrification. Could you confirm or deny that?

Mr. Phil Verster: So—

Ms. Jessica Bell: I'm trying to think of a simple way of saying it, but are you committed to GO electrification?

Mr. Phil Verster: I understand exactly what the question is.

Ms. Jessica Bell: I'm running out of time here.

Mr. Phil Verster: No, no; very good. It's very important that we are going to the market on GO expansion by giving the market full innovation opportunities to come back with proposals to us. The personal conviction of myself is that an electrified solution is the right way forward, for reasons—it has all got to do with the excellent question you asked earlier about what drives business cases. Electrified trains often have faster journey times and therefore significantly more economic value. In our evaluation criteria, we will reward faster operations.

The bit of the question which I think is the message you want to pick up is that we're not specifying how that electrification is achieved. We have kept an open and agnostic view on whether it's OCS, overhead catenary system, which is wires at the top and electrified trains running underneath it, or whether it's something that's more modern technology, such as hydrogen fuel. Both result in an electrified train. The one is by electrified system and an electric train. The other one is by having a propulsion method such that it doesn't need an overhead catenary system. Somewhere in between, there are a number of other options as well. You currently get trains out there—it's called bi-mode trains—that run as a diesel on parts of the network that's not electrified, and on other parts of the network, on short electrification stretches, charge up their batteries and then run on batteries on some parts of the non-electrified system. So there are many combinations of solutions we use.

But the important point to your question is that we're not specifying which solution to pick—

The Chair (Ms. Catherine Fife): Last minute.

Mr. Phil Verster: We are allowing it to develop.

Ms. Jessica Bell: Okay, so help me out here. If a consortium approaches you and says, "Look, we can do the service improvements, but we're going to stick with diesel," is diesel still on the table?

Mr. Phil Verster: Diesel could be on the table—

Ms. Jessica Bell: So that means it is still on the table.

Mr. Phil Verster: Just let me follow through: Diesel could be on the table if there is a business case that gives net present value, which is really low. I find it really difficult, at the point of evaluation, to see that such a business case can succeed, because we will carry price risk for future carbon fuels, and that is not something I think is affordable.

The Chair (Ms. Catherine Fife): Twenty seconds.

Ms. Jessica Bell: He can't answer the question in 20 seconds.

The Chair (Ms. Catherine Fife): You really can't.

Okay, thank you very much. That concludes the question set. I just want to thank Mr. Verster for the report that you forwarded to us from Metrolinx on April 17. I think it was helpful for all committee members. Personally, thanks for coming to Kitchener to do the town hall. That was also helpful. I think your public apology, once the additional train and some of the scheduling issues happened, was very helpful, and I think that builds confidence in the whole process.

That concludes our time. I'd like to thank you all for appearing here today. We will now be going into closed session so that the committee may commence report-writing. I would ask all members of the public to leave the room at this time.

The committee recessed at 1440 and later continued in closed session.

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