

CITATION: City of Ottawa v. Rideau Transit Group General Partnership, 2025 ONSC 6396
COURT FILE NO.: CV-21-00086531-0000
DATE:2025-11-12

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: City of Ottawa, Plaintiff

AND:

Rideau Transit Group General Partnership, Defendant

BEFORE: Associate Justice Perron

COUNSEL: Sharon C. Vogel, James Little and Catherine Gleason-Mercier for the Plaintiff

Daniel A. Schwartz, Scott McGrath, Andrew Hanrahan and Jacob Svirsky for the Defendant

HEARD: November 3rd, 2025

ENDORSEMENT:

1. This is a motion by the City pursuant to Rule 30.02 seeking an order confirming the scope of RTG's documentary production.
2. The parties have negotiated an extensive draft discovery plan. The draft plan is approximately 86 pages long with several detailed appendices setting out the scope of production. The draft plan takes into consideration the Sedona Principles, for example, the parties have agreed on production from identified custodians (32 custodians from the City and 23 custodians from RTG) and key word searches.
3. At a case conference before me on September 9, 2025, the parties flagged that there was a dispute on the scope of productions. At that time, there were almost 300 items in dispute. I directed the parties to continue to discuss the issues with a view of narrowing the scope of disputed items, and I provided directions for this motion.
4. The parties made some progress in their continued discussions, but they continue to disagree on approximately 115 categories of documents. The disputed requests have been grouped into four categories which are particularized in four schedules that were filed on this motion.
5. Following a discussion at the outset of the motion, the parties agreed that they would make submissions on the four categories of documents which would allow me to make a determination on each category without hearing submissions on each individual request. The Court thanks the parties for grouping their requests into limited categories so that the motion can be determined in an efficient manner and make appropriate use of the Court's limited resources.

6. At the outset of their submissions, both parties made general comments on the overall scope of the production requests.
7. The City takes the position that the requested documents are relevant to the issues raised in the pleadings and that it would be proportionate to the litigation to compel RTG to produce them. The City submits that it has made significant compromises in terms of the scope of production of its documents, and that the majority of documents agreed upon to date are being produced by the City. However, the City submits that the majority of relevant documents in this action are in RTG's possession because of the contractual structure employed by RTG to perform the work, and that RTG is resisting production of those documents. The City seeks reciprocal, fair and proportionate disclosure from RTG and alleges that if RTG does not produce the documents, it would put the parties in an unequal position to bargain and/or litigate.
8. RTG's position is that the City's motion is a fishing expedition and that the City is seeking to dramatically expand the scope of discovery by including requests for documents that are not relevant. RTG relies heavily on the proportionality factors set out in Rule 29.2 and submits that the requests would cause them to incur significant expense to respond, that it would not be possible to meet the current production deadline of December 19, 2025 such that the action would be delayed and that the requests would result in an excessive amount of documents being produced. RTG's position is that it has also made significant compromise in expanding its productions and narrowing its requests.
9. Below is my determination on each of the disputed categories.

Category 1: Documents between and among RTG employees and between and among RTG and its subcontractors, consultants and representatives (the Subcontractor Documents)

10. The Subcontractor Documents essentially consist of internal communications within RTG employees as well as communications between RTG and its subcontractors.
11. Due to the structure of the contract, the City alleges that it does not have access to any of these documents because its main point of contact was with RTG. The City's position is that these documents would represent approximately 30% of the production requests and that the requests have been tailored to relevant allegations regarding design and construction issues that are raised in the pleadings. Further, the City's requests only seek internal communications with respect to the 23 custodians that have already been identified and agreed to by RTG.
12. As an example, the City referred to the first request in Schedule 1 which seeks documents pertaining to RTG's acceptance and/or use of ash wood upon delivery, including any documents regarding RTG's analysis or review of the ash wood. In other words, the City seeks any internal documents dealing with RTG's inspection of the ash wood upon receipt and whether RTG made any conclusions as to the quality and/or fitness of the use of that specific ash wood for the project.

13. RTG's position is that the issues to be determined in the action focus on identifying/interpreting the parties' obligations under the contract and whether or not the parties complied or breached those obligations. They submit that "internal chatter and debates" amongst RTG employees and/or its subcontractors are not relevant because the documents do not form part of the factual matrix because they weren't disclosed to the City and that such documents will not assist the Court in determining whether the parties complied with their contractual obligations. They submit that just because a background fact is mentioned or alleged in the pleading, that does not make the issue relevant.
14. RTG also points out that it will be producing relevant internal communications on certain requests that it has already agreed to. For example, RTG concedes that how RTG stored the ash wood and whether RTG did any sample testing on the wood is relevant and they have agreed to produce those documents. RTG concedes there might be some overlap in the City's requests. But they reiterate that internal chatter within RTG, including RTG's internal responses on letters or directions received from the City on those issues is not relevant to determine the contractual claims.
15. In addition, RTG disagrees that there is an imbalance between the parties on access to productions and takes the position that the City already has access to the most relevant documents. RTG submits that while it was responsible for the design and implementation of the work, the project was a public/private partnership and the City was involved every step of the way including to review and approve designs, and that the City received monthly reports and established numerous committees to provide input and feedback. RTG referred to several excerpts from the contract setting out the parties' obligations on document production, review and/or reporting etc.
16. RTG also submits that this category of documents would be burdensome to produce, would likely result in hundreds of thousands of documents and cost hundreds of thousands of dollars to review/produce and that it would be highly unlikely to meet the current production deadline.
17. I disagree with RTG that this request is a fishing expedition by the City. The City has not made a blanket request for all internal communications. The City has narrowed and particularized its requests to matters in issue in the action based on the allegations in the pleadings.
18. There may very well be changes to the Rules in the foreseeable future that will alter the scope of productions in civil actions, however, the parties' current obligations are governed by relevancy as defined by Rule 30.02, proportionality pursuant to Rule 29.2 and the applicable caselaw.
19. Rule 30.02 requires parties to produce documents relevant to any matter in issue and it is firmly established that "pleadings determine the ambit of production. Where a party raises an issue in its pleading, all documents relevant to that issue shall be disclosed and produced.¹" The Court has also found that "a document is "relevant" if it is logically connected to and tending to prove or disprove a matter in issue²".

¹ [Sky Solar \(Canada\) Ltd. v Economical Mutual Insurance Company, 2015 ONSC 4714, at para 25.](#)

² Sky Solar at para 25 citing Morawetz J. in [Sycor Technology Incorporated v Kiaer, 2012 ONSC 5285 at para 23.](#) See

20. The pleadings in this action contain detailed allegations. The pleadings are approximately 119 pages in length.
21. Turning to the example for internal communications dealing with RTG's inspection of the ash wood on receipt and its fitness for use, those issues have been expressly raised in the City's Reply pleading including at paragraph 111 where the City pleads that "RTG accepted the ash wood upon delivery and did not raise any concerns with the ash wood supplied by the City [...and that] RTG knew, or ought to have known, based on due diligence which it did or ought to have performed, of any such issues with the ash wood at the time it accepted delivery)".
22. Emails amongst RTG employees and/or with its subcontractors on their observations of the ash wood supplied by the City at the time of delivery are clearly relevant to the alleged breaches of contract and also to the issues of damages including mitigation. These issues are squarely raised in the pleadings and the documents are relevant to prove or disprove the allegations.
23. In my view, RTG's position on relevancy is much too narrow and does not comply with the Rules and caselaw. This is a contractual dispute arising from a construction project. Internal communications by those completing the work and communications with their subcontractors on the alleged contract obligations and any breaches of contract cannot be generally categorized as irrelevant. The City's request is not akin to granting a party unfettered access to one's filing cabinet.
24. Recognizing that limited examples were referenced during submissions pursuant to the agreed scope of argument for the motion, I confirm that I am satisfied that the above rationale would apply to all internal communications covered by this category. Generally, the internal communications regarding the design and build issues as pled, and who knew what and when in respect of the alleged breaches of contract are relevant not only to the issue of the alleged breaches but also to damage issues including mitigation and limitation period defences.
25. I therefore find that the Subcontractor Documents are relevant.
26. The City's claim seeks damages in excess of \$130,000,000. RTG's counterclaim seeks damages in excess of \$200,000,000. Each head of damages sought in the counterclaim is in the millions of dollars and the damages sought by RTG over the use of ash wood on the project are approximately \$70,000,000.
27. When considering disclosure obligations in cases where significant damages are claimed, the Court has found that "the law should favor a generous interpretation of disclosure requirements under the Rules of Civil Procedure and therefore a broad scope of document production³".

also [Insite Construction Management Inc. v Ambien Mechanical Ltd., 2024 ONSC 457, at para 8.](#)

³ [Seelster v HMTQ and OLG, 2015 ONSC 908 at para 155.](#)

28. That said, the Rules clearly require the Court to consider proportionality and subrule 29.2.03 requires the Court to consider specific factors in making its determination on production. The proportionality rule applies to large and small cases but should not be used as a tool to expand production in large cases. Proportionality now governs discovery principles and is not merely an afterthought.⁴
29. With respect to RTG's submissions on the factors set out in subrule 29.2.03, RTG did not file an affidavit because it understood from my previous directions that I did not want the parties to file affidavits on this motion. My endorsement of September 9, 2025 directed the parties to file memorandum of 5 pages double-spaced "with limited evidence/exhibits that are essential to the determination of the motion". An affidavit addressing the proportionality factors should have been produced if this was essential to RTG's position on the motion.
30. In any event, I asked counsel to explain what investigation/searches had been done to date to support their assertion that the requests would result in hundreds of thousands of documents at a cost of hundreds of thousands of dollars. Counsel indicated that they had already collected documents from the 23 agreed-upon custodians and that there were approximately 2,000,000 documents in the electronic database without running any key word searches pursuant to the discovery plan. RTG conceded that they wouldn't be surprised if the productions would be in the hundreds of thousands of documents based on the already agreed-upon searches.
31. However, RTG did not have an estimate (i.e. from those who will be tasked with running the electronic searches and/or reviewing the documents) and it did not appear that any sample searches had been run in the current database. It does not appear that RTG's concerns are supported by any concrete or objective data or estimates.
32. I am not of the view that the additional production requests would offend the rule of proportionality.
33. I accept that, generally, the productions of both parties in this matter will no doubt result in a significant number of productions and that the production phase will be a costly exercise for both parties.
34. However, RTG has already collected the documents from the 23 custodians. RGT concedes that this category of production will not require them to request documents from other custodians. Running additional key word searches in the existing database, and reviewing the resulting documents for relevancy, should not be a disproportionately burdensome exercise.
35. In addition, based on each party's submissions, the review of documents has already begun. The parties have over a month remaining to comply with the deadline for production. The deadline to complete examinations is June 30, 2026. I do not accept that these additional requests would unduly delay progress of the action.
36. The internal communications are clearly not available to the City from any other source.

⁴ [Hanson v Stollery Estate, 2017 ONSC 528, at paras 60 and 61.](#)

37. Considering the substantial quantum of damages sought in the proceedings, the significant extent of the already agreed-upon scope of productions and the absence of any objective evidence to support RTG's concerns on proportionality, I am satisfied that this category of production is proportionate.
38. For the reasons set out above, RTG shall produce the Subcontractor Documents and include them in the discovery plan.

Category 2: Reports and/or updates to lenders, executive committee, management committee, board of directors and other relevant senior management teams of each of RTG and OLRT-C and resolutions and meeting minutes of the same (the Board Documents)

39. There are approximately 38 requests made by the City for production of the Board Documents.
40. The City's position is that contemporaneous reporting to the board and other senior leadership is relevant because it is evidence of what RTG knew and when regarding the issues in dispute, and of what was being reported and determined about potential liability and risk exposure. It also submits that reports to lenders are relevant because this is a Design-Build-Operate-Finance model contract. The City submits that it has narrowed its request only to seek relevant reports, resolutions and meeting minutes on specific issues and it is not looking for emails between individual directors.
41. They City has also agreed that this request could be reciprocal and is prepared to produce the same documents involving City Council and any relevant committee.
42. As to any concerns arising from commercially sensitive communications and redactions, the City submits that RTG can move for a sealing order at an appropriate time but that is not an issue that should prevent production of the documents in the discovery plan. The City's position is that it would be more efficient to determine the scope of production on this category now to ensure that discoveries are productive. The purpose of the discovery plan is to avoid future disputes over production.
43. RTG's position is that the documents are not relevant because senior management executives were not involved in the day-to-day issues on the project and they are not involved in the litigation. In addition, the City has not alleged that RGT failed to make timely reports to the board. RGT also submits that this category would likely require requesting documents from different custodians and require additional searches.
44. For example, RTG referred to item B #33 on Schedule 2 where the City seeks production of Board Documents pertaining to the alleged new weather directive and whether this constituted a variation. RTG's position is that whatever may have been reported up the chain on what constituted a "variation" under the contract is nothing but an opinion expressed by RTG and would not be helpful to the Court to determine the parties' obligations or whether there was a breach.
45. RTG submits that the City has failed to establish an evidentiary foundation for these requests and that the issue should be canvassed at discovery. RTG also submits that this

request would be extremely burdensome as most of the documents will be either privileged, commercially sensitive and/or confidential such that a careful review of the documents would be required to make extensive redactions.

46. That said, RTG indicated that to move the litigation forward, it has not pursued its own requests for documents from City Council but if it is compelled to produce this category of documents, the City should be compelled to do the same.
47. The fact that both parties made a request for production of documents under this category at some point in time during their discussions on the discovery plan, and the fact that both parties now take the position that any such request should be reciprocal, strongly suggests that the parties recognize that the documents are relevant to the issues in dispute.
48. With respect to relevancy and the allegations raised in the pleadings, for the same reasons that I found that RGT's internal communications and communications with the subcontractors are relevant, I also find that reports and communications to the board and senior management would be relevant. What was being reported up the chain would not only be relevant to the issue of the alleged breaches but also relevant to the issue of damages including mitigation and limitation period defences. Meeting minutes and resolutions setting out actionable items on the issues in dispute would be particularly relevant.
49. That said, I accept that production of this category of documents may involve issues of privilege requiring redactions to the documents. I also accept that production of "reports and/or updates" may require RGT to seek production from several additional custodians.
50. The parties have already contemplated that redactions may be necessary. Section 4 of the draft discovery plan provides that redactions may be made on the basis that the information is protected by privilege and that if a party chooses to redact portions of a document, the basis for the redaction must be identified, and redacted documents must be identified in Schedule A. The parties have also agreed to produce a Schedule B which may be categorized in respect of privileged documents and that particulars regarding the author, recipient and date of Schedule B documents will only be required where government interest immunity is asserted.
51. If the request for "reports and/or updates" is excluded from this category, the scope of requested documents is very narrow and is limited to meeting minutes and resolutions where specific issues in dispute were discussed and/or arose. Production of minutes of meetings and resolutions should be relatively easy to locate and should not require extensive searches from a number of other custodians. In addition, even accepting that some redactions may be necessary, the cost associated with producing the documents should not be unduly expensive.
52. The request for "reports and/or updates" in this category can be further canvassed by the City at discovery but for the reasons set out above, I find that the requests for production of the meeting minutes and resolutions are relevant and proportionate, and that this production request should be reciprocal (as both parties have requested) such that each of the City and RGT are required to produce the relevant meeting minutes and resolutions that fall under this category.

Category 3: Documents pertaining to any receipt of proceeds from any source of insurance, including how much was paid, from whom and when (the Insurance Related Documents)

53. The City confirmed during its submissions that this request is limited to documents showing how much has been paid pursuant to insurance, from who the funds were received and when the funds were received for each head of damages claimed by RGT. The City does not seek production of the entire insurance claim or the supporting documents submitted for each claim. The City has also agreed to produce the same documents as relates to its Builders' Risk Insurance Policy.
54. RTG takes the general position that the requests are overbroad and unnecessary and that these requests can be appropriately addressed by the City at examinations for discovery. During submissions, RTG stated that the wording of the City's requests for production under this category is drafted much more broadly and would include email communications dealing with insurance claims among others.
55. No serious objections on relevancy or proportionality arise from this request. RTG started its submissions on this category by stating that RTG was not suggesting that the City wasn't entitled to the documents, but that RTG doesn't think the requests are appropriate in advance of discovery.
56. I agree with the City that the main purpose of having a discovery plan is to narrow issues prior to examinations and ensure that examinations are as productive as possible. There is no legitimate reason to hold off on producing the documents under this category. The documents are clearly relevant, very narrow in scope and they should be easy to locate and produce. Producing the documents now will also ensure that the parties can make more informed inquiries at examinations on this issue.
57. To the extent there was any ambiguity in the scope of the City's request, I confirm that for each applicable head of damages, the parties are hereby each ordered to produce documents showing the quantum received from insurance proceeds, the payor of the funds and when the funds were received.

Category 4: Miscellaneous Requests

58. This category included only 5 items therefore each item was reviewed during the motion. Below are my rulings with reference to the discovery plan as appeared on Schedule 4:
- a. App A #2: documents of RTG's due diligence during the proposal period pertaining to the City's supply of ash wood:
- RTG's claim relates to fitness of use of the actual ash wood supplied by the City. Documents regarding general due diligence about ash wood products is not relevant to the issue in the action.

- b. App A #29: documents pertaining to RTG's claim that VD-139 caused disruption costs including any analysis, review, findings, conclusions, or opinions prepared by RTG or for RTG:

RTG agrees to produce documents supporting how this VD caused disruption costs/damages but they object to producing the documents targeted by the underlined portion of this request on the basis that those documents would be internal and that redactions would be required due to privilege. The City's position is that this is a live issue in the action and that RTG's costs for this head of damage have significantly increased from previous estimates and it is relevant to know why the costs increased and how that was calculated.

The City's request is broad and the City obviously has knowledge of the quantum of prior costs claimed. The relevance of RTG's change in position is not clear. I agree with RTG that this request should be confined to the non-underlined portion at the outset (documents to support the current costs/damages claimed) and the City can further explore this issue on examination for discovery if it continues to take the view that prior cost estimates are relevant.

- c. App A #9: documents pertaining to RTG's claim for damages/costs related to VN-100 and VE-DCE-280:

RTG agrees to produce these documents and they shall be produced.

- d. App C #30 (a) and (b): documents pertaining to RTG's delays in delivering the vehicles including: a) analysis/assessment etc prepared by RTG, b) schedule analysis pertaining to the delayed delivery and, c) reports/updates to lenders/executive/board etc.

The City's position in the litigation is that it is not responsible for delays but that the delays were caused by RTG, including inactions related to the design, manufacture and delivery of the vehicles. The City submits that this issue has been raised in the pleadings and that RTG's production of these documents should not be limited to the scope of the allegations made by RTG on what RTG alleges are the causes of the delays in deliver of the vehicles (i.e. that the City delayed approving design elements of the vehicles).

RTG has agreed to produce documents regarding delays in producing the vehicles but is not prepared to produce documents on all other issues raised in this request on the basis the request is overly broad. For example, RTG will produce documents on delays by the City in approving design elements but it is not prepared to produce documents regarding labour force or procurement or supply chain issues. RTG submits that there is no foundation for the City's request for those documents and this can be explored at examinations.

The City's reply contains several paragraphs where it is alleged that delays were caused as a result of design, manufacture, procurement and/or delivery of the vehicles which it alleges were the responsibility of RTG. RTG conceded that these documents would likely be available through the 23 agreed-upon custodians.

I agree with the City that RTG cannot limit relevancy to only the allegations raised by RTG in its pleading. That is not the test for relevancy (see analysis in Category 1 above). While the City will bear the onus of proving its allegations at trial, it is entitled to production of documents causing delays to the vehicles for all allegations raised in the pleadings.

These documents are relevant and in keeping with my analysis above on proportionality of documents for the production of the Subcontractor Documents, I limit the scope of RTG's searches under this request to the 23 agreed-upon custodians. Running additional key word searches in the existing database should not be overly time consuming or burdensome.

For the "reports and/or updates" request under c), pursuant to my determination on production of the Board Documents, RTG need only produce minutes of meetings and resolution at the outset and the issues can be further canvassed at examinations.

- e. App E #13(b): documents pertaining to any costs arising under the Hydro Ottawa Planning Report and Letter of Agreement, including any analysis, review, findings, conclusions, or opinions substantiating such costs.

This request includes additional documents but RTG only disputes the underlined portion of the request for the same reasons it objects to producing the documents for #A-29 above. The City's position on the relevancy of this request is the same as for request #29 above and the VD on ashwood.

I agree with RTG that this request should be confined to the non-underlined portion at the outset (documents to support the current costs/damages claimed) and the City can further explore this issue on examination for discovery if it is of the view that RTG has produced insufficient documents supporting these costs/damages.

Conclusion and Summary of Production Orders

59. For the reasons set out above, the following documents shall be produced and included in the discovery plan:

- a. RTG shall produce the Subcontractor Documents;
- b. The City and RTG shall produce relevant minutes of meetings and resolutions pertaining to the Board Documents (with the City producing minutes of meetings of City Council and relevant committees). The request for "reports and/or updates" in this category can be further canvassed by the City at discovery.
- c. The City and RTG shall produce the Insurance Related Documents. These documents are limited to documents showing the quantum received from insurance proceeds, the payor of the funds and when the funds were received.
- d. App A#2: these documents are not relevant.

- e. App A#29: RTG shall produce the non-underlined portion of this request and the City can further explore this issue on examination for discovery if it continues to take the view that prior cost estimates are relevant;
 - f. App C #30: RTG shall produce the documents but this request is limited at the outset to relevant documents in the possession of the 23 custodians. For item c), this request is limited at the outset to minutes of meetings and resolutions.
 - g. App E #13 b): RTG shall produce documents pertaining to the non-underlined portion of this request at the outset and the City can further explore this issue on examination for discovery if it is of the view that RTG has produced insufficient documents supporting these costs/damages.
60. Neither party filed a costs outline on the motion. The parties had not reached agreement on costs.
61. The Rules and practice directives are clear that any party seeking costs of a motion must be prepared to address costs at the motion and must have delivered a costs outline prior to the commencement of the motion.
62. Unless the parties reach an agreement on costs, there shall be no costs of this motion.

Date: November 12, 2025



Associate Justice Perron