

In the Matter Of:
Seelster Farms Inc., et al. vs
Her Majesty The Queen In Right Of Ontario, et al.

RODNEY SEILING
December 15, 2017

neelsons

77 King Street West, Suite 2020
Toronto, ON M5K 1A2
1.888.525.6666 | 416.413.7755

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Court File No. 272/14
ONTARIO
SUPERIOR COURT OF JUSTICE
B E T W E E N :

SEELSTER FARMS INC., WINBAK FARM OF CANADA INC.,
STONEBRIDGE FARM, 774440 ONTARIO INC., NORTHFIELDS
FARM INC., JOHN MCKNIGHT, TARA HILLS STUD LTD.,
TWINBROOK LTD., EMERALD RIDGE FARM, CENTURY SPRING
FARMS, HARRY RUTHERFORD, DIANE INGHAM, BURGESS
FARMS INC., ROBERT BURGESS, 453997 ONTARIO LTD.,
TERRY DEVOS, SONIA DEVOS, GLENN BECHTEL, GARTH
BECHTEL, 496268 NEW YORK INC., HAMSTAN FARM INC.,
ESTATE OF JAMES CARR, deceased, by its executor
Darlene Carr, ESTATE OF GUY POLILLO, deceased, by
its executor Carolyn Polillo, DAVID GOODROW,
TIMPANO GAMING INC., CRAIG TURNER, GLENGATE
HOLDINGS INC., KENDAL HILLS STUD FARM LTD., ANDY
KLEMENCIC, TIM KLEMENCIC, STAN KLEMENCIC, JEFF
RUCH, BRETT ANDERSON, DR. BRETT C. ANDERSON
PROFESSIONAL VETERINARY CORPORATION, KILLEAN ACRES
INC., DECISION THEORY INC., 296268 ONTARIO LTD.,
DOUGLAS MURRAY MCCONNELL, QUINTET FARMS INC., KARIN
BURGESS, BLAIR BURGESS, ST. LAD'S LTD., WINDSUN
FARM INC., SKYHAVEN FARMS, HIGH STAKES INC.,
1806112 ONTARIO INC., GLASSFORD EQUI-CARE, JOHN
GLASSFORD, GLORIA ROBINSON and KEITH ROBINSON
Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and
ONTARIO LOTTERY AND GAMING CORPORATION
Defendants

--- This is the Rule 39.03 Examination of RODNEY
SEILING, a non-party witness herein, taken at the
offices of Neeson Court Reporting Inc., 77 King
Street West, Suite 2020, Toronto, Ontario, Canada,
M5K 1A2, on Friday, the 15th of December, 2017.

1 A P P E A R A N C E S :

2

3 Jonathan C. Lisus, Esq. - for the Plaintiffs.

4 Ian C. Matthews, Esq.

5 & Vivien Milat, Esq.

6

7 Eunice Machado, Esq. - for Defendant Crown.

8 & Meagan Williams, Esq.

9

10 H. Michael Rosenberg, Esq. - for Defendant, Ontario

11 Lottery and Gaming

12 Corporation.

13

14 ALSO IN ATTENDANCE:

15 Dr. Patrick Meyers.

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25 REPORTED BY: Bonnie Lynn van der Meer, CSR

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I N D E X O F P R O C E E D I N G S

DESCRIPTION	PAGE
WITNESS: Rodney Seiling; Sworn.....	9
Examination by Mr. Matthews.....	9
Examination by Mr. Rosenberg.....	339

---[Reporter's note: The following indices of undertakings, under advisements, objections and refusals are provided for the assistance of counsel and do not purport to be complete or binding on the parties herein.]

I N D E X O F U N D E R T A K I N G S

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: (None).

I N D E X O F U N D E R A D V I S E M E N T S

The questions/requests taken under advisement are noted by U/A and appear on the following pages/lines: (None).

1 I N D E X O F O B J E C T I O N S

2 The questions/requests refused are noted by O/B and
3 appear on the following pages/lines: 142:12,
4 191:21, 211:7, 219:15, 219:16, 252:13, 255:8,
5 259:20, 259:21, 260:24, 261:16, 261:17, 262:4.

6

7

8 I N D E X O F R E F U S A L S

9 The questions/requests refused are noted by R/F and
10 appear on the following pages/lines: (None).

11

12

13 I N D E X O F E X H I B I T S

14 EXHIBIT NO. DESCRIPTION PAGE/LINE

15 1: Summons to Witness issued to Rod Seiling..10:10

16 2: A news release from the Government of
17 Ontario, October 30th, 2006, entitled "Rod
18 Seiling nominated for Ontario Racing
19 Commission Chair.".....12:15

20 3: Horse Racing Industry Transition Panel
21 Interim Report dated August 17, 2012; Doc ID
22 Number SB 3784.....26:14

23 4: A flowchart entitled Ministry of Energy and
24 Infrastructure, Slots at Racetrack Program,
25 Revenue Distribution, dated May 2009; Doc ID

1	Number CR 27619.....	31:7
2	5: Legislative Assembly of Ontario, Standing	
3	Committee on Government Agencies, Report on	
4	Agencies, Boards and Commissions; Doc ID	
5	Number SB 902.....	45:21
6	6: 2006-2007 annual report of the Ontario	
7	Racing Commission; Doc ID Number SB 1752.....	95:22
8	7: A letter from Minister Dwight Duncan to Rod	
9	Seiling, dated January 15, 2010, Doc ID Number	
10	CRE 85399; and 2009 through 2012 business plan,	
11	Doc ID Number CR 25331.....	101:11
12	8: A September 10th, 2010 letter to Rod	
13	Seiling from Minister Duncan, approving the	
14	2010 through 2013 business plan, Doc ID Number	
15	CRE 85441, along with attached business plan,	
16	Doc ID Number CR 2260.....	102:22
17	9: A letter from Rod Seiling to Minister	
18	Duncan, dated March 31, 2011; Doc ID Number	
19	CRE 85415.....	103:19
20	10: June 29th 2011 letter from Minister Duncan	
21	to Rod Seiling, Doc ID Number CRE 85410, and	
22	business plan from 2011 to 2014, Doc ID Number	
23	CR 2238.....	111:24
24	11: Review of HIP Final Report dated March	
25	2008; Doc ID Number CRE 314295.....	118:8

1 12: A cover letter addressed to Mr. Lehman,
2 dated September 2nd, 2011, Doc ID 274150, and
3 signed MOU between the Ministry of Finance and
4 the ORC, also Doc ID Number CRE 274150.....133:11
5 13: Briefing note, Doc ID Number CRE
6 101515.....138:17
7 14: Doc ID Number CR 27833.....144:23
8 15: A bundle of advertisements, Document ID
9 Numbers SB 894, SB 895, SB 896, SB 897, SB 889,
10 SB 898, SB 899, SB 889.....148:12
11 16: A bundle of financial projections; Doc ID
12 Numbers SB 4481, SB 3932, SB 12657.....156:4
13 17: 2012 financial plan for the Horse
14 Improvement Program, dated October 24th, 2011;
15 Doc ID Number CRE 312903.....164:9
16 18: Copies of Integrity Matters; Doc ID
17 Numbers SB 1462, SB 1474, SB 1484, SB 1486,
18 and SB 1490.....169:2
19 19: Two covering letters, dated January 26,
20 2012, and January 27, 2017, Doc ID Numbers CRE
21 85407 and CRE 85421, with 2008 and 2009 HIP
22 annual reports.....180:10
23 20: News release and accompanying report, Doc
24 ID Numbers SB 5389 and SB 5371.....183:5
25 21: A memo for a March 24th, 2011 meeting at

1 OLG's office; Doc ID Number OLGSB 586.....189:16
2 22: An internal OLG document dated November
3 25th, 2010; Doc ID Number OLGSB 477.....191:10
4 23: Minister Duncan's speech; Doc ID Number
5 CRE 297789.....206:10
6 24: An October 2011 e-mail chain; Doc ID
7 Number CRE 94799.....212:21
8 25: Handwritten notes dated February 9th, 2012,
9 with transcription; Doc ID Number CR 1590.....217:2
10 26: A transcription of two radio ads; Doc ID
11 Number CRE 81193.....221:11
12 27: An e-mail chain among a number of people
13 in Ministry of Finance on March 14th, 2012; Doc
14 ID Number CRE 32227.....234:8
15 28: Submission of the Chair for the ORC
16 Board meeting of March 2012; Doc ID Number
17 CRE 274260.....238:11
18 29: A covering e-mail from Ministry of Finance
19 and its attached letter from Mr. Seiling to
20 Mr. Godfrey, Doc ID Numbers CRE 24235 and
21 CRE 24236.....246:4
22 30: An e-mail amongst people in Ministry of
23 Finance, August 2012; Doc ID Number CRE
24 318221.....253:15
25 31: E-mail sent August 3rd, 2012; Doc ID

1	Number CRE 29291.....	261:9
2	32: Doc ID Number CRE 84904.....	263:14
3	33: Document entitled "Backgrounder re:	
4	Restructured ORC.".....	265:19
5	34: Packet of documents produced by	
6	Mr. Seiling.....	267:5
7	35: Doc ID Number CRE0094758; 2009 to 2010	
8	ORC Annual Report.....	365:8
9	36: ORC's 2007 to 2010 business plan.....	373:4
10	37: Doc ID Number CRE0230844.....	393:11
11	38: Doc ID Number SB6829.....	402:18
12	39: Doc ID Number SB5410.....	416:14

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10:09:55 1 ---Upon commencing at 10:09 a.m.

10:09:55 2 RODNEY SEILING; SWORN.

10:09:56 3 EXAMINATION BY MR. MATTHEWS:

10:09:56 4 1 Q. Good morning, Mr. Seiling.

10:09:58 5 My name is Ian Matthews. I have with

10:10:01 6 me my colleague, Mr. Lisus, and my colleague,

10:10:04 7 Mr. Milat. We are lawyer for the Plaintiffs in a

10:10:09 8 lawsuit brought by Standardbred horse breeders

10:10:15 9 against the Government of Ontario and OLG.

10:10:16 10 You are here today, being Examined

10:10:18 11 pursuant to a Summons to Witness that was served

10:10:20 12 upon you.

10:10:20 13 Is that correct?

10:10:20 14 A. Yes, it is.

10:10:22 15 2 Q. I have passed you a copy of the

10:10:25 16 Summons. And is this the summons you received,

10:10:27 17 Mr. Seiling?

10:10:28 18 A. It appears to be so.

10:10:28 19 3 Q. And I see that on the second page

10:10:30 20 of the Summons, if you could take a look, there's a

10:10:34 21 number of document requests, that you're asked to

10:10:37 22 bring documents and produce them at today's

10:10:39 23 Examination.

10:10:40 24 And I understand you've searched your

10:10:42 25 records and you have brought and produced, to all

10:10:45 1 counsel here today, copies of any documents you
10:10:48 2 have in your power, possession and control;
10:10:50 3 correct?

10:10:51 4 A. That's correct.

10:10:51 5 4 Q. Thank you very much for doing
10:10:51 6 that.

10:10:53 7 MR. MATTHEWS: I would like to mark
10:10:55 8 your Summons as the first exhibit, please; Exhibit
10:10:56 9 1.

10:10:57 10 ---EXHIBIT NO. 1: Summons to Witness
10:11:00 11 issued to Rod Seiling.

10:11:14 12 BY MR. MATTHEWS:

10:11:14 13 5 Q. Have you ever been Examined as a
10:11:17 14 witness before, Mr. Seiling?

10:11:17 15 A. No, but I have been on the other
10:11:19 16 side many times.

10:11:20 17 6 Q. I understand as a Commissioner on
10:11:22 18 the ORC, you were involved in a number of hearings
10:11:25 19 that the Commission would have.

10:11:26 20 Is that right?

10:11:27 21 A. Correct.

10:11:27 22 7 Q. So you've had experience with and
10:11:36 23 understand what an Examination looks like.

10:11:36 24 Is that fair?

10:11:38 25 A. Correct.

10:11:38 1 8 Q. And just because we have a court
10:11:40 2 reporter here and for the sake of generating a
10:11:42 3 clean transcript, I would just ask you to give me
10:11:44 4 the opportunity to finish any questions I have, and
10:11:48 5 then you can respond, just so the record is clear.

10:11:50 6 If you don't understand any question
10:11:52 7 that I have, I'm happy to clarify it.

10:11:54 8 A. Okay.

10:11:55 9 9 Q. And if you need a break at any
10:11:56 10 time, just let me know and we're happy to give you
10:11:58 11 a break.

10:11:59 12 Is that fair?

10:11:59 13 A. Fair.

10:12:00 14 10 Q. All right. So I understand that
10:12:08 15 you were nominated to become Chair of the Ontario
10:12:13 16 Racing Commission around October 30th, 2006.

10:12:14 17 Does that sound right?

10:12:15 18 A. Sounds about right.

10:12:23 19 11 Q. I pass you a news release from the
10:12:26 20 Government of Ontario, October 30th, 2006.

10:12:34 21 MR. ROSENBERG: What's the document
10:12:34 22 number, Counsel?

10:12:35 23 MR. MATTHEWS: No document number.

10:12:38 24 THE WITNESS: Do you want me to read it
10:12:39 25 or just acknowledge that this is a news release?

10:12:41 1
10:12:42 2
10:12:43 3
10:12:46 4
10:12:48 5
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10:12:56 9
10:13:01 10
10:13:08 11
10:13:10 12
10:13:14 13
10:13:20 14
10:12:24 15
10:12:25 16
10:13:00 17
10:13:02 18
10:13:27 19
10:13:28 20
10:13:29 21
10:13:33 22
10:13:36 23
10:13:40 24
10:13:40 25

BY MR. MATTHEWS:

12 Q. Well, my question for you, sir, is just: Does this refresh your recollection that that's approximately when you were appointed the Chair of the Ontario Racing Commission?

A. Yes.

MR. MATTHEWS: All right. I would like to mark this as Exhibit 2; news release, October 30th, 2006, entitled "Rod Seiling nominated for Ontario Racing Commission Chair."

MR. ROSENBERG: Do you have a copy of that for us, Counsel?

---(Document provided to Mr. Rosenberg.)

---EXHIBIT NO. 2: A news release from the Government of Ontario, October 30th, 2006, entitled "Rod Seiling nominated for Ontario Racing Commission Chair."

BY MR. MATTHEWS:

13 Q. Now, prior to being appointed the Chair of the Ontario Racing Commission, I understand that you had actually served as a Commissioner on the Racing Commission prior to 2006.

Is that right?

10:13:40 1 A. Yes.

10:13:40 2 14 Q. And when was that?

10:13:42 3 A. I don't recall the exact dates.

10:13:43 4 15 Q. I also understand that prior to

10:13:50 5 your tenure on the Racing Commission as Chair,

10:13:52 6 you'd had a fair amount of experience with the

10:13:54 7 horse racing industry.

10:13:55 8 Is that fair?

10:13:56 9 A. Yes.

10:13:56 10 16 Q. I understand that you were the

10:13:58 11 Executive Director of Racetracks Canada from about

10:14:01 12 1982 to 1990; correct?

10:14:03 13 A. About 12, 13 years, yes.

10:14:05 14 17 Q. You were also the General Manager

10:14:08 15 of Elmira Raceway, 1982 to 1990; correct?

10:14:12 16 A. No. It wouldn't be that long.

10:14:15 17 I was there about two, two-and-a-half

10:14:17 18 years.

10:14:17 19 18 Q. I see.

10:14:19 20 You were on the Canada Horse Council as

10:14:24 21 the Secretary-Manager from about 1985 to 1991?

10:14:27 22 A. Sounds about right.

10:14:28 23 19 Q. You had a period of time where you

10:14:33 24 worked for what was then called the Ontario Jockey

10:14:38 25 Club, now called Woodbine Entertainment Group.

10:14:42 1 Is that right?

10:14:42 2 A. Yes.

10:14:42 3 20 Q. About 1991 to 1994, you were the
10:14:44 4 Vice-President of Corporate Development and
10:14:46 5 External Relations?

10:14:48 6 A. Yes.

10:14:48 7 21 Q. And what was the nature of your
10:14:49 8 role at Woodbine? Could you just describe it a
10:14:53 9 little bit?

10:14:53 10 A. Yes. I had two primary functions.
10:14:56 11 I was responsible for all off-track
10:15:01 12 wagering and I was also responsible for the
10:15:06 13 relationships, public relationships primarily with
10:15:13 14 government and with our partners in industry, okay,
10:15:29 15 other racetracks and horsepeople organizations.

10:15:32 16 22 Q. Thank you.

10:15:35 17 Apart from your involvement in
10:15:37 18 positions that were focused directly on the horse
10:15:41 19 racing industry, I understand that you also had a
10:15:44 20 career in business for an extended period of time
10:15:47 21 at the Greater Toronto Hotel Association.

10:15:50 22 A. Correct.

10:15:50 23 23 Q. And I understand you were there
10:15:52 24 between about 1994 and 2006.

10:15:54 25 Is that right?

10:15:55

1

A. Correct.

10:15:55

2

24

Q. And so, you were there at the

10:15:57

3

Greater Toronto Hotel Association at the time the

10:16:01

4

government announced the Slots at Racetracks

10:16:04

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Program in 1998; correct?

10:16:05

6

A. Correct.

10:16:06

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25

Q. And so, do you have some

10:16:07

8

recollection about the debate that was going on in

10:16:11

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Ontario in the 1996 to the 1998 period about

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whether or not video lottery terminals or slot

10:16:19

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machines should be installed at racetracks as

10:16:22

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opposed to installed at hotels or restaurants?

10:16:24

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Do you have some experience in that?

10:16:26

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A. A bit. Not -- we weren't directly

10:16:28

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involved, but I would have minimal knowledge

10:16:33

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because it wasn't a big deal with us.

10:16:35

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26

Q. And I also understand you were a

10:16:40

18

Director of the Canadian Tourism Commission from

10:16:44

19

2001 for a number of years thereafter?

10:16:46

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A. Correct.

10:16:47

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Q. And how long was your tenure on

10:16:49

22

that Commission?

10:16:50

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A. I'm going to guess 10, 12 years, I

10:16:58

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think. I'm -- I'm just going by memory, which some

10:17:01

25

days is better than others.

10:17:03 1 28 Q. And you also had a stint at
10:17:05 2 Tourism Toronto. Is that right?

10:17:06 3 A. I was on the Board at Tourism
10:17:09 4 Toronto.

10:17:09 5 29 Q. For approximately a dozen years.
10:17:13 6 Is that about right?

10:17:14 7 A. About that, yes.

10:17:15 8 Primarily for my whole tenure with the
10:17:19 9 Greater Toronto Hotel Association.

10:17:20 10 30 Q. All right. And I've also been
10:17:21 11 told that you've played some hockey at some point
10:17:24 12 in time.

10:17:24 13 Is that true?

10:17:25 14 A. It's rumoured. (Laughter)

10:17:29 15 31 Q. I heard they let you into the NHL.
10:17:32 16 Is that right?

10:17:33 17 A. Well, I snuck in once or twice.

10:17:36 18 32 Q. And you played for the Team Canada
10:17:38 19 1972 team?

10:17:39 20 A. Yes.

10:17:39 21 33 Q. And you're still involved with the
10:17:41 22 Toronto Maple Leafs through their alumni
10:17:45 23 organization?

10:17:45 24 A. Uh. Just a member. I resigned
10:17:48 25 off the board two years ago.

10:17:48 1 34 Q. I see.

10:17:48 2 And in terms of your educational

10:17:50 3 background, you have a BA from Wilfrid Laurier?

10:17:53 4 A. Correct.

10:17:54 5 35 Q. Did you have a focus or

10:17:55 6 specialization at Wilfrid Laurier?

10:17:55 7 A. Economics and English. A double

10:17:58 8 major.

10:17:58 9 36 Q. I see.

10:18:00 10 And what part of Ontario are you from,

10:18:00 11 sir?

10:18:05 12 A. Central Ontario. Central

10:18:07 13 Southwestern Ontario. Raised in Elmira. Uh.

10:18:11 14 Lived a little part of my life in

10:18:13 15 Kitchener-Waterloo and had a farm for a period of

10:18:17 16 time just north of the racetrack in -- uh, Mohawk

10:18:22 17 Racetrack in Campbellville.

10:18:23 18 37 Q. And so, given where you grew up

10:18:25 19 and given your proximity to the Mohawk Racetrack, I

10:18:29 20 understand that even prior to your appointment as

10:18:32 21 Chair of the Ontario Racing Commission, you were

10:18:35 22 fairly familiar with the horse racing industry in

10:18:37 23 Ontario.

10:18:38 24 Is that correct?

10:18:38 25 A. That would be correct. I also

10:18:40 1 raced horses--

10:18:41 2 38 Q. And I --

10:18:42 3 A. --and -- and bred -- bred horses.

10:18:44 4 39 Q. And I understand that the horses

10:18:46 5 you've raced and bred have been Standardbred

10:18:49 6 horses?

10:18:50 7 A. Correct.

10:18:51 8 40 Q. Have you bred or raced or trained

10:18:54 9 Thoroughbred or Quarter Horses?

10:18:55 10 A. No.

10:18:56 11 41 Q. So... And did I also understand

10:18:57 12 that you have trained some Standardbred horses?

10:18:59 13 A. I had a trainer's licence.

10:19:01 14 42 Q. And when did you stop, if you have

10:19:04 15 stopped, breeding or owning or training or racing

10:19:08 16 Standardbred horses?

10:19:08 17 A. When I went to work for, at then

10:19:11 18 the Ontario Jockey Club, we weren't allowed to own

10:19:16 19 horses.

10:19:16 20 43 Q. So that was in about 1991?

10:19:17 21 A. About that, yes.

10:19:18 22 44 Q. And prior to joining Woodbine, how

10:19:24 23 long had you bred horses for, Standardbred horses?

10:19:27 24 A. Oh. I'd say that I would have

10:19:34 25 started... I had a farm in -- in outskirts of

10:19:39 1 Waterloo, '72... Around, give or take - I'm just
10:19:48 2 guessing - 1972 when I started.

10:19:51 3 45 Q. And so, this is something that you
10:19:59 4 were involved in and had ongoing while you were
10:20:03 5 also -- while you also had a career in the NHL.

10:20:05 6 Is that right.

10:20:05 7 A. The last number of years, yes.

10:20:07 8 46 Q. And so, while you were travelling
10:20:09 9 and playing hockey, how did you maintain your farm
10:20:12 10 operations during that time?

10:20:13 11 Did you have some help?

10:20:15 12 A. My oldest son and -- and my dad
10:20:17 13 lived close by, but I don't -- the -- my farm
10:20:20 14 operations were only for the last three -- that's
10:20:23 15 one of the reasons I retired, 'cause I had this
10:20:26 16 thing going.

10:20:26 17 And I also had the job opportunity up
10:20:29 18 at Elmira, so it became problematic to leave my --
10:20:33 19 I started to leave my family at home for the hockey
10:20:38 20 season and that wasn't an ideal situation, so that
10:20:42 21 led me to retirement earlier than... I could have
10:20:44 22 played some more, but I decided it was time.

10:20:47 23 I also wanted to see whether my degree
10:20:50 24 was worth anything. Spent 11 years going to summer
10:20:53 25 school to get it, so...

10:21:00 1 47 Q. Fair enough.

10:21:00 2 So I think I already know the answer to

10:21:02 3 this question, but I will ask it in any event.

10:21:05 4 Given your involvement in the

10:21:08 5 Standardbred breeding industry, I take it you're

10:21:10 6 familiar with what's been referred to as the "horse

10:21:12 7 production cycle".

10:21:12 8 Is that fair?

10:21:13 9 A. Correct.

10:21:18 10 48 Q. And I'm just going to show you a

10:21:20 11 document. It's SB 3784.

10:21:31 12 Just while I turn up the document, sir,

10:21:33 13 can you just give us your understanding of the

10:21:36 14 horse production cycle, let's say, for a

10:21:39 15 Standardbred racehorse?

10:21:40 16 A. Well, the cycle is good for any

10:21:43 17 horse.

10:21:45 18 Umm. You have to purchase the horse.

10:21:48 19 You may already own it, but you -- assume -- let's

10:21:51 20 assume, for -- for clarification, that you -- you

10:21:57 21 come -- you either owned the horse or -- or bought

10:21:59 22 the horse.

10:22:00 23 You make a decision to breed the horse.

10:22:03 24 You've got an 11-month gestation period. The foal

10:22:08 25 is born and I'm -- I'm assuming -- I guess I should

10:22:12 1 have asked.

10:22:13 2 You're assuming, as a breeder who is
10:22:15 3 planning to use that -- the offspring for...,
10:22:19 4 either to sell or to race?

10:22:21 5 49 Q. Yes, sir.

10:22:22 6 A. Okay.

10:22:23 7 So you, umm, you breed the horse.
10:22:30 8 Gestation is 11 months. Foal is born. You hope
10:22:34 9 that it is healthy and legs are straight -
10:22:37 10 sometimes they're not - and you raise that -- that
10:22:41 11 foal to be a yearling.

10:22:44 12 You then, if you're a commercial
10:22:47 13 breeder, you will put it into a sale and hopefully
10:22:50 14 that owners will be incented to buy it because of
10:22:56 15 its breeding, and you will have researched -- when
10:22:58 16 you're breeding that mare, you will have researched,
10:23:01 17 uh, what stallion would mate well with the
10:23:04 18 bloodlines of the mare.

10:23:08 19 So you will then either sell the horse
10:23:15 20 or keep the horse.

10:23:16 21 During the later part of that yearling
10:23:18 22 year, you will start to train it and as it gets
10:23:22 23 into its second year, if you're lucky, it might be
10:23:25 24 eligible -- it might be good enough to race.

10:23:27 25 50 Q. And then, the racing career of a

10:23:30 1 horse, after its second year, could continue for a
10:23:33 2 number of years.

10:23:34 3 Is that fair?

10:23:34 4 A. Yes. Umm. It's... There are
10:23:41 5 breed incentive programs directed to 2- -- for its
10:23:45 6 2- and 3-year-old campaign, uh, and then it,
10:23:49 7 depending on its ability, how long it can -- and
10:23:53 8 health, how long it can race thereafter.

10:23:56 9 51 Q. Based on your own personal
10:23:58 10 experience as well as your understanding of the
10:24:00 11 Ontario industry, sir, do you have a sense of how
10:24:03 12 far in advance of the actual breeding of a horse a
10:24:07 13 decision to breed that horse might be made?

10:24:10 14 A. Well, you... Again, it depends
10:24:16 15 whether you're buying the horse or you already own
10:24:20 16 the horse.

10:24:21 17 I mean, if you own the horse, you've --
10:24:23 18 you've acquired it at some point in time or it was
10:24:26 19 a racehorse that you owned and -- and had retired
10:24:28 20 it.

10:24:29 21 So you will have been on the lookout to
10:24:33 22 see what -- uh, you will make a conscious decision.

10:24:37 23 But let's -- let's -- I'd better step
10:24:40 24 back because there's two -- two options.

10:24:42 25 One, uh, if you've owned the horse and

10:24:47 1 you have been racing it, you will make a decision
10:24:53 2 as to whether, from an economic standpoint, it now
10:24:56 3 makes sense to turn that mare into a broodmare or
10:24:59 4 to keep racing it or you're going to make a
10:25:02 5 decision as to whether it makes sense to buy that
10:25:09 6 mare and at what price point that it makes sense to
10:25:12 7 buy it.

10:25:13 8 Then you will have made the decision at
10:25:17 9 some point along, in that same process of -- of
10:25:20 10 researching, uh, as to what stallion it might make
10:25:26 11 -- of the bloodlines would -- would be -- work in
10:25:29 12 best favour to turn out a -- a product that's got
10:25:34 13 good bloodlines because in the horse racing
10:25:38 14 business, owners research the bloodlines and look
10:25:44 15 for past performance as to whether -- what the
10:25:46 16 potential is for that foal to be a good racehorse.

10:25:52 17 52 Q. And so, in terms of the kind of
10:25:54 18 research that you're suggesting, I presume, sir,
10:25:57 19 that this takes a little bit of time to do that
10:25:59 20 kind of a research before you actually make the
10:26:03 21 decision as to the stallion you want to breed a
10:26:06 22 mare to.

10:26:07 23 Is that fair?

10:26:08 24 A. Could be. It doesn't have to be,
10:26:10 25 but it could be.

10:26:11 1 53 Q. So I'm going to pass you the
10:26:14 2 document I was referring to earlier.

10:26:16 3 What it is, is it's the Interim Report
10:26:19 4 of the Horse Racing Industry Transition Panel.

10:26:23 5 You're familiar with that panel, sir?

10:26:25 6 A. I am.

10:26:25 7 54 Q. Do you remember reading that
10:26:27 8 report around the time it came out, August 17th,
10:26:30 9 2012?

10:26:30 10 A. Uh. I don't remember it right
10:26:30 11 now, but I'm sure I will have seen it.

10:26:34 12 55 Q. And in your capacity as Chair of
10:26:36 13 the Racing Commission, did you make any submissions
10:26:40 14 the Panel in advance of their Interim Report?

10:26:42 15 A. I did.

10:26:43 16 56 Q. All right. So I'm going to pass
10:26:44 17 you the Interim Report and ask you to look at the
10:26:47 18 diagram on the top of page 10 of that report.

10:26:50 19 And what the Panel has set out at page
10:26:52 20 10 is --

10:26:55 21 A. I'm just going to put some
10:26:57 22 cheaters on here.

10:26:58 23 --- (Mr. Seiling puts on reading
10:27:00 24 glasses.)

10:27:00 25 MR. ROSENBERG: Document number,

10:27:01 1 please, Counsel.

10:27:05 2 MR. MATTHEWS: SB 3784.

10:27:07 3 MR. ROSENBERG: Thank you.

10:27:08 4 BY MR. MATTHEWS:

10:27:08 5 57 Q. What you see at the top of page 10

10:27:10 6 is a graphical--

10:27:10 7 A. Yeah.

10:27:13 8 58 Q. --representation of what the Panel

10:27:17 9 describes to as the "Breed to Race Model" where

10:27:21 10 obviously they've -- they've set out the same

10:27:21 11 sequence that you spoke about a moment ago.

10:27:23 12 They have, at the front end, that the

10:27:26 13 mating decision might be made some six months in

10:27:30 14 advance of the actual conception of the horse.

10:27:35 15 Just taking a look at that graphical

10:27:36 16 representation, sir, does that -- does that appear

10:27:37 17 generally accurate to you?

10:27:37 18 A. I think it's fairly accurate.

10:27:39 19 The only, uh, comment I would make is

10:27:42 20 that, is a two-year-old starts racing by July, I

10:27:46 21 would say that I'm not sure. Somewhere along the

10:27:50 22 line, you can work -- figure -- find out quite

10:27:54 23 easily what the stats are and how many

10:27:56 24 two-year-olds race, but my guess would be, umm...

10:28:00 25 I don't know whether it's 50 per cent or whatever

10:28:02 1 it is, so you're -- you're quite fortunate if you
10:28:04 2 get a two-year-old that's good enough to race.
10:28:07 3 That -- that makes -- that kind of makes sense, and
10:28:08 4 that there will be Stakes opportunities available
10:28:11 5 as a two-year-old, as well.

10:28:12 6 59 Q. So horses that don't make the cut
10:28:16 7 to race as a two-year-old might have additional
10:28:18 8 training and then you'd evaluate whether they could
10:28:22 9 race as a three-year-old?

10:28:22 10 A. Correct.

10:28:24 11 MR. MATTHEWS: All right. I would like
10:28:25 12 to mark this Interim Report as Exhibit 3. We'll
10:28:27 13 come back to it again later.

10:28:30 14 ---EXHIBIT NO. 3: Horse Racing
10:28:30 15 Industry Transition Panel Interim Report dated
10:28:31 16 August 17, 2012; Doc ID Number SB 3784.

10:28:47 17 BY MR. MATTHEWS:

10:28:47 18 60 Q. So I take it, sir, you have an
10:28:50 19 understanding that there are different breeds of
10:28:52 20 horses; Thoroughbred, Standardbred, Quarter Horse?

10:28:55 21 A. Correct.

10:28:55 22 61 Q. And you knew that when you were
10:28:57 23 appointed Chair of the ORC?

10:28:59 24 A. Correct.

10:28:59 25 62 Q. You also understood, when you were

10:29:01 1 appointed Chair of the ORC, that in Ontario, the
10:29:05 2 Standardbred sector is the largest in terms of the
10:29:07 3 number of horses and the number of tracks at which
10:29:10 4 Standardbred racing is carried on?

10:29:11 5 A. Correct.

10:29:12 6 63 Q. And as I understood it, at the
10:29:16 7 apex of the Slots at Racetrack Program, prior to
10:29:20 8 the termination of the revenue-sharing arrangement,
10:29:24 9 Standardbred racing was carried on at 15 out of 17
10:29:27 10 tracks in the Province of Ontario?

10:29:29 11 A. Sounds about right.

10:29:30 12 64 Q. And I understand that one of those
10:29:32 13 tracks is Woodbine, that does both Thoroughbred and
10:29:36 14 Standardbred racing?

10:29:37 15 A. Correct.

10:29:55 16 65 Q. And before I get to the Slots at
10:29:57 17 Racetracks Program, sir, do I understand correctly
10:30:00 18 that prior to you appearing today as a witness, the
10:30:06 19 Crown offered to represent you pro bono, but you
10:30:11 20 declined that offer?

10:30:12 21 A. Correct. I think I've explained
10:30:14 22 that. As I said to the Crown, that I have no stake
10:30:20 23 in this. I have no need for legal counsel and that
10:30:26 24 I am prepared to give my testimony to the best of
10:30:30 25 my ability.

10:30:31 1 66 Q. And do you -- has that always been
10:30:39 2 your view, sir, that you've been willing to give
10:30:42 3 your testimony to the best of your ability?

10:30:44 4 A. Correct.

10:30:45 5 67 Q. And do you understand, sir, that
10:30:46 6 there was an effort by Ontario and OLG to quash
10:30:49 7 your summons?

10:30:51 8 A. I am aware that there was some
10:30:53 9 legal action, that Ms. Machado had -- had said that
10:30:55 10 there were some legal proceedings going on and that
10:30:58 11 I may not need to testify, but it was going to be
10:31:02 12 decided by the -- by the courts, and I am here.

10:31:05 13 68 Q. And did you express to Ms. Machado
10:31:08 14 that you were willing to testify?

10:31:10 15 A. Yes.

10:31:14 16 69 Q. So I want to turn to the Slots at
10:31:18 17 Racetracks Program.

10:31:18 18 I take it you understand what that
10:31:20 19 program was?

10:31:21 20 A. Yes.

10:31:23 21 70 Q. And I understand, because we
10:31:25 22 reviewed your background, that you were not
10:31:27 23 actually working in the horse racing industry, per
10:31:31 24 se, in 1998 when that program came into existence;
10:31:35 25 correct?

10:31:35 1 A. Correct.

10:31:37 2 71 Q. But certainly, by the time you
10:31:39 3 became the Chair of the ORC in 19- -- in 2006, you
10:31:43 4 had an understanding that there was a program known
10:31:46 5 as the Slots at Racetrack Program that was in
10:31:49 6 place?

10:31:49 7 A. Correct.

10:31:50 8 72 Q. And you understood that that
10:31:52 9 program had been in place many years, going back to
10:31:54 10 1998?

10:31:55 11 A. Correct.

10:31:56 12 73 Q. And you also understood that in
10:31:59 13 1998, there were negotiations that resulted in a
10:32:03 14 deal whereby slot machines were introduced into
10:32:07 15 racetracks that were willing to have them, and then
10:32:09 16 in exchange, 20 per cent of the net win from those
10:32:14 17 slot machines would be shared 50/50 between the
10:32:17 18 racetrack and the horse racing industry?

10:32:20 19 A. Correct.

10:32:24 20 74 Q. And I don't propose to get into
10:32:26 21 the documents that set up the arrangement because
10:32:30 22 they speak for themselves, but in terms of your
10:32:33 23 understanding as to how the revenue share pursuant
10:32:40 24 to SARP flowed, I just want to show you a document,
10:32:44 25 sir, and ask you to confirm that that was

10:32:46 1 consistent with your understanding as to how
10:32:48 2 revenue flowed from the slot machines pursuant to
10:32:54 3 the Slots at Racetracks Program. So I'm going to
10:33:03 4 show you CR 27619.

10:33:15 5 Sir, this was a document that was
10:33:16 6 produced to the Plaintiffs by Ontario. It's got a
10:33:20 7 date of May 2009 in the bottom left-hand corner and
10:33:25 8 it's entitled Ministry of Energy and Infrastructure
10:33:29 9 Slots at Racetracks Program, Revenue Distribution.

10:33:31 10 So take a moment to review that,
10:33:33 11 please.

10:33:34 12 A. I'm familiar.

10:33:34 13 75 Q. All right. Can you confirm, sir,
10:33:36 14 that this document and the revenue distribution it
10:33:39 15 reflects is consistent with your understanding as
10:33:42 16 to how revenue was distributed pursuant to the
10:33:46 17 Slots at Racetracks Program?

10:33:47 18 A. I can. And I can add that while
10:33:50 19 the Ontario Racing Commission was not a party to
10:33:55 20 the siteholder agreement, we did become involved
10:33:59 21 inasmuch as that -- it was the Commission's
10:34:03 22 responsibility to audit the purse account to make
10:34:06 23 sure that all the money that was received from the
10:34:12 24 OLG ended up in the horsemen's purse account.

10:34:16 25 And so each track across the Province

10:34:18 1 would have an annual audit conducted by a person
10:34:22 2 that would be contracted by the Commission.

10:34:26 3 MR. MATTHEWS: Thanks for that
10:34:28 4 addition.

10:34:28 5 So I will mark this flowchart as
10:34:31 6 Exhibit 4.

10:34:33 7 ---EXHIBIT NO. 4: A flowchart entitled
10:34:33 8 Ministry of Energy and Infrastructure, Slots at
10:34:33 9 Racetrack Program, Revenue Distribution, dated May
10:34:34 10 2009; Doc ID Number CR 27619.

10:34:37 11 BY MR. MATTHEWS:

10:34:37 12 76 Q. And one of the things that the
10:34:38 13 flowchart shows, Mr. Seiling, is that a percentage
10:34:40 14 of the horsepeople's share of the revenue that's
10:34:43 15 distributed under SARP goes into the Horse
10:34:48 16 Improvement Program; correct?

10:34:49 17 A. Correct.

10:34:49 18 77 Q. And I understand that the Horse
10:34:53 19 Improvement Program is a provincial program that,
10:34:55 20 at least during your tenure as Chair of the ORC,
10:34:59 21 was administered by the ORC?

10:35:01 22 A. Correct.

10:35:01 23 78 Q. And within the Horse Improvement
10:35:04 24 Program, I understand, broadly speaking, that
10:35:08 25 there's a division or a segmentation as it relates

10:35:16 1 to the Thoroughbred sector on the one hand and the
10:35:18 2 Standardbred sector on the other hand?
10:35:18 3 A. Actually, three. The -- the
10:35:19 4 Quarter Horse had one, as well.
10:35:19 5 79 Q. I see.
10:35:22 6 A. It was much different.
10:35:31 7 It's -- it's better to actually park it
10:35:32 8 off to the side because how that program operated
10:35:35 9 was quite a bit different than the Thoroughbred and
10:35:38 10 Standardbred program, so it's -- we're better to
10:35:42 11 park it off and leave it. It's not germane to...
10:35:45 12 80 Q. Yes. I understand that there was
10:35:46 13 a special arrangement made with respect to the
10:35:48 14 Quarter Horse industry and how revenue attributable
10:35:52 15 to slot machines were distributed to Quarter
10:35:56 16 Horses; fair?
10:35:57 17 A. Correct.
10:35:57 18 81 Q. My focus, obviously, for the
10:35:58 19 purpose of this case, is on the Standardbred
10:35:59 20 sector.
10:36:00 21 You understand that, sir?
10:36:01 22 A. Yes.
10:36:02 23 82 Q. And so, within the Horse
10:36:02 24 Improvement Program, there is a sub-portion of that
10:36:04 25 program known as the Standardbred Improvement

10:36:06 1 Program; correct?

10:36:06 2 A. Correct.

10:36:06 3 83 Q. And the Standardbred Improvement

10:36:12 4 Program derives some of its revenue from the

10:36:14 5 revenue-sharing arrangement through the Slots at

10:36:17 6 Racetracks Program; correct?

10:36:17 7 A. Correct.

10:36:18 8 84 Q. And within the Standardbred

10:36:20 9 Improvement Program, there are a number of

10:36:22 10 different programs administered by the ORC for the

10:36:26 11 benefit of the Standardbred industry, such as the

10:36:29 12 Ontario Sires Stakes Program?

10:36:30 13 A. Correct.

10:36:31 14 85 Q. At one time, there was something

10:36:33 15 known as the Ontario Resident Mare Program?

10:36:38 16 A. Yes. We brought it in.

10:36:39 17 86 Q. Yes.

10:36:42 18 And there were also a number of

10:36:44 19 incentives designed to incentivize the breeding of

10:36:50 20 Standardbred horses that flowed through the

10:36:52 21 Standardbred Improvement Program; correct?

10:36:54 22 A. Correct.

10:36:54 23 87 Q. And those incentives were funded,

10:36:58 24 in part, by money that came from the Slots at

10:37:02 25 Racetrack Program; correct?

10:37:02

1

A. Correct.

10:37:03

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Q. So coming back to the Slots at

10:37:15

3

Racetracks Program, you understood, sir, when you

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4

became Chair of the Ontario Racing Commission, that

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5

the deal that was set up in 1998 was between

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6

Ontario and OLG on the one hand and the horse

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7

racing industry represented by OHRIA on the other

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8

hand; correct?

10:37:30

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A. Correct.

10:37:31

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Q. And you understood, I presume,

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11

also, because of your involvement in the

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Standardbred industry, that OHRIA was an umbrella

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industry association that represented all segments

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14

of the horse racing industry, including the

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Standardbred sector; correct?

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A. Correct.

10:37:47

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Q. And including Standardbred

10:37:49

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breeders; correct?

10:37:50

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A. Correct.

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Q. And I've often heard the

10:38:01

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expression - perhaps you have, as well - of the

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horse racing industry being described as the

10:38:04

23

"three-legged stool".

10:38:07

24

Have you heard that expression before?

10:38:07

25

A. Correct. We use --

10:38:07 1 92 Q. What's your understanding?

10:38:09 2 A. Well, the reference is that the
10:38:11 3 three stools are tracks, race horse people, and
10:38:16 4 breeders, and that you need all three for the
10:38:18 5 industry. That makes up the supports. The
10:38:22 6 stool -- the stool sits on top of it.

10:38:27 7 93 Q. So, to give a concrete example,
10:38:31 8 without the breeding industry, the stool would
10:38:34 9 collapse and the horse racing industry would be
10:38:36 10 upended?

10:38:36 11 A. Without horses, it's pretty hard
10:38:40 12 to have a race.

10:38:44 13 94 Q. And it also works the same way
10:38:47 14 with respect to racetracks.

10:38:48 15 Without racetracks, there's nowhere for
10:38:50 16 the horses to race and there's no reason to breed
10:38:53 17 horses?

10:38:53 18 A. Correct.

10:38:59 19 95 Q. And so, would you agree with me,
10:39:01 20 sir, that in order for the Slots at Racetracks
10:39:04 21 Program to be successful, the industry had to do
10:39:10 22 its part, and when I say "do its part" in the
10:39:13 23 industry, I mean all three parts of the
10:39:15 24 three-legged stool had to participate in the
10:39:18 25 program in order for the Slots at Racetracks

10:39:20 1 initiative to be successful?

10:39:23 2 A. I would agree with that.

10:39:24 3 96 Q. And you understood that one of the
10:39:28 4 purposes of the Slots at Racetracks Program was to
10:39:33 5 promote live horse racing; correct?

10:39:38 6 A. Correct.

10:39:38 7 97 Q. And without horses bred to race at
10:39:41 8 tracks, there would not be live horse racing;
10:39:44 9 correct?

10:39:44 10 A. Correct.

10:39:45 11 98 Q. And I understand that during the
10:39:49 12 time you were the Chair of the ORC, you had to, on
10:39:52 13 occasion, participate in the unenviable task of
10:39:56 14 appearing before Standing Commissions of the
10:39:59 15 Legislature.

10:40:00 16 Is that right?

10:40:01 17 A. Correct.

10:40:01 18 99 Q. And this is because, among other
10:40:08 19 things, the ORC is a Crown agency and so it's
10:40:12 20 subject to oversight of the Legislature?

10:40:14 21 A. Correct.

10:40:19 22 100 Q. And I'm going to take you to a
10:40:21 23 document in a moment, sir, but did you become
10:40:24 24 aware, in the time you were the Chair of the ORC,
10:40:27 25 that OLG took the position that without live horse

10:40:33 1 racing at a racetrack, they were under no
10:40:36 2 obligation to share revenue from the Slots at
10:40:39 3 Racetrack Program?

10:40:39 4 A. No, I'm not aware of that.

10:40:41 5 101 Q. All right. Let me take you to a
10:40:43 6 document, then; SB 902.

10:40:55 7 What this is, sir, is it's a Report on
10:40:59 8 Agencies, Boards and Commissions.

10:40:59 9 A. Actually, I might have
10:41:01 10 misunderstood you, but go ahead because we had a
10:41:06 11 number of racing stoppages that dealt with if there
10:41:12 12 was not live racing, uh, there would still be
10:41:18 13 intertrack racing.

10:41:18 14 And so that dancing on the
10:41:21 15 proverbial...

10:41:23 16 102 Q. ...head of the pin?

10:41:24 17 A. ...head of the pin, not because of
10:41:26 18 our rules, but because of the CPMA - that's
10:41:30 19 Canadian Pari-Mutuel Agency - you had to have an
10:41:38 20 operating agreement for -- between the local
10:41:42 21 Horsemen's Association and the track.

10:41:44 22 And the local Horsemen's Association
10:41:48 23 would try to use that leverage to shut down the
10:41:52 24 slots as -- as leverage to get a better deal on the
10:41:57 25 -- on the cut of the pari-mutuel commission with

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the racetrack.

So if that's what you're referring to, yes, I am aware.

Q. Thank you, sir.

So I would like you to look at this report I passed you. Just a number of points I would like to touch on as we go through it, and I'll --

A. Okay. Just direct me to the -- to the page.

Q. So, let's start just at page -- what's labelled as "page 2" of the report.

A. Yeah.

Q. After the table of contents, there's a heading, "Ontario Racing Commission's Mandate."

Do you see that, sir?

A. I do.

Q. So I see that it says that:

"The Ontario Racing Commission is a self-funding agency operating under the authority of the Ontario Racing Commission Act. The Commission's mandate is to [govern direct and control] govern, direct,

10:42:44 1 control and regulate horse racing in
10:42:46 2 the Province." [As read.]

10:42:50 3 Is that your understanding of the
10:42:52 4 Commission's mandate when you were its Chair?

10:42:54 5 A. Correct.

10:42:55 6 Also, the safety and protection of its
10:42:58 7 participants, and the public interest was also very
10:43:03 8 important, so I would like to have that on the
10:43:05 9 record.

10:43:05 10 107 Q. Certainly. And now it is.

10:43:07 11 Can you flip ahead, sir, to page 11 of
10:43:14 12 the report, please, under the heading "ORC and OLG
10:43:18 13 Responsibilities"?

10:43:19 14 A. Yep.

10:43:21 15 108 Q. Is it fair to say that because of
10:43:27 16 the installation of slot machines at racetracks and
10:43:32 17 the revenue-sharing from those slot machines with
10:43:35 18 the horse racing industry, to a degree, OLG and ORC
10:43:42 19 became bound up together through the Slots at
10:43:47 20 Racetracks Program?

10:43:47 21 A. I wouldn't call it "bound
10:43:49 22 together" because we had very little communication
10:43:54 23 with OLG.

10:43:56 24 We... The OLG had, uh, had their
10:44:08 25 operations at tracks.

10:44:12 1 We were not a party to the site holder
10:44:15 2 agreement and so that the communication with --
10:44:26 3 with the OLG was, I guess, when you say "bound
10:44:36 4 together", it depends how you mean it.

10:44:38 5 If you're -- "bound together" that
10:44:40 6 we're two government authorities working together,
10:44:43 7 no, that would not be the case.

10:44:45 8 109 Q. Well, so it's always been the case
10:44:50 9 that the ORC and the OLG are separate Crown
10:44:53 10 agencies; correct?

10:44:54 11 A. Correct.

10:44:54 12 110 Q. What I meant when I said "bound
10:44:56 13 together" is -- and I said "bound together through
10:44:59 14 the Slots at Racetracks Program."

10:45:03 15 What I meant by that, sir, was that as
10:45:06 16 a result of that program which involved the
10:45:07 17 installation of OLG slot machines into racetracks
10:45:12 18 and revenue being distributed to purses and
10:45:16 19 through the Horse Improvement Program, that through
10:45:20 20 that program, there was a linkage between the OLG
10:45:27 21 and the ORC.

10:45:28 22 Do you accept that?

10:45:30 23 A. To a degree, yes, I would.

10:45:33 24 I mean, we were responsible for the
10:45:36 25 purse end of it, so -- and that money flowed

10:45:39 1 directly from the OLG.

10:45:42 2 And, of course, we would get, to the
10:45:48 3 best of my knowledge because this would be an
10:45:51 4 administrative function, not a board function, we
10:45:54 5 would -- the ORC would receive financial
10:46:00 6 information from OLG as to the money flow.

10:46:04 7 So that's the only way that -- that the
10:46:07 8 ORC could know what monies it was getting.

10:46:11 9 So the breed improvement program knew
10:46:15 10 exactly how much it was going to get because of --
10:46:17 11 of the information furnished by the OLG.

10:46:20 12 Similarly, we were able to know exactly
10:46:23 13 how much money was flowing into the purse account
10:46:26 14 from the OLG.

10:46:27 15 111 Q. And you who have to audit the
10:46:30 16 purse accounts; correct?

10:46:30 17 A. We would. And we also had our
10:46:33 18 breed improvement programs audited every year.

10:46:36 19 112 Q. Including the Standardbred
10:46:40 20 Improvement Program?

10:46:40 21 A. Correct.

10:46:40 22 113 Q. And I understand that over the
10:46:41 23 years, there were a number of halting efforts to
10:46:45 24 work -- for the ORC to work with the OLG, to come
10:46:49 25 up with some sort of benchmarks to measure the

10:46:51 1 success of the Slots at Racetrack Program; correct?

10:46:55 2 A. Well, I don't know whether there
10:46:58 3 was a -- how strong of a -- of an agreement or
10:47:04 4 working arrangement with OLG on that front.

10:47:10 5 The ORC certainly was working at
10:47:13 6 benchmarking the breed improvement programs as to
10:47:18 7 how well it was performing in terms of the number
10:47:23 8 of stallions, for example, number of mares bred,
10:47:27 9 number of foals, success rate of those foals, and
10:47:31 10 -- and getting an idea of, uh, of jobs out in rural
10:47:41 11 Ontario.

10:47:41 12 114 Q. And did you have an understanding,
10:47:43 13 when you were the Chair of the ORC, that under the
10:47:46 14 Slots at Racetracks Program, the siteholder
10:47:48 15 agreements contained provisions relating to
10:47:51 16 benchmarking?

10:47:52 17 A. I am aware of it.

10:47:54 18 115 Q. Okay. And that so, it was in that
10:47:56 19 context whether or not -- when I was asking whether
10:48:00 20 or not there was ever, you know, an effort between
10:48:03 21 OLG and ORC to coordinate, to -- to facilitate the
10:48:08 22 benchmarking, not just for the purposes that the
10:48:11 23 ORC needed to collect information, but also for the
10:48:13 24 purpose of ensuring the benchmarking exercise under
10:48:17 25 the siteholder agreements was being carried out?

10:48:20 1 A. That would have happened more at
10:48:22 2 the administrative level, so I really don't want to
10:48:25 3 speak to that, but it would not surprise me. A
10:48:30 4 lady by the name of Wendy Hoogeveen, who has
10:48:33 5 unfortunately since passed, was in charge of the
10:48:38 6 breed improvement programs, and she was quite
10:48:41 7 active, so it would not surprise me that she would
10:48:41 8 be dealing with people at the OLG.

10:48:53 9 But again, there would not be board
10:48:53 10 function.

10:48:53 11 116 Q. Okay. So I would like to return
10:48:55 12 to the report we have been looking at under the
10:48:57 13 heading of the "ORG and OLC Responsibilities".

10:49:00 14 And in the second sentence under that
10:49:02 15 heading, you see the Standing Committee indicating
10:49:09 16 that the central issue at that time, they believed,
10:49:12 17 is that these entities, the OLC and ORC, that are
10:49:17 18 central to the success of the industry, function
10:49:19 19 independently.

10:49:21 20 Would you accept that, pursuant to the
10:49:26 21 Slots at Racetracks Program, both the ORC and the
10:49:28 22 OLG were central to the success of the horse racing
10:49:31 23 industry?

10:49:32 24 A. Yes.

10:49:33 25 117 Q. And if you look a little further

1 down the page, you see that there's a quote that
2 has been excerpted from the ORC.

3 Now, I understand that you appeared
4 before the Standing Committee.

5 Is that right?

6 A. Yes.

7 118 Q. And so, when you see the quote
8 from the ORC saying:

9 "We work and do all we can to
10 ensure the maximum return goes back
11 to the industry, not just
12 racetracks, but horsepeople and the
13 breeding industry because we
14 recognize the chain that feeds the
15 whole agriculture community."

16 [As read.]

17 Would that be something you would have
18 said at the time, sir?

19 A. Sounds like it.

20 119 Q. And is it accurate?

21 A. It is.

22 120 Q. And if you go down to the
23 paragraph following that quote, this comes to the
24 point I was making to you when I brought this
25 report to your attention.

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You see where it says:

"According to OLG, the presence of slot machines at racetracks is tied to horse racing; therefore, if a racetrack ceases to offer racing, the OLG's obligation to provide the Slot Program ceases." [As read.]

Do you see that?

A. I see that.

Q. And so, that was the point that I was making, sir.

Did you come to understand, during the course of your tenure as the Chair of the ORC, that OLG took the view that if there wasn't any racing at a racetrack, their obligation to share revenue from the Slots Program came to an end?

A. It would sound reasonable.

Q. So if you can return to the document to me, sir, I would like to mark this as Exhibit 5.

---EXHIBIT NO. 5: Legislative Assembly of Ontario, Standing Committee on Government Agencies, Report on Agencies, Boards and Commissions; Doc ID Number SB 902.

BY MR. MATTHEWS:

10:51:19 1 123 Q. I want to come back to the
10:51:21 2 statement that we just reviewed about the ORC
10:51:22 3 understanding the chain that feeds the entire
10:51:25 4 agricultural community.

10:51:27 5 And I want to ask you, in particular,
10:51:29 6 now that we have reviewed sort of the flow of
10:51:32 7 revenue under the Slots at Racetracks Program, I
10:51:35 8 want to get your evidence regarding your
10:51:37 9 understanding, as Chair of the Commission, about
10:51:40 10 the linkage between revenue from slot machines and
10:51:44 11 the breeding industry.

10:51:45 12 Did you understand, sir, when you were
10:51:48 13 the Chair of the ORC, the relationship between
10:51:52 14 purses and the value of Ontario-bred horses?

10:51:55 15 A. Yes.

10:51:56 16 124 Q. What is that linkage, sir?

10:51:59 17 A. Well, the obvious, that how you
10:52:03 18 incent owners to buy horses and the value of that
10:52:09 19 horse is its earning capacity.

10:52:10 20 And so, the better the purses for that
10:52:14 21 horse, the more value that -- that you can ascribe
10:52:17 22 to that horse.

10:52:18 23 125 Q. And I understand and accept, sir,
10:52:21 24 that there are other factors that contribute to the
10:52:25 25 value of a horse, but can we agree that a

10:52:32 1 significant factor that would determine the value
10:52:36 2 of the horse is its earning capacity?

10:52:39 3 A. Yes.

10:52:39 4 --- (Dr. Patrick Meyers arrives at 10:52
10:52:41 5 a.m.)

10:52:41 6 MR. MATTHEWS: Can we go off the
10:52:42 7 record, please?

10:52:42 8 --- Off the record at 10:52 a.m.

10:53:08 9 --- On resuming at 10:53 a.m.

10:53:08 10 MR. MATTHEWS: If we can go back on the
10:53:09 11 record, please.

10:53:09 12 BY MR. MATTHEWS:

10:53:09 13 126 Q. So, in your answer before, when
10:53:11 14 you drew the relationship between value and earning
10:53:12 15 capacity, could you be more specific, in terms of
10:53:14 16 your understanding as the Chair of the ORC, as to
10:53:17 17 the relationship, then, between purses funded by
10:53:20 18 money from the Slots at Racetrack Program and
10:53:23 19 breeding activity for Standardbred breeders?

10:53:26 20 A. Well, as I said, the value one
10:53:34 21 would ascribe to a horse will be a direct
10:53:37 22 relationship to its earning capacity.

10:53:41 23 And the earning capacity is directly
10:53:44 24 related to the value of the purses, so the higher
10:53:50 25 the purse, the better earning potential for the

10:53:54 1 horse, the better value one might place on that
10:53:58 2 horse when one was trying to sell it.

10:54:00 3 127 Q. Now, would you agree with me, sir,
10:54:03 4 that if purses are higher and that would increase
10:54:07 5 the value of a horse, that, in turn, may
10:54:10 6 incentivize a breeder to -- sorry. Strike that.

10:54:22 7 Would you agree with me, sir, the
10:54:24 8 higher the value of the purse, that will
10:54:26 9 incentivize a breeder to invest more, perhaps, by
10:54:29 10 way of a larger stud fee, to improve the quality of
10:54:34 11 their horses with the hope of getting a higher
10:54:38 12 return at auction for those horses because the
10:54:41 13 horses now are able to race for more valuable or
10:54:44 14 lucrative purses?

10:54:46 15 A. Yes. And if you -- I'm sure you
10:54:48 16 have documentation that will show ads that the
10:54:55 17 breed improvement ran, promoting the Ontario Sires
10:55:00 18 Stakes Program, and it would refer to the purse
10:55:02 19 levels.

10:55:02 20 128 Q. And I'm going to take you to some
10:55:05 21 advertisements from the Ontario Sires Stakes Program
10:55:08 22 in a moment regarding those advertisements that
10:55:16 23 encouraged breeders to breed, buy, race in Ontario.

10:55:20 24 Were you aware of those advertisements?

10:55:21 25 A. Yes.

10:55:21 1 129 Q. And you're aware that those
10:55:22 2 advertisements were put out through the Ontario
10:55:24 3 Sires Stakes which was, in turn, is part of the
10:55:28 4 Horse Improvement Program which was overseen by the
10:55:30 5 ORC?

10:55:30 6 A. Yes.

10:55:38 7 130 Q. And those advertisements, as well
10:55:39 8 as much of the activity done through the Horse
10:55:40 9 Improvement Program was for the purpose of
10:55:42 10 encouraging and incentivizing the increased quality
10:55:46 11 and quantity of Ontario-bred horses; correct?

10:55:49 12 A. Yes.

10:55:56 13 131 Q. And a number of the initiatives
10:55:57 14 that you oversaw as your -- in your time as --

10:55:57 15 A. Just rephra- -- more to the
10:55:59 16 quality than the quantity.

10:56:01 17 132 Q. Understood.

10:56:08 18 And a number of the initiatives that
10:56:10 19 you oversaw in your tenure as Chair of the ORC,
10:56:15 20 including, for example, the establishment of the
10:56:17 21 Ontario Racing Program, were done to encourage
10:56:19 22 breeders to make investments in their horses and
10:56:21 23 farms with a view to improving the quality of their
10:56:25 24 horses for racing in Ontario; correct?

10:56:26 25 A. Correct.

10:56:27 1 We wanted to -- part of the Ontario
10:56:30 2 Racing Program, the philosophy behind it was to
10:56:34 3 provide more opportunities for young horses to
10:56:36 4 race, so that owners had a chance to -- for want of
10:56:41 5 a better term, earn out, uh, so that they saw value
10:56:46 6 in buying more the next year.

10:56:49 7 133 Q. And the ORC, while you were Chair,
10:56:49 8 understood that breeding a horse was a long-term
10:56:58 9 investment; correct?

10:56:58 10 A. We talked -- covered that earlier,
10:56:58 11 yes.

10:57:01 12 134 Q. And you also understood that there
10:57:03 13 had to be an atmosphere of stability to give
10:57:08 14 breeders confidence to make those long-term
10:57:10 15 investments geared towards improving the quality of
10:57:13 16 their horses; correct?

10:57:15 17 A. That would be the best situation.

10:57:16 18 135 Q. And while you were the Chair of
10:57:27 19 the ORC, you understood, sir, that there was a
10:57:31 20 linkage between the revenue from the Slots at
10:57:33 21 Racetrack Program and breeding activity in Ontario;
10:57:35 22 correct?

10:57:35 23 A. Correct.

10:57:36 24 136 Q. In fact, since the inception of
10:57:39 25 the Slots at Racetrack Program until its cessation,

10:57:45 1 the increased purses and revenues flowing to the
10:57:48 2 breeding industry through the Slots at Racetrack
10:57:51 3 Program led to an increase both in the quality and
10:57:54 4 quantity of Ontario Standardbred horses; correct?

10:57:57 5 A. Correct.

10:57:58 6 I would say that, during my tenure
10:58:02 7 there, that the Standardbred program was producing
10:58:07 8 world-quality horses as evidenced that the Horse of
10:58:14 9 the Year one year was a Standardbred stallion.

10:58:17 10 137 Q. Which horse was that?

10:58:18 11 A. Pat can help me with that.

10:58:22 12 I went to -- I went to Lexington when
10:58:24 13 he set the world record, so we could put -- we put
10:58:27 14 a blanket on him for the picture. Stands at Hanover
10:58:32 15 Shoe Farm.

10:58:35 16 DR. MEYERS: I'm sorry. I missed the
10:58:38 17 question.

10:58:39 18 THE WITNESS: The name of the horse
10:58:39 19 slips by, but he was a champion three-year-old, set
10:58:41 20 the world record at -- at Lexington. And the
10:58:45 21 people at Lexington were good enough to allow us --
10:58:46 22 I went down and we put an Ontario Sires Stakes
10:58:52 23 cooler on him for the -- for the picture. Stands at
10:58:52 24 Hanover Shoe Farm.

10:58:54 25 DR. MEYERS: Oh. Somebeachsomewhere?

10:58:54 1 THE WITNESS: Somebeachsomewhere.

10:58:54 2 Thank you.

10:58:54 3 MS. MACHADO: Great name.

10:58:54 4 BY MR. MATTHEWS:

10:59:09 5 138 Q. And to --

10:59:09 6 A. That was -- and that was for

10:59:09 7 promotional purposes.

10:59:11 8 139 Q. And to breed horses of a

10:59:14 9 world-class calibre like Somebeachsomewhere, you

10:59:16 10 understood that Standardbred breeders would need to

10:59:19 11 make and maintain significant investments in their

10:59:22 12 horse breeding operations in the Province; correct?

10:59:25 13 A. Correct.

10:59:39 14 140 Q. And we'll come to this later in

10:59:41 15 more detail, but when it was announced in March

10:59:49 16 2012 that the revenue-sharing from the Slots at

10:59:51 17 Racetracks Program was being discontinued, there

10:59:54 18 was an immediate and very significant drop in the

10:59:58 19 value of Ontario-bred horses; correct?

11:00:00 20 A. Correct.

11:00:01 21 141 Q. And you have seen the Auditor

11:00:04 22 General's report that suggested that the value of

11:00:06 23 Standardbred horses fell some 60 per cent?

11:00:09 24 A. That wouldn't surprise me.

11:00:11 25 142 Q. And you were on the frontlines in

11:00:11 1 terms of interacting with participants in the horse
11:00:21 2 racing industry, including breeders in the
11:00:22 3 immediate aftermath of the announcement of the
11:00:25 4 cancellation of SARP; correct?

11:00:27 5 A. Yes. We bore the wrath, to a
11:00:31 6 large degree. A lot of -- a lot of people in the
11:00:33 7 industry called us the "idiot son" because they
11:00:37 8 thought we were responsible -- in some part
11:00:38 9 responsible for the decision which, of course, was
11:00:40 10 far from the truth.

11:00:41 11 143 Q. In fact, you only found out about
11:00:43 12 the decision, I understand, the evening before it
11:00:45 13 was announced?

11:00:46 14 A. Correct. Blair Stransky called me
11:00:50 15 to tell me that the announcement was being made the
11:00:53 16 next day.

11:00:54 17 I asked him, were they sure they
11:00:56 18 understood what the ramifications were, that did
11:00:58 19 they not need some outside advice?

11:01:00 20 And they said, no, that he was -- they
11:01:02 21 were quite comfortable and they were going ahead.

11:01:05 22 144 Q. So I will come back to that a
11:01:08 23 little later on, but that's -- that's helpful.

11:01:08 24 And when the announcement was made in
11:01:19 25 March of 2012, you understood that that was right

11:01:21 1 in the middle of breeding season; correct?

11:01:23 2 A. Correct.

11:01:24 3 145 Q. When is breeding season? Can you
11:01:26 4 explain that?

11:01:26 5 A. Breeding season theoretically
11:01:29 6 starts the 1st of January if you -- if you can get
11:01:30 7 a mare to cycle, I guess and, more than likely,
11:01:33 8 February.

11:01:34 9 But they do breed anywhere from January
11:01:38 10 to about June would be the breeding season.

11:01:46 11 Warmer weather is helpful and more
11:01:50 12 daylight to get -- to get a mare to cycle.

11:01:50 13 That's, for those -- I'd better explain
11:01:53 14 "to cycle". That's so she is in season, so that
11:01:57 15 you can breed her.

11:01:59 16 MR. LISUS: Warmer weather and daylight
11:02:02 17 are helpful to most things. (Laughter)

11:02:13 18 BY MR. MATTHEWS:

11:02:13 19 146 Q. And do I understand correctly,
11:02:14 20 sir, that once the decision is made to breed,
11:02:18 21 especially if the decision is made to breed to a
11:02:20 22 popular stallion, there have to be advance bookings
11:02:24 23 made to book your mare to be bred to that stallion.

11:02:28 24 Is that correct?

11:02:28 25 A. Correct.

11:02:28 1 147 Q. So that might occur a number of
11:02:31 2 months in advance of the actual attempt to breed to
11:02:33 3 that stallion?

11:02:33 4 A. Generally speaking, yes.

11:02:34 5 148 Q. And did you understand that due to
11:02:39 6 the success and the word-class nature of the
11:02:43 7 Standardbred program in Ontario, there were many
11:02:47 8 well-known stallions standing in Ontario for
11:02:51 9 Standardbred mares to be bred to?

11:02:53 10 A. Correct.

11:02:58 11 149 Q. And did you also understand that
11:03:00 12 when the announcement was made regarding the
11:03:03 13 cancellation of the slots revenue-sharing in March
11:03:06 14 2012, that many of the bookings to stallions
11:03:21 15 standing in Ontario that had yet to occur were
11:03:21 16 cancelled?

11:03:22 17 A. Correct.

11:03:22 18 I might add - and there is a memo to
11:03:24 19 file in the material I provided you today - that I
11:03:27 20 met with a number of breeders, and I can't remember
11:03:30 21 whether -- whether Pat was there or not, but they
11:03:33 22 were besides themselves.

11:03:35 23 And they had -- and they had written a
11:03:41 24 letter to the Minister and --

11:03:44 25 150 Q. Is this Minister Duncan?

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A. Yes.

And a gentleman by the name of Bill O'Donnell, who I knew reasonably well, had -- and I had met with him a couple of times because I was having meetings with various industry people because they were all -- the industry was turned upside down.

And not only was the breeding industry in turmoil; so were racetracks, because the -- we were, as the agreement was to run out March 31 --

Q. Of 2013?

A. Yeah. So long before that, of course, tracks would have to apply for race dates.

And also, the Commission, we had to find out, how do we size ourselves for whatever the new industry is going to be?

So it was impossible for tracks to even think about applying for race dates because of the process that OLG had put in place, that you needed to have a partner to bid on a casino, not knowing how they do anything of that thing in any of the -- any -- and OLG had not released any details about that whole process.

There was turmoil all across, and so I had undertaken a number of meetings with different

11:05:09 1 people in the industry to try and get a handle
11:05:12 2 where things were, so we could understand where
11:05:15 3 things might be because tracks and people were
11:05:18 4 having meetings with different people and the
11:05:21 5 government and OLG, and our information flow was
11:05:25 6 limited.

11:05:26 7 Mr. O'Donnell asked me if -- if I would
11:05:31 8 meet with a number of breeders who were, umm, quite
11:05:36 9 upset and --

11:05:36 10 152 Q. Were these Standardbred breeders?

11:05:38 11 A. Yes. They were all Standardbred
11:05:40 12 breeders, and there's a list of them in there, in
11:05:43 13 my document -- in a memo to file.

11:05:46 14 And what they asked me was that they
11:05:48 15 had written a letter or told me, first of all, that
11:05:50 16 they had written a letter to the Minister and they
11:05:52 17 were not sure that the Minister had even seen it.

11:05:56 18 So I undertook -- I said I'll -- I said
11:05:58 19 -- I again explained that we had no input in the
11:06:00 20 decision. My information came the -- the day
11:06:04 21 before the announcement was made, but that I would
11:06:07 22 do my best to ensure that the Minister had seen it
11:06:10 23 or would see it.

11:06:12 24 And I did make a call to Mr. Stransky
11:06:19 25 to ensure that the letter was brought -- had been

11:06:21 1 or would be brought to the Minister's attention.

11:06:23 2 And so, I was certainly aware of the
11:06:26 3 plight of the breeders at that point in time.

11:06:28 4 153 Q. Do you accept that the ORC, at
11:06:31 5 least while you were Chair of the ORC, had
11:06:33 6 developed some expertise in the horse racing
11:06:36 7 industry?

11:06:36 8 A. I would agree with that.

11:06:37 9 We were recognized as a world-class
11:06:40 10 regulator at that point in time. And that's --
11:06:41 11 that's not me. That's the information flowing back
11:06:45 12 from the Association of Racing Commissions (sic)
11:06:50 13 International.

11:06:50 14 154 Q. And the ORC understood that the
11:06:54 15 breeding cycle for horses; correct?

11:06:57 16 A. Correct.

11:06:57 17 155 Q. The ORC understood the long-term
11:07:02 18 nature of investments that are required to breed
11:07:06 19 high-quality horses; correct?

11:07:07 20 A. Correct.

11:07:08 21 156 Q. And, in fact, under your tenure,
11:07:10 22 including under the Ontario Racing Program, the
11:07:13 23 Commission had been taking active steps to
11:07:16 24 encourage long-term, stable investments in the
11:07:20 25 breeding of Standardbred horses in Ontario;

11:07:22 1 correct?

11:07:23 2 A. If you take that to mean that as
11:07:26 3 we administered the breed improvement programs on
11:07:33 4 behalf or -- of the government to -- to encourage
11:07:37 5 continual improvement in the -- in the breeding
11:07:40 6 aspect, yes.

11:07:41 7 157 Q. While you were there, let's say,
11:07:46 8 in 2012, January 1, 2012, are you able to give me a
11:07:51 9 sense of the number of staff that the ORC had?

11:07:56 10 I'm not going to hold you to it, but--

11:07:56 11 A. Well --

11:07:58 12 158 Q. --are we talking a hundred or are
11:08:00 13 we talking --

11:08:01 14 A. Yeah. It depends how you --
11:08:03 15 you -- if you want to count full-time or part-time.
11:08:06 16 Because of our -- of our judging pool, we need more
11:08:11 17 people in the summertime when a lot of the tracks
11:08:13 18 are racing than we would -- and so, that kind of
11:08:17 19 fluctuates.

11:08:17 20 So if you said a hundred, you wouldn't
11:08:19 21 be that fair off, give or take.

11:08:21 22 159 Q. And I understand, sir - and this
11:08:28 23 goes back to some of the evidence you were giving
11:08:30 24 earlier about the metrics you were tracking with
11:08:33 25 respect to the horse racing industry - that the ORC

11:08:37 1 had data and information about the volume of
11:08:41 2 breeding activity; correct?

11:08:43 3 A. Correct.

11:08:43 4 160 Q. Other metrics related to efforts
11:08:50 5 to enhance the quality of -- of breeding in
11:08:54 6 Ontario?

11:08:54 7 A. Correct.

11:08:54 8 161 Q. And are you tell me, sir, that
11:09:00 9 prior to the announcement on March 12th, 2012, that
11:09:07 10 revenue-sharing would end March 31 of the following
11:09:12 11 year, no effort was made by OLG or the government
11:09:17 12 to seek the input of the ORC with respect to the
11:09:22 13 horse racing industry?

11:09:23 14 A. You would be correct.

11:09:26 15 In fact, you will see, in some of the
11:09:27 16 documentation I brought with me today, there was a
11:09:32 17 rumour floating around and a call -- comments had
11:09:36 18 been made to an ORC staff member, which I thought
11:09:40 19 was totally inappropriate, about the ORC being in
11:09:44 20 trouble and that there were three tracks going to
11:09:48 21 close.

11:09:49 22 And I called Mr. Stransky to offer my
11:09:55 23 opinion, that I thought it was totally
11:09:57 24 inappropriate that a person would make that comment
11:09:59 25 to a staffer; that if such information was going to

1 be passed on, it should have gone to my executive
2 director Mr. Blakney, or to me directly. And --

3 --- (Court reporter appeals.)

4 THE WITNESS: Blakney, B-l-a-k-n-e-y,
5 John. John Blakney.

6 BY MR. MATTHEWS:

7 162 Q. '...or to myself personally,' I
8 think is what you said.

9 A. Pardon me?

10 163 Q. You said it should either go to
11 Mr. Blakney or to yourself personally?

12 A. Yes.

13 And also about a rumour about three
14 tracks closing.

15 And he said, 'There's nothing to it,'
16 and that the upcoming budget, there was nothing to
17 worry about for racing.

18 164 Q. And we'll come to the notes. I
19 was glancing through the notes that you produced
20 today and we'll obviously let the documents say
21 what they say, but my recollection is, that was in
22 about December of 2011.

23 Does that seem right?

24 A. It could be. I would have to go
25 back and put it out. That's why I made the notes.

11:10:50 1 And I said on the record that the notes
11:10:53 2 were not made after each call. I can't tell you at
11:10:57 3 what point in time I started to do memo to file,
11:10:59 4 but somewhere along the line, it became clear to me
11:11:03 5 that, as this thing evolved, the potential for a
11:11:07 6 lawsuit was there and there were people talking
11:11:09 7 about it, and so I thought that I had better go
11:11:12 8 back and start making some notes, so that I -- and
11:11:19 9 the notes are made to the best of -- of my recall
11:11:22 10 at that point in time, and I believe they would be
11:11:25 11 accurate to the best of my ability.

11:11:26 12 165 Q. Thank you.

11:11:31 13 When you were giving your answer before
11:11:33 14 about the aftermath following the announcement, you
11:11:37 15 used the word "turmoil" and you said there was
11:11:40 16 turmoil in the breeding sector, there was turmoil
11:11:43 17 for the racetracks.

11:11:44 18 A. And for horsepeople.

11:11:45 19 166 Q. And for horsepeople.

11:11:46 20 And would you agree, also, to a certain
11:11:48 21 degree, for the ORC, sir?

11:11:50 22 A. Very much so. Umm...

11:11:52 23 167 Q. You were sort of left in a bit of
11:11:56 24 a lurch, weren't you?

11:11:58 25 A. Well, we were left in a lurch, and

11:12:00 1 again, it comes back to people.

11:12:02 2 We had people, very good people who
11:12:04 3 didn't know whether they were going to have a job
11:12:07 4 in a short period of time, and what should they be
11:12:10 5 doing?

11:12:10 6 And we were concerned because racing is
11:12:14 7 very specific and there isn't a wide knowledge base
11:12:19 8 of people with that skill set.

11:12:21 9 How were we going to retain these
11:12:23 10 people during that point in time and so that when
11:12:28 11 racing emerged, if it would emerge - and we can
11:12:31 12 talk about that because I had conveyed to the
11:12:36 13 government a number of times that their proposal
11:12:40 14 going forward made no sense whatsoever - there
11:12:45 15 would be no racing.

11:12:45 16 And I disputed the fact that -- the
11:12:50 17 government's statement when they made the
11:12:52 18 announcement, 'There was racing before slots; there
11:12:55 19 would be racing after slots.'

11:12:56 20 And you can see in a letter I've
11:12:58 21 written that disputed that fact because the
11:13:00 22 economics of the industry had changed so
11:13:03 23 dramatically post slots.

11:13:06 24 For example, with the implementation of
11:13:09 25 slots, tracks no longer charged for parking, tracks

11:13:12 1 no longer charged for admission.

11:13:14 2 The business had gone from an on-track
11:13:17 3 business base to an off-track business base where
11:13:20 4 the -- the splits were so much different because of
11:13:22 5 new technology, the -- the way you sold your
11:13:26 6 business had changed dramatically.

11:13:29 7 Your commission, umm, and I don't want
11:13:36 8 to be held to it, but a track's commission at one
11:13:41 9 point might have been some 20-some per cent -- was
11:13:45 10 about 6 or 7 per cent of the -- of the wagering
11:13:48 11 revenue because of the way it the business had
11:13:49 12 changed.

11:13:56 13 And so, the -- the assumption -- or not
11:13:57 14 the -- the statement that there would be racing
11:13:58 15 afterwards and that the \$150-million wouldn't
11:14:02 16 support one track, let alone -- the government said
11:14:05 17 they'd be -- they wanted five or six tracks and --

11:14:07 18 168 Q. Was it apparent to you very
11:14:09 19 quickly, sir, after you learned of the
11:14:11 20 announcement, that unless corrective action was
11:14:15 21 taken quickly, the Ontario racing industry would
11:14:19 22 collapse?

11:14:19 23 A. Oh. There's -- there's no
11:14:21 24 question in my mind that if -- if there was -- a
11:14:25 25 number of things that were apparent.

11:14:26 1 First of all, there would be no racing
11:14:29 2 come March 31 if the government offer didn't
11:14:34 3 change.

11:14:36 4 Furthermore, there would be no
11:14:41 5 breeding. And I -- and I told the government on
11:14:43 6 numerous times that, including that the
11:14:46 7 three-person committee, that there needed to be an
11:14:49 8 announcement as soon as possible, like immediately,
11:14:53 9 about a breed improvement program or there would be
11:14:56 10 no breeding industry.

11:14:57 11 A. And I said, 'No matter what --
11:14:59 12 what you end up with at the end, if you say -- if
11:15:01 13 you mean what you say, that there will be racing
11:15:03 14 come March 31, then you need to do something now
11:15:06 15 because if you have no breeding industry, you have
11:15:08 16 no racing industry come March 31.'

11:15:11 17 169 Q. And is it fair to say that--

11:15:11 18 A. And --

11:15:13 19 170 Q. --you understood -- sorry. I
11:15:14 20 didn't mean to cut you off. Go ahead.

11:15:16 21 A. And I was also very suspect on the
11:15:20 22 whole OLG proposal, given that I had extensive
11:15:25 23 knowledge and experience in the casino side because
11:15:31 24 when I was -- one of the things I was responsible
11:15:34 25 for at Woodbine when I joined them was their casino

1 bid for Windsor.

2 And it was never the intent, per se, to
3 win the bid for Windsor. It was to be prepared for
4 when -- because everyone -- everyone knew or at
5 least assumed that - and there was never a denial -
6 that the real prize in the casino business was a
7 casino in Toronto.

8 So it was the objective of the -- if
9 the Ontario Jockey Club was going to survive
10 through this whole process, so it needed to be the
11 winner of the Toronto bid.

12 So what better way; we went out and
13 found a -- a party, and I was responsible -- we
14 ended up with Caesars as our partner. And I spent
15 months identifying potential partners, and then we
16 were part of the casino bid.

17 So through that process and the
18 research we did with our partner, I became familiar
19 with studies done and knew what the, uh, ratio, for
20 want of a better term, for a casino and the size of
21 it that could be supported in the population.

22 And so, seeing that the -- was it 26
23 casinos that was going to be built in Ontario, that
24 it was totally unsupported, based on the research
25 that I was aware of from when we did the bid in

11:17:00 1 Windsor.

11:17:01 2 171 Q. So let me give that point back to
11:17:01 3 you, just to make sure I understand it correctly.
11:17:05 4 So when you were at Woodbine, the 1991
11:17:06 5 to 1994 period, Woodbine, through you and others,
11:17:11 6 partnered with Caesars to gather intelligence about
11:17:16 7 the size of the gaming market in Ontario?

11:17:18 8 A. Correct.

11:17:19 9 172 Q. And --
11:17:19 10 A. And -- and adjoining States.

11:17:21 11 173 Q. And because of your immersion in
11:17:24 12 that exercise, you had had, for many years, an
11:17:27 13 understanding about the nature of the gaming market
11:17:31 14 in Ontario; correct?

11:17:32 15 A. Correct.

11:17:32 16 174 Q. And so, when you read OLG's
11:17:36 17 proposal and their plans for expanding gaming in
11:17:39 18 Ontario and the implementation of casinos, that
11:17:43 19 struck you immediately, based on what you knew, as
11:17:46 20 being wildly optimistic?

11:17:48 21 A. That would be a fair way of
11:17:49 22 putting it.

11:17:50 23 175 Q. You also understand that the
11:17:52 24 Auditor General released a report in the aftermath
11:17:56 25 of this, in April 2014, where it -- where the

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Auditor General also concluded that OLG's assumptions were wildly optimistic.

Do you remember reading that report?

A. I am aware of the headline, yes.

Q. Coming back to a number of things that you said in your answer, you said - and I think I captured this accurately - that you understood and you urged the government that there would be no breeding if there wasn't an announcement of some sort.

Can we agree, sir, that you understood that because there needs to be confidence, the breeders need have confidence in the ongoing viability of the racing industry in Ontario to make long-term investments and breed horses; correct?

A. That would be fair.

Q. And without any indication as to whether or not racing would continue past March 31, 2013, breeders would be unwilling to make any investments into breeding; correct?

A. That would be fair.

Q. Are you aware -- well, let me start with this question.

When you were Chair of the ORC, for a certain period of time, Ted McMeekin was the

11:19:27 1 Minister of Agriculture; correct?

11:19:29 2 A. Correct.

11:19:29 3 179 Q. Did you ever meet Ted McMeekin?

11:19:32 4 A. I know Ted.

11:19:33 5 180 Q. Now, he was not your responsible

11:19:38 6 minister at any time; correct?

11:19:39 7 A. Correct. (Clearing throat.)

11:19:40 8 181 Q. Because, as I --

11:19:42 9 A. Correct. I'm sorry.

11:19:43 10 182 Q. As I understand it, at least when

11:19:49 11 the announcement was made about the cancellation of

11:19:50 12 revenue-sharing, the ORC was under the auspices of

11:19:53 13 Finance?

11:19:54 14 A. Correct.

11:19:55 15 183 Q. And Dwight Duncan?

11:19:58 16 A. Correct.

11:19:58 17 184 Q. And the ORC, I think, had moved

11:19:59 18 from responsible ministers going back a little

11:20:01 19 while.

11:20:01 20 At one point in time, you were under

11:20:03 21 Energy and Infrastructure; correct?

11:20:05 22 A. Yes. George Smitherman.

11:20:08 23 185 Q. Mr. Smitherman.

11:20:10 24 And what other Ministries? Were you

11:20:11 25 ever under Consumer and Government Services.

11:20:14 1 A. That had been the traditional home
11:20:16 2 for the Commission for many, many years. All of
11:20:18 3 all sudden, we started getting bounced around.
11:20:21 4 186 Q. Okay. But you were never under
11:20:22 5 Agriculture?
11:20:23 6 A. At the very end, just before I
11:20:25 7 left, yes.
11:20:26 8 187 Q. So this is after the announcement?
11:20:28 9 A. After the announcement. And the
11:20:30 10 Premier, actually, was the Minister of Agriculture
11:20:33 11 then, too, though I never met with her.
11:20:36 12 188 Q. So coming back then to Ted
11:20:43 13 McMeekin, I take it you knew Ted at the time you
11:20:46 14 were Chair of the ORC?
11:20:47 15 A. Correct.
11:20:56 16 189 Q. Did you speak to Mr. McMeekin
11:20:58 17 after the announcement was made by the government
11:21:00 18 and OLG that the revenue-sharing from slots would
11:21:03 19 be cancelled?
11:21:03 20 A. Not to the best of my knowledge,
11:21:06 21 no.
11:21:06 22 190 Q. Are you aware that Mr. McMeekin
11:21:11 23 made a statement, in the aftermath of the
11:21:20 24 announcement, that he found out about it - and by
11:21:24 25 "it", I mean the cancellation of revenue-sharing -

11:21:27 1 at the same time as the public did?

11:21:28 2 Are you aware of that?

11:21:30 3 A. I'm not aware of that.

11:21:31 4 191 Q. Does that surprise you?

11:21:33 5 A. Not necessarily.

11:21:34 6 Again, umm, the conversations that I
11:21:39 7 had with the government were, leading up to the
11:21:45 8 cancellation and for a while afterwards, were
11:21:49 9 through Mr. Stransky and Mr. Stransky alone.

11:21:51 10 I never even spoke to my Minister.

11:21:53 11 192 Q. Even though you had a memorandum
11:21:55 12 of understanding with the Ministry of Finance that
11:21:57 13 required your Minister to speak with you about
11:21:59 14 certain things?

11:22:00 15 A. Correct.

11:22:01 16 And then - I will just finish - later
11:22:04 17 on, I had at least one meeting with the Assistant
11:22:09 18 Deputy Minister who hadn't had a clue about it.

11:22:11 19 193 Q. Barry Goodwin?

11:22:12 20 A. Barry Goodwin. And then with the
11:22:15 21 minister or the deputy minister after that. And by
11:22:17 22 then, I just -- it was just... It was like, 'How
11:22:21 23 do we keep papering this thing?'

11:22:23 24 194 Q. When you say Deputy Minister, do
11:22:25 25 you mean Mr. Orsini?

11:22:26 1 A. Yes.

11:22:27 2 195 Q. So you met with -- and this is all
11:22:27 3 in the aftermath of the announcement?

11:22:29 4 A. That's the aftermath.

11:22:29 5 --- (Mr. Lisus refills the witness's
11:22:29 6 glass of water.)

11:22:31 7 THE WITNESS: Thank you.

11:22:31 8 BY MR. MATTHEWS:

11:22:36 9 196 Q. So you met with Mr. Orsini,
11:22:38 10 Mr. Goodwin, Mr. Stransky?

11:22:41 11 A. Umm. I'm not sure at this point
11:22:42 12 in time whether... I can't tell you when my last
11:22:57 13 meeting with Mr. Stransky was.

11:22:59 14 Leading up to -- and for meetings or
11:23:02 15 conversations with him would be by phone.

11:23:06 16 Uh. This became somewhat too busy to
11:23:11 17 meet, so we -- I could reach him by phone.

11:23:16 18 Umm. The meetings with the ADM and DM
11:23:26 19 were at their request. That was -- that was after.
11:23:32 20 And I couldn't even tell you how long after, but
11:23:34 21 somewhat after. I mean, it wasn't -- I mean, they
11:23:36 22 were then trying to figure out where they were
11:23:39 23 going.

11:23:39 24 197 Q. And was this before there was an
11:23:43 25 announcement about the appointment of this

11:23:47

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tripartite panel? Do you recall?

11:23:50

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A. It could easily be. Umm. I'm not

11:24:01

3

a hundred per cent certain.

11:24:02

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Q. You said a moment ago, if I -- if

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I caught this correctly, that there was a reference

11:24:05

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to, 'How do we keep papering this thing?'

11:24:08

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Is that what you said? What did you

11:24:10

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mean?

11:24:10

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A. Well, it -- it -- it became

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apparent -- and the -- I didn't have contact with

11:24:21

11

him; staff at the ORC did.

11:24:24

12

There was a Gaming Division and

11:24:27

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Elizabeth Yew (ph), I think her name is --

11:24:28

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Q. Yeigh.

11:24:32

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A. Yeah. We pronounced it "Yew", I

11:24:34

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think at the Commission, but -- and another person,

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17

umm, were--

11:24:35

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Q. Tanya Watkins?

11:24:37

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A. --carrying this file.

11:24:39

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And, I mean, it was laughable, umm, the

11:24:47

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\$150-million for the three-year transition.

11:24:50

22

201

Q. I thought it was 50-million.

11:24:51

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A. Oh. Was it 50-million? I thought

11:24:51

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it was 50-million a year.

11:24:55

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50-million, period?

1 MR. LISUS: 50-million over three
2 years.

3 THE WITNESS: Even -- even more.

4 And so, umm, one of, uh, the points
5 was, 'If you want five or six tracks to survive,
6 it's not hard to figure out how much money.'

7 And I made the comment, and you will
8 see it in -- in my notes, in one of them, anyway.
9 I mean, I could do it on the back of an envelope in
10 five minutes because you know what the costs per
11 day of -- of a racetrack are. Throw in what you
12 need for purses, to incent people to buy horses to
13 race.

14 Leave the breeders sit there for a
15 minute because that's another -- that's --

16 --- (Court reporter appeals.)

17 THE WITNESS: Leave the breeders sit
18 there, the third part of the stool to sit there for
19 a minute.

20 Without those two, there's no racing.
21 And, of course, you need to bring the breeders in
22 at some point, as well.

23 So, umm, it -- it became apparent that
24 at some point, the confidence that the government
25 had in ending the Slot Program and their

1 presumptions - based on what, I can't tell you -
2 were so far off the mark that it was laughable.

3 And then, so how do you start to manage
4 the, uh, the situation? Because, I mean, there was
5 utter despair across the industry.

6 I mean, I am aware of -- of people --
7 I'm not aware personally, but heard allegedly
8 stories of people going bankrupt already, social
9 problems at the home. The breeders, you know,
10 having stock there that they had a stallion, you
11 thought you had a hundred breedings to it and all
12 of a sudden you've got none or almost -- a very
13 few.

14 Bitter despair, the whole across. And
15 the tracks -- and I did do a tour to try and find
16 out, gauge. So you will see it, and I met with a
17 number of track operators, trying to gauge where
18 they were, as part of our effort to find try and
19 find out what the Commission should be doing
20 because, as a government agency, we were caught in
21 the middle, trying to regulate the industry, as we
22 were required to under the Act, and try and plan
23 where we needed to be come March 31.

24 In fact, even before that, how are we
25 going to manage a race date application process?

11:27:53 1 Would anybody even apply? Would we -- all those
11:27:56 2 things that were in the mix.

11:27:58 3 So when I said earlier there was huge
11:28:02 4 turmoil, that's almost an understatement. Everyone
11:28:06 5 was panicked. Tracks didn't know what they could
11:28:09 6 do, what they couldn't do. How would they go
11:28:11 7 forward. It was just a mess.

11:28:11 8 BY MR. MATTHEWS:

11:28:13 9 202 Q. Do you accept that from the
11:28:16 10 breeders' perspective, in the aftermath of the
11:28:18 11 announcement, there was a catastrophic impact on
11:28:19 12 the breeding sector?

11:28:21 13 A. I would agree with that, based on
11:28:22 14 the discussions I had with the breeders that day I
11:28:26 15 met with them at their request.

11:28:29 16 203 Q. The answer you just gave about
11:28:30 17 some of the impacts that you heard or learned about
11:28:34 18 through your discussions with breeders and the tour
11:28:37 19 around you did to different tracks, did you explain
11:28:40 20 the consequences that you were hearing about and
11:28:43 21 observing to the Deputy Minister or Mr. Stransky or
11:28:49 22 Mr. Goodwin or Ms. Yeigh or Ms. Watkins or Minister
11:28:54 23 Duncan after the fact?

11:28:55 24 A. Okay. Let's go, each of them
11:28:57 25 individually.

11:28:58 1 204 Q. Sure. Let's start with
11:29:00 2 Mr. Orsini.
11:29:00 3 A. Umm. Yes.
11:29:02 4 Mr. Goodwin, yes.
11:29:04 5 Ms. Yee (ph) or Yeigh; I never spoke to
11:29:07 6 her. That was my staff that -- that had the
11:29:09 7 relationship and I didn't want to get in the way of
11:29:11 8 that.
11:29:11 9 I never had the opportunity to speak to
11:29:13 10 Mr. Duncan.
11:29:14 11 205 Q. Why not?
11:29:15 12 A. He never would talk to me.
11:29:18 13 206 Q. Okay. Did you ask to?
11:29:21 14 A. Tried.
11:29:22 15 207 Q. What about Mr. Stransky?
11:29:25 16 A. Oh. I -- I spoke to Mr. Stransky
11:29:27 17 many times--
11:29:27 18 208 Q. Okay.
11:29:28 19 A. --and again conveyed to him, as I
11:29:31 20 did to the Panel, about the need to make an
11:29:35 21 announcement for breeders; that there would be --
11:29:39 22 because at some point along the line - I can't tell
11:29:42 23 you when it was - it became obvious that they had
11:29:45 24 at least recognized that there was some difficulty
11:29:50 25 with the breeders and that there needed to be an

11:29:53 1 announcement.

11:29:55 2 And so I got the feeling that there
11:29:56 3 would be, at some point in time, an announcement,
11:29:59 4 which did come, but it came at the Harrisburg Sale,
11:30:03 5 when all the sales in Ontario were done.

11:30:05 6 I mean, it was -- it was next to
11:30:06 7 useless.

11:30:07 8 209 Q. November of 2012?

11:30:08 9 A. Yeah. It was, uh... The number
11:30:12 10 of -- let's say, there -- if there might be 10, 20
11:30:15 11 Ontario -- going on base history, past history, my
11:30:19 12 guess would be, and the -- that sale would be a
11:30:22 13 premier sale in North America for horses, and there
11:30:28 14 might be - I'm going to guess - 10 or 20 of the
11:30:33 15 top-bred Ontario yearlings might sell there, so
11:30:36 16 that might have helped them.

11:30:36 17 But the vast -- 90 per cent of all the
11:30:39 18 Ontario-bred yearlings were already sold, so it had
11:30:42 19 no impact on all those.

11:30:44 20 210 Q. Or not sold, I guess?

11:30:46 21 A. Or not sold. Like, it was a day
11:30:49 22 late and a dollar short, for want of a colloquial
11:30:52 23 saying.

11:30:52 24 211 Q. And so, this announcement by the
11:30:55 25 Panel happened on the third day of the Harrisburg

11:30:58 1 Sale, which was the last sale of the year?

11:30:59 2 A. Yes.

11:31:00 3 212 Q. So coming back to the list of
11:31:02 4 people I had asked you about, whether or not you
11:31:04 5 had explained some of the impact that you had
11:31:06 6 observed and heard about, did you ever explain it
11:31:09 7 to Minister McMeekin?

11:31:11 8 A. No. And, as I said, I never had
11:31:19 9 discussion -- my -- because we were an agency of
11:31:21 10 the government, my limitation as to who I could
11:31:24 11 speak to was pretty limited.

11:31:26 12 I reported to a Minister.

11:31:28 13 213 Q. And that Minister apparently
11:31:30 14 didn't want to speak with you; correct?

11:31:31 15 A. I never had discussion with him.

11:31:33 16 214 Q. You did have discussions with him
11:31:36 17 prior to the announcement, as I understand it?

11:31:38 18 A. I did. In fact -- in fact, the --
11:31:43 19 perhaps the last discussion I had, uh, with him
11:31:49 20 would have been for him to give his okay to the
11:31:54 21 introduction of the Ontario Racing Program.

11:31:55 22 215 Q. And he did; correct?

11:31:57 23 A. He did.

11:31:57 24 216 Q. And I will bring to you a letter
11:31:59 25 later where he makes reference to that.

11:32:00 1 But in one of your earlier answers, you
11:32:05 2 made reference to Ms. Yeigh and you said that there
11:32:09 3 was a second person working with her in the Gaming
11:32:09 4 Policy Branch, I believe.

11:32:14 5 Was that Tanya Watkins?

11:32:15 6 A. That name sounds familiar, yes.

11:32:21 7 MR. MATTHEWS: All right. I see it's
11:32:22 8 11:30.

11:32:23 9 Why don't we take a morning break here,
11:32:27 10 Madam Reporter. Let's take 10 minutes. Are you
11:32:27 11 all right with that?

11:32:33 12 THE COURT REPORTER: Sure. That's
11:32:33 13 great.

11:32:33 14 MR. MATTHEWS: Okay. Off the record.

11:32:36 15 ---Recess at 11:32 a.m.

11:42:06 16 ---On resuming at 11:42 a.m.

11:42:12 17 MR. MATTHEWS: All right. Back on the
11:42:13 18 record, please.

11:42:14 19 BY MR. MATTHEWS:

11:42:14 20 217 Q. In answer to some of the questions
11:42:15 21 you were given earlier, you were describing how
11:42:19 22 racetracks used to charge for parking. They used
11:42:21 23 to charge for an admission fee.

11:42:25 24 Was it your understanding, sir, that
11:42:27 25 those kind of things fell away once slot machines

11:42:30 1 were installed into racetracks because OLG wanted
11:42:38 2 to facilitate customers coming to the racetrack,
11:42:39 3 and charging for parking or admissions fees were
11:42:41 4 inconsistent with that?

11:42:43 5 A. Correct.

11:42:44 6 218 Q. When was the last time you spoke
11:42:52 7 with Ted McMeekin?

11:42:54 8 A. Oh. I couldn't tell you.

11:42:56 9 It was before the decision to end SARP.

11:43:00 10 219 Q. Before the decision?

11:43:04 11 A. Yes.

11:43:05 12 220 Q. Okay. One of your earlier
11:43:10 13 answers, you mentioned Bill O'Donnell.

11:43:12 14 You've met Bill before?

11:43:16 15 A. Yes.

11:43:16 16 221 Q. Is he well-known in the horse
11:43:20 17 racing industry?

11:43:20 18 A. Yes.

11:43:21 19 222 Q. He's involved in the Standardbred
11:43:25 20 segment?

11:43:25 21 A. Yes. He heads up COSA, which is
11:43:30 22 the Central -- like, Central Ontario Standardbred
11:43:31 23 Horsemen's Association. Something like that,
11:43:33 24 anyway.

11:43:34 25 He represents the horsepeople who race

11:43:40 1 at -- at -- on the WEG circuit.

11:43:40 2 --- (Court reporter appeals.)

11:43:40 3 BY MR. MATTHEWS:

11:43:45 4 223 Q. "WEG" being Woodbine Entertainment

11:43:46 5 Group?

11:43:46 6 A. Woodbine -- Woodbine -- yes.

11:43:46 7 MS. MACHADO: "WEG".

11:43:47 8 THE WITNESS: Woodbine and Mohawk.

11:43:47 9 BY MR. MATTHEWS:

11:43:56 10 224 Q. So coming back to the turmoil that

11:43:58 11 followed the announcement regarding the

11:44:00 12 cancellation of the revenue-sharing from Slots at

11:44:03 13 Racetracks, you understood, as Chair of the ORC,

11:44:05 14 that the impact would fall most heavily on the

11:44:15 15 Standardbred sector insofar as they represented the

11:44:19 16 largest segment of the Ontario horse racing

11:44:21 17 industry and raced at 15 out of 17 tracks in the

11:44:28 18 Province?

11:44:28 19 A. On a percentage basis, yes.

11:44:30 20 225 Q. And when I had asked you earlier

11:44:43 21 about the relationship between the purses and the

11:44:50 22 value of horses, I don't think I asked you about

11:44:52 23 the relationship between the incentives that flowed

11:44:54 24 through the Horse Improvement Program, including

11:44:56 25 the Standardbred Improvement Program, and breeding

11:44:56 1 activity.

11:44:59 2 But was it your understanding, sir,
11:45:01 3 that the purpose of these incentive programs was to
11:45:11 4 incentivize increases in quality of Standardbred
11:45:13 5 breeding in Ontario?

11:45:13 6 A. Yes.

11:45:19 7 226 Q. And I think we already established
11:45:21 8 that these incentive programs were funded, in part,
11:45:26 9 by revenue from the Slots at Racetracks Program;
11:45:29 10 correct?

11:45:29 11 A. Yes.

11:45:29 12 227 Q. And you're aware, aren't you, sir,
11:45:31 13 that in the aftermath of the cancellation of the
11:45:35 14 revenue share, the auditor for the Horse
11:45:38 15 Improvement Program determined, in financial
11:45:40 16 statements for the Horse Improvement Program, that
11:45:42 17 they had concerns about HIP's ability to function
11:45:45 18 as a going concern, given the abrupt withdrawal of
11:45:51 19 revenue from the Slots at Racetrack Program?

11:45:53 20 A. That would be correct.

11:46:16 21 228 Q. Are you also aware, sir, that in
11:46:18 22 the aftermath of the announcement of the decision
11:46:21 23 in March 2012, racetracks including the racetracks
11:46:25 24 controlled by Great Canadian Gaming Corporation,
11:46:28 25 which is a public company, had to issue documents

11:46:33 1 like Material Change Reports, indicating that
11:46:35 2 because of the announcement, that the siteholder
11:46:37 3 agreements pursuant to which they operated were
11:46:41 4 being terminated, that was a material change that
11:46:44 5 would have an impact on the Great Canadian Gaming's
11:46:50 6 business?

11:46:50 7 Are you aware of that?

11:46:51 8 A. I believe I am. I -- I don't seem
11:46:53 9 to recall it, but it -- obviously, they would have
11:46:57 10 to, being a public company.

11:47:02 11 229 Q. All right.

11:47:02 12 I want to switch gears, if I may, sir,
11:47:05 13 and talk a little bit more generally about the ORC.

11:47:10 14 We touched on its mandate a little bit
11:47:12 15 earlier, but I want to focus a little bit on some
11:47:22 16 of the reports and other documents that came from
11:47:24 17 the Commission, particularly during the time that
11:47:27 18 you were its Chair, from 2006 until I understand
11:47:32 19 you left in 2013.

11:47:34 20 Is that right?

11:47:35 21 A. Correct.

11:47:35 22 230 Q. Do you remember what month in
11:47:37 23 2013?

11:47:45 24 A. September, October. I'm not sure
11:47:47 25 which.

11:47:47 1 231 Q. Was that the end of your term or
11:47:49 2 did you resign early?
11:47:50 3 A. I resigned early.
11:47:52 4 232 Q. Why did you resigned early?
11:47:54 5 A. Because otherwise, they would fire
11:47:56 6 me.
11:47:56 7 233 Q. Why do you know that?
11:47:59 8 A. Because I was told, 'Resign or be
11:48:02 9 fired.'
11:48:02 10 234 Q. And who was -- this is when
11:48:07 11 Premier Wynne was the Minister of Agriculture?
11:48:09 12 A. Correct.
11:48:10 13 235 Q. And at that time, the ORC -- the
11:48:11 14 ORC's responsible minister was then Kathleen Wynne?
11:48:15 15 A. Correct.
11:48:16 16 236 Q. Who told you, 'Resign or -- or be
11:48:19 17 fired'?
11:48:19 18 A. It was conveyed through my
11:48:19 19 executive director, Mr. Lehman.
11:48:19 20 I was in Europe at the time, visiting
11:48:22 21 my granddaughter.
11:48:24 22 237 Q. Do you know who told Mr. Lehman?
11:48:24 23 A. I do not.
11:48:24 24 238 Q. Was it someone from the Ministry
11:48:24 25 of Agriculture?

11:48:24 1 A. Uh. I'm -- I couldn't tell you.
11:48:31 2 I would presume so. My guess would be the Deputy
11:48:34 3 Minister, but I never bothered to ask. It was
11:48:40 4 quite clear.

11:48:40 5 239 Q. You know that the Deputy Minister
11:48:41 6 at that time in Agriculture was Michael Keegan?

11:48:42 7 A. Yes. But I -- I can't tell you
11:48:44 8 who -- who would have conveyed...

11:48:48 9 240 Q. When was your term due to expire?

11:48:51 10 A. I think I had another year to go,
11:48:53 11 approximately.

11:48:54 12 241 Q. And when was your term renewed?
11:48:59 13 Was it in 2009?

11:48:59 14 A. It was renewed for five years, so
11:49:02 15 if you work back, so...

11:49:02 16 242 Q. So that would be 2009 running into
11:49:05 17 2014?

11:49:06 18 A. Yes.

11:49:07 19 243 Q. So that would have been, while
11:49:10 20 Minister Duncan was your responsible minister, your
11:49:14 21 term was extended?

11:49:16 22 A. No. I don't -- I don't think --
11:49:17 23 he -- he wouldn't have been. We weren't with
11:49:18 24 Finance then. Umm.

11:49:19 25 244 Q. Might have been Smitherman, then,

11:49:22 1 in Infrastructure?

11:49:23 2 A. Could have been Smitherman. I --

11:49:25 3 I actually don't recall who.

11:49:27 4 Appointments generally went through the

11:49:29 5 Appointment Office and the Minister in the

11:49:35 6 Appointment Office would have a discussion.

11:49:37 7 245 Q. All right. Do you know why you

11:49:55 8 were going to be fired, sir?

11:49:56 9 A. No. I was never given a reason.

11:50:00 10 I could...

11:50:01 11 246 Q. What's your belief?

11:50:02 12 A. I could guess, but I don't...

11:50:04 13 247 Q. Well, what's your belief, sir?

11:50:06 14 A. Well, I... I don't believe that

11:50:09 15 they saw me as a person who was going to, uh, carry

11:50:17 16 the torch for what they had planned, I guess.

11:50:20 17 I don't know. So I can only assume.

11:50:22 18 I don't -- I don't make assumptions, so

11:50:25 19 the easier answer is: I don't know. You can ask

11:50:31 20 them.

11:50:31 21 248 Q. And do you know when Paul Godfrey

11:50:42 22 resigned as the Chair of -- of OLG?

11:50:45 23 A. Before I did. About half a year

11:50:46 24 before. I -- I couldn't tell you, but I'm going to

11:50:50 25 presume around then.

11:51:10 1 249 Q. And so, I understood that you
11:51:11 2 resigned in September or October of 2013; correct?

11:51:14 3 A. Correct.

11:51:15 4 250 Q. And Mr. Godfrey resigned or was
11:51:18 5 fired or otherwise relieved of his position a
11:51:23 6 number of months ahead of that, but after Kathleen
11:51:27 7 Wynne became the Premier; correct?

11:51:29 8 A. I'm not sure about that.

11:51:29 9 251 Q. All right. I'm going to pass you
11:51:29 10 a copy of the ORC's annual report for the year 2006
11:51:40 11 to 2007, SB 1752.

11:51:47 12 It's probably been a number of years,
11:51:47 13 sir, but you're familiar with the -- in a general
11:51:47 14 sense, you're familiar with the annual reports that
11:51:54 15 the ORC put out under your tenure?

11:51:56 16 A. Correct.

11:51:56 17 252 Q. So if you take a look at this one.
11:51:58 18 I believe it's the first one that was
11:52:01 19 put out after you were appointed Chair.

11:52:04 20 So if you flip to what's page 3 of the
11:52:08 21 annual report, you see a message from the Chair and
11:52:13 22 a very dashing picture of yourself.

11:52:16 23 A. Yes.

11:52:24 24 253 Q. And can I just ask you, sir, to
11:52:47 25 look at page 8 of the annual report?

11:52:53 1 A. I don't think -- there are no page
11:52:55 2 numbers on it, so --

11:52:55 3 254 Q. Well, it's the heading, "Core
11:52:58 4 Business Functions" and I see that number 8 in the
11:53:01 5 bottom left-hand corner.

11:53:11 6 A. Here. Why don't you find it? It
11:53:13 7 will be faster. You know where to go.

11:53:15 8 255 Q. So the heading, "Core Business
11:53:23 9 Functions".

11:53:23 10 A. Yes.

11:53:23 11 256 Q. And you see, down the left-hand
11:53:28 12 side of that page, there's an "ORC Mission
11:53:34 13 Statement" about how the ORC sees itself governing
11:53:37 14 horse racing.

11:53:37 15 And you say that:

11:53:40 16 "The ORC wants to govern horse
11:53:44 17 racing in a manner that promotes
11:53:45 18 high standards of honesty,
11:53:47 19 integrity, business practices and
11:53:50 20 accountability, protects and
11:53:52 21 enhances the broader public
11:53:54 22 interest, protects and enhances the
11:53:57 23 safety of a horse, encourages
11:54:02 24 industry dialogue at all levels, and
11:54:03 25 encourages industry sustainability

11:54:05 1 through effective policy regulation

11:54:07 2 and program delivery." [As read.]

11:54:09 3 Do you see that, sir?

11:54:09 4 A. Yes, sir.

11:54:10 5 257 Q. Now, while you were the Chair of

11:54:12 6 the ORC, was that a mission statement that you

11:54:14 7 sought to have your Commission abide by?

11:54:17 8 A. Yes.

11:54:17 9 258 Q. And below that, you see that there

11:54:21 10 is a statement, "The ORC envisions..."

11:54:23 11 You envision both a strong horse racing

11:54:26 12 industry guided by principles of honesty, integrity

11:54:29 13 and social responsibility and a climate where

11:54:32 14 customers and participants can invest and conduct

11:54:38 15 their horse racing activities with trust and

11:54:40 16 confidence; correct?

11:54:41 17 A. Correct.

11:54:41 18 259 Q. And is that an atmosphere or a

11:54:43 19 climate that the ORC envisioned to project to the

11:54:46 20 participants in the horse racing industry

11:54:49 21 throughout your time as Chair?

11:54:51 22 A. Yes.

11:54:51 23 260 Q. And focusing specifically on the

11:54:53 24 second bullet point:

11:54:55 25 "A climate where customers and

11:54:59 1 participants can invest and conduct
11:55:00 2 their horse racing activity with
11:55:02 3 trust and confidence." [As read.]

11:55:04 4 Is it fair to say, sir, that through
11:55:06 5 the Horse Improvement Program and through other
11:55:08 6 activities of the Ontario Racing Commission while
11:55:12 7 you were its Chair, the ORC sought to project
11:55:14 8 messages that would allow breeders to invest and
11:55:18 9 conduct their horse racing activities with trust
11:55:21 10 and confidence?

11:55:22 11 A. Well, I think all you have to do
11:55:23 12 is look at the reports that -- that the Commission
11:55:27 13 issued on the breed improvement programs. It
11:55:30 14 speaks for itself.

11:55:31 15 261 Q. And it speaks for itself in the
11:55:33 16 sense that those reports continually project
11:55:35 17 messages designed to encourage breeders to make
11:55:39 18 investments in their breeding operations with trust
11:55:41 19 and confidence; correct?

11:55:43 20 A. I would say so, yes.

11:55:45 21 262 Q. And you're aware that the ORC was
11:55:49 22 the regulator closest to the horse racing industry;
11:55:52 23 correct?

11:55:52 24 A. Correct.

11:55:54 25 263 Q. And among the principles for the

11:55:56 1 ORC were principles of honesty, integrity and
11:56:00 2 social responsibility; correct?

11:56:01 3 A. Correct.

11:56:02 4 264 Q. And you and your Commission, under
11:56:04 5 your leadership, were honest and transparent with
11:56:07 6 the industry; correct?

11:56:07 7 A. Correct.

11:56:09 8 265 Q. And you understood that, as the
11:56:13 9 regulator closest to the industry, the industry
11:56:16 10 would look to the ORC and rely on the messages
11:56:20 11 coming out of the ORC in conducting their horse
11:56:24 12 racing activities.

11:56:25 13 You understood that; correct?

11:56:26 14 A. To a certain degree, that's true.
11:56:29 15 They would also look to government.

11:56:34 16 A. Fair enough.

11:56:35 17 But, as I was saying before, the ORC
11:56:38 18 was an agent of government; correct?

11:56:40 19 A. Correct. As a regulator.

11:56:44 20 266 Q. Your Board was appointed by the
11:56:46 21 government?

11:56:48 22 A. Correct.

11:56:48 23 267 Q. And you administered the Horse
11:56:49 24 Improvement Program on behalf of government;
11:56:51 25 correct?

11:56:51 1 A. Correct.

11:56:51 2 268 Q. And you believed that when you put
11:56:56 3 out these messages for breeders to conduct their
11:57:00 4 activities with trust and confidence, you were
11:57:03 5 speaking for and as an agent of the government?

11:57:07 6 A. Correct. And to the both of my
11:57:10 7 knowledge, government would see these things before
11:57:12 8 they went out anyway. They had to approve the --
11:57:16 9 the annual report.

11:57:17 10 --- (Court reporter appeals.)

11:57:18 11 THE WITNESS: ...approve the annual
11:57:19 12 report.

11:57:21 13 BY MR. MATTHEWS:

11:57:21 14 269 Q. Not just the annual report, sir,
11:57:21 15 right? There were business plans they had to
11:57:23 16 approve; correct?

11:57:23 17 A. Yes. We had to file a rolling
11:57:25 18 business plan.

11:57:26 19 270 Q. And there were also Horse
11:57:30 20 Improvement Program annual reports they had to
11:57:32 21 approve; correct?

11:57:33 22 A. To the best of my knowledge, yes.

11:57:35 23 271 Q. And they were aware of major
11:57:37 24 initiatives of your Commission, such as the Ontario
11:57:41 25 Racing Program; correct?

11:57:41 1 A. Correct.

11:57:42 2 272 Q. They had to approve that, as well;

11:57:45 3 correct?

11:57:45 4 A. Correct.

11:57:45 5 273 Q. And these were things that were

11:57:48 6 developed in consultation with the industry;

11:57:51 7 correct?

11:57:51 8 A. Correct.

11:57:51 9 274 Q. For example, the Ontario Racing

11:57:55 10 Program came out of a dialogue and a series of

11:57:58 11 consultations between your Commission and the

11:58:01 12 industry?

11:58:01 13 A. Correct.

11:58:06 14 275 Q. And I also understand, for

11:58:07 15 example, in 2008, your Commission undertook a large

11:58:11 16 review of the Horse Improvement Program; correct?

11:58:15 17 A. Correct.

11:58:16 18 276 Q. And that was also a review that

11:58:17 19 was conducted in consultation with the industry;

11:58:21 20 correct?

11:58:21 21 A. Yes. Consultation was done by

11:58:25 22 staff.

11:58:26 23 277 Q. And then, the result of --

11:58:27 24 A. Not -- not the Commission itself,

11:58:30 25 but by staff.

11:58:31 1 278 Q. And the result of that was a
11:58:33 2 report that then went to and was approved by the
11:58:36 3 governing board of your Commission?

11:58:37 4 A. Correct.

11:58:42 5 MR. MATTHEWS: So I would like to mark
11:58:44 6 this annual report, 2006 to 2007, as the next
11:58:44 7 exhibit.

11:58:44 8 BY MR. MATTHEWS:

11:58:52 9 279 Q. And I don't need to take you to
11:58:54 10 all of the annual reports. I don't think that that
11:58:54 11 would be a useful--

11:58:54 12 A. No.

11:58:54 13 280 Q. --exercise for our time,
11:58:54 14 Mr. Seiling.

11:58:59 15 But can we agree that, under your
11:59:01 16 tenure, the principles of trust and confidence,
11:59:03 17 honesty, integrity were themes that were emphasized
11:59:04 18 in your annual reports over the years?

11:59:06 19 A. Yes.

11:59:12 20 MR. MATTHEWS: So Exhibit 6 is the
11:59:13 21 2006-2007 annual report, SB 1752.

11:59:32 22 ---EXHIBIT NO. 6: 2006-2007 annual
11:59:35 23 report of the Ontario Racing Commission; Doc ID
11:59:37 24 Number SB 1752.

12:00:19 25 BY MR. MATTHEWS:

12:00:19 1 281 Q. I'm going to pass you two
12:00:21 2 documents, CRE 85399, CR 25331.

12:00:27 3 What these are, sir - I will just
12:00:29 4 describe them for the benefit of the record - it's
12:00:32 5 a letter to you, dated January 15th, 2010, from
12:00:36 6 Dwight Duncan, approving the 2009 through 2012
12:00:41 7 business plan for the ORC.

12:00:43 8 And then the second document is the
12:00:46 9 2009 through 2012 business plan.

12:00:49 10 I will pass those to you, have you take
12:00:52 11 a look at them.

12:00:53 12 --- (Witness reviewing documents.)

12:01:14 13 BY MR. MATTHEWS:

12:01:14 14 282 Q. So, looking first at the cover
12:01:16 15 letter, sir.

12:01:17 16 You would receive letters like this
12:01:18 17 from time to time from your responsible minister,
12:01:20 18 approving things like your annual reports or
12:01:23 19 business plans as you were required to submit those
12:01:26 20 to the government; correct.

12:01:27 21 A. Correct.

12:01:27 22 283 Q. And looking at this one from
12:01:31 23 Minister Duncan, January 15th, 2010, looking at the
12:01:37 24 second paragraph, you see that, among other things,
12:01:39 25 Mr. Duncan is writing in reference to your business

1 plan for 2009 to 2012, and he is saying that:

2 "The plan successfully

3 highlights the goals of the ORC to

4 increase the long-term

5 sustainability of the horse racing

6 industry and enhance the regulatory

7 and oversight functions of the

8 Commission." [As read.]

9 Correct?

10 A. Correct.

11 284 Q. And that plan; i.e., the business

12 plan that you have in your hand, would have set

13 out, at a high level, the steps that you were

14 taking to increase the long-term sustainability of

15 the horse racing industry; correct?

16 A. Correct.

17 285 Q. So let's look at the business

18 plan. Look at page 3, please, sir.

19 You set out your mandate on page 3 and

20 you reiterate some of the same values that we

21 talked about earlier in your annual report.

22 You set out your vision for the ORC as

23 being:

24 "...ensuring there's a strong,

25 vibrant horse racing industry

12:03:03 1 founded upon the principles of
12:03:04 2 honesty, integrity and social
12:03:07 3 responsibility." [As read.]

12:03:08 4 Correct?

12:03:08 5 A. Yeah.

12:03:09 6 286 Q. And if you flip to what appears to
12:03:33 7 be the sixth page of the document, at the very top,
12:03:37 8 you see a reference to 2008 and it describe a
12:03:43 9 report that came out in 2008 known as the "Sadinsky
12:03:46 10 Report"; correct?

12:03:47 11 A. No. I'm not -- my page 6 has got
12:03:50 12 an org chart.

12:03:51 13 287 Q. Umm. So go two pages forward from
12:03:54 14 that, sir.

12:04:02 15 Do you see the year "2008" at the top
12:04:04 16 of the page?

12:04:05 17 A. No. I've got to go further.

12:04:08 18 288 Q. I think you just passed it, sir.
12:04:10 19 I'm happy to take to you the page.

12:04:12 20 A. "Strategic Plan"? No? "Recent
12:04:18 21 Government Impacts"?

12:04:19 22 289 Q. I think you've gone past it, sir.
12:04:21 23 Let me find it for you. Thank you.

12:04:34 24 I have the explanation. I'm looking at
12:04:37 25 a different report.

12:04:38 1 A. That will explain why it's not
12:04:42 2 there.
12:04:42 3 290 Q. So let me give this back to you.
12:04:42 4 MR. ROSENBERG: Sorry. Are we really
12:04:44 5 at CR0025331? Because that's what I'm looking at.
12:04:54 6 It seems to be a business plan, 2009 to 2012.
12:04:57 7 MR. MATTHEWS: Yeah. That's what we're
12:04:59 8 looking at.
12:05:04 9 BY MR. MATTHEWS:
12:05:04 10 291 Q. So if you look -- look at page 5
12:05:13 11 of the 2009 through 2012 business plan.
12:05:15 12 A. On the document you gave me or are
12:05:18 13 you giving me a different one?
12:05:19 14 292 Q. The document I gave you.
12:05:24 15 A. Okay. Page 5?
12:05:26 16 293 Q. Yes, sir.
12:05:27 17 A. Okay.
12:05:28 18 294 Q. So you see here, some of the
12:05:29 19 different aspects of the ORC's mandate we have
12:05:32 20 discussed earlier; honesty, integrity,--
12:05:35 21 A. Yeah.
12:05:35 22 295 Q. --social responsibility.
12:05:38 23 Honesty includes being truthful,
12:05:41 24 transparent and responsive.
12:05:42 25 And then, if you continue on, on page

11, do you see there's a heading under the year 2008, referring to the Sadinsky Report, and that the report:

"...suggested a number of structural changes to the industry, but to date, the government has not announced its response to the report." [As read.]

Do you see that?

A. I do.

296 Q. And if you go over the page to page 12, you set out a vision, mission and values. These again dovetail with some of the things we were discussing earlier in your annual report.

Under the "Accountability" heading, it indicates that:

"The ORC views accountability as doing what we say we will do in an open and transparent matter, acting professionally in accordance with our responsibilities, ensuring effective physical management and care of ORC resources, measuring our progress and accomplishments, both individually and as an

12:07:08 1 organization." [As read.]

12:07:16 2 And those were accountability values
12:07:18 3 that, under your leadership, the ORC sought to
12:07:20 4 achieve; correct?

12:07:21 5 A. Correct.

12:07:34 6 MR. MATTHEWS: All right. I would like
12:07:35 7 to mark the cover letter and the business plan
12:07:40 8 together as Exhibit 7. So that's the cover letter,
12:07:46 9 CRE 85399, and the business plan, CR 25331,
12:07:54 10 Exhibit 7.

12:07:55 11 ---EXHIBIT NO. 7: A letter from
12:07:55 12 Minister Dwight Duncan to Rod Seiling, dated
12:07:56 13 January 15, 2010, Doc ID Number CRE 85399; and 2009
12:07:59 14 through 2012 business plan, Doc ID Number CR 25331.

12:08:21 15 BY MR. MATTHEWS:

12:08:21 16 297 Q. The same sort of thing, CRE 85414
12:08:25 17 and CR 2260.

12:08:29 18 I'm going to give you a September 10th,
12:08:31 19 2010 letter to you from Minister Duncan, approving
12:08:36 20 your business plan for 2010 through 2013, and then
12:08:39 21 a copy of that business plan.

12:09:10 22 You recall receiving this letter, sir?

12:09:12 23 A. Yes.

12:09:12 24 298 Q. And in terms of the business plan,
12:09:14 25 not only the one you had in front of you, but the

12:09:16 1 one I gave you before and the other business plans
12:09:18 2 that were prepared under your leadership at the
12:09:23 3 Commission, these business plans were publicly
12:09:26 4 available; correct?

12:09:27 5 A. Correct.

12:09:27 6 299 Q. And did you have an understanding,
12:09:30 7 sir, that the industry that you regulate would look
12:09:35 8 to your business plan to understand, at a high
12:09:41 9 level, the priorities of the ORC during the period
12:09:45 10 of time for which the business plan was prepared?

12:09:47 11 A. I would assume as such.

12:09:53 12 300 Q. All right. I would like to -- and
12:09:55 13 did you also understand, sir, that as the regulator
12:09:59 14 of the industry, participants of the industry would
12:10:02 15 rely on things like the business plans that the ORC
12:10:05 16 was preparing in terms of structuring and
12:10:10 17 implementing their own horse racing activities?

12:10:13 18 A. I would again assume so.

12:10:16 19 MR. MATTHEWS: All right. So I would
12:10:17 20 like to mark the letter and the business plan as
12:10:21 21 the next exhibit; Exhibit 8, please.

12:10:23 22 ---EXHIBIT NO. 8: A September 10th,
12:10:23 23 2010 letter to Rod Seiling from Minister Duncan,
12:10:23 24 approving the 2010 through 2013 business plan, Doc
12:10:23 25 ID Number CRE 85441, along with attached business

12:10:26 1 plan, Doc ID Number CR 2260.

12:10:34 2 BY MR. MATTHEWS:

12:10:34 3 301 Q. Now I'm going to give you a letter
12:10:36 4 from you to Minister Duncan, March 31, 2011, CRE
12:10:43 5 85415.

12:10:45 6 And I'm giving you this because not
12:10:50 7 only are you submitting your business plan for 2011
12:10:54 8 through 2014, but you're also informing Minister
12:10:58 9 Duncan about the Ontario Racing Program that has
12:11:01 10 been developed by the Commission under your tenure.

12:11:03 11 So take a look at that letter, please,
12:11:05 12 sir.

12:11:32 13 --- (Witness reviewing document.)

12:11:32 14 BY MR. MATTHEWS:

12:11:32 15 302 Q. You recall sending that letter?

12:11:33 16 A. Yes.

12:11:35 17 MR. MATTHEWS: Okay. And I would like
12:11:36 18 to mark that as the next exhibit; Exhibit 9.

12:11:39 19 --- EXHIBIT NO. 9: A letter from Rod
12:11:39 20 Seiling to Minister Duncan, dated March 31, 2011;
12:11:41 21 Doc ID Number CRE 85415.

12:11:41 22 BY MR. MATTHEWS:

12:11:48 23 303 Q. And I'm now going to give you a
12:11:49 24 July 29th, 2011 letter from Minister Duncan to you,
12:11:54 25 approving that business plan - that's CRE 85410 -

12:12:01 1 together with the business plan from 2011 through
12:12:04 2 2014, CR 2238.

12:12:04 3 --- (Witness reviewing documents.)

12:12:04 4 BY MR. MATTHEWS:

12:12:34 5 304 Q. So starting with the letter, sir,
12:12:35 6 do you recall receiving this letter?

12:12:40 7 A. Yes.

12:12:41 8 305 Q. Now, if you look at the second
12:12:43 9 paragraph, you see Minister Duncan not only
12:12:46 10 approving your business plan for 2001 through 2014,
12:12:49 11 but asking you to extend your sincere thanks to the
12:12:49 12 Board of Directors and your staff:

12:12:54 13 "...for producing this
12:12:57 14 important accountability document
12:12:57 15 which highlights a number of key ORC
12:12:59 16 activities to enhance live horse
12:13:01 17 racing for industry participants and
12:13:03 18 customers, including the new Ontario
12:13:06 19 Racing Program." [As read.]

12:13:07 20 Correct?

12:13:08 21 A. Correct.

12:13:08 22 306 Q. So let's now look at the business
12:13:11 23 plan from 2011 through 2014 because it discusses
12:13:16 24 this Ontario Racing Program which has now been
12:13:20 25 developed and launched by your Commission.

12:13:36 1 So look at page 18 of the business
12:13:41 2 plan.
12:13:43 3 A. Okay.
12:13:44 4 307 Q. So before I ask you to read
12:13:47 5 through these paragraphs, I want to ask you, in the
12:13:51 6 letter we just looked at where you delivered your
12:13:54 7 2011 through 2014 business plan to the Minister of
12:13:58 8 Finance, you drew his attention specifically to the
12:14:01 9 Ontario Racing Program; correct?
12:14:03 10 A. Correct.
12:14:03 11 308 Q. You did that because that was a
12:14:06 12 major initiative that your Commission had
12:14:09 13 undertaken at the time; correct?
12:14:11 14 A. Correct.
12:14:11 15 309 Q. And you wanted him to be aware of
12:14:13 16 the Ontario Racing Program; correct?
12:14:16 17 A. Correct.
12:14:17 18 310 Q. And as you understood it,
12:14:19 19 including from receipt of this letter back from him
12:14:22 20 on July 29th, 2011, the Ministry of Finance and
12:14:27 21 Minister Duncan had not only received the Ontario
12:14:33 22 Racing Program information, but approved of that
12:14:35 23 program?
12:14:35 24 A. Correct.
12:14:36 25 311 Q. So let's now look at the document

12:14:39 1 where you describe the Ontario Racing Program
12:14:42 2 implementation.

12:14:44 3 So if you need to, sir, you can take a
12:14:46 4 moment to review it.

12:14:48 5 A. I will likely be able to answer
12:14:55 6 your questions. If not, I will refer to it.

12:14:57 7 312 Q. Well, can you tell me first, in a
12:14:59 8 general way, what is the Ontario Racing Program?
12:15:02 9 How did it come to be and how was it implemented?

12:15:05 10 A. The Ontario Racing Program came
12:15:08 11 into being to deal with an issue regarding the race
12:15:14 12 date application process whereby there was no set
12:15:19 13 criteria for how tracks should develop their, umm,
12:15:30 14 planned number of race days they would want to race
12:15:33 15 the coming year and, dovetailing with that, no set
12:15:38 16 of criteria upon which the Commission would approve
12:15:43 17 or disapprove that application.

12:15:46 18 And so, the plan was to provide some
12:15:50 19 certainty and understanding and transparency to the
12:15:53 20 industry as to what the criteria would be for race
12:16:00 21 date application on the basis for what -- what --
12:16:06 22 how the Commission would look at those dates and
12:16:08 23 either approve or reject.

12:16:10 24 And it was also based on a customer
12:16:15 25 focus whereby that the, uh, the objective was to

12:16:22 1 have the best horses racing against the best horses
12:16:25 2 on a -- on a basis, so that you couldn't have --
12:16:28 3 you wouldn't have the same class of horses racing
12:16:32 4 within two days of one another or have a horse be
12:16:37 5 able to duck its class and race, for example, at
12:16:41 6 another track for a really good person -- purse,
12:16:45 7 and be a 1:9 shot, and be just basically a mail-in.

12:16:51 8 And so, so it was to help improve the
12:16:53 9 business, put a better product on the track, and it
12:16:58 10 was based on three tiers of tracks; Grassroots...

12:17:01 11 I forget what we called Class 2.

12:17:04 12 313 Q. Signature?

12:17:05 13 A. Signature. And then the Class 1,
12:17:07 14 which were the WEG tracks.

12:17:09 15 314 Q. Feature.

12:17:10 16 A. And so everything was -- it was a
12:17:14 17 pyramid, so that you would take Grassroot horses
12:17:17 18 where they would have an opportunity to race, be
12:17:20 19 competitive, learn to race, be able to earn some
12:17:24 20 money, work their way up not unlike the National
12:17:27 21 Hockey League where kids start as Juniors, go to
12:17:30 22 the Minors, end up in the NHL. And so, it's a
12:17:31 23 feeder system and it had six -- I think six
12:17:36 24 criteria within the Ontario Racing Program that
12:17:39 25 looked at the whole thing.

12:17:41 1 315 Q. And so, the six criteria you're
12:17:44 2 referring to, I've seen this referred to as the
12:17:47 3 "six principles" of the Ontario Racing Program;
12:17:49 4 correct?

12:17:49 5 A. Correct.

12:17:49 6 316 Q. So I will read them to you and you
12:17:51 7 tell me if those accord with what your
12:17:54 8 understanding were of the principles.

12:17:55 9 The first one was:

12:17:56 10 "Enhance live racing and
12:17:57 11 provide benefit to the agricultural
12:18:00 12 sector in Ontario." [As read.]

12:18:00 13 A. Correct.

12:18:01 14 317 Q. Second was:

12:18:02 15 "Provide a fair return on
12:18:03 16 investment over the short term while
12:18:06 17 protecting value for owners and
12:18:08 18 communities over the long term."

12:18:09 19 A. Correct.

12:18:10 20 318 Q. Third was:

12:18:10 21 "Provide customer-focused
12:18:12 22 competitive racing by recognizing
12:18:14 23 both supply and demand."

12:18:17 24 A. Correct.

12:18:18 25 319 Q. Fourth:

12:18:18 1 "Leverage and support the horse
12:18:20 2 racing's partnership with the public
12:18:23 3 sector by using government's
12:18:24 4 investment to enhance the economic
12:18:26 5 sustainability of Ontario Horse
12:18:28 6 Racing."

12:18:28 7 A. Correct.

12:18:29 8 320 Q. Fifth was:

12:18:29 9 "Encourage and provide
12:18:32 10 incentives for live racing."

12:18:34 11 A. Correct.

12:18:34 12 321 Q. And the sixth was:

12:18:36 13 "Be simple and objective."

12:18:37 14 A. Correct.

12:18:38 15 322 Q. Now, this program was the
12:18:42 16 byproduct of extensive consultation with the
12:18:45 17 industry; correct?

12:18:46 18 A. Correct.

12:18:46 19 323 Q. Including the Standardbred sector?

12:18:49 20 A. Correct.

12:18:50 21 324 Q. And including Standardbred
12:18:51 22 breeders; correct?

12:18:52 23 A. Correct.

12:18:54 24 325 Q. And because it was the byproduct
12:18:56 25 of this consultation, once it was finalized and

12:19:00 1 went to your governing board, the result of the
12:19:04 2 program was promoted to the industry; correct?
12:19:08 3 A. Correct.
12:19:08 4 326 Q. Actively promoted?
12:19:10 5 A. Correct. And we did meetings
12:19:13 6 across the province to get the word out.
12:19:16 7 327 Q. And when you say "across the
12:19:19 8 province", I take it, then, you understood it was
12:19:21 9 important to widely promote this new program?
12:19:24 10 A. Correct. And answer questions.
12:19:25 11 328 Q. Because this was going to be the
12:19:28 12 new program on a go-forward basis in terms of the
12:19:33 13 Ontario racing industry; correct?
12:19:35 14 A. Correct.
12:19:35 15 329 Q. And as it relates to breeders in
12:19:38 16 particular, some of the principles that I've read
12:19:42 17 out would be directed specifically towards
12:19:45 18 breeders; correct?
12:19:46 19 A. Correct.
12:19:46 20 330 Q. "Provide a fair return on
12:19:49 21 investment over the short term while
12:19:51 22 protecting value for owners and
12:19:53 23 communities over the long term."
12:19:55 24 That includes long-term investments
12:19:58 25 made by breeders; correct?

12:19:59 1 A. And owners, period.

12:20:01 2 331 Q. And "encouraging and providing
12:20:08 3 incentives for live racing"; that included
12:20:16 4 incentives to have horses bred for live racing at
12:20:18 5 Ontario racetracks; correct?

12:20:18 6 A. By extension, yes.

12:20:20 7 332 Q. And so this program launched and
12:20:22 8 was rolled out and highly publicized in 2011;
12:20:27 9 correct?

12:20:27 10 A. Correct.

12:20:30 11 333 Q. And this program was specifically
12:20:32 12 brought to the attention of the Ministry of
12:20:34 13 Finance; correct?

12:20:35 14 A. Correct.

12:20:35 15 334 Q. And you understood that the
12:20:37 16 Ministry of Finance not only was aware of this
12:20:39 17 program, but supported and endorsed it; correct?

12:20:41 18 A. Correct. You -- you have
12:20:43 19 communication there from the Minister, accepting
12:20:46 20 it.

12:20:46 21 MR. MATTHEWS: All right. So let's
12:20:46 22 mark the letter and the business plan from 2011 to
12:21:02 23 2014 together as the next exhibit, Exhibit 10.

12:21:02 24 ---EXHIBIT NO. 10: June 29th 2011
12:21:02 25 letter from Minister Duncan to Rod Seiling, Doc ID

12:21:02 1 Number CRE 85410, and business plan from 2011 to
12:21:02 2 2014, Doc ID Number CR 2238.

12:21:03 3 THE WITNESS: And I might add that we
12:21:04 4 were required to take it to the Minister by the --
12:21:05 5 because of our MOU.

12:21:07 6 MR. MATTHEWS: Sure. That's a good
12:21:08 7 segue because I'm about to come to this MOU, the
12:21:14 8 memorandum of understanding.

12:21:16 9 Can we go off the record for a second?

12:21:21 10 --- (Discussion off the record.)

12:21:24 11 --- (Mr. Lisus withdraws at 12:21 p.m.)

12:22:55 12 --- Luncheon recess at 12:22 p.m.

12:43:01 13 --- On resuming at 12:43 p.m.

12:43:03 14 MR. MATTHEWS: Back on, please.

12:43:17 15 BY MR. MATTHEWS:

12:43:17 16 335 Q. Before we took a break for lunch,
12:43:19 17 Mr. Seiling, I was asking you about some of the
12:43:21 18 documents that would be submitted to the Ministry
12:43:23 19 of Finance for approval while you were at the ORC.
12:43:26 20 We looked at some of the annual reports and
12:43:28 21 business plans.

12:43:28 22 I am next going to take you to the
12:43:36 23 review of the Horse Improvement Program Final
12:43:37 24 Report dated March 2008, CRE 314295.

12:43:54 25 Can I start by asking you, sir, is this

12:44:00 1 a report that you recall being delivered to your
12:44:04 2 responsible minister around the time it was
12:44:04 3 completed?

12:44:05 4 A. Yes.

12:44:06 5 336 Q. Okay. And to the best of your
12:44:06 6 recollection, was this a report that was received
12:44:07 7 and accepted by Ontario?

12:44:08 8 A. Yes.

12:44:09 9 337 Q. And I don't propose to go through
12:44:11 10 this report in detail. It's a lengthy report, but
12:44:15 11 let me ask you perhaps some organizing questions.

12:44:18 12 This review of the Horse Improvement
12:44:22 13 Program or "HIP" was, similar to the Ontario Racing
12:44:26 14 Program, the byproduct of extensive consultation
12:44:30 15 with the industry; correct?

12:44:31 16 A. Correct.

12:44:32 17 338 Q. And can you explain to us, sir, at
12:44:35 18 a high level, what the objective was and what was
12:44:38 19 the impetus for the review of HIP that resulted in
12:44:43 20 this report?

12:44:43 21 A. Well, in a general sense, it
12:44:47 22 would... The genesis of the program would be
12:44:51 23 twofold; one, to see how current the program was,
12:44:59 24 what, if any, improvements should or could be made,
12:45:02 25 and also to respond, as I recall, that the breeders

12:45:07 1 had been voicing an opinion that the program needed
12:45:11 2 some improvements; that their return has fallen
12:45:16 3 behind what the other two legs of the stool had
12:45:19 4 been receiving.

12:45:20 5 339 Q. Right.

12:45:21 6 So just following up on that point, was
12:45:24 7 it your understanding that one of the things that
12:45:27 8 led to this report was the feeling by breeders,
12:45:31 9 including Standardbred breeders, that they were not
12:45:34 10 benefiting to the same extent from the Slots at
12:45:39 11 Racetrack Program as were racetracks and other
12:45:41 12 horsemen?

12:45:42 13 A. Correct.

12:45:42 14 It's my understanding that when the
12:45:48 15 SARP was implemented, that the breeding industry,
12:45:52 16 for whatever reason, decided they would benefit
12:45:54 17 through a trickle-down effect.

12:46:00 18 And --

12:46:00 19 340 Q. Were you involved--

12:46:01 20 A. No.

12:46:02 21 341 Q. --with the negotiation at the
12:46:03 22 time?

12:46:03 23 A. No. This is long before my --
12:46:05 24 this is when the program first came into being.

12:46:16 25 342 Q. But do I -- did you --

12:46:17 1 A. That's -- that's my understanding.
12:46:18 2 I have no hard evidence to prove that, but that's
12:46:21 3 what I had been -- had been led to believe.

12:46:23 4 343 Q. But we went through some evidence
12:46:24 5 earlier today, sir, in which, as I understood your
12:46:30 6 answers, to be that the revenue distributed through
12:46:32 7 the Slots at Racetrack Program, both through purses
12:46:37 8 and through the Horse Improvement Program, did have
12:46:40 9 an effect on the value of horses and--

12:46:40 10 A. It did.

12:46:42 11 344 Q. --breeding activity?

12:46:45 12 A. I guess, to put it in context, the
12:46:47 13 breeders did get a set amount of money to go into
12:46:52 14 breed improvement programs.

12:46:53 15 But in addition to that, rather than
12:46:55 16 have a larger share, they had decided to..., the
12:47:03 17 rest of their benefit would come through the sale
12:47:06 18 of their product.

12:47:06 19 The Racing Commission did undertake a
12:47:12 20 consultation process. Staff did undertake a
12:47:15 21 consultation process to see if the tracks and the
12:47:21 22 horsepeople would agree to a different amount of
12:47:26 23 money, an increased amount of money going into the
12:47:30 24 breed improvement programs.

12:47:33 25 Unfortunately or fortunately, depending

12:47:35 1 on, I guess, your point of view, that didn't
12:47:38 2 happen. The -- there was not consensus. And --
12:47:40 3 and not being a signatory, the Commission had no
12:47:45 4 power. All -- all it had was the ability to
12:47:48 5 undertake consultations and hope that they could
12:47:50 6 get people to agree.

12:47:51 7 345 Q. And so, if I can just put this
12:47:54 8 back to you and you tell me if I've captured --

12:47:54 9 A. I should just -- but we did --
12:47:57 10 there was some small monies - and I can't tell you
12:48:01 11 directly where they -- how they came about - there
12:48:04 12 was a bit of money that -- that we did have some
12:48:08 13 control over, that we were able to move into the
12:48:14 14 breed programs to help bolster it.

12:48:17 15 346 Q. And so, would it be fair say, sir,
12:48:19 16 that the concerns of the industry and breeders, in
12:48:21 17 particular, that you understood around the time of
12:48:23 18 this HIP review Final Report were essentially that
12:48:26 19 the three-legged stool was not being equally
12:48:31 20 compensated through revenue from the Slots at
12:48:35 21 Racetrack Program, and they wanted a realignment of
12:48:37 22 the flow of that revenue to more directly get to
12:48:39 23 breeders.

12:48:40 24 Is that fair?

12:48:40 25 A. Correct.

12:48:47 1 347 Q. But you're not suggesting, sir,
12:48:49 2 that breeders did not benefit, at all?
12:48:50 3 A. Oh. Not -- not in the least.
12:48:52 4 There was a direct benefit by the money
12:48:54 5 going in.
12:48:55 6 It was just, there was a -- there were
12:49:01 7 presentations, conversations made that perhaps
12:49:05 8 there should be a realignment to better reflect the
12:49:08 9 realities of the day because the -- through the
12:49:11 10 increases in revenues coming to the industry, uh,
12:49:18 11 the breeders felt that there should be more coming
12:49:21 12 their way to directly reflect their investment.
12:49:24 13 348 Q. Right. And so, to the extent that
12:49:26 14 information was reaching you from breeders at the
12:49:29 15 time, March 2008, was it your understanding that
12:49:34 16 the advocacy being put forward on the breeders'
12:49:37 17 behalf was not that they weren't benefiting from
12:49:39 18 SARP, but that they wanted to benefit more from
12:49:42 19 SARP?
12:49:42 20 A. Correct.
12:49:42 21 349 Q. All right. And one of the
12:49:50 22 rationales behind the Horse Improvement Program was
12:49:53 23 to discuss and see whether or not adjustments could
12:49:56 24 be made to the Horse Improvement Program that would
12:49:58 25 lead to further benefits to breeders of the

12:50:02 1 incentives, including the incentives funded by SARP
12:50:06 2 money that flowed to them under the Horse
12:50:08 3 Improvement Program?
12:50:08 4 A. Correct.
12:50:09 5 MR. MATTHEWS: All right. So I would
12:50:10 6 like to mark this review of HIP as the next
12:50:15 7 exhibit, CRE 314295, Exhibit 11.
12:50:19 8 ---EXHIBIT NO. 11: Review of HIP Final
12:50:19 9 Report dated March 2008; Doc ID Number CRE 314295.
12:50:22 10 BY MR. MATTHEWS:
12:50:22 11 350 Q. And this period of time, sir,
12:50:24 12 March 2008, was just prior to the release in June
12:50:28 13 2008 of a report that was known as the "Sadinsky
12:50:32 14 Report"; correct?
12:50:33 15 A. If you tell me so, I will agree
12:50:34 16 with you.
12:50:46 17 351 Q. Well, I do tell you so, so you can
12:50:46 18 accept that for the sake of giving your answers to
12:50:46 19 my next few questions.
12:50:50 20 I don't propose to take you to the
12:50:52 21 report right now, but you understood and were aware
12:50:55 22 at the time of -- of a report being composed by a
12:50:57 23 group of people, including Stanley Sadinsky, that
12:51:00 24 resulted in what's known as the "Sadinsky Report";
12:51:03 25 correct?

12:51:03 1 A. Correct.

12:51:03 2 352 Q. And you made submissions to

12:51:05 3 Mr. Sadinsky and his Panel in connection with the

12:51:13 4 consultations they had prior to releasing their

12:51:15 5 report?

12:51:15 6 A. Yes.

12:51:16 7 353 Q. And did you have a general

12:51:18 8 understanding of the flavour of the recommendations

12:51:21 9 of the Sadinsky Report once that report was

12:51:24 10 released?

12:51:25 11 A. I did. I don't remember it now,

12:51:28 12 but I -- it laid on the shelf of the government for

12:51:31 13 a long time, gathered a lot of dust.

12:51:32 14 354 Q. And do you agree, sir, that

12:51:37 15 Mr. Sadinsky did not recommend cancelling the Slots

12:51:41 16 at Racetracks Program?

12:51:41 17 A. Correct.

12:51:42 18 355 Q. In fact, sir, I'm going to put to

12:51:44 19 you that Mr. Sadinsky suggested maintaining or

12:51:47 20 increasing the percentage of revenue that would go

12:51:51 21 to the industry through the Slots at Racetracks

12:51:55 22 Program.

12:51:55 23 Do you accept that.

12:51:58 24 A. I do.

12:51:58 25 356 Q. And, also, as part of the

12:51:59 1 maintenance or increase of the Slots at Racetrack
12:52:01 2 Program, Mr. Sadinsky suggested reorganizing the
12:52:05 3 program and creating new oversight and benchmarking
12:52:09 4 criteria to monitor the ongoing success of the
12:52:12 5 program; correct?

12:52:13 6 A. I believe you're right. I don't
12:52:17 7 -- as I say, it's been a long time since I saw that
12:52:20 8 report, so... But if you tell me so, I will agree.

12:52:23 9 I'm sure my friend on my left here, if
12:52:26 10 it's not right, will stand up and correct it.

12:52:31 11 MS. MACHADO: Can't yell about much at
12:52:32 12 this point.

12:52:32 13 BY MR. MATTHEWS:

12:52:32 14 357 Q. Sure.

12:52:36 15 And obviously, the report says what it
12:52:36 16 says.

12:52:36 17 A. Exactly.

12:52:39 18 358 Q. Everyone accepts that.

12:52:41 19 Now, I would like to turn to something
12:52:41 20 we've discussed earlier on. There have been a
12:52:42 21 couple of mentions to "MOU" and I take it by that,
12:52:46 22 sir, you were referring to the memorandum of
12:52:48 23 understanding that was in place between the Ontario
12:52:53 24 Racing Commission and its responsible Ministry at
12:52:56 25 all given times when you were Chair; correct?

12:52:58 1 A. Correct.

12:52:58 2 359 Q. All right. I'm going to pass you
12:52:59 3 now what's been produced to us by the Crown as a
12:53:04 4 signed memorandum of understanding between the
12:53:06 5 Ministry of Finance and the ORC. This one, in
12:53:11 6 particular, is dated 2011, and I'm going to give it
12:53:14 7 to you together with a cover letter, addressed to
12:53:17 8 your Chief Administrative Officer, Mr. Lehman, from
12:53:22 9 September 2nd, 2011.

12:53:24 10 So the cover letter is CRE 274150. The
12:53:29 11 MOU is CRE 274150.

12:53:29 12 MS. MACHADO: I think you provided the
12:53:29 13 same number for both documents.

12:53:29 14 THE WITNESS: Do you want to see?

12:53:32 15 MS. MACHADO: Thank you.

12:53:43 16 MR. MATTHEWS: You could just clarify
12:53:45 17 if I've misstated it, Ms. Machado.

12:53:51 18 MS. MACHADO: It looks like it is all
12:53:52 19 one document.

12:53:54 20 BY MR. MATTHEWS:

12:53:54 21 360 Q. Now, you're familiar with this
12:53:56 22 MOU, Mr. Seiling?

12:53:57 23 A. I am.

12:54:03 24 361 Q. Now, just broadly, in terms of
12:54:04 25 what your understanding was of the purpose of the

12:54:04 1 MOU, at a high level, is it fair to say, sir, that
12:54:18 2 this MOU set out the obligations and reporting
12:54:20 3 relationships between the ORC on one hand and the
12:54:25 4 Ministry of Finance on the other hand?

12:54:27 5 A. Correct.

12:54:27 6 362 Q. And you understood that you were
12:54:28 7 required by the Ministry of Finance to discharge
12:54:31 8 your obligations under the MOU; correct?

12:54:34 9 A. Yes.

12:54:34 10 363 Q. And you also understood that in so
12:54:36 11 far as the MOU placed any obligations on the
12:54:39 12 Ministry of Finance, the Ministry of Finance was
12:54:42 13 required to discharge its obligations to you and to
12:54:44 14 the Commission; correct?

12:54:45 15 A. Yes.

12:54:52 16 364 Q. So looking at the MOU, sir,
12:54:56 17 there's a number of definitions in Section 1.0
12:55:04 18 including the definition of "Chair", meaning of the
12:55:07 19 Chair of the Commission.

12:55:08 20 That's you; correct?

12:55:09 21 A. Correct.

12:55:09 22 365 Q. "Minister" means the Minister
12:55:11 23 responsible for administration of the Act.

12:55:14 24 At this time, that Minister was the
12:55:17 25 Ministry of Finance; correct?

12:55:18 1 A. Yes.

12:55:19 2 366 Q. That was Dwight Duncan; correct?

12:55:22 3 A. Yes.

12:55:22 4 367 Q. "The Ministry" refers to the
12:55:24 5 Ministry of Finance; correct?

12:55:25 6 A. Yes.

12:55:26 7 368 Q. And "the Commission" means the
12:55:28 8 ORC; correct?

12:55:29 9 A. Yes.

12:55:31 10 369 Q. All right. So I would like you to
12:55:33 11 look at the mandate prescribed in Article 3 of the
12:55:39 12 MOU, and I would like you to take a moment to
12:55:47 13 refresh your recollection of Item 3.4.

12:56:07 14 A. Do you want me to respond?

12:56:09 15 370 Q. Well, first, I just want to give
12:56:09 16 you an opportunity to review it and once you've had
12:56:13 17 an opportunity to do that --

12:56:13 18 A. Well, I've read -- I haven't read
12:56:13 19 the bullet points, but I read the other side.
12:56:15 20 That's enough, I think, where you will likely go
12:56:18 21 with this.

12:56:20 22 371 Q. So, first of all, did you
12:56:21 23 understand that Article 3.4 required the Commission
12:56:31 24 to work collaboratively with industry stakeholders,
12:56:32 25 including OLG, horsepeople, racetrack operators,

12:56:35 1 and industry associations?

12:56:36 2 A. Okay. Umm. This part of the MOU

12:56:43 3 never happened. It was withdrawn, as I recall.

12:56:47 4 Umm...

12:56:47 5 372 Q. When was it withdrawn?

12:56:54 6 A. Oh. I can't remember now, but --

12:56:56 7 373 Q. Was it after the announcement of

12:56:59 8 the termination?

12:56:59 9 A. No. I think maybe even before.

12:57:01 10 In fact, the, uh... It became

12:57:04 11 redundant after.

12:57:06 12 But I recall, when -- the government

12:57:09 13 put this in, it was not something the Commission

12:57:17 14 asked for, really want to do because it would be

12:57:21 15 very contentious.

12:57:22 16 And my comment was to, I think,

12:57:26 17 Mr. Stransky - I can't remember whether it was

12:57:28 18 Mr. Duncan; one of them anyway - that -- and we

12:57:32 19 were getting ready to have a meeting with the

12:57:34 20 industry, umm, at--

12:57:36 21 374 Q. When was this? Do you recall?

12:57:38 22 What year?

12:57:39 23 A. Well, I'm getting confused now,

12:57:42 24 but what -- what we had said to the -- and I may be

12:57:47 25 getting confused with a -- a subsequent document.

12:57:50 1 But we did not want to get involved in
12:57:54 2 the economic -- because that's really the
12:57:57 3 management of the industry, unless the government
12:58:00 4 went to the industry and told them this was what
12:58:03 5 they wanted us to do, not what we were trying do
12:58:07 6 because we were always --

12:58:09 7 Because of the nature of the horse
12:58:11 8 racing industry, we had to be arbiter, sometimes
12:58:18 9 manager, sometimes this, sometimes that because of
12:58:21 10 the diverse nature and the conflicting aims and
12:58:25 11 objectives of the participants in the industry.

12:58:28 12 So sometimes, we were criticized for
12:58:37 13 overreach, and this definitely would have been seen
12:58:40 14 as overreach.

12:58:41 15 So we said, 'If -- if you are going to
12:58:45 16 want us to do this, then you've got to tell the
12:58:47 17 industry this is what you want us to do. We're not
12:58:50 18 -- we're just not going to go out and do this.
12:58:53 19 We'll get -- you want to start a battle? This will
12:58:55 20 start a battle and we'll be right in the middle of
12:58:57 21 it.'

12:58:57 22 375 Q. And when you say it might be seen
12:59:00 23 as overreach, you mean seen by the industry as
12:59:04 24 overreach?

12:59:04 25 A. Yes.

12:59:04 1 376 Q. But can we agree, sir, at least as
12:59:06 2 of the date of the letter that I've given you,
12:59:08 3 transmitting this, and the signatures on the final
12:59:11 4 page or close to the end of the document,--

12:59:11 5 A. Yeah.

12:59:14 6 377 Q. --that as of the date of this
12:59:15 7 memorandum, umm, Article 3.4 was included at the --
12:59:24 8 at the decision of the Ministry of Finance as part
12:59:30 9 of the ORC's mandate?

12:59:31 10 A. Agreed.

12:59:32 11 378 Q. And you suggested earlier that at
12:59:40 12 some point in time, this economic oversight
12:59:43 13 provision may have been withdrawn.

12:59:44 14 Do you have any recollection, sir,
12:59:46 15 whether or not there was ever a formal amendment to
12:59:51 16 or withdrawal of Article 3.4 of the MOU and when
12:59:54 17 that happened?

12:59:55 18 A. I can't recall, but if we ever get
13:00:03 19 to my documents I provided you, there may be -- I
13:00:05 20 seem to recall, there's a reference in there. And
13:00:06 21 that's why I'm not sure on the timelines, whether
13:00:09 22 there was a subsequent MOU proposed, and so I'm --
13:00:13 23 I'm hedging my bets, so to speak.

13:00:16 24 379 Q. All right. Well, I guess the
13:00:20 25 documents will say what they say.

13:00:22 1 I can tell you, Mr. Seiling, and you
13:00:25 2 can accept it from me, that I have not seen, in the
13:00:28 3 course of the productions that were made to us by
13:00:31 4 Ontario, an MOU from the OLG that withdrew Article
13:00:38 5 3.4 after 2011, but prior to the announcement
13:00:48 6 regarding the end of -- of Slots --

13:00:52 7 A. And I wouldn't disagree with you,
13:00:54 8 but...

13:00:56 9 380 Q. In any event, can we agree that at
13:00:59 10 least from the Commission's perspective, the
13:01:02 11 inclusion of this Article 3.4 might not have been
13:01:06 12 something that it wanted to include as part of its
13:01:09 13 mandate, but, pursuant to the signed MOU, it was
13:01:12 14 nevertheless made part of the ORC's mandate at that
13:01:16 15 time?

13:01:16 16 A. I would agree.

13:01:16 17 381 Q. Okay.

13:01:17 18 So if we could go back and look at, at
13:01:19 19 least what the MOU required to the ORC to do.

13:01:29 20 It required you to work collaboratively
13:01:32 21 with the ORC, horsepeople, and racetrack operators,
13:01:32 22 and industry associations.

13:01:39 23 Now, just pausing there, prior to this
13:01:40 24 MOU, you were already working collaboratively with
13:01:43 25 breeders, for example; correct?

13:01:45 1 A. Correct.

13:01:45 2 382 Q. So that's not a change in terms of

13:01:46 3 working--

13:01:47 4 A. No.

13:01:48 5 383 Q. --collaboratively?

13:01:49 6 A. No.

13:01:50 7 384 Q. You said earlier in your evidence

13:01:52 8 that there wasn't much communication between your

13:01:54 9 Commission and the OLG, but did you understand, at

13:01:58 10 least, that ideally, there should be

13:02:01 11 collaboration--

13:02:01 12 A. I --

13:02:02 13 385 Q. --between ORC and OLG?

13:02:04 14 A. I participated in one meeting with

13:02:08 15 the OLG, uh, and it was, I think, purported to be

13:02:14 16 more of a "get to know you".

13:02:17 17 It was at the start of their review of

13:02:21 18 whatever they wanted to call it.

13:02:23 19 386 Q. Land-based gaming?

13:02:24 20 A. Land-based gaming strategy.

13:02:28 21 And I told my staff that I wanted -- I

13:02:30 22 was inviting myself because I was very concerned

13:02:34 23 that the OLG would later come back and say, 'Well,

13:02:37 24 we've consulted with the Racing Commission and they

13:02:40 25 have agreed to all the -- whatever it might be.'

13:02:42 1 And I wanted to make it very clear that
13:02:44 2 we had agreed to nothing. This was -- there was no
13:02:47 3 substance discussed.

13:02:48 4 And, in fact, I think that's -- I --
13:02:53 5 that would be a fair, uh, representation of that
13:02:56 6 meeting.

13:02:56 7 That's the only meeting I am aware of
13:02:59 8 that ever took place between ORC and OLG that I --
13:03:05 9 it's the only one I participated in. It's the only
13:03:08 10 conversation I had.

13:03:09 11 I would have had one with, uh, with Rod
13:03:12 12 Phillips possibly. I can't remember.

13:03:14 13 I certainly had a phone call with, uh,
13:03:17 14 Paul Godfrey and I wrote him a letter.

13:03:20 15 387 Q. After the announcement of the --

13:03:21 16 A. Yeah.

13:03:22 17 388 Q. -- of the termination of
13:03:25 18 revenue-sharing?

13:03:25 19 A. And you will notice in my notes
13:03:28 20 that Mr. Stransky was not very happy with my
13:03:31 21 letter, right.

13:03:32 22 389 Q. Well, we've seen that in the
13:03:33 23 documents, too, which we'll come to in a bit, sir.

13:03:35 24 A. Okay.

13:03:35 25 390 Q. I think it's safe to say that the

13:03:40 1 government was not enthused by the letter you wrote
13:03:43 2 to Mr. Godfrey, I think it was in May of 2012,
13:03:49 3 which we'll come to, in fairness.

13:03:50 4 A. Okay.

13:03:50 5 391 Q. Can I just return your attention
13:03:52 6 to 3.4 of the MOU?

13:03:54 7 A. Yeah.

13:03:55 8 392 Q. At least at the time that it came
13:04:00 9 into force, you had an understanding that there was
13:04:02 10 a direction to the Commission to:

13:04:04 11 "...report annually to the
13:04:06 12 Minister on the industry's long-term
13:04:09 13 sustainability plan, including the
13:04:12 14 extent to which industry
13:04:13 15 participants are implementing and/or
13:04:15 16 supporting the plan, and the
13:04:17 17 Commission's assessment of industry
13:04:19 18 progress against the key milestones
13:04:21 19 and performance targets."

13:04:21 20 [As read.]

13:04:24 21 Would you agree with me, sir, that one
13:04:25 22 of the ways in which that reporting would be given
13:04:27 23 to the Ministry would be updates on the progress of
13:04:30 24 the implementation of the Ontario Racing Program?

13:04:34 25 A. Correct.

13:04:34 1 393 Q. And you see that 3.4 continues
13:04:36 2 right at the end to say:
13:04:38 3 "This will include
13:04:39 4 collaborating with the OLG to report
13:04:41 5 on how funds generated through the
13:04:44 6 Slots at Racetrack Program are spent
13:04:45 7 to support objectives identified in
13:04:48 8 the plan." [As read.]
13:04:49 9 Can you agree with me that that piece
13:04:51 10 of your mandate became redundant quite quickly,
13:04:55 11 given the announcement that happened in March 2012?
13:04:57 12 A. Correct.
13:04:57 13 394 Q. And still on 3.4, when you see
13:05:07 14 reference to things like "sustainability of the
13:05:12 15 industry" and "sustainability plans", was it your
13:05:16 16 understanding, sir, that the Ministry of Finance
13:05:18 17 had an expectation that the ORC would take
13:05:22 18 measures, in terms of its regulation of the
13:05:26 19 industry and development of initiatives such as the
13:05:30 20 Ontario Racing Program, to put the industry on a
13:05:33 21 path that support its sustainability over the long
13:05:38 22 term?
13:05:38 23 A. Correct.
13:05:38 24 395 Q. And that's one of the things you
13:05:40 25 were trying to do through the Ontario Racing

13:05:42 1 Program; correct?

13:05:42 2 A. Correct.

13:05:43 3 396 Q. Can I ask you to flip forward in

13:05:48 4 the MOU to Article 5.0? You see that it's

13:05:53 5 entitled--

13:05:53 6 A. Yeah.

13:05:53 7 397 Q. --"Accountability Relationships".

13:05:57 8 And if you keep flipping forward to

13:06:01 9 Article 6, you see "Roles and Responsibilities".

13:06:05 10 Now, this article, Article 6; is it

13:06:08 11 your understanding, sir, that Article 6 imposed

13:06:12 12 obligations on the parties named therein to provide

13:06:17 13 the information and discharge the responsibilities

13:06:21 14 set out in Article 6?

13:06:23 15 A. Yes.

13:06:24 16 398 Q. And you had responsibilities under

13:06:26 17 Article 6; correct?

13:06:27 18 A. Correct.

13:06:27 19 399 Q. And those are detailed at Article

13:06:31 20 6.3?

13:06:32 21 A. Correct.

13:06:32 22 400 Q. And the Minister, Dwight Duncan,

13:06:36 23 also had responsibilities, and those are set out in

13:06:39 24 Article 6.1; correct?

13:06:41 25 A. Correct.

13:06:41 1 401 Q. And if you look at 6.1(a), you
13:06:46 2 understood and, in fact, the MOU indicates that the
13:06:50 3 Minister had a responsibility to inform and consult
13:06:52 4 with you, as Chair, as appropriate on the
13:06:57 5 government's priorities and any broad policy
13:06:59 6 decisions for the ORC; correct?

13:07:01 7 A. Correct.

13:07:15 8 MR. MATTHEWS: So I would like to mark
13:07:17 9 this MOU and the cover letter together as the next
13:07:18 10 exhibit, Exhibit 12, please.

13:07:19 11 ---EXHIBIT NO. 12: A cover letter
13:07:19 12 addressed to Mr. Lehman, dated September 2nd, 2011,
13:07:19 13 Doc ID 274150, and signed MOU between the Ministry
13:07:19 14 of Finance and the ORC, also Doc ID Number CRE
13:07:20 15 274150.

13:07:20 16 BY MR. MATTHEWS:

13:07:41 17 402 Q. What was Blair Stransky's title,
13:07:42 18 sir?

13:07:42 19 A. Oh.

13:07:43 20 403 Q. If I put to you that he was a
13:07:45 21 Senior Policy Advisor in the Ministry of Finance,
13:07:47 22 do you accept that?

13:07:48 23 A. Yes, I would.

13:07:49 24 404 Q. He was not a Deputy or Assistant
13:07:52 25 Deputy Minister?

13:07:52 1 A. No.

13:07:52 2 405 Q. As far --

13:07:53 3 A. No. He was -- he was political

13:07:54 4 staff.

13:07:54 5 406 Q. Okay.

13:07:55 6 As far as you're aware, there were no

13:07:57 7 roles or responsibilities specified in the MOU for

13:08:00 8 Blair Stransky; correct?

13:08:01 9 A. Correct.

13:08:02 10 407 Q. Now, we were talking before about

13:08:20 11 the fact that over your tenure as Chair of the

13:08:24 12 Commission, you met from time to time with your

13:08:26 13 responsible minister; correct?

13:08:27 14 A. Correct.

13:08:27 15 408 Q. And that included meetings, at

13:08:30 16 least prior to the announcement regarding the Slots

13:08:37 17 at Racetracks Program, with Dwight Duncan, right?

13:08:40 18 A. Yes.

13:08:40 19 409 Q. All right. I would like to pass

13:08:42 20 you two documents. They are -- they appear to be

13:08:46 21 briefing notes or agendas for meetings between you

13:08:49 22 and your Minister.

13:08:51 23 The first is CRE 101515. The second

13:08:57 24 one is CR 27833.

13:08:57 25 And just because I think it's easier if

13:08:57 1 we go chronologically, could you look first at the
13:08:57 2 meeting with the Ontario Racing Commission Chair
13:09:18 3 Briefing Note of January 9th, 2008?
13:09:19 4 A. Yeah.
13:09:20 5 410 Q. Do you recall who your responsible
13:09:25 6 minister was January 9th, 2008?
13:09:26 7 A. I don't. Could have been
13:09:29 8 Smitherman, but I -- I don't know. I -- I really
13:09:38 9 don't know.
13:09:38 10 411 Q. Do you remember meeting with
13:09:39 11 Mr. Smitherman?
13:09:41 12 A. I had met with Mr. -- I did meet
13:09:42 13 with Mr. Smitherman at one time, yes.
13:09:44 14 412 Q. When he was your responsible
13:09:46 15 minister?
13:09:46 16 A. Yes.
13:09:46 17 413 Q. All right. But can we agree, sir,
13:09:48 18 that, you know, whoever was your responsible
13:09:54 19 minister on January 9th, 2008 - and that can be
13:09:58 20 determined - that would have been who you met with
13:09:59 21 on that day; correct?
13:10:01 22 A. Correct.
13:10:02 23 414 Q. All right. So you see, under the
13:10:05 24 "Current Issues For Discussion", there's a
13:10:07 25 discussion about the Horse Improvement Program

13:10:11 1 review, which resulted in the March 2008 report we
13:10:14 2 looked at--
13:10:14 3 A. Yeah.
13:10:14 4 415 Q. --before; correct?
13:10:14 5 A. Can I just interrupt you for a
13:10:17 6 minute?
13:10:18 7 416 Q. Of course.
13:10:19 8 A. Now, you see at the bottom of that
13:10:20 9 page, "Economic Regulation".
13:10:21 10 417 Q. Yes.
13:10:22 11 A. So, going back to the MOU, we
13:10:23 12 would be involved in that, would have done it,
13:10:27 13 because - it just jogged my memory - we had some
13:10:30 14 tracks who were underperforming in certain areas,
13:10:33 15 and so we were requiring certain things of them to
13:10:35 16 try and promote the product and offer a facility
13:10:40 17 that people would want to come to.
13:10:40 18 418 Q. So is it --
13:10:48 19 A. We'll -- we'll leave them unnamed
13:10:52 20 for the record, but there was at least more than --
13:10:53 21 there was more than one, and so there was a fair
13:11:00 22 amount of consternation within the industry, but we
13:11:00 23 felt that --
13:11:01 24 --- (Court reporter appeals.)
13:11:02 25 MR. MATTHEWS: Consternation.

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MS. MACHADO: A fair amount of
consternation.
THE WITNESS: Consternation in the
industry over our requirement to do certain things.
BY MR. MATTHEWS:
419 Q. And is it fair to say, sir, now
having reviewed this briefing note and having your
recollection refreshed, that what was going on at
this time in 2008, was that the ORC was being put
in a position of trying to take some steps which
involved effective economic regulation of the
industry, and subsequently that requirement was
formally incorporated into your MOU that we looked
at before?
A. Correct.
420 Q. And I don't see any discussion in
this particular briefing note about Slots at
Racetrack Program, which is fine. It is what it
is.
But I do see on the first page, just to
be fair to you, sir, the third bullet point under
"ORC Operations", this goes back to what you were
discussing earlier.
You were making a recommendation that
HIP be funded entirely from slots revenue instead

1 of wagering.

2 And then, there's a discussion about
3 how slots revenue flows into the Horse Improvement
4 Program and, you know, the ongoing discussions you
5 were having as part of the HIP review that we
6 discussed--

7 A. Yes.

8 421 Q. --earlier; fair?

9 A. Yep. Correct.

10 MR. MATTHEWS: All right. So let's
11 mark this particular briefing note, CRE 101515, as
12 the next --

13 THE WITNESS: You want both of them or
14 just...?

15 MR. MATTHEWS: No. We'll just do this
16 one and we'll make it Exhibit 13.

17 ---EXHIBIT NO. 13: Briefing note, Doc
18 ID Number CRE 101515.

19 BY MR. MATTHEWS:

20 422 Q. And then, the next one which I'll
21 ask you to come to is a November 30th, 2009
22 meeting.

23 And I'm going to put to you, sir, that
24 at this time, November 30th, 2009, the ORC was now
25 under the auspices of the Ministry of Finance and

13:13:15 1 you were meeting with Dwight Duncan on that day?

13:13:17 2 A. Correct.

13:13:24 3 423 Q. So take a moment to review 1(b) of

13:13:27 4 the agenda?

13:13:28 5 A. In fact, is there a -- is there a

13:13:29 6 -- a location on the top of that document there?

13:13:32 7 It would tell you who I was meeting with.

13:13:34 8 424 Q. So, on the document we just --

13:13:36 9 A. No. At the -- it would be on the

13:13:37 10 front page, right?

13:13:38 11 425 Q. There is no location, sir.

13:13:40 12 A. Okay. Then we can't -- then I was

13:13:42 13 going to say... 'Cause this one here, 7th Floor,

13:13:52 14 Frost Building; that's Finance.

13:13:52 15 426 Q. All right. So you have a

13:13:52 16 recollection, then, that the meeting reflected on

13:13:53 17 the agenda of November 30th, 2009, was with Dwight

13:13:55 18 Duncan?

13:13:55 19 A. That's the Ministry of

13:13:56 20 Finance's -- that's Finance building, so one would

13:14:01 21 have to conclude it's Mr. Duncan.

13:14:04 22 BY MR. MATTHEWS:

13:14:04 23 427 Q. So you see, first of all, under

13:14:08 24 1(a), there's three bullet points under there and

13:14:10 25 the third one is:

13:14:10 1 "The Ministry supports the idea
13:14:13 2 of the ORC taking on more economic
13:14:15 3 oversight/regulation of the industry
13:14:18 4 (i.e. holding the industry
13:14:21 5 accountable for public funds)."

13:14:21 6 [As read.]

13:14:24 7 Do you have any recollection of
13:14:25 8 discussing that with Mr. Duncan, November 30th,
13:14:30 9 2009?

13:14:30 10 A. I don't.

13:14:30 11 428 Q. Okay. And under 1(b), there's a
13:14:36 12 discussion particularly on the government position
13:14:39 13 on horse racing where it indicates that:

13:14:41 14 "The government supports the
13:14:43 15 Slots at Racetrack Program and the
13:14:45 16 intent of the program, which is to
13:14:48 17 support live horse racing."

13:14:50 18 Second point being:

13:14:51 19 "At this time, there's no
13:14:52 20 desire on the part of government to
13:14:53 21 modify the 20 per cent slot
13:14:57 22 commissions to the industry."

13:14:59 23 Do you have any recollection of a
13:15:01 24 discussion about these points with Mr. Duncan in
13:15:03 25 that meeting?

13:15:04 1 A. Well, not specifically, except to
13:15:06 2 say that it would be -- I would remember it if
13:15:10 3 there was anything different that perspective.

13:15:13 4 That had been the position of the
13:15:15 5 government on an ongoing basis and that was the
13:15:17 6 basis on which we were regulating the industry.

13:15:21 7 429 Q. And when you say "the position of
13:15:23 8 the government", is it fair to say, sir, the
13:15:26 9 position of the government at least as it was known
13:15:28 10 to you and to the Commission?

13:15:29 11 A. Correct.

13:15:30 12 430 Q. And is it also fair to say, sir,
13:15:33 13 that your understanding and the Commission's
13:15:37 14 understanding of the Slots at Racetrack Program and
13:15:40 15 whether it would continue into the future informed
13:15:44 16 some of the messaging that you would put out to the
13:15:47 17 industry, including messaging regarding making
13:15:50 18 long-term investments in horses and breeding
13:15:54 19 operations?

13:15:54 20 A. Correct. That -- that would have
13:15:57 21 -- that information would have flown, umm, to the
13:16:01 22 government that they would -- they would see, as a
13:16:07 23 part of our reporting mechanism, through the HIP
13:16:10 24 program, what we're communicating to the industry.

13:16:12 25 431 Q. So let me put this proposition to

13:16:14 1 you, Mr. Seiling: If you had met with the Minister
13:16:17 2 of Finance and he had said to you, you know, 'The
13:16:21 3 government is having another look-see at the Slots
13:16:25 4 at Racetrack Program because we don't think it's
13:16:26 5 continuing to meet its objectives and we are
13:16:28 6 thinking about changing the revenue-sharing
13:16:32 7 arrangement,' is it fair to say, sir, that your
13:16:35 8 commission under your leadership may have been
13:16:38 9 perhaps more guarded or cautious in actively
13:16:41 10 encouraging breeders to make long-term investments
13:16:45 11 in their horses?

13:16:46 12 O/B MR. ROSENBERG: I object to this
13:16:48 13 question. It calls for the witness to speculate.

13:16:51 14 MR. MATTHEWS: Okay. Fair enough.

13:16:51 15 BY MR. MATTHEWS:

13:16:52 16 432 Q. You can answer that.

13:16:56 17 A. Leave it this way: Before we
13:17:04 18 would move forward - and this -- my -- my view, not
13:17:08 19 'cause I head a board that I would have to have on
13:17:11 20 side - you certainly would take a step back and
13:17:13 21 find out where this might be going, that, uh...
13:17:22 22 And more than -- depending on what the Minister had
13:17:29 23 said, might go back and markedly tell him, 'This is a
13:17:36 24 conversation you need to have with the industry,
13:17:39 25 not with -- with me. We are only the regulator.

13:17:40 1 We are not a signatory to the agreement. If you're
13:17:44 2 thinking about making any changes, then it would be
13:17:47 3 appropriate to have that discussion with the
13:17:50 4 signatories to the agreement and then tell us where
13:17:52 5 you're going.'

13:17:53 6 In the interim, we more likely would
13:17:59 7 be, in our view, reticent to be doing a whole lot
13:18:05 8 of things publicly unless there was a resolve of
13:18:08 9 that issue.

13:18:09 10 433 Q. So fair to say, sir, that you
13:18:12 11 would want to ensure when you, as Chair, and your
13:18:13 12 Commission are discharging your mandate as
13:18:15 13 regulator of the industry, you're not doing
13:18:18 14 anything that's out of step with your understanding
13:18:20 15 of the direction that the government is going in;
13:18:23 16 correct?

13:18:23 17 A. We are -- we were an agency of the
13:18:26 18 government and they set the policy. We only
13:18:31 19 implement it.

13:18:32 20 434 Q. Understood.

13:18:33 21 And is it also fair to say, sir, that
13:18:36 22 the MOU that we were just looking at that had the
13:18:40 23 provision whereby the Minister would advise you, as
13:18:44 24 appropriate, on the direction of the government
13:18:48 25 with respect to policy matters, was there to

13:18:52 1 ensure, for example, that you, as Chair, understood
13:18:57 2 the general policy direction of the government, so
13:19:00 3 that your Commission wouldn't do anything that was
13:19:05 4 inconsistent with what the government might want it
13:19:09 5 to do?

13:19:09 6 A. I'll go -- I'll reiterate what I
13:19:12 7 said earlier.

13:19:13 8 Government set -- sets policy -- set
13:19:13 9 the policy. We implement it.

13:19:15 10 If we're asked for input, we provided
13:19:18 11 input.

13:19:19 12 435 Q. All right. And so, is it fair to
13:19:28 13 say, sir, that coming out of this meeting, November
13:19:29 14 30th, 2009 with Mr. Duncan, you understood that the
13:19:33 15 position of the Ontario Government was that it
13:19:36 16 stood behind the Slots at Racetracks Program and so
13:19:40 17 your messaging, insofar as it reached the industry,
13:19:44 18 was aligned with the position of the government on
13:19:47 19 SARP, as you understood it?

13:19:49 20 A. Yes.

13:19:51 21 MR. MATTHEWS: Next exhibit, please.

13:19:54 22 CR 27833, Exhibit 14.

13:19:57 23 ---EXHIBIT NO. 14: Doc ID Number CR
13:20:00 24 27833.

13:20:19 25 BY MR. MATTHEWS:

13:20:19 1 436 Q. And so, talking about your
13:20:22 2 interactions with the industry, the messaging that
13:20:25 3 was being put out through or under the auspices of
13:20:29 4 the ORC and programs administered by the ORC, such
13:20:34 5 as the Horse Improvement Program, you understood
13:20:37 6 that messages were being put out to the industry
13:20:42 7 through the ORC that were being relied on by
13:20:46 8 participants in the horse racing industry; correct?

13:20:49 9 A. Umm. I -- yeah, I would say so.

13:20:54 10 437 Q. You were the regulator closest to
13:20:55 11 the horse racing industry; correct?

13:20:57 12 A. If you are -- if you are referring
13:20:59 13 to programs to buy, breed, race in Ontario, that
13:21:05 14 would be correct.

13:21:05 15 438 Q. Well, that is a very good segue to
13:21:12 16 what I'm going to show you now, sir.

13:21:14 17 What I'm showing you is a series of
13:21:17 18 advertisements, and you can see, at the top of the
13:21:19 19 page, the publication in which they appeared and
13:21:21 20 the date.

13:21:27 21 MR. MATTHEWS: I know what you're going
13:21:28 22 to say, Mr. Rosenberg, so let me give you --
13:21:30 23 there's a number of Document ID's here; SB 894,
13:21:33 24 SB 895, SB 896, SB 897, SB 889, SB 898, SB 899, SB
13:21:46 25 889.

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13:22:40 24
13:22:42 25

BY MR. MATTHEWS:

439 Q. I've handed you this bundle of documents. They are sort of arranged chronologically, but can we agree, sir, that these advertisements all relate to the Ontario Sires Stakes Program; correct?

A. Yes, yes.

440 Q. And as you see, if you look at the very first advertisement at the bottom, it says in small print that:

"The Ontario Sires Stakes Program is part of Ontario's Horse Improvement Program and is administered by the ORC."

[As read.]

Correct?

A. Correct.

441 Q. And in terms the dates on these advertisements, I don't expect you to have knowledge to confirm that these advertisements ran when the dates say they ran.

But you were generally aware, sir, as the Chair of the ORC, that through the Sires Stakes Program, advertisements encouraging people to buy, breed and race in Ontario were being put out on a

13:22:45 1 regular basis; correct?

13:22:47 2 A. Yes.

13:22:47 3 442 Q. And you also agree with me, sir,
13:22:49 4 that these advertisements continued through 2011,
13:22:55 5 including into early 2012; correct?

13:22:58 6 A. Umm. If -- if you have the dates
13:23:02 7 there in front of you. Here's one -- here's one,
13:23:07 8 it says "January-March of 2012", so if the date's
13:23:12 9 right on the top, then I would say you're right.

13:23:14 10 443 Q. You don't have any reason to
13:23:16 11 dispute that, do you, sir?

13:23:17 12 A. No.

13:23:17 13 444 Q. And can we also agree, sir, that
13:23:19 14 these kind of advertisements were the kinds of
13:23:23 15 things, because they ran through the Horse
13:23:26 16 Improvement Program and the Sires Stakes Program,
13:23:28 17 that were part and parcel of the goal of the
13:23:31 18 Ontario Racing Program and the mandate of your
13:23:33 19 Commission to increase trust and confidence in the
13:23:36 20 industry, to encourage breeders to make long-term
13:23:39 21 investments, and increase the quality of their
13:23:42 22 horses?

13:23:42 23 A. In general, yes. It's an offshoot
13:23:46 24 of support live racing.

13:23:48 25 445 Q. And breeding quality horses would

13:23:52 1 -- would do that; correct?

13:23:52 2 A. Yes.

13:23:53 3 446 Q. In fact, as you said earlier, the
13:23:55 4 breeding that took place, particularly in the
13:23:58 5 Standardbred side, resulted in what you described
13:24:00 6 as a world-class Standardbred industry in Ontario;
13:24:03 7 correct?

13:24:03 8 A. Yes.

13:24:05 9 MR. MATTHEWS: I would like to mark the
13:24:06 10 bundle of advertisements collectively as Exhibit
13:24:10 11 15, please.

13:24:11 12 ---EXHIBIT NO. 15: A bundle of
13:24:11 13 advertisements, Document ID Numbers SB 894, SB 895,
13:24:11 14 SB 896, SB 897, SB 889, SB 898, SB 899, SB 889.

13:24:11 15 BY MR. MATTHEWS:

13:24:31 16 447 Q. And as part of the Ontario Sires
13:24:34 17 Stakes Program and the Standardbred Improvement
13:24:36 18 Program, you understood, sir, that there were
13:24:38 19 industry advisory groups, for example, within the
13:24:42 20 Standardbred Improvement Program that would work
13:24:46 21 collaboratively with the ORC and the OSS program
13:24:50 22 administrator to help design the Ontario Sires
13:24:54 23 Stakes Program?

13:24:54 24 A. Correct. (Clearing throat.)

13:24:56 25 Correct.

13:24:56 1 448 Q. And were you also aware, sir, that
13:25:02 2 as part of the ongoing collaboration between the
13:25:07 3 Standardbred industry within the Standardbred
13:25:14 4 Improvement Program and the ORC, there were regular
13:25:16 5 exchanges of financial projections for the
13:25:22 6 Standardbred Improvement Program and the Ontario
13:25:24 7 Sires Stakes Program that were being circulated?

13:25:27 8 A. That's -- I would say yes.

13:25:32 9 449 Q. I'm going to pass you a few of
13:25:34 10 these that have been produced in the course of the
13:25:36 11 lawsuit; SB 3932, SB 12657, SB 4481.

13:26:02 12 You understood, sir that the industry
13:26:06 13 advisory groups included representatives of
13:26:08 14 Standardbred breeders' industry associations;
13:26:10 15 correct?

13:26:10 16 A. Yes.

13:26:11 17 450 Q. And you understood that, at all
13:26:13 18 times in which you were Chair, one of the ways in
13:26:17 19 which the ORC engaged with Standardbred breeders
13:26:20 20 was through their industry associations; correct?

13:26:22 21 A. Yes.

13:26:22 22 451 Q. So those would include industry
13:26:25 23 associations like Standardbred Canada; correct?

13:26:28 24 A. Yes.

13:26:28 25 452 Q. Standardbred Breeders of Ontario

13:26:31 1 Association; correct?

13:26:31 2 A. Yes.

13:26:32 3 453 Q. COSA; correct?

13:26:33 4 A. Yes.

13:26:34 5 454 Q. OHHA?

13:26:35 6 A. Yes.

13:26:37 7 455 Q. And the umbrella organization,

13:26:38 8 OHRIA; correct?

13:26:40 9 A. Likely. I'm not sure of that --

13:26:43 10 of OHRIA, but OHRIA had kind of evaporated for a

13:26:48 11 while. That's why the Commission ended up back

13:26:51 12 with the Sires Stakes Program.

13:26:52 13 456 Q. And -- and why it resumed

13:26:54 14 oversight of the Horse Improvement Program;

13:26:57 15 correct?

13:26:57 16 A. Yes.

13:26:58 17 457 Q. Now, I'm going to suggest to you,

13:27:00 18 sir, that one of the reasons that your Commission

13:27:07 19 interfaced with the industry associations was

13:27:09 20 because you understood that Standardbred breeders

13:27:11 21 are sort of dispersed across the Province of

13:27:14 22 Ontario; correct?

13:27:15 23 A. Yes.

13:27:16 24 458 Q. And so, one of the reasons you

13:27:18 25 would interface with their industry associations

13:27:23 1 was to ensure that any message the ORC needed to
13:27:27 2 communicate would be properly distributed across
13:27:30 3 the Province to Standardbred breeders; correct?

13:27:33 4 A. In part.

13:27:34 5 459 Q. And there were also other ways in
13:27:36 6 which you disseminated information.

13:27:38 7 I've seen, for example, the newsletter
13:27:40 8 that was put out called Integrity Matters; correct?

13:27:44 9 A. Yes.

13:27:44 10 460 Q. And there were business plans and
13:27:46 11 other documents you made publicly available on the
13:27:49 12 website; correct?

13:27:49 13 A. Yes.

13:27:49 14 461 Q. And you would promote programs,
13:27:51 15 such as the Ontario Racing Program; correct?

13:27:56 16 A. Yes.

13:27:57 17 462 Q. And so, is it fair say that, you
13:28:00 18 know, there were a variety of ways in which the ORC
13:28:04 19 sought to work collaboratively with the industry
13:28:08 20 and communicate with them about matters of concern
13:28:12 21 that affected the breeding of Standardbred horses?

13:28:14 22 A. Yes.

13:28:16 23 463 Q. And would you also agree with me,
13:28:18 24 sir, that one thing that affected the breeding of
13:28:22 25 Standardbred horses was the size of purses which

13:28:27 1 were, in large measure, funded through revenue from
13:28:31 2 the Slots at Racetracks Program?

13:28:33 3 A. Yes.

13:28:34 4 464 Q. So come back to the documents that
13:28:36 5 I've given you, sir.

13:28:42 6 Have you seen...? I will call them
13:28:46 7 "projections", but they are what they are.

13:28:48 8 Have you seen documents like this
13:28:50 9 before, that sort of set out the projections for a
13:28:59 10 number of years into the future for the funding
13:29:01 11 available for the Ontario Sires Stakes Program and
13:29:05 12 Ontario Breeders Rewards?

13:29:07 13 A. Yes.

13:29:09 14 465 Q. And did you understand, sir, that
13:29:11 15 a number of these documents, in addition to sort of
13:29:15 16 projecting the net amount of revenue available for
13:29:19 17 these programs, also made projections of revenue
13:29:24 18 derived from the Slots at Racetracks Program?

13:29:26 19 A. Yes.

13:29:27 20 466 Q. So let me point you to Example 4
13:29:33 21 to the projection that is labelled as SB 12657.
13:29:43 22 It's a single-page document, sir.

13:29:46 23 A. Okay. 12657. I've got it.

13:29:58 24 467 Q. Yes, sir.

13:29:59 25 So you see that this is SIP Program

13:30:03 1 Projection, 2011 through 2015.

13:30:06 2 "SIP" is Standardbred Improvement

13:30:08 3 Program; correct?

13:30:08 4 A. Yes.

13:30:09 5 468 Q. And you see, this appears to be a

13:30:13 6 table of revenue and expenditures for the SIP

13:30:18 7 Program; correct?

13:30:19 8 A. Yes.

13:30:19 9 469 Q. And you see that, at what appears

13:30:22 10 to be Row 11 of this table,--

13:30:25 11 A. Mm-hmm.

13:30:25 12 470 Q. --you see it says:

13:30:28 13 "Contribution from HM's slot

13:30:30 14 revenue." [As read.]

13:30:30 15 Correct?

13:30:31 16 A. Yes.

13:30:32 17 471 Q. And what you see there is a

13:30:34 18 projection, from the year 2010 up until 2015, of

13:30:40 19 the revenue available to the Standardbred

13:30:44 20 Improvement Program from slot revenue; correct?

13:30:47 21 A. Yes.

13:30:49 22 472 Q. And you're aware that the ORC,

13:30:52 23 through the administration of the ORC, was

13:30:55 24 regularly consulting with and engaging with

13:30:58 25 Standardbred breeders and providing them with these

13:31:00 1 kind of projections; correct?

13:31:02 2 A. I would presume so, through the --
13:31:06 3 the consultation meetings.

13:31:09 4 I didn't attend them, so I -- I can't
13:31:18 5 provide you with an exact, but it would not be --
13:31:21 6 it would be surprising that they wouldn't.

13:31:22 7 473 Q. Well, if... I'm going to suggest
13:31:27 8 to you that these kind of meetings and projections
13:31:29 9 were provided by people like Wendy Hoogeveen in the
13:31:33 10 context of her --

13:31:34 11 A. I'm not disagreeing with you.

13:31:36 12 All I'm saying is, given I didn't
13:31:39 13 attend, I can't say definitively, but I would find
13:31:43 14 it hard to believe that it wasn't, given that --
13:31:46 15 the recommendations -- would come back with and
13:31:48 16 that Wendy would be consulting with them.

13:31:49 17 I can't imagine that she wouldn't be
13:31:52 18 providing this information.

13:31:53 19 474 Q. Do you also accept, sir, that one
13:31:56 20 of the reasons why these projections are made for a
13:31:58 21 five-year period is because there is a planning
13:32:02 22 exercise that Standardbred breeders need to do in
13:32:06 23 terms understanding, having regard to the
13:32:09 24 production cycle for a Standardbred horse, what the
13:32:12 25 future value of their horses might be in terms of

13:32:16 1 what purses those horses can race for in the
13:32:19 2 future; correct?

13:32:19 3 A. Yes.

13:32:20 4 475 Q. And that would be something that
13:32:21 5 would drive the decision to breed; correct?

13:32:24 6 A. Yes.

13:32:27 7 MR. MATTHEWS: All right. So I would
13:32:28 8 like to mark these bundle of documents collectively
13:32:31 9 as Exhibit 16?

13:32:38 10 MR. ROSENBERG: Has the witness
13:32:39 11 identified all of them?

13:32:39 12 BY MR. MATTHEWS:

13:32:45 13 476 Q. I will give these back to you,
13:32:46 14 sir, because my friend, Mr. Rosenberg, has a
13:32:49 15 concern that you haven't identified the documents.

13:32:51 16 Can you just look at them and satisfy
13:32:52 17 yourself that these all appear to be financial
13:32:55 18 projections provided through the Horse Improvement
13:33:02 19 Program and its Standardbred Improvement Program,
13:33:04 20 projecting revenue available for that program?

13:33:06 21 A. The answer is yes.

13:33:08 22 MR. MATTHEWS: Thanks.

13:33:08 23 So we'll mark these collectively as
13:33:10 24 Exhibit 16.

13:33:10 25 THE COURT REPORTER: Was it three

13:33:10 1 different numbers?

13:33:23 2 MR. MATTHEWS: Yes. SB 4481, SB 3932,
13:33:27 3 SB 12657; Exhibit 16.

13:33:30 4 ---EXHIBIT NO. 16: A bundle of
13:33:30 5 financial projections; Doc ID Numbers SB 4481, SB
13:33:36 6 3932, SB 12657.

13:33:39 7 BY MR. MATTHEWS:

13:33:39 8 477 Q. And we have looked earlier at
13:33:41 9 business plans that you submitted to the Ministry
13:33:43 10 of Finance.

13:33:45 11 Do you recall that, sir?

13:33:45 12 A. Yes.

13:33:46 13 478 Q. Do you also recall composing
13:33:49 14 financial plans? And when I say "you", I mean your
13:33:53 15 Commission.

13:33:53 16 Were you aware that your Commission was
13:33:55 17 composing financial plans for the Horse Improvement
13:33:59 18 Program?

13:33:59 19 A. We would do that reporting
13:34:02 20 structure.

13:34:02 21 479 Q. All right. I'm going to give you
13:34:05 22 a document, CRE 312903. It is a 2012 financial
13:34:10 23 plan for the Horse Improvement Program dated
13:34:13 24 October 24th, 2011.

13:34:31 25 --- (Witness reviewing document.)

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BY MR. MATTHEWS:

480 Q. Would these be documents, sir,
that would come to the attention of the Board of
the ORC?

A. Yes.

481 Q. Okay. And do you know, sir, would
these financial plans be sent along to the Ministry
of Finance as part of the documents that had to be
signed off on by the Ministry?

A. I would -- yes, I would believe
so.

482 Q. So I want to take you through this
one because, as you can see from the date on the
first page, this particular financial plan is very
close in time to the announcement regarding the
Slots at Racetrack Program that gets made
approximately six months later.

And so, first of all, if you look on
the second page of the document, you see that
there's a section discussing slot revenue; correct?

A. Yes.

483 Q. And, among other things, there's a
discussion in that section about International
Financial Reporting Standards, IFRS.

Do you see that?

13:35:28 1 A. Yes.

13:35:32 2 484 Q. Do you have a recollection of
13:35:35 3 there being a requirement for OLG to start
13:35:38 4 reporting their results under the IFRS in 2011?

13:35:38 5 A. Yes.

13:35:42 6 485 Q. And so, is it fair to say, sir,
13:35:43 7 that what these two paragraphs under IRFS are
13:35:49 8 discussing is the fact that the way in which slots
13:35:51 9 revenue is going to be reported is going to change
13:35:54 10 insofar as OLG is changing to this new IFRS
13:35:58 11 reporting standard?

13:35:59 12 A. Yes.

13:36:04 13 486 Q. And so, the reason I wanted to
13:36:06 14 draw your attention to that is, when you continue
13:36:09 15 down the first page, you see there's a heading,
13:36:12 16 "Effect on 2012 Projection"?

13:36:14 17 A. Yes.

13:36:16 18 487 Q. And it says:

13:36:17 19 "The administration..."

13:36:18 20 Just pausing there, that's the
13:36:19 21 administration of the ORC; correct?

13:36:22 22 A. Yes.

13:36:22 23 488 Q. "The administration has provided
13:36:25 24 for the potential reduction in slot
13:36:27 25 revenues due to IFRS in their 2012

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projection."

Do you see that?

A. Yes.

Q. And then, it continues on and it says:

"This will be a one-time reduction in revenues in 2012, and is not expected to impact the program further in subsequent years."

And "the program" there; we're referring to the Horse Improvement Program, sir?

A. Yes.

Q. Okay. And can we agree that this 2012 financial plan, like the business plans, were made publicly available by the ORC?

A. Uh. I would presume so, yes. Everything was. I have no reason to believe this wasn't.

Q. Okay.

A. I know there was a lot of consternation in the industry about what the -- what the OLG was going to have to start charging on track for some things. That caused some unhappiness within the horse industry as it was

13:37:23 1 going to impact on their revenues.

13:37:25 2 492 Q. So do you understand, then, that
13:37:26 3 because of this consternation that you are
13:37:31 4 describing, participants in the industry who
13:37:33 5 derived some of their revenue from the Slots at
13:37:37 6 Racetracks Program were paying very close attention
13:37:39 7 to the messaging being put out by the ORC, among
13:37:43 8 others, that touched on the Slots at Racetrack
13:37:47 9 Program?

13:37:47 10 A. Yes.

13:37:48 11 493 Q. And you also might remember, a
13:37:50 12 little bit prior to --

13:37:50 13 A. Well, in -- I mean, I don't -- I'm
13:37:53 14 not sure where that information came from
13:37:55 15 originally. It might have originated out of the
13:37:58 16 tracks because I recall first, that's where I --
13:38:00 17 where I first heard it.

13:38:01 18 But anyway, to your point about the
13:38:04 19 industry being aware of it, yeah. The answer is
13:38:07 20 yes.

13:38:07 21 494 Q. Okay. I'm not quite done with the
13:38:09 22 document yet, sir, but--

13:38:09 23 A. Okay.

13:38:11 24 495 Q. --I just wanted to ask you, do you
13:38:13 25 recall, just a little bit prior to this time,

13:38:16 1 October 24th, 2011, there had been some talk in the
13:38:20 2 industry related to the fact that siteholder
13:38:23 3 agreements, pursuant to which the slot machines
13:38:25 4 were installed at the racetracks, were coming up
13:38:29 5 for expiration and were only being renewed for a
13:38:33 6 short periods of a number of months?

13:38:35 7 Do you recall that?

13:38:35 8 A. Yes.

13:38:36 9 496 Q. And do you also recall that after
13:38:37 10 that had happened for a number of months, the
13:38:40 11 Ministry of Finance then came out and announced
13:38:43 12 that all siteholder agreements were being extended
13:38:46 13 for at least a further five years?

13:38:48 14 A. Yes.

13:38:48 15 497 Q. And did you understand, sir, that
13:38:50 16 one of the reasons that the short-term renewal of
13:38:55 17 siteholder agreements was causing some
13:38:57 18 consternation in the industry was because industry
13:39:01 19 participants were concerned that this perhaps
13:39:05 20 suggested that the government did not remain
13:39:09 21 committed to the Slots at Racetracks Program in the
13:39:12 22 long term?

13:39:12 23 A. No, I don't recall that.

13:39:18 24 What I do recall hearing is that, uh, a
13:39:20 25 short-term contract, agreement - whatever you want

13:39:26 1 to call it - precluded the planning of -- of doing
13:39:30 2 any improvements in a facility; that why would you
13:39:35 3 start doing renovations in your plant, racetrack,
13:39:43 4 without knowing that you had a longer term
13:39:46 5 commitment?

13:39:46 6 That's what -- what we were hearing.

13:39:48 7 498 Q. Would it also be fair to say, sir,
13:39:48 8 that from the breeders' perspective --

13:39:51 9 A. Or that I was hearing, anyway.

13:39:52 10 499 Q. Did you also hear, from the
13:39:55 11 breeders' perspective, that short-term renewal of
13:39:58 12 siteholder agreement also didn't allow breeders to
13:40:00 13 do long-term planning in terms of making the
13:40:03 14 decision to breed without knowing whether or not
13:40:07 15 the Slots Program would in force in the years to
13:40:10 16 come?

13:40:10 17 A. Umm. It -- it wouldn't be
13:40:13 18 surprising that they would take that view.

13:40:15 19 Umm. Did the breeders come to me
13:40:18 20 personally and make that argument? No.

13:40:22 21 But if I was a breeder, I would
13:40:24 22 certainly have that concern.

13:40:26 23 500 Q. Did you know, sir, that in 2009,
13:40:31 24 when these siteholder agreements were being renewed
13:40:37 25 for short periods of time, breeders and others

13:40:39 1 through OHRIA organized and engaged in a lobbying
13:40:42 2 effort with members of the government to -- to get
13:40:45 3 siteholder agreements renewed for longer periods of
13:40:48 4 time? Is that something you learned?

13:40:49 5 A. Wouldn't surprise me. No, I'm not
13:40:51 6 aware of it, nor should I have been. I mean, we --
13:40:54 7 we were an arm of the government. They -- they
13:40:57 8 wouldn't come lobbying to us.

13:40:59 9 I'm quite sure that our staff might
13:41:03 10 aware of it, but there would be no reason for them
13:41:08 11 to lobby us because it wasn't our purview.

13:41:12 12 501 Q. Understood.

13:41:14 13 So before we set this document aside, I
13:41:16 14 just want to show you the final page on -- on CRE
13:41:22 15 312903.

13:41:24 16 It's a chart labelled "Standardbred
13:41:29 17 Improvement Program". And you see that there are
13:41:30 18 five-year financial projections including, and if
13:41:36 19 you look under the "Projected Revenue" heading,
13:41:37 20 sir, there's a projection of slots revenue out
13:41:41 21 until 2016.

13:41:42 22 Do you see that?

13:41:43 23 A. Yes.

13:41:43 24 502 Q. And this is consistent with the
13:41:46 25 documents we were looking at earlier, distributed

13:41:49 1 through the Standardbred Improvement Program
13:41:51 2 whereby the ORC would -- would put out these
13:41:55 3 projections of revenues into the Standardbred
13:42:01 4 Improvement Program; fair?

13:42:02 5 A. Correct.

13:42:03 6 MR. MATTHEWS: All right. I would like
13:42:04 7 to mark this 2012 financial plan as the next
13:42:08 8 exhibit, please; 17.

13:42:14 9 ---EXHIBIT NO. 17: 2012 financial plan
13:42:14 10 for the Horse Improvement Program, dated October
13:42:15 11 24th, 2011; Doc ID Number CRE 312903.

13:42:20 12 BY MR. MATTHEWS:

13:42:21 13 503 Q. And we were discussing earlier,
13:42:28 14 sir, the various ways in which you would keep the
13:42:31 15 industry informed about issues of importance to
13:42:33 16 them, and one of the ways that was discussed was
13:42:36 17 the newsletter you put out called "Integrity
13:42:39 18 Matters".

13:42:39 19 Do you recall that?

13:42:40 20 A. Yes.

13:42:41 21 504 Q. All right. I'm going to hand you
13:42:43 22 a bundle of documents; SB 1462, SB 1474, SB 1482,
13:42:52 23 SB 1486, SB 1490. And I have arranged these
13:42:58 24 chronologically, sir. These are excerpts -- or, in
13:43:01 25 fact, I think they're the entire thing of different

13:43:04 1 Integrity Matters publications spanning fall 2007
13:43:08 2 to June 2011.
13:43:11 3 ---(Witness reviewing documents.)
13:43:11 4 BY MR. MATTHEWS:
13:43:29 5 505 Q. And, first of all, you're aware
13:43:30 6 that the Commission was publishing these
13:43:33 7 newsletters--
13:43:33 8 A. Yes.
13:43:34 9 506 Q. --during your tenure?
13:43:35 10 A. Yes.
13:43:36 11 507 Q. The purpose of these newsletters
13:43:38 12 was to communicate with the horse racing industry?
13:43:38 13 A. Yes.
13:43:38 14 508 Q. You expected that these -- these
13:43:40 15 newsletters would reach participants in the horse
13:43:42 16 racing industry; correct?
13:43:43 17 A. Yes.
13:43:44 18 509 Q. Including Standardbred breeders?
13:43:45 19 A. Yes.
13:43:46 20 510 Q. And the messages and information
13:43:50 21 that you put in these newsletters were designed to
13:43:54 22 draw matters of importance to the attention of
13:43:57 23 participants in the horse racing industry?
13:44:00 24 A. Yes.
13:44:00 25 511 Q. And from the perspective of the

13:44:03 1 ORC, and given its mandate to act in a manner
13:44:06 2 that's honest and transparent, you would agree with
13:44:09 3 me that what is contained in these Integrity
13:44:14 4 Matters newsletters was honest and transparent;
13:44:16 5 correct?

13:44:16 6 A. Yes.

13:44:17 7 512 Q. All right. I don't propose to go
13:44:19 8 through them in detail with you, but you just flip
13:44:22 9 through them, you see that most of these contain a
13:44:25 10 message from the Chair, being you, at the start of
13:44:27 11 the newsletter.

13:44:28 12 Do you see that?

13:44:29 13 A. Yes.

13:44:31 14 513 Q. And so, if you look at the first
13:44:36 15 one, which is that fall 2007 one, it contains a
13:44:39 16 message from you that begins on page 1 and
13:44:41 17 continues onto page 2, and you set out things such
13:44:47 18 as the ORC's vision for the horse racing in the
13:44:50 19 Province:

13:44:50 20 "The ORC envisions a strong
13:44:53 21 horse racing industry guided by
13:44:54 22 principles of honesty, integrity and
13:44:58 23 social responsibility, and a climate
13:45:00 24 where customers and participants can
13:45:02 25 invest in/conduct the horse racing

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activities with trust and
confidence." [As read.]
Do you see that?
A. Yep.
Q. And this is consistent with the
kinds of messages we have seen in your annual
reports, in your business plans, and in Integrity
Matters; correct?
A. Correct.
Q. And you also see, throughout these
newsletters - and I'm happy to take you to some of
these points, if you dispute it - but in many of
your messages, I have noticed a theme that you have
indicated that the Commission is open to
consultations and working collaborative with the
industry to address issues.
Is that fair?
A. It's fair.
Q. And if you flip to the last one
that I've given you, which is June 2011 Integrity
Matters.
Do you have that one, sir?
A. I do.
Q. You see here, by this point in
time, you've now rolled out the Ontario Racing

13:46:11 1 Program; correct?

13:46:11 2 A. Correct.

13:46:12 3 518 Q. And this is one of the means by

13:46:13 4 which you would publicize the Ontario Racing

13:46:15 5 Program to participants in the industry; correct?

13:46:16 6 A. Correct.

13:46:17 7 519 Q. And so, you see on the first page,

13:46:19 8 a message from the Chair in the right-hand column,

13:46:22 9 from you, describing the right program at the right

13:46:27 10 time, discussing the Ontario Racing Program;

13:46:31 11 correct?

13:46:31 12 A. Correct.

13:46:32 13 520 Q. And if you flip to the very final

13:46:35 14 page of the document, you see this pyramid you were

13:46:39 15 referencing earlier, with the different hierarchies

13:46:44 16 of racing, where the Grassroots level feeds the

13:46:48 17 upper levels; correct?

13:46:48 18 A. Yes.

13:46:49 19 521 Q. And you also see the six

13:46:50 20 principles of the Ontario Racing Program that we

13:46:52 21 discussed before; correct?

13:46:53 22 A. Yes.

13:46:57 23 MR. MATTHEWS: So I would like to mark

13:46:59 24 all of these copies of Integrity Matters, which

13:47:05 25 I've identified earlier, collectively as Exhibit

13:47:08 1 18.

13:47:09 2 ---EXHIBIT NO. 18: Copies of Integrity

13:47:09 3 Matters; Doc ID Numbers SB 1462, SB 1474, SB 1484,

13:47:15 4 SB 1486, and SB 1490.

13:47:25 5 BY MR. MATTHEWS:

13:47:25 6 522 Q. And you're aware that from time to

13:47:27 7 time, the Ontario Racing Commission would oversee

13:47:32 8 the preparation of annual reports for the Horse

13:47:36 9 Improvement Program; correct?

13:47:36 10 A. We have agreed to that already.

13:47:38 11 523 Q. Yeah.

13:47:39 12 A. You're a little redundant.

13:47:41 13 524 Q. I'm not trying to be, but this is

13:47:44 14 Cross-Examination, Mr. Seiling.

13:47:45 15 A. I know, although it's not

13:47:47 16 Cross-Examination. I'm just a witness.

13:47:50 17 525 Q. I'm just giving you a hard time.

13:47:52 18 I'm just going to show you, sir, a

13:47:52 19 bundle of documents.

13:48:05 20 It's a letter, CRE 85407; the Ontario

13:48:06 21 Horse Improvement Program Annual Report for

13:48:09 22 2008-2009, SB 7572; and the Ontario Horse

13:48:15 23 Improvement Program Annual Report for 2010, SB 828.

13:48:29 24 I'm just going to hand these to you,

13:48:31 25 sir. It's not necessary for you to review them in

13:48:33 1 depth.

13:48:33 2 MR. LISUS: [Sotto voce.]

13:48:37 3 MR. MATTHEWS: Thank you.

13:48:37 4 BY MR. MATTHEWS:

13:48:39 5 526 Q. My colleague informs me that the

13:48:40 6 first letter I've given you is actually two letters

13:48:42 7 that are stapled together, so it's CRE 85407 and

13:48:45 8 CRE 85421.

13:48:47 9 And these are letters, dated January

13:48:52 10 26th, 2012 and January 27th, 2012 respectively,

13:48:58 11 from Wendy Hoogeveen to Elizabeth Yeigh of the

13:49:04 12 Gaming Policy Branch of the Ministry of Finance,

13:49:05 13 and to Blair Stransky, Senior Policy Advisory in

13:49:10 14 the Minister of Finance's office, and you're copied

13:49:13 15 on both letters; correct?

13:49:14 16 A. Correct.

13:49:17 17 527 Q. And we can agree, sir, that the

13:49:18 18 purpose of these two letters was to bring to the

13:49:18 19 attention of the government the 2008 and 2009

13:49:30 20 annual report of the Horse Improvement Program;

13:49:32 21 correct?

13:49:32 22 A. Correct.

13:49:32 23 528 Q. And as both letters say:

13:49:45 24 "The Horse Improvement Program

13:49:47 25 was put in place almost 40 years ago

13:49:49 1 by the government to bolster the

13:49:51 2 breeding industry in Ontario."

13:49:51 3 [As read.]

13:49:53 4 Is that fair?

13:49:53 5 A. It's fair.

13:49:54 6 529 Q. And I just want to draw your

13:49:57 7 attention, if we look, for example, at the 2010

13:50:00 8 Horse Improvement Program Annual Report, sir, this

13:50:10 9 would have been a report that would have been

13:50:12 10 prepared by the ORC administration and then

13:50:14 11 elevated to the governing board of which you were

13:50:16 12 Chair for approval; correct?

13:50:18 13 A. Correct.

13:50:19 14 530 Q. And then, you would, in order to

13:50:20 15 keep the Ministry apprised, pass these reports

13:50:24 16 along to the Ministry of Finance; correct?

13:50:26 17 A. Correct.

13:50:26 18 531 Q. And did they have to approve these

13:50:28 19 reports before they went out?

13:50:29 20 A. Yes.

13:50:30 21 532 Q. All right. And so, the fact that

13:50:32 22 I have these reports, sir, suggests that they have

13:50:35 23 been approved and publicly released; correct?

13:50:37 24 A. Yes.

13:50:38 25 533 Q. All right. Do you agree with me,

13:50:46 1 sir, that one of the reasons that these reports
13:50:48 2 were put together and publicly released were so
13:50:51 3 that participants in the horse racing industry and
13:50:55 4 as it relates to the Horse Improvement Program; in
13:50:57 5 particular, breeders, had insight into the Horse
13:51:05 6 Improvement Program and its revenue and expenses?

13:51:08 7 A. Umm. In general, I would agree.

13:51:12 8 Uh. But quite frankly, they would be
13:51:15 9 aware of it long before that through their
13:51:18 10 consultancy with the -- through the breed
13:51:24 11 improvement program.

13:51:24 12 So to many people like my friend
13:51:28 13 sitting at the other end, beside you there, and
13:51:30 14 through -- whether -- I can't tell whether he sat
13:51:33 15 on one of those committees or not, but I'm sure
13:51:36 16 after breed meetings, they would be well aware of
13:51:40 17 these things before this document ever got
13:51:42 18 released.

13:51:43 19 534 Q. Because they're actively
13:51:44 20 participating in the industry; correct?

13:51:47 21 A. Yes.

13:51:47 22 MR. ROSENBERG: For the record, when
13:51:47 23 the witness just said "my friend sitting right next
13:51:50 24 to you", he's referring to Mr. Meyers.

13:51:54 25 THE WITNESS: Oh. I'm sorry.

13:51:56 1 MR. MATTHEWS: Dr. Meyers, actually, I
13:51:58 2 believe.
13:51:59 3 THE WITNESS: It is.
13:51:59 4 MR. ROSENBERG: Dr. Meyers. I'm sorry,
13:51:59 5 sir.
13:52:00 6 THE WITNESS: Dr. Meyers.
13:52:02 7 MS. MACHADO: You apparently have a lot
13:52:03 8 of friends in this room, so --
13:52:05 9 THE WITNESS: You're all -- you're all
13:52:05 10 friends.
13:52:05 11 MS. MACHADO: There you go.
13:52:05 12 BY MR. MATTHEWS:
13:52:06 13 535 Q. So, sir, if I can ask you to look
13:52:07 14 at the 2010 report and maybe flip to the very first
13:52:11 15 page following the table of contents.
13:52:17 16 A. Yeah.
13:52:17 17 536 Q. You see that, starting on this
13:52:20 18 page which is labelled "page 2" of the report,
13:52:23 19 there's -- and continuing on to the next page,
13:52:26 20 there are a number of goals that are set out.
13:52:28 21 These are goals of the Horse
13:52:30 22 Improvement Program; correct?
13:52:31 23 A. Yes.
13:52:33 24 537 Q. And these were goals for the
13:52:35 25 program that were developed in consultation between

13:52:40 1 the ORC and the horse racing industry; correct?

13:52:46 2 A. Yes.

13:52:46 3 538 Q. And many of these goals were, in
13:52:48 4 fact, the byproduct of the review of the Horse
13:52:53 5 Improvement Program, which was that March 2008
13:52:55 6 report we looked at before; correct?

13:52:57 7 A. Yes.

13:52:57 8 539 Q. And so --

13:53:00 9 A. Well, an ongoing consulting
13:53:00 10 program.

13:53:00 11 That -- the consulting program just
13:53:03 12 wasn't one. It -- it was annual, so there was an
13:53:07 13 ongoing -- Ms. Hoogeveen had a group she met with
13:53:10 14 annually every year. It wasn't just, 'We're going
13:53:15 15 to meet now 'cause...'

13:53:16 16 This was annually.

13:53:18 17 540 Q. I've seen that referred to as the
13:53:21 18 "Standardbred Advisory Group", sir.

13:53:21 19 Is that right.

13:53:22 20 A. Yes.

13:53:22 21 541 Q. And just at a very high level, the
13:53:25 22 goals that are stated on these two pages; I see,
13:53:28 23 for example, Goal Number 3 is:

13:53:32 24 "Developing and supporting
13:53:33 25 programs that foster, sustain and

13:53:34 1 encourage investment within the

13:53:37 2 breeding sector." [As read.]

13:53:38 3 That was one goal of the Horse

13:53:40 4 Improvement Program; correct?

13:53:42 5 A. Yes.

13:53:42 6 542 Q. Goal 4:

13:53:43 7 "Supporting the Ontario

13:53:45 8 breeding sector as a priority with

13:53:48 9 programs and race conditions that

13:53:49 10 create incentives for the breeding

13:53:51 11 and purchase of Ontario offspring,

13:53:54 12 yearlings in particular." [As read.]

13:53:56 13 That was a goal of the Horse

13:53:58 14 Improvement --

13:53:58 15 A. Yes.

13:54:01 16 543 Q. And just stepping back, sir, when

13:54:03 17 we were discussing earlier about the fact that you

13:54:05 18 were an agency of the Crown and that you would meet

13:54:07 19 with your responsible Minister from time to time,

13:54:10 20 is it fair to say that because HIP was an Ontario

13:54:13 21 program administered by the ORC, you would not be

13:54:17 22 putting forward goals that you believed were

13:54:19 23 inconsistent with what the government wanted; fair?

13:54:23 24 A. Correct.

13:54:24 25 544 Q. Goal 5 --

13:54:25 1 A. And -- and, in fact, just as an
13:54:28 2 addition to that, I don't ever recall producing a
13:54:32 3 document, but we went to great pains to point out
13:54:36 4 to the government through different conversations,
13:54:41 5 the success of the program by the number of foreign
13:54:47 6 buyers who both bought and raced here in Ontario.

13:54:52 7 That -- that was a misperception by
13:54:56 8 many of them who thought that this was a
13:55:01 9 subsidization of Ontario money going out of the
13:55:03 10 Province.

13:55:03 11 And we had to educate them to the fact,
13:55:12 12 it actually was a sign of success because it was
13:55:15 13 actually, rather than import, it was an export
13:55:18 14 because they were buying an Ontario product and, on
13:55:22 15 top of that, they were racing in Ontario, and all
13:55:22 16 the expenses, the money was being spent here, in
13:55:29 17 Ontario, to do that.

13:55:29 18 545 Q. And that was benefiting the
13:55:30 19 agricultural economy; correct?

13:55:31 20 A. Correct.

13:55:32 21 546 Q. And that was feeding the chain
13:55:34 22 that -- that was referred to in that government
13:55:37 23 committee report we were looking at before, feeding
13:55:40 24 the chain of the agricultural community; correct?

13:55:42 25 A. Correct.

13:55:44 1 547 Q. And when a foreign buyer would
13:55:46 2 come and purchase an Ontario Standardbred yearling
13:55:49 3 at auction, if they wanted to race that yearling as
13:55:54 4 a two-year-old in Ontario, they would have to board
13:55:59 5 that yearling at an Ontario breeding farm, for
13:56:03 6 example; correct?

13:56:04 7 A. Not necessarily.

13:56:05 8 548 Q. But that happened?

13:56:05 9 A. Oh. Some -- some would stay here.
13:56:07 10 Some would -- some would -- many would leave it
13:56:11 11 with an Ontario-based trainer and -- and some might
13:56:12 12 take it home, train it down, and then send it back.

13:56:15 13 But certainly, they -- they would be
13:56:17 14 paying sustaining payments. If you go through the
13:56:20 15 projections here, you will see one of the -- the
13:56:24 16 good things, I guess, in one respect, the funding
13:56:27 17 model, race horsepeople supported the program with
13:56:30 18 their nominating sustaining payments. That -- that
13:56:34 19 helped build up the purses.

13:56:35 20 So those people -- even -- so you may
13:56:37 21 buy a horse and put all that money in it and never
13:56:41 22 race. That's the lotto aspect of buying --
13:56:46 23 breeding, buying a racehorse. It may work out; it
13:56:49 24 may not work out.

13:56:50 25 549 Q. And when you said earlier that the

13:56:52 1 Standardbred sector in Ontario had become
13:56:56 2 world-class, it's not inconsistent with it being
13:56:58 3 world-class that foreigners would come and
13:57:01 4 participate in the Ontario Standardbred industry;
13:57:03 5 correct?

13:57:03 6 A. Correct. Not just only Americans;
13:57:06 7 Europeans, as well.

13:57:07 8 550 Q. And including that, breeders in
13:57:10 9 Ontario, for example, some of them got into the
13:57:13 10 semen export business; correct?

13:57:15 11 A. Correct.

13:57:16 12 551 Q. Because there was demand for semen
13:57:20 13 for Ontario horses to be exported, for breeding in
13:57:23 14 other jurisdictions; correct?

13:57:24 15 A. Correct.

13:57:28 16 552 Q. And some U.S. operations, in fact,
13:57:31 17 established themselves with Canadian operations;
13:57:34 18 correct?

13:57:35 19 A. Yes.

13:57:35 20 553 Q. Are you aware of Winbak Farm, for
13:57:38 21 example?

13:57:38 22 A. Yes.

13:57:39 23 554 Q. Winbak Farm is a major U.S.
13:57:41 24 breeding operation; correct?

13:57:43 25 A. I'm well aware.

13:57:44 1 555 Q. And they've established Winbak
13:57:48 2 Farm of Canada; correct?
13:57:49 3 A. Yes.
13:57:49 4 556 Q. And they employ people in Ontario;
13:57:53 5 correct?
13:57:53 6 A. Yes.
13:57:53 7 557 Q. And they feed and benefit the
13:57:53 8 agricultural economy in Canada; correct?
13:57:59 9 A. Yes.
13:57:59 10 558 Q. Coming back to the document, Goal
13:58:02 11 5 of the Horse Improvement Program:
13:58:02 12 "Supporting Ontario breeding,
13:58:04 13 the Ontario breeding sector over the
13:58:06 14 long-term with programs that
13:58:08 15 encourage investment in the breeding
13:58:10 16 sector, encourage the purchase of
13:58:13 17 Ontario offspring, maximize the
13:58:15 18 value of Ontario offspring, include
13:58:18 19 long-term returns to owners of
13:58:20 20 Ontario-bred horses, Ontario
13:58:22 21 breeders, and Ontario stallion
13:58:25 22 owners, support improvement in
13:58:26 23 quality, not just increased quantity
13:58:29 24 in breeding programs, encourage
13:58:33 25 improvements to the broodmare band

13:58:34 1 as well as the stallion population."
13:58:37 2 These are all part and parcel of the
13:58:40 3 goals that the Ontario Horse Improvement Program
13:58:42 4 sought to attain; correct?
13:58:43 5 A. Yes.
13:58:50 6 MR. MATTHEWS: I would like to mark
13:58:51 7 these two annual reports together with the two
13:58:54 8 covering letters, January 26th, January 27th, 2012,
13:58:57 9 collectively as the next exhibit; Exhibit 19.
13:59:00 10 ---EXHIBIT NO. 19: Two covering
13:59:00 11 letters, dated January 26, 2012, and January 27,
13:59:00 12 2017, Doc ID Numbers CRE 85407 and CRE 85421, with
13:59:00 13 2008 and 2009 HIP annual reports.
13:59:14 14 MR. MATTHEWS: Can we go off the
13:59:15 15 record, please?
13:59:15 16 ----(Discussion off the record.)
13:59:37 17 ---Recess at 1:59 p.m.
14:10:42 18 ---On resuming at 2:10 p.m.
14:10:55 19 MR. MATTHEWS: Back on the record,
14:10:56 20 please.
14:10:57 21 BY MR. MATTHEWS:
14:10:57 22 559 Q. Mr. Seiling, I've passed you two
14:11:00 23 documents, a news release of September 10th, 2010,
14:11:04 24 SB 5389, and a document entitled "Ontario Horse
14:11:08 25 Racing Back on Track" dated October 31st, 2010, SB

14:11:12 1 5371.

14:11:14 2 Do you have those, sir?

14:11:15 3 A. Yes.

14:11:15 4 560 Q. So this is that news release,
14:11:19 5 announcing the introduction of the Ontario Racing
14:11:23 6 Program; correct?

14:11:23 7 A. Correct.

14:11:24 8 561 Q. Together with the report
14:11:32 9 describing the Ontario Racing Program; correct?

14:11:35 10 A. Yes.

14:11:35 11 562 Q. And just in terms of the news
14:11:37 12 release, sir, would the ORC put out news releases
14:11:40 13 without getting signoff from Ministry of Finance?

14:11:47 14 A. The government would be aware of
14:11:48 15 this.

14:11:48 16 563 Q. Okay. So --
14:11:51 17 --- (Court reporter appeals.)
14:11:51 18 THE WITNESS: The government would be
14:11:52 19 aware of this.

14:11:52 20 BY MR. MATTHEWS:
14:11:53 21 564 Q. All right. And I see in the news
14:11:54 22 release, sir, you're quoted toward the bottom of
14:11:57 23 it, where you're quoting as saying:
14:11:58 24 "To all stakeholders involved,
14:12:00 25 this commitment to live horse racing

14:12:03 1 means that they can see themselves
14:12:04 2 reinvesting, building and growing
14:12:07 3 the racing industry for the future."
14:12:07 4 [As read.]
14:12:09 5 Was that a quote that you gave for this
14:12:11 6 news release, sir?
14:12:12 7 A. It would be.
14:12:13 8 565 Q. And this would have been a quote
14:12:14 9 that you would have given with the understanding
14:12:22 10 that what you're saying would be aligned with what
14:12:25 11 you believed to be the position of the government
14:12:28 12 regarding the horse racing industry; correct?
14:12:29 13 A. Correct.
14:12:29 14 566 Q. And when you say "to all
14:12:31 15 stakeholders involved", you include in that
14:12:35 16 Standardbred breeders; correct?
14:12:37 17 A. Yes.
14:12:37 18 567 Q. And --
14:12:38 19 A. A three-legged stool.
14:12:42 20 568 Q. Yes.
14:12:48 21 And fair to say that one of the things
14:12:49 22 you will find in this report for "Ontario Horse
14:12:52 23 Racing Back on Track" is the recitation of the six
14:12:56 24 principles for the Ontario Racing Program we've
14:12:58 25 seen in other documents; correct?

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14:13:56 19
14:13:56 20
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14:14:08 24
14:14:11 25

A. Yes.

MR. MATTHEWS: All right. I would like to mark the news release and accompanying report collectively together as Exhibit 20.

---EXHIBIT NO. 20: News release and accompanying report, Doc ID Numbers SB 5389 and SB 5371.

BY MR. MATTHEWS:

569 Q. So, I'd like to turn in a more pointedly way now, sir, to the events that bring you here today as a witness, and that relates, you understand, to a lawsuit brought by a number of Standardbred breeders against Ontario and OLG; correct?

A. Correct.

570 Q. You also understand that that lawsuit stems from the announcement of the cancellation of revenue-sharing from the Slots at Racetrack Program; correct?

A. Yes.

571 Q. Now, earlier in your evidence, you indicated that you had only had an in-person meeting with OLG on one occasion; correct?

A. No. I -- I think I -- I indicated that at some point, I did have an opportunity, I

14:14:18 1 can't remember whether it was on the phone. Maybe
14:14:21 2 it was just -- no. Just on the phone. But we did
14:14:22 3 -- I did have a meeting teed up with Rod Phillips
14:14:26 4 and he cancelled it.

14:14:27 5 I had known Rod -- Rod for a lot of
14:14:29 6 years, but I don't believe we ever had an official
14:14:33 7 meeting in his capacity at the OLG.

14:14:35 8 572 Q. So coming back to my question,
14:14:36 9 then, I had suggested to you that I understood your
14:14:39 10 evidence to be, in the time that you were Chair of
14:14:41 11 ORC, you only had one in-person meeting with OLG;
14:14:44 12 correct?

14:14:44 13 A. Correct.

14:14:45 14 573 Q. And that meeting, as I understood
14:14:46 15 you to say was, you viewed it as sort of a "get to
14:14:49 16 know you" type of meeting; correct?

14:14:51 17 A. Yes.

14:14:52 18 574 Q. And did you also understand that
14:14:53 19 that meeting occurred in the context of
14:14:57 20 consultations that OLG was conducting as part of
14:15:01 21 its strategic business review?

14:15:03 22 A. Yes.

14:15:03 23 575 Q. All right. Are you aware, sir,
14:15:08 24 that -- well, let me just show you this document,
14:15:12 25 OLG SB 586.

14:15:23 1 This is a document that appears to be a
14:15:27 2 meeting memo for a meeting that took place March
14:15:30 3 24th, 2011, from 10:00 a.m. to 12:00 noon at OLG's
14:15:36 4 office and lists you as one of the participants.

14:15:39 5 Do you see that, sir?

14:15:39 6 A. Yes.

14:15:41 7 576 Q. Does this refresh your
14:15:42 8 recollection as to the one in-person meeting you
14:15:44 9 had with OLG?

14:15:45 10 A. Umm. In general. Certainly,
14:15:47 11 that's the meeting. That's -- without reading,
14:15:52 12 umm, going through the whole document, but I would
14:15:54 13 say that, uh, I was at that meeting, yes.

14:15:59 14 577 Q. Okay. And I see that at the top,
14:16:02 15 it says the stakeholder is the "Ontario Racetrack
14:16:05 16 Commission".

14:16:06 17 I guess that sort of illustrates that
14:16:09 18 hadn't been too much of a dialogue between OLG and
14:16:12 19 ORC; fair?

14:16:13 20 A. I think that speaks volumes.

14:16:14 21 578 Q. Yeah. I also note that they have
14:16:17 22 misspelled your name as a participant, but... The
14:16:22 23 document sort of speaks for itself.

14:16:24 24 Can I ask you, sir, to read...?

14:16:32 25 Let me ask you, did OLG ever send this

14:16:35 1 memo to you or to the ORC, to your knowledge?

14:16:37 2 A. I've never seen it before.

14:16:38 3 579 Q. All right. Well, can I ask you to
14:16:44 4 have a look at sort of the introductory two
14:16:47 5 paragraphs of the meeting memo? Just review them
14:16:52 6 to yourself.

14:16:54 7 --- (Witness reviewing document.)

14:17:15 8 BY MR. MATTHEWS:

14:17:16 9 580 Q. Do you see, the second paragraph
14:17:17 10 there, where the author of the memo appears to be
14:17:22 11 Claire MacDougall, who is listed as making the
14:17:25 12 record, records that:

14:17:25 13 "We assured them that OLG will
14:17:25 14 not take anything to its board or
14:17:29 15 government without first meeting
14:17:31 16 with ORC again."

14:17:33 17 Is that a sentiment--

14:17:33 18 A. Yes.

14:17:33 19 581 Q. --that you recall being expressed
14:17:36 20 to you at that meeting by OLG?

14:17:39 21 A. Well, umm, paraphrasing, I spoke
14:17:49 22 to you earlier. The reason I went to the meeting
14:17:49 23 was to try and ensure that this was a simply more
14:17:50 24 of a get to know; that the OLG was starting out a
14:17:55 25 process for planning and that given that I wanted

14:17:59 1 to make sure that nothing took place that could be
14:18:03 2 construed as that the ORC was agreeing to anything
14:18:09 3 because simply, we weren't -- we weren't there nor
14:18:14 4 should we have been there, umm, and there meaning
14:18:19 5 in terms of agreeing to any decision on what
14:18:23 6 arrangement may be taking place between Racing and
14:18:28 7 OLG differing from what it currently was.

14:18:32 8 So all I can tell you is that the
14:18:43 9 wording here is close. It wouldn't be how I would
14:18:45 10 write it, but it certainly doesn't say that we
14:18:49 11 agreed to anything either, so I will leave it at
14:18:52 12 that.

14:18:52 13 582 Q. Did you come away from that
14:18:54 14 meeting, as best you can recall, Mr. Seiling, with
14:18:58 15 the impression that if OLG was going to make any
14:19:01 16 sort of major change to the arrangement between
14:19:06 17 itself and the horse racing industry; i.e., the
14:19:11 18 Slots at Racetracks Program, that you would be
14:19:13 19 consulted before they took such a proposal to their
14:19:17 20 Board or to the government?

14:19:18 21 A. Yes.

14:19:27 22 583 Q. When is the next time you spoke
14:19:30 23 with the OLG?

14:19:30 24 A. A conversation with the Chair.
14:19:33 25 It's in my notes that I left you.

14:19:37 1 584 Q. After the announcement?

14:19:38 2 A. After the -- well, after the

14:19:39 3 announcement at which the Chair said he hadn't seen

14:19:42 4 my letter yet.

14:19:42 5 585 Q. And this was the letter you sent

14:19:44 6 around May -- end of May 2012?

14:19:47 7 A. Somewhere. I have to go back and

14:19:49 8 take a look at the exact date. A copy of it is in

14:19:53 9 the package I have left here.

14:19:54 10 586 Q. So to the extent you came out of

14:19:56 11 this meeting, March 24th, 2011, with the

14:19:59 12 understanding that OLG would consult with the ORC

14:20:03 13 before going to its board or the government with

14:20:05 14 any big ideas that might affect the Slots at

14:20:08 15 Racetrack Program, that consultation never

14:20:10 16 occurred?

14:20:10 17 A. No, it did not.

14:20:27 18 587 Q. Was there an acknowledgement, to

14:20:30 19 the best of your knowledge, by OLG in this meeting

14:20:36 20 that as it came to understanding the horse racing

14:20:38 21 industry, the ORC understood more about the horse

14:20:41 22 racing industry than the OLG?

14:20:47 23 A. Umm. Well, I -- I can't speak for

14:20:49 24 -- I won't try to speak for them.

14:20:50 25 I think, obviously, by what they

14:20:53 1 proposed, one would have to conclude that we
14:20:57 2 understood a lot more about horse racing than they
14:21:02 3 did, to come up with a proposal that was structured
14:21:06 4 in the way it was, was -- demonstrated a severe
14:21:07 5 lack of understanding of horse racing and all its
14:21:10 6 components.

14:21:33 7 588 Q. Was there any ever -- was there
14:21:36 8 ever any suggestion to you, that you did recall, in
14:21:39 9 the meeting you had with OLG in the meeting of
14:21:41 10 March 24th, 2011, that they were considering
14:21:44 11 modifying the revenue-sharing arrangement of the
14:21:48 12 Slots at Racetracks Program?

14:21:49 13 A. No.

14:21:58 14 MR. MATTHEWS: I would like to mark
14:21:59 15 this memo as Exhibit 21; OLGSB 586.

14:22:08 16 ---EXHIBIT NO. 21: A memo for a March
14:22:09 17 24th, 2011 meeting at OLG's office; Doc ID Number
14:22:10 18 OLGSB 586.

14:22:10 19 BY MR. MATTHEWS:

14:22:10 20 589 Q. I'm going to show you another
14:22:21 21 document, sir. This is an OLG internal document,
14:22:23 22 OLGSB 477.

14:22:34 23 If you could turn to -- well, first of
14:22:34 24 all, if you'd look at, on the first page, "the
14:22:36 25 issue", you see that it records that:

14:22:37 1 "The Government of Ontario has
14:22:39 2 asked OLG to provide advice on the
14:22:41 3 long-term future of lottery and
14:22:43 4 gaming in Ontario for consideration
14:22:45 5 post October 2011." [As read.]

14:22:59 6 If you can flip ahead, sir, to what is
14:23:03 7 labelled "page 12 of 18" of the document.

14:23:12 8 A. Yep.

14:23:12 9 590 Q. You see that OLG, much like the
14:23:14 10 ORC, creates lists of principles and here, OLG is
14:23:18 11 setting out principles for the future.

14:23:21 12 Direct your attention to Number 5.

14:23:35 13 And what I'm going to suggest to you,
14:23:37 14 sir, is that as of the date of this document, which
14:23:40 15 is November 25th, 2010, so long before your meeting
14:23:45 16 with OLG:

14:23:47 17 "OLG had determined that it
14:23:51 18 will suggest ways to decouple
14:23:54 19 government sectoral economic
14:23:56 20 development from business
14:23:58 21 operational decisions and increase
14:24:00 22 transparency and accountability of
14:24:03 23 payments to third party
14:24:04 24 stakeholders." [As read.]

14:24:06 25 Was there any suggestion along this

14:24:08 1 line to the ORC from the OLG in your meeting; in
14:24:13 2 other words, that as part of its strategic review,
14:24:16 3 the OLG was actively going to be suggesting ways to
14:24:20 4 decouple or delink revenue sharing from slots from
14:24:25 5 the slot machines?

14:24:26 6 A. Not to the best of my
14:24:28 7 recollection.

14:24:32 8 MR. MATTHEWS: All right. I would like
14:24:33 9 to mark this document as Exhibit 22.

14:24:35 10 ---EXHIBIT NO. 22: An internal OLG
14:24:36 11 document dated November 25th, 2010; Doc ID Number
14:24:37 12 OLGSB 477.

14:25:01 13 BY MR. MATTHEWS:

14:25:01 14 591 Q. And had it been made clear to you
14:25:04 15 - and when I mean "you", I mean you as Chair of the
14:25:07 16 ORC - prior to the announcement on March 12th,
14:25:14 17 2012, that the OLG or Ontario or both were
14:25:19 18 considering making changes to the Slots at
14:25:27 19 Racetracks Program, the ORC would have likely had
14:25:30 20 something to say about that; correct?

14:25:31 21 O/B MR. ROSENBERG: I object to this
14:25:32 22 question. It calls for speculation.

14:25:36 23 THE WITNESS: Well, I really...

14:25:40 24 What one would do, or what I would have
14:25:42 25 done is, as I did when the government told me they

14:25:52 1 were making the announcement the next day to end
14:25:55 2 the slots, 'Are you sure you understand what you're
14:25:58 3 doing?'

14:25:58 4 BY MR. MATTHEWS:

14:25:59 5 592 Q. Well, the OR- --

14:26:00 6 A. 'And you do not think -- on whose
14:26:03 7 advice do you not need some expert third party
14:26:07 8 advice on which to base it,' because not having had
14:26:09 9 any discussion with us, who was their arm, their
14:26:13 10 agency relating to horse racing, one would have
14:26:18 11 through there'd have been some discussion of the
14:26:21 12 pros and cons or whatever, or the impacts that
14:26:21 13 follow it.

14:26:25 14 That's all I can say.

14:26:26 15 593 Q. And as far as you're aware, as
14:26:27 16 Chair of the ORC, no discussions with OMAFRA
14:26:32 17 either?

14:26:32 18 A. Not with -- not with anybody from
14:26:33 19 government.

14:26:33 20 594 Q. What I mean is, there were no
14:26:35 21 discussions between the Ministry of Finance and
14:26:38 22 OMAFRA or OLG and OMAFRA, as far as you're aware,
14:26:43 23 about making changes to the Slots at Racetrack
14:26:45 24 Program?

14:26:45 25 A. I have no knowledge of any

14:26:47 1 discussions going on with our government.

14:26:50 2 595 Q. But you and I can agree, sir, that

14:26:52 3 if Ontario, and specifically the Ministry of

14:26:56 4 Finance, had --

14:26:57 5 A. Actually, time out.

14:26:59 6 596 Q. Sure.

14:26:59 7 A. Actually, I do, and it's in my

14:27:05 8 notes, I recall, to Stransky, I referenced earlier

14:27:13 9 about rumours circulating about the closing of

14:27:14 10 three tracks--

14:27:14 11 597 Q. Yes.

14:27:15 12 A. --and Ms. Yeigh saying, 'The

14:27:17 13 Commission is in big trouble,' and my call to

14:27:19 14 Stransky, objecting about that comment being made

14:27:21 15 to an employee, and then assurances nothing was

14:27:21 16 happening with the racetracks and there's nothing

14:27:21 17 coming down, as I recall - I have to go back and

14:27:21 18 look - nothing coming down in the upcoming budget

14:27:35 19 that would affect racing.

14:27:37 20 598 Q. That's what you were told by

14:27:39 21 Mr. Stransky?

14:27:39 22 A. Yes.

14:27:40 23 599 Q. And you and I can agree, sir, that

14:27:41 24 you understood that major changes to Slots at

14:27:45 25 Racetracks Program would have a significant impact

14:27:46 1 on the horse racing industry; correct?

14:27:48 2 A. Well, if you altered the income,
14:27:51 3 stands to reason it's going to have an impact.

14:27:54 4 600 Q. Or if you discontinue the
14:27:57 5 revenue-sharing altogether, that would have a
14:27:58 6 significant impact on the horse racing industry;
14:28:01 7 correct?

14:28:01 8 A. Yes.

14:28:02 9 601 Q. You knew that and the ORC knew
14:28:03 10 that; correct?

14:28:04 11 A. Yes.

14:28:04 12 602 Q. And if you had been approached by
14:28:08 13 OLG or the Ministry of Finance, saying, 'We're
14:28:12 14 thinking of discontinuing the revenue-sharing after
14:28:18 15 one year with the horse racing industry, going to
14:28:22 16 zero. Would that have any impact on the horse
14:28:24 17 racing industry,' you would have told them that it
14:28:26 18 would have had a major impact; correct?

14:28:32 19 A. We would have offered information
14:28:37 20 and adv- -- to them, pointing out the impacts to
14:28:39 21 the various sectors, although it would be -- still
14:28:44 22 be their decision.

14:28:45 23 But certainly, we would have provided,
14:28:48 24 if you want to call it "advice".

14:28:51 25 603 Q. But I would also suggest to you,

14:28:54 1 subject matter expertise, sir. You, the ORC, were
14:28:57 2 the subject matter expert on horse racing in
14:29:01 3 Ontario; correct?

14:29:01 4 A. I take it that the advice given --
14:29:04 5 we are the government's agency. That's... Goes
14:29:05 6 without saying.

14:29:06 7 604 Q. I would hope that the government
14:29:09 8 agency regulating the horse racing industry would
14:29:12 9 know something about the horse racing industry.

14:29:13 10 You agree with that, sir?

14:29:15 11 A. Yes, sir.

14:29:15 12 605 Q. And because the ORC understood the
14:29:22 13 relationship between revenue from the Slots at
14:29:27 14 Racetracks Program and the impact of that revenue
14:29:29 15 on the horse racing industry, you would have wanted
14:29:33 16 to ensure that any decision to change that sharing
14:29:41 17 of revenue was done thoughtfully; fair?

14:29:45 18 A. That's fair, yes.

14:29:47 19 606 Q. And you would have wanted to
14:29:50 20 ensure that before making the decision, the
14:29:53 21 government understood the potential impact or
14:29:56 22 consequences of that decision; correct?

14:29:58 23 A. Yes.

14:29:59 24 607 Q. And if OLG asked you, you would
14:30:12 25 have also wanted to ensure that the OLG understood

14:30:16 1 the impact of abruptly discontinuing the sharing of
14:30:19 2 revenue through the Slots at Racetrack Program;
14:30:22 3 correct?

14:30:22 4 A. The same.

14:30:32 5 608 Q. And were you aware, Mr. Seiling,
14:30:33 6 in your time as Chair of the ORC, what happened in
14:30:37 7 Quebec with respect to the collapse of the horse
14:30:39 8 racing industry in that province?

14:30:40 9 A. Yes.

14:30:41 10 609 Q. And what was your awareness of
14:30:42 11 what occurred in Quebec?

14:30:43 12 A. Well, the Lotto Quebec withdrew
14:30:47 13 support for the industry and the industry
14:30:52 14 collapsed.

14:30:53 15 610 Q. How quickly did Quebec withdraw
14:30:56 16 support?

14:30:58 17 A. As I recall, almost immediately.

14:31:00 18 I -- I don't recall the exactly
14:31:01 19 details, but I have friends, one of my teammates
14:31:04 20 from 1972, Serge Savard --

14:31:04 21 --- (Court reporter appeals.)

14:31:08 22 THE WITNESS: Serge Savard, who was a
14:31:15 23 -- an active owner, both in Ontario and Quebec, so
14:31:21 24 he told me.

14:31:22 25 And, of course, one of the things that

14:31:31 1 -- you talked earlier about my -- my day -- my
14:31:32 2 previous experience as the president -- it was
14:31:34 3 actually where my title was Racetracks Canada, so I
14:31:36 4 represented tracks in Quebec, so I know exactly
14:31:40 5 what happened, Blue Bonnets, Connaught Park
14:31:43 6 Trois-Rivières, Quebec City.

14:31:43 7 BY MR. MATTHEWS:

14:31:47 8 611 Q. And it caused a lot of harm in
14:31:49 9 Quebec; correct?

14:31:50 10 A. A lot of the Quebec horsemen,
14:31:53 11 understandably - well, they didn't have a
14:32:00 12 Thoroughbred business anymore - migrated to
14:32:02 13 Ontario.

14:32:02 14 612 Q. And then, a similar thing happened
14:32:04 15 in Ontario; correct?

14:32:05 16 A. Yeah. Yes.

14:32:06 17 613 Q. So as we approach the end of 2011,
14:32:33 18 you had a signed MOU with the Ministry of Finance;
14:32:39 19 correct?

14:32:39 20 A. Yes.

14:32:40 21 614 Q. The MOU required your commission
14:32:42 22 to exercise an economic oversight function over the
14:32:46 23 industry; correct?

14:32:47 24 A. Yes.

14:32:48 25 615 Q. The MOU also indicated that

14:32:51 1 Minister Duncan would consult you, as appropriate,
14:32:54 2 about matters of policy that might affect the horse
14:32:59 3 racing industry; correct?

14:33:00 4 A. Yes.

14:33:00 5 616 Q. You had met with the OLG and they
14:33:03 6 had made clear to you that they would speak with
14:33:06 7 the ORC if they were going to make any changes or
14:33:10 8 bring anything to their board or government that
14:33:13 9 might impact the horse racing industry; correct?

14:33:17 10 A. Yes.

14:33:21 11 617 Q. And did you become aware, in
14:33:24 12 February 2012, that Minister Duncan had given a
14:33:31 13 speech where he characterized the revenue-sharing
14:33:34 14 from Slots at Racetracks Program as a subsidy that
14:33:39 15 was benefiting wealthy horse owners?

14:33:43 16 A. Became aware of it, yes.

14:33:45 17 618 Q. Around the time the speech was
14:33:47 18 given?

14:33:48 19 A. After the speech.

14:33:49 20 619 Q. After the speech and before the
14:33:52 21 announcement about the cancellation of revenue
14:33:55 22 share?

14:33:56 23 A. I couldn't tell you how -- when
14:34:01 24 that...

14:34:01 25 620 Q. I'm going to give you CRE 297789.

14:34:05 1 Mr. Seiling, this is the text of a
14:34:07 2 speech that Minister Duncan gave to the Economic
14:34:10 3 Club of Canada February 13th, 2012.

14:34:14 4 And if I can ask you, sir, to turn to
14:34:18 5 the fourth page of that document.

14:34:42 6 --- (Witness reviewing document.)

14:35:03 7 BY MR. MATTHEWS:

14:35:04 8 621 Q. And I see you, sir, referring to
14:35:06 9 your notes.

14:35:06 10 Is there something in your notes that
14:35:07 11 you produced that refreshes your recollection
14:35:10 12 around this?

14:35:10 13 A. Yeah. I'm trying to -- trying to
14:35:14 14 coincide this with a Blair Stransky call.

14:35:16 15 On -- oh. That's March. No.

14:35:29 16 622 Q. Well, I see what appears to be a
14:35:30 17 handwritten memo to file entitled "Stransky call
14:35:35 18 early December," it appears to be early December of
14:35:39 19 2012.

14:35:43 20 Is that right, sir, because by December
14:35:46 21 2012, the announcement had already --

14:35:51 22 A. Yeah. No, I'm -- I'm just trying
14:35:52 23 to go back.

14:36:01 24 The first call with Stransky deals with
14:36:06 25 what I've already discussed, the, uh -- that he

14:36:09 1 told me that -- that I'd heard rumours about three
14:36:16 2 tracks closing, Fort Erie, Windsor, and Hiawatha.
14:36:20 3 And he told me, 'No concern.'
14:36:20 4 623 Q. And --
14:36:24 5 A. 'Not to worry, that nothing will
14:36:26 6 happen.'
14:36:26 7 624 Q. And --
14:36:29 8 A. And then...
14:36:30 9 625 Q. If I'm looking at the same
14:36:32 10 handwritten memo to file, sir, do you recall what
14:36:35 11 month and what year that call would have taken
14:36:38 12 place with Mr. Stransky?
14:36:39 13 A. The first one?
14:36:39 14 626 Q. Yes.
14:36:43 15 A. Umm. Well, it's the fall -- it
14:36:45 16 would in 2012. I've tried to put them in
14:36:51 17 chronological order, and it says, if you go to the
14:36:55 18 next one on 12/20:
14:36:58 19 "Discussion, racing. Based on
14:37:01 20 previous call, not anything hard
14:37:02 21 coming down for racing. Told to
14:37:07 22 expect OLG land-based gaming
14:37:08 23 strategy coming new year. Told him
14:37:10 24 not want to know anything about the
14:37:11 25 details." [As read.]

14:37:13 1 627 Q. So can you and I agree, sir, --

14:37:15 2 A. And I reiterated the offer of the

14:37:22 3 -- the administration ORC could supply to the

14:37:24 4 government.

14:37:25 5 "Told he doesn't need anything

14:37:27 6 from us." [As read.]

14:37:27 7 628 Q. So just pausing there, sir.

14:37:29 8 Can you and I agree that these two

14:37:31 9 memos about your calls with Mr. Stransky reflect

14:37:34 10 conversations that occurred before the government

14:37:36 11 announced?

14:37:37 12 A. Correct.

14:37:37 13 629 Q. And can you and I also agree that

14:37:39 14 the announcement occurred in March 2012?

14:37:42 15 A. Correct.

14:37:42 16 630 Q. So when we see the dates on these

14:37:45 17 handwritten memos as being December of 2012, I'm

14:37:49 18 going to suggest to you, sir, that it's actually

14:37:51 19 December 2011.

14:37:52 20 Do you accept that?

14:37:53 21 A. I -- I'm not going to dispute or

14:37:57 22 agree. I don't know. I told you they were based

14:38:00 23 on information, and I could have the wrong date

14:38:03 24 down. But one would assume so, but I can't -- I

14:38:08 25 can't tell you for sure.

14:38:11 1 As I said earlier, they were made after
14:38:12 2 the fact and to the best -- from bits and pieces of
14:38:19 3 scraps of paper I had around, and I could have the
14:38:22 4 wrong date on them. I don't know.

14:38:23 5 631 Q. Well, when you see you recording,
14:38:25 6 for example, on the memo dated 12/20/12, so
14:38:29 7 that's--

14:38:29 8 A. Yeah.

14:38:31 9 632 Q. --December 20th of 2012, according
14:38:33 10 to your memo, where you record that Mr. Stransky
14:38:35 11 told you to expect OLG land-based strategy coming,
14:38:41 12 that strategy was announced March 2012; correct?

14:38:43 13 A. Umm. I guess so, yes, because if
14:38:45 14 you go on to the next one, two thousand -- uh,
14:38:51 15 5/15/12, it goes on to the land-based gaming
14:38:52 16 strategy. He's telling me where the different
14:38:55 17 zones are.

14:39:00 18 "Government working with
14:39:01 19 OMAFRA." [As read.]

14:39:02 20 633 Q. And this was when the Panel, the
14:39:07 21 Horse Racing Industry Transition Panel was getting
14:39:10 22 set up, sort of May-June 2012; correct?

14:39:30 23 A. I would say, yes.

14:39:31 24 634 Q. Right. So they are your notes,
14:39:32 25 obviously. I am going to take you through them in

14:39:34 1 more detail later on, but --

14:39:36 2 A. Okay.

14:39:36 3 635 Q. But the point that I just was
14:39:38 4 trying to clarify, sir, it appears from these notes
14:39:41 5 that you recollect having a couple of conversations
14:39:44 6 with Blair Stransky prior to the March 2012
14:39:48 7 announcement regarding the Slots at Racetracks
14:39:52 8 Program; correct?

14:39:53 9 A. Correct.

14:39:53 10 636 Q. And so, to the extent that some of
14:39:58 11 these memos to file suggest that your calls
14:40:00 12 occurred in December of 2012, which is after the
14:40:05 13 announcement, it's possible that you meant December
14:40:08 14 2011; correct?

14:40:09 15 A. In all likelihood, yes.

14:40:11 16 637 Q. All right.
14:40:12 17 So if you come back to the document
14:40:14 18 that I put in front of you, the text of the speech
14:40:17 19 from Minister Duncan, it records that the speech
14:40:23 20 was given February 13th of 2012.

14:40:25 21 And in that speech, you will see that
14:40:27 22 there's a portion of the speech that's circled in
14:40:30 23 pen where Minister Duncan makes some remarks
14:40:35 24 directed at what he characterizes as a "subsidy" to
14:40:38 25 the tune of \$345-million a year through the Slots

14:40:42 1 at Racetracks Program; correct?

14:40:42 2 A. Yes.

14:40:43 3 638 Q. And you said earlier that you
14:40:45 4 became aware of this speech around the time it was
14:40:49 5 given. Is that fair?

14:40:50 6 A. Correct.

14:40:50 7 639 Q. And do you remember the
14:40:52 8 circumstances in which you became aware of it?

14:40:56 9 A. Umm. Somebody likely called me.

14:41:01 10 640 Q. And were you also aware, sir, that
14:41:04 11 this speech set off a fair amount of activity in
14:41:11 12 the horse racing industry because participants in
14:41:14 13 the industry became quite concerned that the
14:41:18 14 government might be thinking of changing course
14:41:21 15 with respect to the Slots at Racetracks Program?

14:41:24 16 A. Sounds reasonable.

14:41:25 17 641 Q. Well, is that something that you
14:41:28 18 became aware of around mid-February 2012?

14:41:31 19 A. Well, I would expect that the
14:41:39 20 Commission received a number of phone calls from
14:41:42 21 industry participants and the response would be the
14:41:46 22 same, whether -- our staff would say, 'We don't
14:41:49 23 know anything more about it than what we've heard.'

14:41:51 24 642 Q. And as we have established
14:41:53 25 already, sir, at this point in time, you hadn't

14:41:55 1 received any call from Minister Duncan pursuant to
14:42:00 2 the MOU; correct?

14:42:00 3 A. No.

14:42:00 4 643 Q. You hadn't received any call from
14:42:03 5 the OLG, even though they had suggested they might
14:42:05 6 call you if they were going to be making any such
14:42:08 7 changes; correct?

14:42:09 8 A. Correct.

14:42:11 9 644 Q. So as far as the ORC was
14:42:12 10 concerned, notwithstanding what Minister Duncan
14:42:16 11 might be saying, you hadn't been told anything that
14:42:18 12 would change your thinking about the Slots at
14:42:21 13 Racetracks Program and whether or not it would
14:42:23 14 continue; fair?

14:42:24 15 A. Correct.

14:42:25 16 645 Q. So as it related to Slots at
14:42:29 17 Racetracks Program from the ORC's perspective, it
14:42:32 18 was business as usual; correct?

14:42:33 19 A. Correct.

14:42:34 20 646 Q. All right. And do you recall
14:42:52 21 around this time, mid-February 2012, how would you
14:42:57 22 characterize the state of the ORC's relationship
14:43:02 23 with the Ministry of Finance?

14:43:04 24 A. Umm. Wondering what was
14:43:14 25 transpiring. We had been having trouble getting

14:43:18 1 appointments through, which was an indicator that,
14:43:21 2 'What's going on?'

14:43:27 3 I had to go back a couple of times and
14:43:30 4 get a couple of Commissioners' terms extended,
14:43:32 5 simply that -- because I needed them for hearing
14:43:36 6 and/or a quorum and, in particular, the Vice-Chair.

14:43:42 7 647 Q. And were you aware...?

14:43:45 8 MR. MATTHEWS: Well, let's mark the
14:43:46 9 speech as the next exhibit. It will be Exhibit 23.
14:43:56 10 ---EXHIBIT NO. 23: Minister Duncan's
14:44:01 11 speech; Doc ID Number CRE 297789.

14:44:06 12 BY MR. MATTHEWS:

14:44:06 13 648 Q. And were you aware, sir, or did
14:44:07 14 you form the impression that there was hostility
14:44:11 15 within the Ministry of Finance towards the Slots at
14:44:15 16 Racetracks Program?

14:44:15 17 A. No.

14:44:15 18 649 Q. That was not visible to you?

14:44:16 19 A. No.

14:44:18 20 650 Q. I'm showing you an e-mail, sir,
14:44:21 21 CRE 94799. This is an e-mail October 10th, 2011.
14:44:36 22 It's actually an e-mail chain in October 2011.
14:44:37 23 And you'll see in this, sir, just
14:44:37 24 because you can see beside their names in the
14:44:39 25 e-mail chains, it's people within the Ministry of

14:44:43 1 Finance e-mailing one another.

14:44:44 2 Do you see that?

14:44:45 3 A. I see the date of May 10th, 2011.

14:44:49 4 651 Q. Sorry. It's actually October,

14:44:55 5 sir.

14:44:55 6 A. Or October. Oh. I'm reading it

14:44:57 7 -- okay. October 10.

14:44:57 8 652 Q. And do you see, it's an e-mail

14:45:00 9 chain between a fellow named Salvatore Crisanti,

14:45:03 10 C-r-i-s-a-n-t-i,--

14:45:03 11 A. Yeah.

14:45:03 12 653 Q. --and Tanya Watkins in the

14:45:05 13 Ministry of Finance; correct?

14:45:06 14 A. Yes.

14:45:06 15 654 Q. And if you look at the very first

14:45:06 16 e-mail in the chain, it appears that the impetus

14:45:20 17 for this e-mail exchange is "ORC/GPB meeting".

14:45:21 18 Do you understand that "GPB" to be the

14:45:30 19 Gaming Policy Branch, sir?

14:45:30 20 A. Umm. Yes.

14:45:31 21 655 Q. And were you aware, around October

14:45:33 22 2011, if there was to be a meeting between your

14:45:36 23 Commission and the Gaming Policy Branch?

14:45:38 24 A. That would be staff. It wouldn't

14:45:40 25 have involved anything to do with me, so I would

14:45:42 1 not be necessarily aware.

14:45:44 2 656 Q. And if you look at the very first
14:45:46 3 e-mail in the chain, right at the bottom, sir, you
14:45:49 4 see Mr. Crisanti writing to Mr. -- to Ms. Watkins,
14:45:53 5 saying, among other things, that:

14:45:55 6 "99 per cent of Ontarians don't
14:45:57 7 care about horse racing and that the
14:46:00 8 only thing that keeps them going is
14:46:01 9 the thought that [he] might still be
14:46:03 10 at the Ministry of Finance when the
14:46:05 11 entire Slots at Racetracks Program
14:46:07 12 is either slashed brutally or purse
14:46:11 13 pooling and yearly grants based on
14:46:13 14 yearly applications gets rid of the
14:46:16 15 notion that horsemen have of slot
14:46:21 16 money being their money."

14:46:21 17 [As read.]

14:46:22 18 Do you see that, sir?

14:46:23 19 A. Yes, sir.

14:46:23 20 657 Q. Did that level of hostility ever
14:46:26 21 filter over to the ORC?

14:46:28 22 A. Not that I'm aware of.

14:46:30 23 658 Q. What's your reaction to this
14:46:32 24 e-mail, sir?

14:46:33 25 A. Surprised.

14:46:33 1 659 Q. Why is that?

14:46:34 2 A. Well, again, these people are

14:46:42 3 employees of the government.

14:46:44 4 660 Q. Bureaucrats; correct?

14:46:46 5 A. Correct.

14:46:47 6 One would have thought that if this is

14:46:49 7 the government's position, that somewhere along the

14:46:52 8 line, this would have been conveyed, in some form

14:46:56 9 or shape, to the government's arm dealing with

14:47:01 10 racing.

14:47:02 11 661 Q. And if you keep reading through

14:47:05 12 the chain, you see Ms. Watkins responds and says:

14:47:11 13 "I hear you. That's the thing.

14:47:12 14 The industry could be in for a big

14:47:14 15 change, depending on the outcall of

14:47:16 16 the SBR." [As read.]

14:47:18 17 I suggest to you, sir, that is "SBR" is

14:47:22 18 Strategic Business Review, which is the OLG's

14:47:25 19 process.

14:47:25 20 A. Mm-hmm.

14:47:26 21 662 Q. And then, if you continue on,

14:47:27 22 Mr. Crisanti apologizes for seeming grumpy, but

14:47:32 23 continues to say:

14:47:33 24 "It really irks me when the

14:47:38 25 industry talks about slot revenue as

14:47:41 1 if they do something to actually
14:47:41 2 generate it. It's their money, et
14:47:41 3 cetera."

14:47:41 4 Now, just pausing there, sir.

14:47:41 5 I know you weren't around and -- and
14:47:51 6 actively involved in the industry back in 1998, but
14:47:52 7 you understood, sir, that the Slots at Racetracks
14:47:55 8 Program involved OLG slot machines being installed
14:47:59 9 onto private property of racetracks; correct?

14:48:02 10 A. Yes.

14:48:02 11 663 Q. And you understood that there was
14:48:03 12 an acute concern back in 1998 from the industry
14:48:07 13 that installing competing slot machines onto
14:48:11 14 racetracks would cannibalize the horse racing
14:48:16 15 industry's customer base; correct?

14:48:19 16 A. Yes.

14:48:20 17 664 Q. And you also understood, sir, that
14:48:22 18 OLG took the position - and we looked at their
14:48:24 19 position - that they had no obligation to share
14:48:27 20 revenue from slots if there wasn't live racing at
14:48:30 21 tracks; correct?

14:48:31 22 A. Yes.

14:48:32 23 665 Q. And you also understood, sir, that
14:48:35 24 in order for there to be live racing at tracks, all
14:48:37 25 three parts of the three-legged stool had to

14:48:40 1 participate; correct?

14:48:41 2 A. Yes.

14:48:41 3 666 Q. And so, would you agree with me,
14:48:43 4 sir, that when Mr. Crisanti says that -- suggests
14:48:47 5 that the industry doesn't anything to generate
14:48:50 6 slots money, that's just not a fair statement?

14:48:52 7 O/B MR. ROSENBERG: I object to that
14:48:53 8 question.

14:48:55 9 BY MR. MATTHEWS:

14:48:55 10 667 Q. You can answer.

14:48:56 11 A. I would agree. I mean, if the --
14:49:02 12 uh, racing allowed...

14:49:03 13 It's my understanding that the reason
14:49:08 14 that the government chose the -- to introduce slots
14:49:15 15 at racetracks was, it was the easiest way for them
14:49:24 16 introduce slots and generate revenue, and --
14:49:28 17 because they were going into an existing gambling
14:49:31 18 site, and that they understood that they had to
14:49:35 19 make payments for allowing somebody to come in with
14:49:39 20 a competing form of gambling, and that payment was
14:49:43 21 in lieu of that anticipated lost business.

14:49:46 22 668 Q. And rent as it related to the
14:49:49 23 racetrack; correct?

14:49:50 24 A. Yes.

14:49:51 25 669 Q. All right. So it's not as though

14:49:54 1 the government and OLG got nothing out of the slots
14:49:57 2 arrangement; correct?
14:49:59 3 A. Correct.
14:49:59 4 670 Q. They got a significant new stream
14:50:01 5 of revenue from slot machines; correct?
14:50:05 6 A. Correct.
14:50:05 7 671 Q. They got a venue for -- for those
14:50:07 8 slot machines; correct?
14:50:09 9 A. Correct.
14:50:09 10 672 Q. And they got access to a customer
14:50:11 11 base, which up until that time, were people who
14:50:15 12 were betting exclusively on horse races; correct?
14:50:17 13 A. Correct.
14:50:18 14 MR. MATTHEWS: All right. I would like
14:50:20 15 to mark this as the next exhibit, please.
14:50:20 16 MS. MACHADO: Sorry. And you say -- is
14:50:20 17 that Exhibit twenty...?
14:50:20 18 THE COURT REPORTER: 24.
14:50:20 19 MS. MACHADO: ...four?
14:50:31 20 MR. MATTHEWS: 24; CRE 94799.
14:50:31 21 ---EXHIBIT NO. 24: An October 2011
14:50:31 22 e-mail chain; Doc ID Number CRE 94799.
14:50:31 23 BY MR. MATTHEWS:
14:50:43 24 673 Q. I also want to show you this, sir.
14:50:47 25 This is handwritten notes with an identification of

14:50:50 1 CR 1590, dated February 9th, 2012.

14:50:55 2 And we also have appended to it a typed
14:51:00 3 transcription of the notes, and we have Examined
14:51:03 4 the author of the notes, so you can accept that
14:51:06 5 this is an accurate transcription.

14:51:08 6 I would like you to take a look at
14:51:21 7 that, but before I ask you some questions about
14:51:24 8 this, sir, I want to ask you about your knowledge
14:51:24 9 of participants in the horse racing industry.

14:51:27 10 Some of the people who own racetracks
14:51:31 11 are wealthy; correct?

14:51:32 12 A. Umm. I -- I guess -- I guess it
14:51:38 13 depends what you're -- how you class "wealthy", but
14:51:41 14 there -- some of them, they are people of means.
14:51:42 15 But many in Ontario were non-profit, as well.

14:51:45 16 674 Q. Sure.

14:51:48 17 And within the Standardbred industry,
14:51:51 18 there were some people - breeders, owners - who
14:51:56 19 were wealthy; correct?

14:51:57 20 A. Yes.

14:51:58 21 675 Q. But equally true, there were
14:52:02 22 people in the Standardbred industry, Standardbred
14:52:04 23 breeders who were not wealthy; fair?

14:52:07 24 A. Correct.

14:52:08 25 676 Q. And, in fact, I'm going to suggest

14:52:09 1 to you, sir, that the vast majority of Standardbred
14:52:13 2 breeding in Ontario was conducted on a small scale
14:52:17 3 in small farms spread across rural Ontario.

14:52:22 4 Do you accept that?

14:52:23 5 A. Yes, I do.

14:52:23 6 677 Q. And there are some commercial
14:52:26 7 Standardbred breeding operations; correct?

14:52:30 8 A. Correct.

14:52:30 9 678 Q. But there's also a number of
14:52:32 10 smaller farms where Standardbred breeding is
14:52:36 11 carried on; correct?

14:52:37 12 A. Yes.

14:52:37 13 679 Q. And would you agree with me, sir,
14:52:40 14 that - and I don't mean this in a derogatory way,
14:52:44 15 so don't take it as that - that a number
14:52:48 16 participants in the Ontario Horse Racing industry
14:52:52 17 are not highly educated? Do you accept that?

14:52:55 18 A. Uh. In terms of the employee
14:53:01 19 base, very much so. In fact, you'll see a document
14:53:01 20 in there that --

14:53:01 21 --- (Court reporter appeals.)

14:53:01 22 THE WITNESS: I said "very much so."
14:53:07 23 You will see a document in there, that I talk about
14:53:09 24 that, as to the impacts -- the negative impacts of
14:53:13 25 the people who are losing their jobs and their

14:53:21 1 inability be -- their -- be retrained; no, uh,
14:53:22 2 insurance, whether it be Workers' or Health
14:53:26 3 Insurance and, uh, inability to be retrained or job
14:53:29 4 opportunities.

14:53:29 5 BY MR. MATTHEWS:

14:53:30 6 680 Q. And to be fair to these people,
14:53:32 7 these people might know quite a bit about the horse
14:53:34 8 racing industry; correct?

14:53:36 9 A. Correct.

14:53:37 10 681 Q. It's just that some of the skills
14:53:39 11 they have are not readily transferable to other
14:53:41 12 industries; fair?

14:53:42 13 A. Correct.

14:53:42 14 682 Q. And so, retraining these people to
14:53:46 15 work in a different industry when they've grown up
14:53:49 16 working exclusively in the horse racing industry
14:53:53 17 would be challenging; fair?

14:53:54 18 A. Correct.

14:53:55 19 683 Q. And you understood this when you
14:53:57 20 were the Chair of the ORC; correct?

14:53:59 21 A. Correct.

14:54:00 22 684 Q. And it's not to say anything
14:54:02 23 negative. It's just there were a number of people
14:54:05 24 whose livelihoods depended on the horse racing
14:54:08 25 industry; correct?

14:54:09 1 A. Correct.

14:54:11 2 685 Q. And so, with that in mind, sir,

14:54:12 3 I'm going to ask you to look at the second page of

14:54:16 4 this handwritten note that I've put to you, and you

14:54:19 5 see the date of it is February 9th, 2012.

14:54:23 6 So if you flip over to the back half of

14:54:26 7 the page, do you see it at the top, it says "Horse

14:54:35 8 Racing looking at --" and then it's not clear.

14:54:39 9 "Here is an example, not" and then, below that, it

14:54:43 10 says, "Key facts on horse racing. Little

14:54:45 11 education. Will be hit hard."

14:54:47 12 I'm going to put to you, sir, that

14:54:49 13 these were notes created by someone working in the

14:54:52 14 Ministry of Finance on February 9th, 2012, and I'm

14:55:00 15 going to suggest to you, sir, that the fact that

14:55:04 16 they are recording, "Little education. Will be hit

14:55:06 17 hard," is consistent with what you've told me; that

14:55:10 18 many of the people working in the horse racing

14:55:12 19 industry had little education and would be hit hard

14:55:14 20 by any dramatic change to the Slots at Racetrack

14:55:14 21 Program.

14:55:18 22 Do you accept that?

14:55:19 23 A. Yes.

14:55:21 24 MR. MATTHEWS: All right. I am going

14:55:22 25 to mark this as the next exhibit, please; Exhibit

14:55:42 1 25, CR 1590 and its transcription.

14:55:42 2 ---EXHIBIT NO. 25: Handwritten notes
14:55:42 3 dated February 9th, 2012, with transcription; Doc
14:55:42 4 ID Number CR 1590.

14:55:45 5 BY MR. MATTHEWS:

14:55:46 6 686 Q. Towards the end of February 2012,
14:55:50 7 sir, did it come to your attention that there were
14:55:53 8 certain radio ads being run by the Liberal Party of
14:55:57 9 Ontario regarding the Slots at Racetrack Program
14:56:00 10 and the horse racing industry?

14:56:03 11 A. Yes.

14:56:04 12 687 Q. And I've passed you a document,
14:56:05 13 CRE 81193, and I suggest to you, sir, that this is
14:56:10 14 a transcription of the two radio ads that were
14:56:14 15 running at that time.

14:56:15 16 Do you remember hearing those radio ads
14:56:17 17 around the time that they were run?

14:56:18 18 A. If I didn't hear them, I was
14:56:20 19 certainly made aware of them.

14:56:21 20 688 Q. Okay. Do you remember what your
14:56:23 21 reaction was to those ads at the time, sir?

14:56:25 22 A. Well, umm, I would say that it
14:56:39 23 was, uh, the government putting a full-court press,
14:56:49 24 trying to find justification for --

14:56:49 25 --- (Court reporter appeals.)

14:56:49 1 THE WITNESS: Putting on a full-court
14:56:50 2 press, trying to -- to justify to the public that
14:56:54 3 they made the right decision ending SARP; that
14:56:58 4 they're already starting to feel the heat.

14:56:58 5 BY MR. MATTHEWS:

14:57:00 6 689 Q. But you accept, sir, if you look
14:57:03 7 at the date of this e-mail, February 27th, this is
14:57:05 8 prior to the actual public announcement, March of
14:57:09 9 2012?

14:57:09 10 A. Yes. But I think it's after the
14:57:13 11 -- the speech.

14:57:13 12 690 Q. That's right. Yes, it is.
14:57:16 13 The speech was February 13th.

14:57:17 14 A. So that -- that's my take on it;
14:57:19 15 that it had already generated blowback.

14:57:24 16 691 Q. And do you see that both of the
14:57:26 17 radio ads refer to SARP as a "secret subsidy"?

14:57:31 18 You'd agree, sir, there's nothing
14:57:33 19 secret about the Slots at Racetrack Program;
14:57:35 20 correct?

14:57:35 21 A. Not to the best of my knowledge.

14:57:37 22 692 Q. And you say that -- it also says
14:57:39 23 that it's a "secret subsidy for a few very wealthy
14:57:43 24 racetrack owners."

14:57:45 25 That's not an accurate statement

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14:58:02 9
14:58:03 10
14:58:07 11
14:58:09 12
14:58:15 13
14:58:18 14
14:58:21 15
14:58:23 16
14:58:25 17
14:58:27 18
14:58:27 19
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14:58:31 21
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14:58:36 24
14:58:38 25

either, sir?

A. No.

693 Q. In fact, while you and I can agree that some racetracks owners might be wealthy, SARP benefited far more than a few wealthy racetrack owners?

A. Well, the -- the largest recipient of the SARP funds on the track side is a non-profit. In fact, their -- their funds would, I think -- would guess to be equal or more than the rest of the industry combined.

694 Q. Would you agree with me, sir, that really, the impact of these radio ads was to demonize the horse racing industry?

O/B MR. ROSENBERG: Objection.

O/B MS. MACHADO: Objection. Calls for complete speculation.

BY MR. MATTHEWS:

695 Q. I'm asking for your reaction to these radio ads, as you understood them, sir.

MR. ROSENBERG: What is the relevance of that, Counsel?

MR. MATTHEWS: Thank you, Mr. Rosenberg.

BY MR. MATTHEWS:

14:58:38 1 696 Q. You can go ahead.

14:58:39 2 A. Well, as I think I said earlier, I

14:58:41 3 think that, uh, the politics were such that the

14:58:43 4 government was trying to, uh, follow up a line

14:58:51 5 where they were trying to justify their statements

14:59:01 6 about the subsidy and also to lay it onto the

14:59:07 7 Leader of the Opposition and his supposed

14:59:09 8 friendship, and I can't tell you whether he was a

14:59:11 9 friend or not of -- of certain people.

14:59:23 10 697 Q. Now, when these ads get brought to

14:59:27 11 your attention - and we're at a point in time where

14:59:29 12 the ORC hasn't heard anything from the Minister of

14:59:32 13 Finance or the OLG - did it cause you some concerns

14:59:39 14 that, you know, something was going to happen in

14:59:40 15 relation to the horse racing industry, and here you

14:59:43 16 are, as the Chair of the industry's regulator and

14:59:45 17 you had no idea what was going to happen?

14:59:47 18 A. Certainly.

14:59:48 19 698 Q. And did you take any steps to

14:59:59 20 reach out to Mr. Stransky or Mr. Duncan or--

14:59:59 21 A. No.

15:00:02 22 699 Q. --Mr. Orsini or anyone to try and

15:00:03 23 get a read on what's going on here?

15:00:06 24 A. If you accept that I have the

15:00:07 25 wrong date, I had been assured by Mr. Stransky that

15:00:10 1 there was nothing forthcoming that was bad for
15:00:14 2 racing when I asked him about rumours about three
15:00:18 3 tracks closing.

15:00:19 4 MR. MATTHEWS: Okay. All right. So
15:00:19 5 let's mark this as the next exhibit, Exhibit 26,
15:00:22 6 please.

15:00:30 7 MR. ROSENBERG: Sorry, Counsel. The
15:00:33 8 document number?

15:00:34 9 MR. MATTHEWS: CRE 81193.

15:00:37 10 MR. ROSENBERG: Thank you.

15:00:37 11 ---EXHIBIT 26: A transcription of two
15:00:39 12 radio ads; Doc ID Number CRE 81193.

15:00:39 13 BY MR. MATTHEWS:

15:00:39 14 700 Q. And then, as we know, you know,
15:00:42 15 about two weeks after these radio ads run, there is
15:00:46 16 a press conference at Queen's Park with Mr. Godfrey
15:00:51 17 and Mr. Duncan, where they announce that the Slots
15:00:58 18 at Racetracks Program and its revenue sharing will
15:01:01 19 end effective March 31, 2013; correct?

15:01:04 20 A. Correct.

15:01:05 21 701 Q. And you alluded to before, the
15:01:15 22 fact that your heads up as Chair of the ORC came
15:01:16 23 basically the evening before this announcement.

15:01:18 24 Is that right?

15:01:18 25 A. Correct.

15:01:18 1 702 Q. So why don't you now just expand
15:01:21 2 in terms of what you recall from your discussion
15:01:23 3 with Mr. Stransky that evening?

15:01:24 4 A. Mr. Stransky called me, told me
15:01:26 5 there would be an announcement made the next day on
15:01:29 6 the ending of SARP.

15:01:32 7 I asked him if he understood the
15:01:33 8 impacts and that, uh, was he sure that their
15:01:39 9 decision was based on sound advice, and that did
15:01:44 10 they not need some expert advice.

15:01:48 11 And he said he was quite confident and
15:01:52 12 comfortable with the advise they had received.

15:01:54 13 703 Q. And when you said to him, 'Did you
15:01:56 14 understand the impacts?' you're referring to the
15:02:00 15 impacts on the horse racing industry?

15:02:02 16 A. Correct.

15:02:02 17 704 Q. And he assured you that he
15:02:05 18 understood it and they were quite comfortable with
15:02:07 19 it?

15:02:07 20 A. Correct.

15:02:08 21 705 Q. Anything else you remember from
15:02:10 22 the--

15:02:10 23 A. No.

15:02:10 24 706 Q. --phone call?

15:02:11 25 Do you remember your reaction after

15:02:13 1 receiving this phone call? I mean, it's -- it's --
15:02:20 2 I had understood that something of this magnitude,
15:02:23 3 you would be getting a phone call from Minister
15:02:27 4 Duncan.

15:02:27 5 A. I was -- I was shocked, uh, but
15:02:29 6 after the Drummond Report, one would not be totally
15:02:38 7 surprised simply because you can see that -- one
15:02:44 8 can see, I think the lines connecting, the dots
15:02:48 9 connecting.

15:02:49 10 How Mr. Drummond even found out about
15:02:52 11 the SARP program, I don't know and I'm not going to
15:02:55 12 speculate, but, uh, I -- I would have thought that
15:03:01 13 there would have been some communication,
15:03:05 14 consultation with the government's agency before
15:03:12 15 such a decision was made.

15:03:13 16 Nothing was forthcoming.

15:03:14 17 707 Q. And we actually examined
15:03:17 18 Mr. Drummond yesterday in Ottawa and he was quite
15:03:20 19 adamant, sir, that his report was nothing more than
15:03:24 20 a suggestion that the government take a look at or
15:03:29 21 re-evaluate, to use his words, whether or not the
15:03:34 22 Slots at Racetrack Program was providing good value
15:03:36 23 for money.

15:03:37 24 He didn't recommend cancelling the
15:03:40 25 arrangement.

15:03:41 1 Is that your understanding?

15:03:43 2 A. Umm. I wouldn't want to

15:03:46 3 speculate. If Mr. Drummond said that, I would have

15:03:52 4 to accept his word.

15:03:55 5 708 Q. Do you have a sense of how old

15:03:56 6 Mr. Stransky is?

15:03:57 7 A. I don't -- I'm not going to guess.

15:03:59 8 I don't think it's pertinent whether he's 2 or 102.

15:04:11 9 709 Q. Well, I will tell you why I ask,

15:04:14 10 and accept that answer, sir, but --

15:04:16 11 A. Well, I don't know the -- simple

15:04:17 12 -- I shouldn't be flippant. Simple answer is I

15:04:23 13 don't know.

15:04:23 14 710 Q. Well, I'm going to put to you,

15:04:24 15 sir, that it was insulting that a decision of this

15:04:26 16 magnitude that would have an impact on the very

15:04:28 17 industry that you regulated and that you consulted

15:04:30 18 with was delivered to you summarily on the evening

15:04:33 19 before it was announced, by not the Minister, not

15:04:36 20 the Deputy Minister, not an Assistant Deputy

15:04:40 21 Minister, but Blair Stransky.

15:04:41 22 Do you accept that?

15:04:42 23 A. Well, I... The fact is, he did

15:04:48 24 make it. I assumed that he was acting on behalf

15:04:52 25 and the direction of the Minister, so

15:04:57 1 notwithstanding that, that the MO- -- it didn't go
15:05:02 2 unnoticed that we'd had no communication with the
15:05:05 3 Minister as per required by the MOU.

15:05:10 4 But again, we are the agency. The
15:05:15 5 government, uh, makes policy.

15:05:18 6 The government made that decision.
15:05:20 7 They said they were comfortable.

15:05:22 8 There was nothing more for us to do.

15:05:24 9 711 Q. And do you actually have any idea
15:05:27 10 how it was that the decision to end the
15:05:33 11 revenue-sharing was actually made?

15:05:34 12 A. Do I know how it was made?

15:05:37 13 712 Q. Correct.

15:05:37 14 A. I have no idea.

15:05:41 15 713 Q. Do you have an understanding as to
15:05:43 16 who actually made the decision?

15:05:44 17 A. I don't know.

15:05:47 18 I know there were -- and I think it's
15:05:51 19 reflected in my notes somewhere in a meeting that
15:05:57 20 there were alleged rumours floating around, that
15:06:00 21 there was some potential animosity, uh, with the
15:06:03 22 horsemen's group or with a racetrack or something,
15:06:06 23 but I have no way of knowing whether they are --
15:06:12 24 has any factuality to it or not.

15:06:16 25 We were not included in any

15:06:18 1 decision-making process, not asked for any
15:06:21 2 information before the decision was made, so I -- I
15:06:23 3 have no way of making any comment as to who made
15:06:27 4 it, why they made it.

15:06:29 5 714 Q. And so, I don't think it's
15:06:32 6 productive to ask you to sort of speculate about
15:06:35 7 rumours, but as far as you're aware, were
15:06:39 8 Standardbred breeders doing something that the
15:06:44 9 government determined they shouldn't be doing?

15:06:46 10 A. No. The rumours had nothing to do
15:06:49 11 with -- with Standardbred breeders. That rumour
15:06:52 12 had to do with a horsemen's group. And again, I --
15:07:03 13 for the sake of liability, I won't go any further.

15:07:05 14 715 Q. That's fine.

15:07:06 15 Did you express, at all, to
15:07:09 16 Mr. Stransky, in the course of this one phone call
15:07:11 17 the evening before, any concern about the fact that
15:07:18 18 for the last several months, for the lack of a
15:07:22 19 better term, you had been out on a road show,
15:07:24 20 promoting the Ontario Racing Program and telling
15:07:28 21 participants in the industry, 'You need to buy into
15:07:29 22 this program. You need to invest'?

15:07:31 23 Is that something you conveyed to
15:07:33 24 Mr. Stransky?

15:07:33 25 A. No. I -- I just asked him whether

15:07:35 1 he was aware of the impacts and that were they --
15:07:39 2 did they not need to have some at-arm's-length
15:07:46 3 third party confirmation that they were making the
15:07:49 4 right decision?

15:07:50 5 That, in itself, I think, indicates
15:07:52 6 that I thought they were off base.

15:07:53 7 But again, as I said, the Commission is
15:07:59 8 an arm of the government. It has no role. We
15:08:02 9 don't make decisions. We just carry out the -- and
15:08:06 10 implement the policy decisions made by the
15:08:08 11 government--

15:08:08 12 716 Q. And --

15:08:08 13 A. --who we all report to.

15:08:46 14 717 Q. When you...? Let me ask you this:
15:08:48 15 Did Mr. Stransky, in this particular phone call,
15:08:50 16 describe the decision in the sense that he said,
15:08:53 17 'We're going to announce tomorrow that we're ending
15:08:56 18 the slots revenue-sharing effective March 31,
15:09:01 19 2013?'

15:09:01 20 Did he go into that much detail?

15:09:03 21 A. I don't recall.

15:09:07 22 He definitely said that, 'We're making
15:09:09 23 an announcement, ending the program.'

15:09:11 24 In all likelihood, he put a date on it,
15:09:13 25 but I -- I'm not a hundred per cent certain.

15:09:16 1 718 Q. When he told you what was going to
15:09:21 2 be announced and, as I recall your evidence, you
15:09:24 3 said that you told him it was a horrible idea.
15:09:27 4 Do I have it right?
15:09:27 5 A. I didn't -- no, I didn't say that.
15:09:29 6 719 Q. Okay. Sorry.
15:09:30 7 A. I -- I asked him if he understood
15:09:33 8 the impacts and should he not get third party
15:09:39 9 at-arm's-length, umm, advice.
15:09:44 10 And he told me they were quite
15:09:47 11 comfortable with their advice and their decision.
15:09:49 12 720 Q. All right. Thanks for that
15:09:52 13 clarification.
15:09:52 14 Did you understand immediately on being
15:09:58 15 told what the decision was, that it would have
15:10:02 16 catastrophic impact on the horse racing industry?
15:10:06 17 A. Yes.
15:10:06 18 721 Q. Did you understand that the
15:10:11 19 decision could cause the collapse of the Ontario
15:10:16 20 Horse Racing industry?
15:10:17 21 A. Yes.
15:10:19 22 722 Q. And you understood that almost
15:10:21 23 immediately; fair?
15:10:21 24 A. Yes. And as did my Board.
15:10:30 25 I had great trouble trying to manage

15:10:32 1 the Board who were distraught to the nth degree,
15:10:37 2 but again, there was no avenue for us to do
15:10:43 3 anything as an arm of the government.

15:10:46 4 723 Q. I'm giving you CRE 32227.

15:10:57 5 What this is, Mr. Seiling, is this is
15:10:58 6 an e-mail chain among a number of people in
15:11:01 7 Ministry of Finance on March 14th, 2012, so this is
15:11:01 8 two days after the announcement.

15:11:05 9 The subject of the e-mail is "ORC
15:11:09 10 Update on Current Issues" and you see it's
15:11:09 11 Mr. Goodwin writing to the Deputy Minister of
15:11:12 12 Finance, Mr. Orsini, and copying on a number of
15:11:16 13 people from the Ministry of Finance.

15:11:18 14 And it begins by saying:

15:11:20 15 "Issues to mention to you re:

15:11:20 16 ORC as we work with MO..."

15:11:25 17 Which I will suggest is the Minister's
15:11:25 18 Office.

15:11:27 19 "...to manage this relationship
15:11:29 20 during difficult times." [As read.]

15:11:31 21 And then, it says:

15:11:33 22 "Blair and Chair have had
15:11:35 23 several animated discussions."

15:11:37 24 And I'm going to put to you,

15:11:39 25 Mr. Seiling, that that's you and Mr. Stransky?

15:11:43

1

A. Correct.

15:11:43

2

724

Q. And it goes on to say:

15:11:47

3

"Expectation of fuller earlier

15:11:50

4

disclosure of OLG plan." [As read.]

15:11:53

5

We will come to your notes in due

15:11:54

6

course, but is it fair to say that one of the

15:11:57

7

things you conveyed to Mr. Stransky was your

15:12:01

8

expectation that there ought to have been fuller,

15:12:04

9

earlier disclosure of OLG's plan to end the

15:12:09

10

revenue-sharing from Slots at Racetracks?

15:12:13

11

A. No, I didn't. I just -- uh,

15:12:17

12

because, again, I didn't feel it -- it wasn't my

15:12:23

13

place, at that point in time, to point out to him

15:12:26

14

that, in my view, the government had, uh, had

15:12:28

15

broken the MOU with the Commission.

15:12:30

16

They had already made the decision.

15:12:34

17

Umm. My hope was that cooler heads would prevail

15:12:38

18

and that they would come to the realization, to

15:12:41

19

come forth with a plan that would -- would, uh, to

15:12:49

20

come to the aid of the industry, and wondering just

15:12:52

21

whether this wasn't a ham-handed, clumsy way of

15:12:59

22

renegotiating the -- the splits.

15:13:01

23

725

Q. The split of revenue-sharing?

15:13:03

24

A. Yes.

15:13:03

25

726

Q. Do I understand you to be saying

15:13:06 1 that what you thought might be happening here is
15:13:09 2 that in order to realign the 20 per cent, the
15:13:14 3 government would make this announcement and then
15:13:17 4 cut a deal at a lesser percentage with the
15:13:20 5 industry?

15:13:20 6 A. It crossed my mind whether that
15:13:22 7 was a possibility. I didn't know. I had no way of
15:13:25 8 knowing, but it certainly crossed my mind, just
15:13:27 9 because I just -- the -- the statements the
15:13:29 10 government had made and/or the OLG, that, 'There
15:13:33 11 was racing -- there was racing before the slots;
15:13:36 12 there would be racing after the slots,' and their
15:13:38 13 offer for the, whatever the millions of dollars
15:13:42 14 was, simply was farcical because it's just -- there
15:13:49 15 was no chance of that happening. It spelled the
15:13:49 16 end of racing and -- and except in some very small
15:14:02 17 -- for example, you will see in the notes that
15:14:03 18 Clinton Raceway was going to race the next year
15:14:04 19 whether there was any -- they had -- they had built
15:14:05 20 up enough surplus, non-profit, that they would at
15:14:08 21 least -- they would race until at least they had
15:14:10 22 used up their surplus.

15:14:12 23 727 Q. I see.

15:14:12 24 A. So I knew of one track that was
15:14:14 25 going to race. That was the only track that had

15:14:18 1 said it -- what they would do in the coming year.

15:14:20 2 728 Q. If you look at the final paragraph

15:14:24 3 of the e-mail, it says that:

15:14:26 4 "The ORC continues to work on

15:14:27 5 some scenarios of likely

15:14:28 6 configuration of sector following

15:14:31 7 termination of Slots At Track

15:14:33 8 Program as part of our ongoing

15:14:35 9 assessment of economic and business

15:14:37 10 impact of changes." [As read.]

15:14:40 11 Do you have any recollection of your

15:14:45 12 Commission being asked to work out some scenarios

15:14:51 13 of the impact of the termination of the Slots at

15:14:56 14 Racetracks Program? And when did that occur, if it

15:14:58 15 occurred?

15:14:58 16 A. I'm aware that staff started to do

15:15:01 17 some work with, uh, the Ministry staff and that...

15:15:14 18 And I wasn't part of that, nor should I have been.

15:15:17 19 But there was an exchange of

15:15:19 20 information and they had -- I know they had

15:15:22 21 meetings, they had discussions.

15:15:24 22 And I -- I would venture to guess,

15:15:29 23 after some time, that's what led to the government

15:15:32 24 starting to re-evaluate the impacts of the decision

15:15:37 25 and what they may then did -- do to ameliorate some

15:15:43 1 of that fallout.

15:15:46 2 729 Q. Because, when I read this and I
15:15:48 3 see at the end of this sentence, it says "ongoing
15:15:52 4 assessment of economic and business impact of
15:15:55 5 changes", this, to me, seems to be somewhat
15:15:58 6 inconsistent with Mr. Stransky who has told that
15:16:01 7 you they've got information and they are very
15:16:04 8 comfortable with it.

15:16:05 9 And this e-mail suggests that they're
15:16:08 10 actually -- after the announcement, they are
15:16:11 11 working to understand the economic and business
15:16:13 12 impact of changes.

15:16:15 13 A. It seems, to me, that the barn
15:16:17 14 door was locked after the horses got out.

15:16:20 15 Umm. I think it demonstrates that when
15:16:23 16 Mr. Stransky told me they understood and they were
15:16:28 17 comfortable, that whoever was giving him or the
15:16:32 18 government advice, it was bad advice.

15:16:37 19 730 Q. That assumes that there was
15:16:39 20 someone actually giving advice.

15:16:41 21 A. I can't -- Mr. Stransky told me
15:16:45 22 they were comfortable with the advice. I have to
15:16:48 23 accept that he got advice.

15:16:49 24 Who that was from or what it was, I
15:16:51 25 have no way of knowing.

15:16:58 1 I think it's clear, they certainly did
15:17:01 2 not understand.
15:17:05 3 MR. MATTHEWS: All right. I would like
15:17:06 4 to mark this e-mail as the next exhibit, please.
15:17:10 5 MR. ROSENBERG: Document number,
15:17:11 6 please.
15:17:12 7 MR. MATTHEWS: CRE 32227.
15:17:14 8 ---EXHIBIT NO. 27: An e-mail chain
15:17:14 9 among a number of people in Ministry of Finance on
15:17:16 10 March 14th, 2012; Doc ID Number CRE 32227.
15:17:18 11 MR. MATTHEWS: Off the record, please.
15:17:52 12 --- (Discussion off the record.)
15:17:52 13 MR. MATTHEWS: Back on, please.
15:17:52 14 BY MR. MATTHEWS:
15:17:58 15 731 Q. CRE 274260.
15:18:01 16 I'm going to pass you a document, sir.
15:18:08 17 This is the submission of the Chair at
15:18:11 18 an ORC Board meeting, March 2012.
15:18:14 19 Do you recall this, sir?
15:18:14 20 A. Yeah.
15:18:15 21 732 Q. What I wanted to direct your
15:18:20 22 attention to, in particular, is the fourth
15:18:26 23 paragraph of your report to your Board in 2012,
15:18:33 24 where you say:
15:18:34 25 "As throughout this process,

15:18:35 1 the ORC has been on the outside
15:18:37 2 looking in. Our offer to provide
15:18:39 3 information, so that informed
15:18:40 4 decisions might be made was
15:18:43 5 declined. 'Frustrating' would be a
15:18:45 6 mild understatement." [As read.]
15:18:46 7 Is that an accurate assessment of the
15:18:48 8 report you gave to your Board in March 2012?
15:18:51 9 A. It is.
15:18:51 10 733 Q. Now, I just want to drill down on
15:18:54 11 this a little bit and try and understand what you
15:18:57 12 mean by your "offer to provide information".
15:19:01 13 What are you referring to there, sir?
15:19:04 14 A. Discussions with Mr. Stransky.
15:19:06 15 734 Q. Okay. And are these the
15:19:09 16 discussions--
15:19:10 17 A. The --
15:19:11 18 735 Q. --that happened in December or --
15:19:13 19 A. At various times.
15:19:14 20 I -- I had offered to take him on a --
15:19:16 21 on a tour. Virtually, every Minister's staffer at
15:19:25 22 some point in time, through the various Ministries,
15:19:28 23 I had -- I had taken -- taken, uh, a person from
15:19:32 24 the Minister's Office on a tour, both a backstretch
15:19:38 25 and farm tour, to give them an understanding of the

15:19:42 1 size and scope of the industry in terms of what
15:19:45 2 happened, the jobs, the investment, all those
15:19:48 3 things, so they had a better understanding of the
15:19:51 4 industry when they were sitting back in their
15:19:53 5 office. There would be a correlation between what
15:19:56 6 was being discussed and what they had seen.

15:19:59 7 And again, with this, as I said
15:20:00 8 earlier, I had asked Mr. Stransky if he wanted
15:20:08 9 outside advice. I had also offered, at different
15:20:13 10 points, to provide information.

15:20:15 11 736 Q. If I can just ask you to look back
15:20:17 12 up at the first paragraph where you start by saying
15:20:17 13 that:

15:20:21 14 "The announced ending of the
15:20:22 15 Slots at Racetrack Program by the
15:20:23 16 Government and the OLG on March
15:20:25 17 12th, 2011 is seismic in nature for
15:20:29 18 the horse racing industry in
15:20:30 19 Ontario, it goes without saying."

15:20:30 20 [As read.]

15:20:32 21 Just first, it appears, sir, that
15:20:33 22 there's a typographical area in that you say it's
15:20:37 23 "March 12th, 2011".

15:20:38 24 It's actually 2012, right?

15:20:40 25 A. Yeah. It's typographical.

15:20:42 1 737 Q. But you do agree that your
15:20:46 2 description of the announcement being "seismic in
15:20:50 3 nature" is accurate; correct?

15:20:52 4 A. Correct.

15:20:53 5 738 Q. And if you go down to the fifth
15:20:54 6 paragraph, you see yourself saying that:

15:20:57 7 "What the announcement has done
15:20:59 8 is cancelled the need for our
15:21:02 9 scheduled industry meeting. It is
15:21:02 10 obvious that economic oversight and
15:21:05 11 sustainability planning clauses in
15:21:06 12 the MOU are now redundant."

15:21:06 13 [As read.]

15:21:08 14 I take it from this, sir, that there
15:21:10 15 had been industry meeting that had been scheduled
15:21:14 16 where you were going to discuss, among other
15:21:16 17 things, economic oversight and sustainability?

15:21:18 18 A. Yes. And so, I was talking about
15:21:22 19 earlier that the government had inserted those two
15:21:31 20 into the MOU --

15:21:32 21 --- (Court reporter appeals.)

15:21:33 22 THE WITNESS: ...had inserted those two
15:21:33 23 issues into the MOU.

15:21:34 24 And again, the Commission did not ask
15:21:38 25 for it.

15:21:39 1 And we had asked that the government go
15:21:42 2 forth to the industry and tell them what they were
15:21:45 3 putting in the -- into the MOU at their request
15:21:47 4 because we knew this was going to be
15:21:52 5 confrontational, where that would be seen as
15:21:57 6 overreach by the Commission.

15:21:59 7 MR. MATTHEWS: All right. I would like
15:22:01 8 to mark your submission of the Chair for the Board
15:22:03 9 meeting of March 2012 as the next exhibit, 28; CRE
15:22:07 10 274260.

15:22:09 11 ---EXHIBIT NO. 28: Submission of the
15:22:09 12 Chair for the ORC Board meeting of March 2012; Doc
15:22:12 13 ID Number CRE 274260.

15:22:14 14 THE WITNESS: Surprised I'd take all
15:22:16 15 that through that my Board. I had one Board member
15:22:19 16 that would catch a comma out of place.

15:22:19 17 MS. MACHADO: Well, you complain about
15:22:19 18 it now.

15:22:19 19 BY MR. MATTHEWS:

15:22:22 20 739 Q. Well, perhaps your Board was
15:22:24 21 distracted and shocked by other circumstances going
15:22:27 22 on at the time.

15:22:29 23 A. Perhaps.

15:22:36 24 740 Q. Well, we've talked about it a few
15:22:37 25 times, sir, and now here it is; the letter that you

15:22:39 1 sent to Mr. Godfrey.

15:22:41 2 And I'm going to give it to you with a
15:22:42 3 covering e-mail from the Ministry of Finance.

15:22:46 4 So the document ID is CRE 24235 and the
15:22:51 5 attached letter is CRE 24236.

15:23:14 6 And if you look at the covering e-mail
15:23:14 7 first, you see this letter that you wrote to
15:23:18 8 Mr. Godfrey being circulated within the Ministry of
15:23:19 9 Finance and you see Liz Yeigh writing to a number
15:23:23 10 of recipients and saying, among other things:

15:23:26 11 "Blair has indicated his strong
15:23:27 12 displeasure with it and obviously,
15:23:30 13 was not engaged by Rod Seiling prior
15:23:33 14 to it being sent." [As read.]

15:23:35 15 Did Mr. Stransky express his
15:23:38 16 displeasure to you personally.

15:23:41 17 A. Yes, he did.

15:23:41 18 741 Q. And how did that happen?

15:23:42 19 A. In a phone call.

15:23:43 20 742 Q. Okay. What do you recall of the
15:23:44 21 phone call?

15:23:45 22 A. He indicated his displeasure and
15:23:51 23 that it could be embarrassing.

15:23:54 24 And I told him that I didn't think it
15:23:56 25 was embarrassing; that we'd had no connection or

15:23:59 1 communication with the OLG, and that if I wanted to
15:24:05 2 embarrass the government, I could have easily done
15:24:07 3 it and I did not.

15:24:08 4 743 Q. How would you have embarrassed the
15:24:09 5 government, if you wanted to?

15:24:09 6 A. Just by saying there had been no
15:24:12 7 consultation. They broke the MOU.

15:24:17 8 Throughout the whole process, had to
15:24:20 9 keep reminding my Board that we were an arm of --
15:24:25 10 an agency of the government, that the government
15:24:26 11 made policy and we had -- whether we liked it or
15:24:32 12 not, it was their responsibility and their right to
15:24:35 13 do so.

15:24:35 14 744 Q. And I see Ms. Yeigh writing that
15:24:39 15 he indicated his strong displeasure.

15:24:43 16 Was that your impression when he called
15:24:46 17 you; that he was strongly displeased with the
15:24:49 18 letter you sent?

15:24:49 19 A. Yeah. Mm-hmm.

15:24:52 20 745 Q. Did he yell at you?

15:24:52 21 A. No, he didn't yell.

15:24:54 22 746 Q. And you directed this letter to
15:24:56 23 Mr. Godfrey because you understood that it was
15:25:02 24 OLG's recommendation to cancel the revenue-sharing
15:25:05 25 from the Slots at Racetrack Program?

15:25:06 1 A. That's how it was portrayed.

15:25:08 2 747 Q. Right.

15:25:09 3 A. That's what the announcement was.

15:25:12 4 748 Q. So you're not aware, sir, that

15:25:19 5 OLG, in fact, was not going to recommend the end

15:25:24 6 of..., the end of money flowing to the horse racing

15:25:30 7 industry.

15:25:31 8 They wanted to delink or decouple slot

15:25:36 9 revenue from money to the industry, but they

15:25:38 10 certainly were not recommending the end of revenue

15:25:42 11 flowing to the industry.

15:25:43 12 Were you aware of that?

15:25:44 13 A. No, we were not. Obvious by the

15:25:49 14 letter.

15:25:49 15 749 Q. Okay. So let's take a look at the

15:25:52 16 letter, sir.

15:25:53 17 The letter was accurate when you sent

15:25:55 18 it?

15:25:55 19 A. Yes, it was.

15:25:55 20 750 Q. Expressed your views at the time?

15:25:57 21 A. Yes.

15:25:57 22 751 Q. And do you still hold those views?

15:25:59 23 A. Yes.

15:26:08 24 752 Q. And you start by saying that you

15:26:10 25 understood that:

15:26:11 1 "...within the last few weeks,
15:26:13 2 Rod Phillips and Larry Flynn have
15:26:15 3 reached out to the administration of
15:26:18 4 the Ontario Racing Commission."
15:26:18 5 [As read.]
15:26:20 6 There was no attempt, as far as you're
15:26:22 7 aware, for either of those two individuals to reach
15:26:25 8 out to you?
15:26:25 9 A. Correct.
15:26:26 10 753 Q. And you, in your letter in the
15:26:27 11 first paragraph, characterize this as "OLG's
15:26:30 12 decision to end the Slots at Racetracks Program";
15:26:32 13 correct?
15:26:33 14 A. Correct.
15:26:33 15 754 Q. And that's because that's how the
15:26:34 16 decision was portrayed to you?
15:26:36 17 A. Correct.
15:26:37 18 755 Q. And when you say, at the end of
15:26:45 19 Paragraph 2:
15:26:46 20 "The breeding sector is in a
15:26:48 21 tailspin and the racetracks are not
15:26:48 22 in a position to make decisions
15:26:54 23 regarding their future in racing."
15:26:55 24 That's accurate; correct?
15:26:57 25 A. Very accurate.

15:26:58 1 756 Q. In the third paragraph where you

15:27:00 2 say:

15:27:00 3 "For racing to continue, time

15:27:02 4 is of the essence."

15:27:03 5 That's accurate; correct?

15:27:04 6 A. Correct.

15:27:05 7 757 Q. Can I just ask, did Mr. Godfrey

15:27:05 8 ever respond to you?

15:27:09 9 A. I had a conversation with

15:27:10 10 Mr. Godfrey. Notes are in the... But he said he

15:27:14 11 had not seen the letter yet and that he would

15:27:16 12 respond after he saw it.

15:27:19 13 I never had a response.

15:27:27 14 758 Q. And did you understand, at a high

15:27:30 15 level, sir, that what was portrayed to you as OLG's

15:27:32 16 decision to end the Slots at Racetracks Program was

15:27:38 17 done because OLG had decided, in order to increase

15:27:41 18 its revenue, it needed to be able to move slot

15:27:45 19 machines out of racetracks and closer to customers

15:27:49 20 in urban centres?

15:27:51 21 Did you understand that?

15:27:52 22 A. Well, I think, as I recall, that

15:27:54 23 was one of the rationales put forward.

15:27:57 24 759 Q. And in order for that to occur

15:28:01 25 and, for example, for there to be a casino in

15:28:03 1 Downtown Toronto, slot machines had to come out of
15:28:07 2 racetracks and go into casinos; correct?

15:28:11 3 A. Uh. Yes.

15:28:11 4 760 Q. Well, at least that was OLG's
15:28:13 5 rationale for wanting to end the program; correct?

15:28:16 6 A. Yes. That's what a number of
15:28:27 7 racetrack operators told me, as well, in a meeting
15:28:28 8 with them, why they were going to lose their
15:28:30 9 machines.

15:28:31 10 761 Q. But you and I can agree, sir, that
15:28:36 11 to this day, although a number of tracks have closed,
15:28:40 12 slot machines continue to be located in racetracks;
15:28:44 13 correct?

15:28:44 14 A. Yes.

15:28:44 15 762 Q. But there is no sharing of revenue
15:28:49 16 from those racetracks with the horse racing
15:28:54 17 industry or with racetracks; correct?

15:28:55 18 A. That's my understanding.

15:28:57 19 763 Q. Your understanding is that there's
15:28:59 20 a commercial lease agreement, if I can put it that
15:29:03 21 way; that OLG pays rent to the racetrack?

15:29:05 22 A. Correct.

15:29:06 23 764 Q. In the concluding paragraph of
15:29:23 24 your paragraph, sir, you expressed the ORC's
15:29:26 25 disappointment that:

1 "...an opportunity was not
2 afforded to jointly work through an
3 approach to implementation of this
4 critical decision to the horse
5 racing community. The result could
6 have been a process that would have
7 provided some certainty to an
8 industry that is now in dire straits
9 and, through no fault of its own,
10 has had a process imposed on it by
11 the OLG that inhibits it from
12 planning for its future."

13 [As read.]

14 That was an accurate statement;

15 correct?

16 A. Correct.

17 765 Q. And does that harken back to your
18 recollection of the one in-person meeting you had
19 with the OLG where they told you that they would
20 consult with the ORC before making this kind of a
21 decision?

22 A. I... It -- a true statement --
23 the...

24 The statement they made to us and the
25 decision are at odds.

15:30:23 1 MR. MATTHEWS: All right. I would like
15:30:24 2 to mark the e-mail and its attached letter, CRE
15:30:29 3 24235 and '36, as Exhibit 29.

15:30:33 4 ---EXHIBIT NO. 29: A covering e-mail
15:30:33 5 from Ministry of Finance and its attached letter
15:30:34 6 from Mr. Seiling to Mr. Godfrey, Doc ID Numbers CRE
15:30:35 7 24235 and CRE 24236.

15:30:35 8 BY MR. MATTHEWS:

15:31:35 9 766 Q. I'm going to pass you CRE 31221.
15:31:41 10 It's an e-mail again, sir, amongst people in the
15:31:43 11 Ministry of Finance in the aftermath of the
15:31:47 12 decision.

15:31:49 13 We're actually now in August of 2012,
15:32:00 14 specifically August 2nd, 2012.

15:32:03 15 Did you understand, by this time,
15:32:04 16 August of 2012, the government had appointed the
15:32:08 17 Horse Racing Industry Transition Panel and that
15:32:10 18 Panel had started meetings with and having
15:32:14 19 consultations with people in the industry, the
15:32:17 20 horse racing industry?

15:32:25 21 Do you want my question again, sir?

15:32:26 22 A. Please. I'm trying to read here
15:32:26 23 and...

15:32:26 24 767 Q. Fair.

15:32:32 25 A. ...walking and chewing gum is...

15:32:32 1 768 Q. So, I was just trying to situate
15:32:34 2 you in terms of where we are in the chronology.

15:32:37 3 A. Yeah.

15:32:37 4 769 Q. This e-mail is August 2nd of 2012,
15:32:40 5 and my question was, sir: Did you understand at
15:32:42 6 this point in time, August 2012, the government had
15:32:46 7 appointed a Horse Racing Industry Transition Panel?

15:32:50 8 A. Yes.

15:32:50 9 770 Q. And that Panel had had some
15:32:53 10 meetings and consultations with participants in the
15:32:57 11 industry, including the ORC; correct?

15:32:59 12 A. Yes.

15:33:00 13 771 Q. So, what I wanted to ask you
15:33:03 14 about, sir, is the e-mail -- at the bottom of the
15:33:06 15 page, the e-mail from Tanya Watkins to Barry
15:33:14 16 Goodwin where it says a number of things, but if
15:33:17 17 you go to the paragraph that begins with, "Here is
15:33:19 18 my two cents."

15:33:20 19 Do you see that?

15:33:21 20 A. Yeah.

15:33:21 21 772 Q. You see that there's discussion
15:33:24 22 about your Commission, where the Ministry of
15:33:29 23 Finance is saying that:

15:33:31 24 "All our data and analysis is
15:33:33 25 based on info from the ORC, mostly

15:33:36 1 received prior to the end of SARP
15:33:38 2 when ORC was willing to show us the
15:33:41 3 racetracks were misspending and
15:33:43 4 there was a need for ORC to do economic
15:33:46 5 oversight." [As read.]
15:33:48 6 Just pausing there, sir.
15:33:54 7 Is it your recollection that prior to
15:33:56 8 the announcement about the cancellation of the
15:33:57 9 Slots at Racetrack Program, the ORC was advocating
15:33:59 10 for doing or taking on an economic oversight role?
15:34:03 11 A. No. We discussed this earlier.
15:34:06 12 Umm. There was a few tracks who were
15:34:16 13 focusing on maximizing profit to the detriment of
15:34:25 14 live racing and --
15:34:26 15 773 Q. And race dates?
15:34:29 16 A. And which then raises its head in
15:34:29 17 race date application.
15:34:31 18 And so, as per our mandate and also in
15:34:40 19 recognition of the government's mandate and the
15:34:50 20 siteholder agreement to benefit live racing, we had
15:34:55 21 to take action.
15:34:56 22 And, quite frankly, that was the start
15:34:59 23 of the genesis for the Ontario Racing Program
15:35:02 24 because when it came to the awarding of race dates
15:35:05 25 or telling a track that, 'No. You -- you raced 200

15:35:09 1 days last year, but you only want to race a hundred
15:35:09 2 this year, and we're saying no, you've got to
15:35:09 3 race...'

15:35:17 4 We needed a whole raft of criteria and
15:35:26 5 benchmarks that could stand up in a court because
15:35:32 6 any of our decisions are appealable. And we just
15:35:36 7 felt that it was our -- first of all, it was our
15:35:42 8 responsibility to support live racing in the
15:35:47 9 decisions that we made and, in doing so, we wanted
15:35:50 10 to be better equipped on how best to do that and
15:35:54 11 not get challenged and -- and lose.

15:35:58 12 We were quite certain we were on the
15:36:02 13 right side of the law. We just wanted to make sure
15:36:04 14 that the -- the process had evolved over the years
15:36:09 15 and it -- it had never been updated.

15:36:13 16 There used to be, prior to slots,
15:36:16 17 tracks used to fight over how many days they could
15:36:18 18 race.

15:36:19 19 Post slots, then it -- after a while,
15:36:20 20 it became an issue for some, that, 'Well, we can
15:36:26 21 race less and make more money.'

15:36:26 22 774 Q. I see.

15:36:29 23 A. So, that's -- that's dealing with
15:36:32 24 the economic, uh...

15:36:35 25 775 Q. ...oversight piece?

15:36:36 1 A. ...oversight piece.

15:36:38 2 776 Q. All right. Can I ask you, then,

15:36:39 3 to continue on in the e-mail where Ms. Watkins

15:36:43 4 writes to Mr. Goodwin and says:

15:36:46 5 "Now that SARP is ending,

15:36:49 6 suddenly (not surprisingly) ORC is

15:36:53 7 coming forward with info for the

15:36:57 8 Panel that shows the industry

15:36:58 9 (racetracks) are financial need."

15:36:58 10 [As read.]

15:37:06 11 What's your reaction to that statement,

15:37:08 12 sir?

15:37:08 13 A. Well, umm, I can't speak on behalf

15:37:14 14 of Ms. Watkins.

15:37:16 15 I think it's devious to take, uh, one

15:37:26 16 or two tracks that may have been trying to race

15:37:30 17 less, and it wasn't a large number. You can go

15:37:32 18 back and look at the record as to what tracks were

15:37:36 19 trying to race less.

15:37:38 20 Then, to that -- and then, make a broad

15:37:41 21 blanket statement that all of a sudden, the

15:37:44 22 racetracks...

15:37:45 23 Our -- our numbers never changed. They

15:37:48 24 can't change because we're reporting them on an

15:37:51 25 annual basis.

15:37:53 1 Our stats; a lot of them come from
15:37:56 2 CPMA, the Canadian Pari-Mutuel Agency, so it's a
15:38:03 3 little tough for us to -- to...

15:38:03 4 777 Q. ...cook the books?

15:38:04 5 A. ...cook the books. The numbers
15:38:06 6 are what the numbers are.

15:38:07 7 And because they may not like the
15:38:10 8 number and whether this -- this is the group that
15:38:13 9 was providing information to whoever for making
15:38:16 10 decisions, I can't comment on.

15:38:18 11 But all I can say is that the
15:38:21 12 information that the Commission provided was always
15:38:26 13 accurate, always based on the same source, and it
15:38:29 14 would be virtually impossible for us to change
15:38:34 15 those numbers to suit a certain particular story.

15:38:38 16 778 Q. I see.

15:38:39 17 And then, she continues on, right after
15:38:41 18 that sentence we have just reviewed, where she says
15:38:44 19 to Mr. Goodwin:

15:38:48 20 "Anyway, all very frustrating.
15:38:51 21 But, also, we have been operating
15:38:54 22 under a cone of silence and haven't
15:38:57 23 been honest with ORC about what we
15:39:00 24 are doing and the need for them to
15:39:01 25 disclose all they have." [As read.]

15:39:02 1 Just pausing there, sir.

15:39:04 2 Is that a frustrating statement for you

15:39:06 3 to read?

15:39:06 4 A. Disappointing.

15:39:08 5 779 Q. So is it fair to say, sir, that

15:39:10 6 what this e-mail suggests is that, to the extent

15:39:13 7 that there had been inquiries of the ORC or the

15:39:16 8 administration of the ORC prior to the announcement

15:39:21 9 of the discontinuance of the revenue-sharing, this

15:39:25 10 e-mail appears to be suggesting that Ministry of

15:39:30 11 Finance was not being forthright with your

15:39:31 12 Commission about the reason for its requests?

15:39:34 13 O/B MR. ROSENBERG: Objection.

15:39:35 14 BY MR. MATTHEWS:

15:39:35 15 780 Q. Fair?

15:39:35 16 A. Well, based on the statement

15:39:37 17 there, I think that's self-evident.

15:39:40 18 781 Q. And then, this perhaps will

15:39:43 19 refresh your recollection in terms of what we were

15:39:45 20 talking about earlier today.

15:39:46 21 You see the final line of the e-mail on

15:39:47 22 this side of the page where Ms. Watkins says:

15:39:52 23 "I suspect more than 50-M will

15:39:56 24 be required." [As read.]

15:39:57 25 Reference to 5-million?

15:39:59 1 A. Umm...

15:39:59 2 782 Q. The very final line on this page.

15:39:59 3 A. Oh, yes. Yeah. I see it now,

15:40:00 4 yeah.

15:40:04 5 783 Q. So I'm going to put to you, sir,

15:40:06 6 that this is at a juncture where the Panel has been

15:40:08 7 struck and the -- at least as far as the industry

15:40:10 8 is aware, what's being considered for the Panel to

15:40:13 9 allocate is \$50-million at this juncture.

15:40:17 10 Does that refresh your recollection?

15:40:19 11 A. I would agree.

15:40:21 12 MR. MATTHEWS: Okay. I would like to

15:40:21 13 mark this e-mail as the next exhibit, Exhibit 30;

15:40:24 14 CRE 31221.

15:40:24 15 ---EXHIBIT NO. 30: An e-mail amongst

15:40:24 16 people in Ministry of Finance, August 2012; Doc ID

15:40:25 17 Number CRE 318221.

15:40:25 18 BY MR. MATTHEWS:

15:40:41 19 784 Q. So that was August 2nd, 2012.

15:40:44 20 I'm giving you another document, sir,

15:40:47 21 August 3rd, 2012. This is CRE 29291.

15:41:08 22 And perhaps you can take a moment to

15:41:09 23 read the -- the lengthy e-mail sent August 3rd,

15:41:16 24 2012, by John Wilkinson to Dave Gene and Michael

15:41:20 25 Keegan.

15:41:22 1 A. Yeah.

15:41:23 2 --- (Witness reviewing document.)

15:41:23 3 BY MR. MATTHEWS:

15:41:24 4 785 Q. I'm happy to just ask you a couple

15:41:26 5 of specific questions. You can take whatever time

15:41:27 6 you need --

15:41:28 7 A. Okay. You can ask the questions.

15:41:30 8 786 Q. You understood that John Wilkinson

15:41:33 9 was one of the members of the Horse Racing Industry

15:41:37 10 Transition Panel; correct?

15:41:38 11 A. Correct.

15:41:38 12 787 Q. Did you know who Dave Gene was?

15:41:40 13 A. Yes. I've met with him numerous

15:41:43 14 times.

15:41:43 15 788 Q. Really. In what context, sir?

15:41:45 16 A. As a senior official in the

15:41:47 17 government.

15:41:47 18 789 Q. While you were Chair of the ORC?

15:41:51 19 A. No. Before that.

15:41:52 20 790 Q. Okay. In what capacity were you

15:41:55 21 meeting with him?

15:41:55 22 A. When I was with the, uh... And I

15:41:59 23 may have met with him, as well, uh, as Chair of the

15:42:02 24 Racing Commission. Quite likely, I might have

15:42:06 25 because I dealt with David a number of times when I

15:42:09 1 was the, uh, President of the, uh, Hotel
15:42:09 2 Association here.

15:42:15 3 791 Q. Fair to say that Mr. Gene is a
15:42:20 4 partisan Liberal?

15:42:20 5 A. Very much so.

15:42:20 6 792 Q. A true believer?

15:42:22 7 A. Well, he's -- he's a Liberal.

15:42:25 8 O/B MS. MACHADO: Come on.

15:42:26 9 THE WITNESS: He's a Liberal, senior
15:42:28 10 Liberal, and I don't think they hire Conservatives.

15:42:33 11 BY MR. MATTHEWS:

15:42:33 12 793 Q. Fair enough.
15:42:33 13 And Mr. Wilkinson, you understood, was,
15:42:35 14 at least prior to his tenure on the Horse Racing
15:42:38 15 Industry Transition Panel, an MPP of the Liberal
15:42:41 16 Party and --

15:42:41 17 A. And I knew John, as well.

15:42:43 18 794 Q. And a Cabinet Minister at one
15:42:43 19 time?

15:42:44 20 A. Former Cabinet Minister.

15:42:44 21 795 Q. Sure.

15:42:51 22 A. I -- I know all three of the -- of
15:42:52 23 the Panel Members prior to their appointment.

15:42:56 24 796 Q. So if you look at the first
15:42:59 25 paragraph, you see Mr. Wilkinson writing to

15:43:07 1 Mr. Gene and copying Mr. Keegan.

15:43:07 2 You know who Mr. Keegan is, as well?

15:43:09 3 A. Yes.

15:43:09 4 797 Q. You understood Mr. Keegan was, at
15:43:11 5 this time, the Chief of Staff to the Minister of
15:43:14 6 Agriculture?

15:43:14 7 A. Yes.

15:43:15 8 798 Q. Mr. Wilkinson is saying that:
15:43:19 9 "We met with McKinsey, hired by
15:43:22 10 Finance, and that McKinsey confirmed
15:43:27 11 that under their widely optimistic
15:43:30 12 best case scenario, (i.e., no
15:43:33 13 collapse of the industry) we are
15:43:33 14 looking at 13,000 job losses and
15:43:38 15 16,000 euthanized horses between
15:43:40 16 September 4th and December 31st."
15:43:40 17 [As read.]
15:43:40 18 It continues on:
15:43:41 19 "Collapse (which we think is
15:43:45 20 what will actually happen) is 23,000
15:43:47 21 job losses and 27,000 dead horses.
15:43:51 22 The lawsuits coming our way will add
15:43:54 23 up to 500-million and you will be
15:43:58 24 lucky to settle for 250-million."
15:43:58 25 [As read.]

15:44:01 1 So put aside the lawsuit piece of this.

15:44:03 2 In terms of the figures that are being
15:44:05 3 given about job losses and euthanized horses, based
15:44:09 4 on your information, as the regulator of the horse
15:44:12 5 racing industry, is this magnitude of job losses
15:44:16 6 and euthanized horses something that you might have
15:44:19 7 expected or anticipated when you learned that the
15:44:23 8 announcement was being made to discontinue the
15:44:26 9 sharing of revenue from the Slots at Racetracks
15:44:29 10 Program?

15:44:29 11 A. I communicated with the Minister
15:44:33 12 and I say in the letter that, uh, the jobs -- the
15:44:38 13 government, in their announcement or whoever -- I
15:44:38 14 forgot who made the announcement, but -- who came
15:44:46 15 up with the number. They said there's only 6,000
15:44:47 16 jobs in the industry. Initially, it was saying
15:44:47 17 60,000.

15:44:51 18 And I just said there would be a lot of
15:44:53 19 job losses and that the number of jobs in the
15:44:57 20 industry were much closer to the industry figure
15:45:00 21 than the 6,000 figure.

15:45:02 22 I -- I didn't go to, uh, the horse --
15:45:05 23 that was something that we had decided that we
15:45:07 24 would not go near because that was just -- that was
15:45:12 25 a -- it was one of those issues that we certainly

15:45:16 1 didn't want to talk about publicly because that's
15:45:20 2 just a scare tactic, and you don't want to make
15:45:24 3 prophecy come true.

15:45:27 4 But we certainly recognized that given
15:45:30 5 the economic situation that would be developing in
15:45:33 6 the industry, that rather than people not feeding
15:45:38 7 their horses and having them starve, that because
15:45:41 8 they -- they love their horses, that the most
15:45:44 9 humane thing they could do would be destroy them,
15:45:48 10 rather than see them starve and go without food or
15:45:52 11 whatever; not be cared for.

15:46:06 12 799 Q. And if you look at the second
15:46:08 13 paragraph, you see Mr. Wilkinson writing:

15:46:12 14 "Michael..."

15:46:13 15 And I presume that's a reference to
15:46:14 16 Michael Keegan.

15:46:15 17 "...has asked me to join him on
15:46:17 18 Wednesday morning. I will lay out
15:46:18 19 the Plan 'B' and give us timelines
15:46:20 20 we need to avoid the consequences of
15:46:23 21 Plan 'A' (fiscal, legal and
15:46:25 22 political) and give us an advantage
15:46:29 23 in the by-elections by wedging both
15:46:31 24 Tim and Andrea. It has been the
15:46:35 25 most complex problem you guys have

15:46:36 1 given me, but three former Cabinet
15:46:36 2 Ministers and a former Deputy
15:46:41 3 Minister working together do have a
15:46:42 4 pretty good sense of public policy
15:46:44 5 and what is doable process-wise and
15:46:48 6 politically." [As read.]
15:46:49 7 Pausing there.
15:46:50 8 Sir, you understood the real
15:46:54 9 consequences being faced by participants in the
15:46:57 10 horse racing industry after the announcement about
15:46:59 11 the discontinuance of revenue sharing; correct?
15:47:02 12 A. Yes.
15:47:03 13 800 Q. Is it disappointing to you, sir,
15:47:06 14 to see one of the Panelists on the Horse Racing
15:47:11 15 Industry Transition Panel using his role as a
15:47:14 16 panelist "to give us," and by "us", I presume the
15:47:23 17 Liberals, "an advantage in the by-elections by
15:47:23 18 wedging both Tim Hudak and Andrea Horwath"?
15:47:23 19 Is that disappointing to you, sir?
15:47:29 20 O/B MS. MACHADO: I object.
15:47:30 21 O/B MR. ROSENBERG: I object.
15:47:30 22 What is the possible relevance of this,
15:47:30 23 Counsel? It's now getting late in the day. It's a
15:47:33 24 Friday.
15:47:33 25 THE WITNESS: Right.

15:47:33 1 MR. ROSENBERG: We're coming up on four
15:47:35 2 o'clock and you said you would be finished an hour
15:47:36 3 ago -- almost two hours ago.

15:47:38 4 I am hoping we could just move past
15:47:39 5 questions like this that don't assist anyone.

15:47:39 6 THE WITNESS: It speaks for itself.

15:47:46 7 BY MR. MATTHEWS:

15:47:47 8 801 Q. If you continue down, sir, there's
15:47:51 9 a paragraph that begins with the word,
15:47:53 10 "Politically..."

15:47:54 11 Do you see that?

15:47:55 12 A. Yes.

15:47:56 13 802 Q. And it says:

15:47:57 14 "Politically, our report will
15:47:58 15 say the government was right to
15:48:01 16 cancel the status quo." [As read.]
15:48:03 17 Just pausing there, sir.

15:48:04 18 I'm going to put to you that what
15:48:07 19 Mr. Wilkinson means by that is that the Horse
15:48:13 20 Racing Industry Transition Panel was going to issue
15:48:13 21 a report, affirming the government's decision to
15:48:17 22 cancel Slots at Racetrack Program in order to give
15:48:20 23 the government of the day political cover.

15:48:25 24 O/B MS. MACHADO: Objection. You're asking
15:48:27 25 him what Mr. Wilkinson intended.

15:48:29 1 You've had Mr. Wilkinson already.

15:48:29 2 You've asked him these questions.

15:48:31 3 Asking another witness; I don't see the

15:48:33 4 relevance of that.

15:48:34 5 THE WITNESS: I think it speaks for

15:48:35 6 itself, anyway.

15:48:36 7 MR. MATTHEWS: Okay. We'll mark this

15:48:38 8 as the next exhibit, please; Exhibit 31.

15:48:40 9 ---EXHIBIT NO. 31: E-mail sent August

15:40:47 10 3rd, 2012; Doc ID Number CRE 29291.

15:48:55 11 BY MR. MATTHEWS:

15:48:55 12 803 Q. As someone who has bred, raced and

15:48:55 13 owned Standardbred horses, is it disappointing to

15:48:55 14 you to see the government using people's

15:48:55 15 livelihoods as a political football, sir?

15:48:55 16 O/B MS. MACHADO: Objection.

15:49:01 17 O/B MR. ROSENBERG: Objection. What is the

15:49:04 18 possible relevance of this, Counsel?

15:49:06 19 This witness is not a Plaintiff, as

15:49:11 20 much as he may have similar appearance with

15:49:14 21 Plaintiffs in this action and even if he were, I

15:49:17 22 couldn't imagine how that question would be

15:49:19 23 relevant.

15:49:20 24 Disappointment has no relevance,

15:49:23 25 Counsel.

15:49:24 1 BY MR. MATTHEWS:

15:49:25 2 804 Q. Pretty harsh stuff. Would you

15:49:28 3 agree?

15:49:28 4 O/B MR. ROSENBERG: Objection.

15:49:29 5 THE WITNESS: Again, the stuff you're

15:49:31 6 showing me speaks for itself.

15:49:46 7 MS. MACHADO: It's nearly four o'clock.

15:49:50 8 Can we take a -- just a five-minute comfort break?

15:49:53 9 THE WITNESS: Yeah.

15:49:53 10 MR. MATTHEWS: I'm almost done with

15:49:53 11 this sequence and then, Ms. Machado --

15:49:53 12 MS. MACHADO: Okay. Fair enough.

15:49:53 13 We'll wait.

15:49:56 14 THE WITNESS: This was the hour that we

15:49:58 15 were going to be, when we started.

15:49:58 16 MS. MACHADO: Yeah.

15:49:58 17 BY MR. MATTHEWS:

15:49:58 18 805 Q. I'm handing you CRE 84904, sir.

15:50:16 19 This is the Horse Improvement Program's

15:50:18 20 financial statements for the year ended December

15:50:20 21 31st, 2011, and I'm taking you to page 11 of those

15:50:24 22 financial statements, sir.

15:50:46 23 You received these financial statements

15:50:48 24 for the Horse Improvement Program when you were the

15:50:50 25 Chair of ORC; correct?

15:50:51
15:50:51
15:50:53
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15:51:01
15:51:03
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15:51:11
15:51:13
15:51:14
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15:51:15
15:51:39
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15:51:41
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A. Correct.

806 Q. And so, you understood, at the time, that the auditor of the Horse Improvement Program formed the view that the loss of revenue from the Slots at Racetrack Program created a material uncertainty regarding the Horse Improvement Program's ability to continue as a going concern?

A. Correct.

MR. MATTHEWS: All right. Let's mark this as the next exhibit, sir; Exhibit 31, CRE --- (Court reporter appeals.)

MR. MATTHEWS: Sorry. 32; CRE 84904. ---EXHIBIT NO. 32: Doc ID Number CRE 84904.

BY MR. MATTHEWS:

807 Q. Did you ever meet or interact with Tanya Watkins, sir?

A. No, not to the best of my ability. Could have -- she could have been in a meeting once, I believe. I... I'm thinking I was at a meeting with her once, but I -- I wouldn't swear to it.

MR. MATTHEWS: Can we go off the record?

15:52:13 1 --- (Discussion off the record.)

15:52:13 2 --- Recess at 3:52 p.m.

16:04:11 3 --- On resuming at 4:04 p.m.

16:04:22 4 BY MR. MATTHEWS:

16:04:22 5 808 Q. Mr. Seiling, I would like to take

16:04:24 6 some time now, if I may, and go through some

16:04:26 7 documents that you produced today in connection

16:04:28 8 with your examination.

16:04:29 9 I would like to start by looking at the

16:04:31 10 two page document that you have provided entitled

16:04:34 11 "Backgrounder Re: Restructured ORC." Do you have

16:04:40 12 that in front of you?

16:04:40 13 A. Yes, sir. I brought it, I -- it's

16:04:43 14 not really germane; I brought it because I happened

16:04:47 15 to have it.

16:04:47 16 809 Q. Do you recall, sir, when you

16:04:48 17 produced this backgrounder?

16:04:50 18 A. It would be post the announcement.

16:04:57 19 810 Q. Okay. And --

16:04:57 20 A. It was related to a meeting that

16:05:00 21 didn't take place.

16:05:00 22 811 Q. Who was that meeting supposed to

16:05:02 23 be with?

16:05:02 24 A. With the industry, as I recall.

16:05:03 25 812 Q. I see.

16:05:05 1 Is this a reference perhaps to the
16:05:06 2 meeting with the industry that you referred to in
16:05:08 3 your Chair's report that you said could not go
16:05:10 4 ahead because--

16:05:11 5 A. Yes.

16:05:13 6 813 Q. --of the change in direction?

16:05:14 7 A. Yes.

16:05:15 8 814 Q. All right. Fair enough.

16:05:16 9 So let's mark this document as Exhibit
16:05:17 10 32; Backgrounder Re -- it's 33, rather.

16:05:18 11 And I'll just -- if you don't mind, you
16:05:19 12 can keep the original, sir. I will stamp the copy
16:05:19 13 that you've given me, if--

16:05:23 14 A. Yes.

16:05:25 15 815 Q. --that's all right.

16:05:26 16 MR. MATTHEWS: So Exhibit 33 is the
16:05:28 17 document entitled "Backgrounder re: Restructured
16:05:33 18 ORC."

16:05:33 19 ---EXHIBIT NO. 33: Document entitled
16:06:03 20 "Backgrounder re: Restructured ORC."

16:06:03 21 BY MR. MATTHEWS:

16:06:04 22 816 Q. And the next thing I'd like to do,
16:06:04 23 sir, is you've given me a packet of documents
16:06:05 24 that's stapled together that contains within it a
16:06:05 25 number of documents.

16:06:05 1 A. Yes.

16:06:06 2 817 Q. What I would propose to do, sir,

16:06:06 3 is, unless counsel has any objection, to mark the

16:06:07 4 entire packet of documents as an exhibit and then

16:06:07 5 we can go through that exhibit and make any

16:06:09 6 clarifications to the document, or ask any

16:06:14 7 questions arising out of that. Is that acceptable

16:06:17 8 to Ontario and OLG?

16:06:23 9 MR. ROSENBERG: I want to go off the

16:06:25 10 record for a moment, just --

16:06:26 11 MR. MATTHEWS: Yes.

16:06:26 12 MR. ROSENBERG: -- discuss.

16:06:29 13 MR. MATTHEWS: Yes.

16:06:29 14 ---Off the record discussion.

16:08:52 15 MR. MATTHEWS: Let's go back on the

16:08:54 16 record, please.

16:08:56 17 Just for the record, counsel had a

16:08:57 18 discussion about the packet of documents that

16:09:00 19 Mr. Seiling has provided in advance of his

16:09:02 20 Examination.

16:09:03 21 What we have agreed to do is mark the

16:09:05 22 packet of documents as Exhibit 34. And we are

16:09:10 23 subsequently going to go through pages in Exhibit 4

16:09:19 24 (sic) to have Mr. Seiling identify and provide any

16:09:21 25 clarification or answer any questions about the

16:09:23 1 various things that are in the different pages of
16:09:25 2 what will become Exhibit 34.
16:09:27 3 So we are going to mark this as Exhibit
16:09:28 4 34.
16:09:28 5 ---EXHIBIT NO. 34: Packet of documents
16:09:28 6 produced by Mr. Seiling.
16:09:28 7 BY MR. MATTHEWS:
16:09:42 8 818 Q. We'll start, Mr. Seiling, with the
16:09:42 9 first two pages of Exhibit 34, which appear to be a
16:09:46 10 draft letter that you prepared to Mr. Duncan;
16:09:50 11 correct?
16:09:50 12 A. Correct.
16:09:50 13 819 Q. It appears that this draft letter
16:09:54 14 was composed after the announcement of March 12th,
16:09:59 15 2012; correct?
16:10:00 16 A. Correct.
16:10:01 17 820 Q. And did you send a final version
16:10:03 18 of this letter to Minister Duncan?
16:10:05 19 A. To the best of my knowledge, yes.
16:10:07 20 821 Q. All right. I haven't seen a final
16:10:18 21 letter from you to Mr. Duncan in the productions
16:10:20 22 and so, we'll look for it and, Ms. Machado, I'm
16:10:28 23 going to be asking, if we can't locate it, for you
16:10:31 24 to identify it if it exists in the productions.
16:10:36 25 But if not, to go back and search for it and

16:10:37 1 provide it to us.

16:10:39 2 MS. MACHADO: You've got all our
16:10:40 3 documents, so if it's not in the productions,
16:10:44 4 it's...

16:10:44 5 I know that Mr. Duncan was one of the
16:10:47 6 individuals who was obviously searched, whose
16:10:50 7 documents were searched.

16:10:54 8 BY MR. MATTHEWS:

16:10:55 9 822 Q. In terms of the content of the
16:10:57 10 letter that was sent to Mr. Duncan, to the best of
16:10:58 11 your recollection, it would be consistent with the
16:11:00 12 content of this draft letter as amended by these
16:11:03 13 handwritten amendments that you can see on page 1
16:11:05 14 of Exhibit 34?

16:11:06 15 A. Correct.

16:11:06 16 823 Q. All right. So, let's move ahead
16:11:09 17 to page 3 and 4 of Exhibit 34. This appears to be
16:11:16 18 the May 31, 2012 letter to Mr. Godfrey that we have
16:11:19 19 looked at?

16:11:19 20 A. Yes, you've already seen that.

16:11:21 21 824 Q. Page 5 appears to be a handwritten
16:11:24 22 note. This is your handwriting, sir?

16:11:26 23 A. Yes, it is.

16:11:27 24 825 Q. And this appears to reflect the
16:11:29 25 telephone call you had with Mr. Godfrey on or about

16:11:32 1 June 1st, 2012?

16:11:34 2 A. Correct.

16:11:35 3 826 Q. And perhaps, just so there's no
16:11:43 4 misunderstanding, could you, to the best you can,
16:11:44 5 read what you've recorded in handwriting so we have
16:11:45 6 it in the record?

16:11:46 7 A. Mr. Godfrey said he has been
16:11:48 8 meaning to call me, told Dan Nixon, Dan Nixon is a
16:11:53 9 board member in the ORC, that Mr. Nixon told him he
16:11:58 10 should call me, they met at a function. Said he
16:12:02 11 was unaware of the letter I had sent to him. I
16:12:02 12 told him we had no contact with OLG, and it was
16:12:19 13 difficult for OLG...

16:12:19 14 MS. MACHADO: I'm sorry, if I might
16:12:20 15 interrupt. If you could just read exactly what's
16:12:22 16 on the document, you're adding some words to
16:12:23 17 explain it to us, which I appreciate, but it's just
16:12:26 18 so that we can get clarification on what you have
16:12:29 19 written.

16:12:29 20 THE WITNESS: Okay. He cleared up time
16:12:32 21 lines.

16:12:32 22 "Leave deals with tracks August
16:12:34 23 31, '12. New casino three years
16:12:38 24 except TO, to five years. Told me
16:12:42 25 government decision to end slots,

16:12:44 1 not OLG. Said he would respond to
16:12:48 2 letter after seeing it. Told him
16:12:51 3 importance of tracks and need for
16:12:53 4 them to have knowledge of revenues.
16:12:58 5 No tracks, no racing. Not agree
16:13:01 6 with me. Uncertainty until 2013."

16:13:05 7 BY MR. MATTHEWS:

16:13:05 8 827 Q. So just a couple of questions
16:13:08 9 about this document, sir. Mr. Godfrey told you he
16:13:12 10 would respond to your letter, but I understood your
16:13:15 11 evidence to be you never received a response;
16:13:17 12 correct?

16:13:18 13 A. I did not.

16:13:18 14 828 Q. And the final sentence, "Not agree
16:13:20 15 with me, uncertainty 'til 2013," do I understand
16:13:23 16 that to be Mr. Godfrey did not agree with you that
16:13:26 17 there would be uncertainty in the industry?

16:13:28 18 A. Yes. Correct.

16:13:29 19 829 Q. All right. So let's go to the
16:13:32 20 next page which will be page 6. Page 6 and 7
16:13:36 21 appear to be a typewritten draft entitled "The New
16:13:41 22 ORC." Did you type this document, sir, it?

16:13:44 23 A. More than likely I did.

16:13:46 24 830 Q. And is it fair to say that this
16:13:47 25 was composed in the aftermath of the decision

16:13:53 1 wherein you tried to sketch out what the new ORC
16:13:58 2 post-SARP would look like?
16:13:59 3 A. Correct.
16:14:00 4 831 Q. All right. So let's make that
16:14:01 5 pages 6 and 7. Page 8, "Talking Points For
16:14:20 6 Government Meeting," which appear to be dated May
16:14:22 7 1st, 2012.
16:14:24 8 Is this something you composed?
16:14:27 9 A. It is.
16:14:27 10 832 Q. And what government meeting are
16:14:29 11 you referring to?
16:14:33 12 A. I believe it's for the Panel.
16:14:35 13 833 Q. So, these were the talking points
16:14:36 14 you prepared for meet with the horse racing
16:14:38 15 industry transition panel?
16:14:40 16 A. Correct.
16:14:40 17 834 Q. Do those taking points accord to
16:14:44 18 what you recall presenting to the Panel when you
16:14:51 19 did meet with them?
16:14:52 20 A. Yes.
16:14:53 21 835 Q. All right. Let's mark that page
16:15:01 22 8.
16:15:01 23 Page 9, this appears to be a memo to
16:15:09 24 file, "Stransky Call Early," what appears to be
16:15:12 25 December of 2012. Do you see that, sir?

16:15:15 1 A. I think the next couple of memos
16:15:17 2 are all the wrong date. They should be '11. As I
16:15:21 3 said to you, to the best of memory, and they
16:15:23 4 weren't all made -- I didn't start making these
16:15:26 5 until after things looked like there would be
16:15:28 6 lawsuits coming, and I was trying to refresh my
16:15:31 7 memory.

16:15:31 8 836 Q. Okay. So for the benefit of the
16:15:33 9 record, sir, could you read what you have recorded
16:15:36 10 in this particular note?

16:15:37 11 A. Okay.
16:15:38 12 "Call Blair after discussion
16:15:39 13 with JB."

16:15:40 14 JB, just so you understand, is John
16:15:44 15 Blakney, who is my executive director.

16:15:45 16 "...in which he told me
16:15:46 17 Ministry staff saying three tracks
16:15:48 18 closing: Fort Erie, Windsor
16:15:50 19 Hiawatha. Tell Blair, hearing
16:15:53 20 rumours three tracks closing and am
16:15:55 21 concerned word may leak if [if] time.
16:16:00 22 ORC left in lurch, what to say. Blair
16:16:03 23 said not to worry, that nothing to
16:16:06 24 that extent will happen."

16:16:07 25 837 Q. All right. That will be page 9.

16:16:10 1 Page 10, another handwritten note which
16:16:12 2 also appears to be dated December 20th, 2012.
16:16:16 3 A. And should be, I think, '11.
16:16:18 4 838 Q. 2011?
16:16:19 5 A. Yes.
16:16:20 6 839 Q. And this appears to be a meeting
16:16:22 7 that you had with Mr. Stransky?
16:16:23 8 A. Yes.
16:16:25 9 840 Q. Was this an in-person meeting?
16:16:28 10 A. Yes.
16:16:29 11 841 Q. Where did the meeting occur?
16:16:31 12 A. More than likely down at Queen's
16:16:33 13 Park.
16:16:33 14 842 Q. Do you have a recollection of
16:16:35 15 going down to Queen's Park to meet Mr. Stransky?
16:16:38 16 A. He's -- he never came to the ORC
16:16:41 17 office, so I would presume it was at Queen's Park.
16:16:44 18 Whether it was at Frost Building or Queen's Park I
16:16:47 19 couldn't tell you. Likely Frost building, but...
16:16:51 20 843 Q. Do you recall anyone else being in
16:16:54 21 this meeting between you and Mr. Stransky?
16:16:56 22 A. No. Two of us.
16:16:58 23 844 Q. All right. So, if you can read
16:17:00 24 the body of the memo into the record.
16:17:02 25 A. "Discussion racing. Based on

16:17:03 1 previous call, not anything bad
16:17:05 2 coming down for racing. Told to
16:17:07 3 expect OLG land based gaming strategy
16:17:10 4 coming new year. Told him not want
16:17:12 5 to know extent details, what doing
16:17:14 6 policy-wise for racing in care -- in
16:17:17 7 case of leak. Statement based on
16:17:20 8 nothing bad. Reiterated offer to
16:17:23 9 administration that ORC could supply
16:17:25 10 info to government. Told don't need
16:17:27 11 it."

16:17:29 12 And then:

16:17:29 13 "Raised, non-generic, raised
16:17:32 14 appointment issues. Don Nicholson
16:17:36 15 was trying to get my board members
16:17:38 16 reappointed."

16:17:39 17 845 Q. So one thing I wanted to ask you
16:17:41 18 about, sir, in the middle of the page where you
16:17:44 19 read "told him not want to know extent of details,"
16:17:48 20 it appears to you actually say "exact details." Is
16:17:52 21 that true or is it...

16:17:52 22 A. Oh, yeah. Exact, sorry, Oh, yeah.
16:17:55 23 I should put my glasses on, exact details.

16:17:58 24 846 Q. All right. So let's have this be
16:18:02 25 page 10.

16:18:02 1 Page 11, what appears to be another
16:18:07 2 memo to file involving a call you had with
16:18:10 3 Mr. Stransky.
16:18:10 4 A. Yeah.
16:18:11 5 847 Q. May 15th, 2012; is that right?
16:18:14 6 A. There's no date on this.
16:18:15 7 848 Q. So the document that I am looking
16:18:20 8 at, sir --
16:18:20 9 A. Memo to file, "Stransky call re
16:18:23 10 Drummond."
16:18:24 11 849 Q. That's not the page I have. In
16:18:26 12 fact, I have a page before that.
16:18:28 13 A. Okay.
16:18:30 14 MS. MACHADO: There is one page before
16:18:31 15 that.
16:18:32 16 THE WITNESS: Okay. I gave her a
16:18:33 17 different one, so --
16:18:36 18 BY MR. MATTHEWS:
16:18:36 19 850 Q. So what I'm looking at is what
16:18:38 20 appears to be a May 15th, 2012 memo to file,
16:18:43 21 Stransky call.
16:18:45 22 A. Okay, I've got it here.
16:18:47 23 MS. MACHADO: No, no. It's this.
16:18:49 24 (Indicating)
16:18:49 25 THE WITNESS: They're out of order. It

16:18:51 1 doesn't matter which order we do it. Let's do the
16:18:53 2 one you've got. Okay.

16:18:54 3 BY MR. MATTHEWS:

16:18:55 4 851 Q. Okay. So, May 15th, 2012, "Memo
16:18:57 5 to File - Stransky Call." Do you see that?

16:19:00 6 A. Yeah.

16:19:00 7 852 Q. All right. Can you read what you
16:19:00 8 have?

16:19:03 9 A. "Told OLG issuing RFI later
16:19:06 10 this week. Five new zones and they
16:19:09 11 are around existing tracks and
16:19:12 12 surrounding [something] area. New -
16:19:15 13 two north, one east, one GTA, one
16:19:19 14 south, Georgian Bay. Government
16:19:22 15 working with OMAFRA. Confirmed no
16:19:26 16 transition dollars for tracks except
16:19:28 17 remediation for those not staying as
16:19:32 18 tracks. Told him helpful if
16:19:34 19 communicated out to industry. Told
16:19:37 20 he likely will meet with OHHA.
16:19:40 21 Reminded him what that does to
16:19:42 22 OHRIA. Told him ORC only invite
16:19:46 23 OHRIA to its strat session as
16:19:49 24 representing voice of racing as per
16:19:52 25 government wishes. Told that is

16:19:54 1

good."

16:19:56 2

I better give some background here.

16:19:58 3

OHHA had been an outlier within the industry, and I

16:20:03 4

had received communication that they weren't a

16:20:11 5

favourite of the Ministry, and that inviting them

16:20:13 6

to certain meetings representing the industry was

16:20:17 7

not -- that OHRIA was a representative of the

16:20:19 8

industry. So I was just confirming what we were

16:20:23 9

doing.

16:20:23 10

853

Q. Okay. So back to what you have

16:20:25 11

written down.

16:20:26 12

A. "I offered to take him on a

16:20:27 13

tour because I do not think he fully

16:20:30 14

grasps impacts."

16:20:32 15

Then the others are appointment issues.

16:20:35 16

"Talked about Nixon

16:20:36 17

reappointment. Need for Donnelly

16:20:38 18

extension into fall. Trying to find

16:20:41 19

a vice-chair candidate. Meeting

16:20:45 20

with a suggestion re name on the

16:20:47 21

board."

16:20:49 22

854

Q. Okay. Two questions.

16:20:50 23

A. They had given me some suggestions

16:20:52 24

for potential board members.

16:20:53 25

855

Q. In the middle of the page where

16:20:59 1 you say:

16:21:01 2 "Told him ORC only invite OHRIA

16:21:03 3 to strat session."

16:21:06 4 A. Yes.

16:21:06 5 856 Q. Is that what it says?

16:21:07 6 A. Yes.

16:21:08 7 857 Q. "Strat"; is that --

16:21:09 8 A. Strategy.

16:21:10 9 Remember, we were going to have a

16:21:11 10 meeting with the industry that got cancelled.

16:21:14 11 858 Q. So that's what it refers to?

16:21:16 12 A. Yes.

16:21:17 13 859 Q. All right. We'll make that page

16:21:24 14 11.

16:21:24 15 So, the next page in my packet, sir, is

16:21:27 16 an undated memo to file, "Stransky call re:

16:21:31 17 Drummond."

16:21:32 18 A. Yeah.

16:21:34 19 "Blair tells me government

16:21:35 20 released Drummond report.

16:21:36 21 Recommendations in Slots Program.

16:21:56 22 Question if can do, told yes.

16:22:02 23 Question wisdom. Told racing will

16:22:05 24 continue but less."

16:22:08 25 That's him telling me.

16:22:09 1 "Question his business
16:22:11 2 rationale."
16:22:13 3 860 Q. So, let's pause on this one.
16:22:15 4 In your earlier testimony, I had
16:22:19 5 understood that you learned about the decision that
16:22:24 6 the revenue sharing would be cancelled on the
16:22:27 7 evening before the announcement. Do you recall
16:22:29 8 that?
16:22:29 9 A. Yes.
16:22:31 10 861 Q. And the Drummond report, as I
16:22:35 11 understand it, sir, was publicly released
16:22:37 12 approximately a month before the announcement by
16:22:40 13 Ontario and OLG in mid-February of 2012.
16:22:43 14 A. Yeah.
16:22:44 15 862 Q. So, can we agree, sir, that if it
16:22:51 16 starts by saying, "Blair tells me government
16:22:54 17 released Drummond Report," then the date of this
16:22:58 18 conversation would be prior to the release of the
16:23:01 19 Drummond report February 15th, 2012; fair?
16:23:04 20 A. Okay. Let me go back and explain
16:23:07 21 what my understanding is.
16:23:08 22 If Mr. Stransky calls, tells me that
16:23:12 23 the Drummond report is going to recommend end of
16:23:16 24 Slots Program.
16:23:17 25 I questioned if that -- if that was

16:23:22 1 even doable. He told me yes. He didn't say they
16:23:25 2 were going to do it. I just asked, can you legally
16:23:29 3 -- my question was, can you legally do it? His
16:23:31 4 answer to me was yes, they can. He didn't tell me
16:23:34 5 they were going to do it. In fact, I never
16:23:37 6 believed they would.

16:23:38 7 863 Q. And then do I understand correctly
16:23:41 8 that there was a further call approximately a month
16:23:44 9 later where he told you tomorrow, we are announcing
16:23:48 10 that we are doing it?

16:23:50 11 A. Yes.

16:23:50 12 864 Q. Okay. And so, when I see --

16:23:55 13 A. You're going to get to it shortly,
16:23:57 14 March 12th.

16:23:58 15 865 Q. When I see here in this memo that
16:24:00 16 you have just written and read into the record
16:24:04 17 where it says "question wisdom", do I take it,
16:24:07 18 then, that not just on the evening before the
16:24:11 19 announcement was actually made, but in the context
16:24:15 20 of this conversation regarding Mr. Drummond's
16:24:18 21 report, you also raised with Mr. Stransky the
16:24:22 22 wisdom of ending the Slots at Racetrack Program.

16:24:27 23 A. Correct.

16:24:28 24 866 Q. And you questioned his business
16:24:29 25 rationale at this time as well?

16:24:31 1 A. Correct.

16:24:32 2 867 Q. And you asked Mr. Stransky if this

16:24:39 3 could be done, i.e., cancelling the Slots Program

16:24:41 4 and he told you yes?

16:24:42 5 A. Yes.

16:24:43 6 868 Q. All right, so let's make this page

16:24:48 7 12.

16:24:50 8 MR. ROSENBERG: Sorry. Did we get the

16:24:53 9 last line read?

16:24:54 10 THE WITNESS: Do you want me to read it

16:24:56 11 again?

16:24:56 12 MS. MACHADO: "Question his business

16:24:58 13 rationale."

16:25:00 14 BY MR. MATTHEWS:

16:25:00 15 869 Q. Is that accurate?

16:25:01 16 A. Yes.

16:25:01 17 870 Q. "Questioned his business

16:25:03 18 rationale."

16:25:04 19 MR. ROSENBERG: Thank you.

16:25:05 20 BY MR. MATTHEWS:

16:25:06 21 871 Q. All right. The next page I have

16:25:09 22 appears to have a date on the left which looks like

16:25:12 23 March 2012, but it's not clear to me, but then it

16:25:16 24 says, "Memo to File: Stransky Call."

16:25:18 25 A. Yes.

16:25:19 1 872 Q. So first, sir, do you know the
16:25:22 2 date on this memo?
16:25:23 3 A. It's the day before they made the
16:25:25 4 announcement.
16:25:26 5 873 Q. So, this is your recollection of
16:25:28 6 what Mr. Stransky told you the evening before March
16:25:30 7 12th, 2012; correct?
16:25:31 8 A. Correct.
16:25:32 9 874 Q. Okay. If you could read this
16:25:34 10 please.
16:25:35 11 A. "Told budget going Tuesday.
16:25:36 12 Will confirm ending of slots.
16:25:39 13 Questioned if government understood
16:25:40 14 impacts. Told same - racing will
16:25:44 15 continue. Don't need some small
16:25:46 16 tracks, though."
16:25:48 17 875 Q. When you write "told same", do you
16:25:52 18 mean were you told the same thing as Mr. Stransky
16:25:57 19 had told you in the earlier conversation regarding
16:25:59 20 the Drummond report?
16:26:01 21 A. Yes, same thing, business
16:26:02 22 rationale, if you understand.
16:26:07 23 876 Q. All right. That's page 13. The
16:26:11 24 next page that I have appears to be May 29th, 2012,
16:26:16 25 "Call Blair Stransky."

16:26:17 1 A. Yeah.

16:26:18 2 877 Q. All right.

16:26:19 3 A. I've talked about this one before

16:26:21 4 so I will read it to you.

16:26:22 5 "Concern over Liz Yeigh telling

16:26:26 6 Steve 'ORC under close scrutiny'."

16:26:30 7 Again, whether I have the date right on

16:26:32 8 there, I...

16:26:34 9 "Inappropriate. If true,

16:26:35 10 should go to Blakney or me. He not

16:26:40 11 aware. Will follow up."

16:26:42 12 Then I go on:

16:26:43 13 "Concern over one year for

16:26:45 14 Nixon reappointment. [Tell

16:26:46 15 reaffirm] tell reinforce anxiety

16:26:50 16 here re future. He received my

16:26:53 17 email on appointments per our

16:26:54 18 discussion. He claimed not aware

16:26:58 19 rumour ORC moving. Admits result of

16:27:04 20 Nixon one year. More anxiety but

16:27:08 21 says not intent. Told me PO office

16:27:11 22 involved in appointment now."

16:27:14 23 That's the Premier's Office.

16:27:17 24 "Told him OHRIA planning not

16:27:21 25 need take place (sic) book for

16:27:23 1 approval. He asked who else or - no
16:27:28 2 know. Asked if government ready to
16:27:30 3 decide who..."
16:27:36 4 In the brackets, that's:
16:27:38 5 "... (tracks) get money if and
16:27:39 6 when government wants. Tell him not
16:27:42 7 wanting to go there because of
16:27:44 8 liability."
16:27:46 9 I'll explain there. I explained to him
16:27:48 10 that the Commission was not going to be put in a
16:27:54 11 position where we would decide what tracks would
16:27:56 12 stay in business and what tracks would be, uh, go
16:28:02 13 the bye-bye and demise at that.
16:28:05 14 878 Q. I see. So this is you; you're
16:28:08 15 just interpreting that phrase in your notes right
16:28:11 16 now?
16:28:11 17 A. Yeah. I'm telling you because
16:28:12 18 it's not clear, so I'm telling you why.
16:28:13 19 879 Q. All right. So back to the notes
16:28:16 20 then, sir.
16:28:17 21 A. "Had to tell him again not
16:28:19 22 expecting any date applications in
16:28:23 23 the fall when he raised it because
16:28:25 24 economics not there or (sic) other
16:28:29 25 decisions be made.

16:28:30 1 "Told him again not see how ORC
16:28:36 2 members (sic) realistic..."
16:28:37 3 "Told him again not see how OLG
16:28:40 4 numbers realistic re new revenues
16:28:43 5 and need for arm's length view of
16:28:46 6 numbers. He says government
16:28:48 7 comfortable."
16:28:49 8 880 Q. Okay. Now, you said at the
16:28:53 9 beginning that this memo, you're not quite sure
16:28:57 10 about the date, but having read through it now, and
16:29:00 11 the discussions about which tracks would close, do
16:29:04 12 you accept, sir, that this memo would be after the
16:29:07 13 announcement about the cancellations--
16:29:09 14 A. Correct.
16:29:10 15 881 Q. --were communicated?
16:29:12 16 A. Yes. I think a bunch of these say
16:29:16 17 '12, but it should be '11.
16:29:18 18 882 Q. But this one, you're satisfied is
16:29:20 19 May of 2012, after the announcement is made?
16:29:22 20 A. It's after the announcement is
16:29:24 21 made. Oh. For sure, it's after the announcement
16:29:27 22 is made.
16:29:27 23 883 Q. Just a couple of questions.
16:29:30 24 Towards the end, you read in:
16:29:33 25 "...when he raised it because

16:29:34 1 economics not there."
16:29:36 2 Do you see that?
16:29:37 3 A. Yeah.
16:29:38 4 884 Q. I believe you said something else,
16:29:40 5 but I read it as saying.
16:29:41 6 "...when he raised it because
16:29:43 7 economics not there until other
16:29:45 8 decisions made."
16:29:47 9 A. I think that's what I read, did I
16:29:49 10 not?
16:29:49 11 885 Q. I don't think you said "until". I
16:29:52 12 think you said something different.
16:29:53 13 A. Okay. That's what I read here. I
16:29:55 14 apologize if I misread it.
16:29:57 15 886 Q. Just so it's clear, following
16:29:59 16 that, as I understood you to say it reads:
16:30:03 17 "Told him again not see how OLG
16:30:05 18 numbers realistic re new revenues
16:30:09 19 and need for arm's length view of
16:30:12 20 number. He says government
16:30:15 21 comfortable."
16:30:16 22 Correct?
16:30:16 23 A. Correct.
16:30:17 24 887 Q. This is you again reiterating to
16:30:19 25 Mr. Stransky your concerns that the numbers that

16:30:21 1 you've seen OLG put out were not, in your view,
16:30:25 2 realistic, and you felt that there was a need for
16:30:28 3 an arm's length review of OLG's numbers; correct?

16:30:34 4 A. Correct.

16:30:34 5 888 Q. Was this their numbers, things
16:30:35 6 like the economic impact on jobs?

16:30:38 7 A. The whole raft of information that
16:30:41 8 was flowing out. Five/six tracks, there will be
16:30:46 9 racing afterwards, all of it.

16:30:48 10 889 Q. And Mr. Stransky again reiterates
16:30:50 11 that the government is comfortable with the numbers
16:30:52 12 they have?

16:30:53 13 A. Correct.

16:30:53 14 890 Q. All right. That will be, then,
16:30:55 15 page 14. Page 15, I have a May 31, 2012 Blair
16:31:07 16 Stransky call.

16:31:07 17 A. Yes.

16:31:07 18 "Told me government to announce
16:31:12 19 formation of transition committee
16:31:15 20 that will consult with industry.
16:31:17 21 Members John Wilkinson, John
16:31:19 22 Snobelen, Elmer Buchanan. Treasury
16:31:23 23 has approved \$60-million over three
16:31:26 24 years. Breeders to get looked after
16:31:31 25 and [summary] training."

16:31:33 1 891 Q. "Some for retaining"?

16:31:34 2 A. "...and some for retraining."

16:31:34 3 Sorry.

16:31:39 4 "Expectation industry plan to

16:31:40 5 fit into this. Told him 60-million

16:31:43 6 not enough if want 5/6 tracks. Went

16:31:47 7 back and explained why no tracks can

16:31:49 8 apply 2013 dates post-March 31 'til

16:31:54 9 know what revenues will be. He is

16:31:57 10 transfixed on industry saving...this

16:31:59 11 year."

16:32:02 12 892 Q. Is it "saving [dollar sign]"?

16:32:04 13 A. Oh.

16:32:05 14 "...saving dollars this year.

16:32:07 15 Explained COSA doing and possibly

16:32:10 16 Capital..."

16:32:11 17 And "Capital" means the Ottawa area,

16:32:13 18 "Capital".

16:32:15 19 "...but questioned how much, if

16:32:18 20 any, tracks can save, but not

16:32:19 21 knowing respective tracks' costs,

16:32:21 22 can only guess."

16:32:24 23 I will just give you a backgrounder on

16:32:27 24 that.

16:32:28 25 It was their contention that knowing

16:32:29 1 what was coming down the pike, the tracks could
16:32:34 2 save money and put it away for operational purposes
16:32:38 3 post-March 31.

16:32:39 4 893 Q. So, you're saying, because the
16:32:42 5 announcement was that revenue-sharing would
16:32:44 6 continue until March 31, 2013, Mr. Stransky
16:32:47 7 believed that the tracks could save some of the
16:32:50 8 revenue that would continue to flow to them through
16:32:54 9 the Slots Program, save that money in order to be
16:32:57 10 able to fund racing post-March 31, 2013?

16:33:00 11 A. Correct.

16:33:00 12 894 Q. All right.

16:33:07 13 A. "Told him ORC cut out again
16:33:09 14 from any policy input just as in
16:33:12 15 ending slots. He wants keep ORC as
16:33:15 16 regulator but left open possible
16:33:19 17 future need for ORC to solve
16:33:20 18 impasse."

16:33:21 19 895 Q. Is that "he want keep" or "he
16:33:25 20 won't keep"?

16:33:25 21 A. "He wants." I am reading that as
16:33:28 22 "want".

16:33:29 23 896 Q. All right. Well, they're your
16:33:30 24 notes, so that's fine.

16:33:31 25 A. Okay.

16:33:32 1 "Told him not realistic expect
16:33:35 2 industry have infrastructure deal
16:33:38 3 with big issue given ORC did it all
16:33:43 4 in [did all in] past. Discuss OHRIA
16:33:47 5 plan and not realistic industry to
16:33:51 6 support it. Explained again why
16:33:53 7 government needs to plan now how to
16:33:55 8 decide what tracks would get
16:33:58 9 government investment. Referenced
16:34:03 10 other ag. industries and most
16:34:05 11 benefit government policy. Told him
16:34:08 12 believe ORP should [continue]
16:34:11 13 forward."

16:34:11 14 That's the Ontario Racing Plan.

16:34:13 15 897 Q. "Continue forward" or "carry
16:34:15 16 forward"?

16:34:15 17 A. Oh. "Carry forward". Sorry.

16:34:18 18 "Told him 60-million not
16:34:20 19 enough. Told him letter to Godfrey
16:34:23 20 he blind copied - had seen it. Told
16:34:28 21 him direction board wanted - he
16:34:31 22 replied would not have been good."

16:34:35 23 Backgrounder: My Board wanted to be
16:34:38 24 much more forceful and I toned down what was sent
16:34:42 25 to Godfrey.

16:34:43 1 898 Q. So, your Board wanted you to write
16:34:45 2 a stronger letter to Mr. Godfrey than the May 31st,
16:34:50 3 2012 letter that you sent?

16:34:52 4 A. Correct.

16:34:52 5 899 Q. Did I also understand, from what
16:34:54 6 you just read, that in transmitting the letter to
16:34:56 7 Mr. Godfrey, you blind copied Blair Stransky?

16:34:58 8 A. Correct.

16:34:59 9 900 Q. That's page 15.

16:35:05 10 I next have what appears to be June
16:35:07 11 1st, 2012, "Godfrey call."

16:35:09 12 A. Yeah. Stransky -- no, we have
16:35:11 13 already -- have we not done the Godfrey call? I
16:35:17 14 thought we had.

16:35:21 15 MS. MACHADO: It may be a different
16:35:22 16 call.

16:35:22 17 THE WITNESS: I only have one call, so
16:35:25 18 let me go back. I was just flipping pages in this
16:35:28 19 package here.

16:35:34 20 MS. MACHADO: I think you only talked
16:35:37 21 about --

16:35:37 22 BY MR. MATTHEWS:

16:35:37 23 901 Q. So what this appears to me, sir,
16:35:39 24 is that it's a duplicate of what has already been
16:35:42 25 marked as page 5.

16:35:43 1 A. Yeah. I think it's -- there's
16:35:47 2 only one Godfrey call, so it's a duplicate.

16:35:49 3 902 Q. So what I'm going to do, just for
16:35:51 4 the record, is I'm going to rip this page out
16:35:53 5 because we've already got it, and it's a good thing
16:35:56 6 we haven't numbered it already.

16:35:58 7 So, after taking this out, what I now
16:36:00 8 have is June 4th, 2012 "Stransky Call".

16:36:04 9 Do you have that?

16:36:05 10 A. Yeah.

16:36:06 11 903 Q. Go ahead, sir.

16:36:09 12 A. "Problematic. Letter on
16:36:11 13 agency. Not good. Exposes Minister
16:36:15 14 - puts him in awkward position. Not
16:36:20 15 care if true. Hear my frustration.
16:36:27 16 Why ORC not call OLG. Told him
16:36:32 17 unrealistic to expect us to call and
16:36:37 18 ask why not involved. Told him
16:36:40 19 letter not mean to embarrass
16:36:43 20 Minister or government - could have
16:36:45 21 if wanted. Told him problem is if
16:36:52 22 FOI comes re any discussion between
16:36:55 23 OLG and ORC. Told him needs to look
16:37:00 24 at situation...ORC..."

16:37:04 25 904 Q. "...from ORC..."

16:37:05 1 A. "...from ORC. Staff knows ORC
16:37:09 2 sidelined. Staff knows ORC not
16:37:10 3 consulted by OLG. Staff knows many
16:37:14 4 to lose jobs." [Now] ORC never
16:37:17 5 embarrassed government. Letter
16:37:21 6 carefully not aimed at government
16:37:22 7 with unsaid. Hopeful OLG to build
16:37:27 8 connection to ORC. Were
16:37:31 9 communications prior re [around
16:37:33 10 ability] and all stopped with
16:37:36 11 announcement."
16:37:37 12 905 Q. I think you said "around ability."
16:37:37 13 Did you mean --
16:37:39 14 A. "Accountability". I mean
16:37:40 15 "accountability".
16:37:41 16 906 Q. So this was a telephone call you
16:37:43 17 had with Mr. Stransky after had you transmitted
16:37:45 18 this letter to Mr. Godfrey?
16:37:46 19 A. Correct.
16:37:47 20 907 Q. And this was one of the animated
16:37:51 21 discussions that you had with Mr. Stransky; fair?
16:37:55 22 A. I wouldn't call it "animated".
16:37:57 23 908 Q. You saw an e-mail I put to you
16:38:00 24 earlier--
16:38:01 25 A. Yes.

16:38:01 1 909 Q. --where they were describing it as
16:38:03 2 "animated"?

16:38:03 3 A. All I can tell you is what I
16:38:06 4 perceived. He was not happy. He was upset. But
16:38:12 5 "animated"? I don't -- might have been. I don't
16:38:14 6 recall.

16:38:14 7 910 Q. And when you read in about five
16:38:17 8 lines down, "not care if true," did I understand
16:38:24 9 that to mean that Mr. Stransky told you, 'I don't
16:38:25 10 care if your letter to Mr. Godfrey was true'?

16:38:27 11 A. That's correct.

16:38:28 12 911 Q. His concern was that it exposed
16:38:31 13 Minister Duncan, or put Minister Duncan in an
16:38:34 14 awkward position?

16:38:35 15 A. Correct.

16:38:36 16 912 Q. And you told him the letter wasn't
16:38:39 17 meant to embarrass Minister Duncan or the
16:38:43 18 government; correct?

16:38:43 19 A. Correct.

16:38:44 20 913 Q. But his concern was that if there
16:38:53 21 was a Freedom of Information request, the fact that
16:38:56 22 you had sent that letter would now be a public
16:38:58 23 record that would be captured and would have to be
16:39:01 24 disclosed?

16:39:02 25 A. I'm presuming as such.

16:39:03 1 914 Q. Is that what you understood it to
16:39:05 2 mean when he told you that?

16:39:06 3 A. He didn't say that, but I'm going
16:39:08 4 to presume as much. Or a leak.

16:39:11 5 915 Q. And there was one portion, perhaps
16:39:26 6 you could help me find it again. It was where I
16:39:32 7 took you to say something to the effect of --

16:39:35 8 A. Accountability?

16:39:36 9 916 Q. No, no. That your letter wasn't
16:39:38 10 supposed to be directed at Ontario; it was supposed
16:39:41 11 to be directed at the OLC -- the Ontario Lottery
16:39:47 12 and Gaming Corporation.

16:39:48 13 A. Are you talking about:

16:39:50 14 "Why ORC not call OLG. Told
16:39:51 15 him unrealistic to expect us to call
16:39:53 16 and ask why not involved. Told him
16:39:57 17 letter not meant to embarrass
16:40:02 18 Minister or government - could have
16:40:08 19 if wanted. Told him problem is if
16:40:11 20 FOI comes re any discussion between
16:40:13 21 OLG and ORC. Told him needs to look
16:40:14 22 at situation from [the] ORC."

16:40:14 23 917 Q. I think it's towards the end where
16:40:16 24 it appears to say --

16:40:18 25 A. "Letter carefully not aimed at

16:40:21 1 government with unsaid. Hopeful OLG
16:40:24 2 to build connection to ORC."
16:40:27 3 918 Q. So just pausing there.
16:40:28 4 When you say, "Letter carefully not
16:40:31 5 aimed at government," is that because your
16:40:33 6 understanding, at least as of June 4th, 2012, was
16:40:37 7 that you understood that it was OLG's decision to
16:40:39 8 cancel the Slots at Racetracks Program?
16:40:42 9 A. Correct.
16:40:43 10 919 Q. All right. So that will be page
16:40:47 11 16.
16:40:51 12 Page 17, or the next page I have is
16:40:55 13 "Friday, June 24, Call with Blair Stransky".
16:40:59 14 A. Yeah. Ready?
16:41:04 15 920 Q. Yes.
16:41:04 16 A. "Told me Finance working with
16:41:07 17 OMAFRA. Developing ideas and
16:41:10 18 determining how government can
16:41:11 19 afford. Expect announce about two
16:41:15 20 weeks. Told him our two plans,
16:41:19 21 [transition] 1. Transition.
16:41:22 22 "2. Sustainability. Problem
16:41:24 23 re number 2.
16:41:25 24 "(a) how government expect
16:41:27 25 industry plan when OLG process not

16:41:30 1 likely complete 'til 2013;

16:41:33 2 "(b) futility expect OHRIA have

16:41:36 3 plan with industry support;

16:41:38 4 "(c) why OHRIA hired Tory

16:41:45 5 (Sadinsky) and government turned

16:41:48 6 down other report, and have lobbyist

16:41:51 7 who also represents MGM;

16:41:55 8 "(d) industry needs certainty;

16:42:00 9 "(e) breeders need help now;

16:42:02 10 "(f) told him not hard for plan -

16:42:07 11 could do it on back of envelope

16:42:09 12 quickly;

16:42:11 13 "(g) [unfortunate ORC staff

16:42:17 14 left]..."

16:42:17 15 No.

16:42:17 16 "...unfortunate ORC staff best

16:42:23 17 that can do it;

16:42:25 18 "(h) reminded him for government

16:42:28 19 dollars if want it to work."

16:42:29 20 921 Q. Just on that point, you said,

16:42:32 21 "reminded him..."?

16:42:34 22 A. Sorry.

16:42:35 23 "Reminded need for government

16:42:37 24 dollars if want it to work."

16:42:40 25 922 Q. Okay. Below that?

16:42:44 1 A. "Asked if government run
16:42:45 2 independent check on OLG numbers.
16:42:48 3 "No. Comfortable.
16:42:51 4 "Informed him of supply and
16:42:52 5 demand realities - used U.S.
16:42:55 6 examples.
16:42:57 7 "Told me government wants
16:43:00 8 revenues near urban and not in
16:43:03 9 rural.
16:43:03 10 "Asked for Radan's contact
16:43:03 11 info."
16:43:03 12 --- (Court reporter appeals.)
16:43:03 13 THE WITNESS: Redan's (sic),
16:43:03 14 R-e-d-a-n-apostrophe-s, the owner.
16:43:22 15 "[Met with Roberts...] Met
16:43:24 16 with Robertshaw."
16:43:24 17 This is -- this is another appointment,
16:43:27 18 so it's not germane.
16:43:29 19 "Told him like to Ann (ph) fill
16:43:32 20 current and Robertshaw next.
16:43:33 21 "Need extend Donnelly 'til
16:43:36 22 October/November.
16:43:37 23 "Am doing search for vice-chair
16:43:39 24 but not easy.
16:43:40 25 "May meet on Thursday."

16:43:42 1 923 Q. And then there appears to be a
16:43:44 2 second page to these notes.
16:43:45 3 A. Yes.
16:43:46 4 924 Q. Okay.
16:43:47 5 A. "He is talking about other
16:43:49 6 tracks - met with WEG and WF [is
16:43:52 7 Western Fair].
16:43:54 8 "Told him ORC not consulted -
16:43:57 9 said he has heard that.
16:43:58 10 "Told him now able to send some
16:44:01 11 info back up but limited.
16:44:03 12 "Told him tell government
16:44:05 13 [that] if there's to be racing, need
16:44:08 14 two numbers:
16:44:09 15 "1. ...need for [for] track
16:44:13 16 to race."
16:44:15 17 925 Q. Just pausing there.
16:44:15 18 It looks like --
16:44:17 19 A. "Dollars [dollars] needed for a
16:44:18 20 track to race.
16:44:20 21 "2. Dollars needed for purses
16:44:23 22 to incent owners to buy and race.
16:44:26 23 " Told me not see how Mohawk
16:44:29 24 survives. If him retract to
16:44:32 25 Woodbine but WEG may see different.

16:44:37 1 "Told...OLG lowballing offers.

16:44:40 2 "Great Canadian and..."

16:44:43 3 And I've got "Cdn" but that means Great

16:44:43 4 Canadian.

16:44:49 5 "...and WEG will get 'fair'

16:44:51 6 deal on OLG out as of March 31.

16:44:54 7 Told me they can legally do it.

16:44:56 8 Hamilton supporting Flam," is

16:44:59 9 Flamboro.

16:45:00 10 "Told him RSC (sic) help where

16:45:05 11 it can..."

16:45:06 12 926 Q. ORC?

16:45:07 13 A. "...ORC help where it can but

16:45:12 14 we are limited.

16:45:12 15 "Told Great Canadian wrote off

16:45:17 16 58-million."

16:45:18 17 927 Q. Okay. So let's make these two

16:45:20 18 pages 17 and 18. I just have a couple of questions

16:45:23 19 about that, sir.

16:45:26 20 On the first page, which we just put as

16:45:28 21 page 17, it records:

16:45:31 22 "Asked if government run

16:45:32 23 independent check on OLG's numbers."

16:45:35 24 And it appears that Mr. -- it appears

16:45:40 25 that that was a question that you asked

16:45:41 1 Mr. Stransky?

16:45:41 2 A. Correct.

16:45:41 3 928 Q. And it appears that Mr. Stransky

16:45:44 4 answered, "No. Comfortable"?

16:45:47 5 A. Yes.

16:45:47 6 929 Q. And so, do I understand that mean

16:45:50 7 that Mr. Stransky told you, no, the government had

16:45:53 8 not run an independent check on OLG's numbers?

16:45:56 9 A. Correct.

16:45:56 10 930 Q. And that the government continued

16:45:58 11 to be comfortable with the numbers they were using?

16:46:00 12 A. Correct.

16:46:15 13 931 Q. The next page I have doesn't

16:46:17 14 appear to be dated, but it's entitled "Memo to File

16:46:20 15 meet Breeders."

16:46:20 16 A. Yes.

16:46:20 17 "Meeting request from Bill

16:46:20 18 O'Donnell.

16:46:22 19 "Anna Meyer, David Heffering,

16:46:25 20 Larry Drysdale and Bill O'Donnell.

16:46:29 21 Expressed dire straits of breeders.

16:46:31 22 Expressed concern government not

16:46:33 23 aware their situation. Concern

16:46:36 24 their letter not read at Finance.

16:46:39 25 Told them ORC not involved. Told

16:46:42 1 them ORC not aware new government
16:46:45 2 policy 'til day before announcement
16:46:50 3 via phone. Committed to get letter
16:46:52 4 in front of Finance. Told them they
16:46:54 5 should look at way to ensure HIP
16:46:58 6 continue and communicate that ASAP
16:47:02 7 to customers.

16:47:02 8 "Explained OLC not involved in
16:47:12 9 program past end of slots. They
16:47:12 10 need identify...who administer HIP."

16:47:15 11 932 Q. So, towards the end of what you
16:47:17 12 just read, sir, there was a reference of
16:47:20 13 "communicate that ASAP to customers."

16:47:23 14 Which customers are you referring to?
16:47:26 15 Are you referring to customers of the breeders?

16:47:28 16 A. Correct.

16:47:29 17 933 Q. So, people who would, for example,
16:47:33 18 board horses at their farms or invest in Ontario
16:47:37 19 breeding operations?

16:47:38 20 A. Or buy their yearlings.

16:47:46 21 934 Q. I understand.

16:47:47 22 And just in terms of where you've
16:47:49 23 placed this memo in the sequence of documents
16:47:51 24 you've provided to us, have you placed it because
16:47:53 25 you think this is where this meeting occurred

16:47:56 1 chronologically in the sequence?

16:47:57 2 A. No. I place it there just to the
16:48:00 3 end of the Stransky -- just to not interfere with
16:48:03 4 the Stransky memos.

16:48:03 5 935 Q. I see.

16:48:03 6 Do you recall approximately when --
16:48:05 7 obviously, this a memo after the announcement was
16:48:09 8 made.

16:48:09 9 A. It's after the announcement, but I
16:48:12 10 think before the announcement of the three-person
16:48:14 11 committee.

16:48:15 12 936 Q. And when you see you're recording
16:48:19 13 "express dire straits of breeders"...?

16:48:23 14 A. That's they, the individuals,
16:48:28 15 meaning expressed the dire straits of the breeders.

16:48:29 16 937 Q. And did you form the view as to
16:48:33 17 whether or not it was these individuals expressing
16:48:35 18 personally that they were in dire straits, or were
16:48:39 19 they expressing it on behalf of a broader group or
16:48:43 20 both?

16:48:43 21 A. A broader group, and themselves,
16:48:46 22 as well.

16:48:47 23 938 Q. Okay. This is what we referred to
16:48:49 24 earlier, they had sent a letter, they weren't sure
16:48:52 25 they'd reached the Ministry of Finance, you said

16:48:52 1 you'd see what you could do to get the letter to
16:48:54 2 Finance?

16:48:55 3 A. And I did call Mr. Stransky who
16:48:56 4 confirmed that it had been received.

16:48:58 5 939 Q. Okay. So I will make that page
16:48:58 6 19.

16:49:06 7 Next page, it appears to me to be
16:49:12 8 4/17/12, it looks like April 17th, 2012, "Memo to
16:49:16 9 File - Warren Armstrong"?

16:49:17 10 A. Yeah. There's a bunch of them
16:49:20 11 here, meetings I had with racetracks operators.
16:49:24 12 I'm not sure how important they are to you, but
16:49:28 13 I'll quickly read through them. I don't think
16:49:32 14 there's anything --

16:49:32 15 940 Q. Sure. Thank you.

16:49:33 16 A. So this is Warren Armstrong. Just
16:49:35 17 for the record, that's Rideau Carleton. He's the
16:49:37 18 owner of Rideau Carleton.

16:49:38 19 --- (Court reporter appeals.)

16:49:42 20 THE WITNESS: I'm just telling you,
16:49:43 21 he's the owner of Rideau Carleton.

16:49:45 22 BY MR. MATTHEWS:

16:49:56 23 941 Q. Rideau Carleton.

16:49:47 24 MS. MACHADO: Rideau.

16:49:47 25 BY MR. MATTHEWS:

16:49:48 1 942 Q. Okay. Go ahead.

16:49:49 2 A. "Had two other employees with

16:49:51 3 him. Told purpose [to] see where RC

16:49:54 4 [Rideau Carleton] is re future

16:49:54 5 intent. Opinion, RC biggest

16:49:59 6 commitment to race of private

16:50:01 7 tracks. Told ORC not involved -

16:50:05 8 hearing things. Tracks being

16:50:06 9 offered 1 to 2 per cent rent. For

16:50:09 10 RC not even cover property tax bill.

16:50:12 11 "Discussed tracks working

16:50:14 12 together. Asked if [it] could work

16:50:16 13 with other tracks planning to race.

16:50:18 14 Said not aware what other for-profit

16:50:21 15 tracks planning. Expected

16:50:23 16 [Western]..."

16:50:23 17 And I'm going to use the full name

16:50:23 18 here.

16:50:25 19 "...Western Fair..."

16:50:28 20 943 Q. "...Grand River..."?

16:50:31 21 A. "...Grand River and WEG would

16:50:32 22 want to race given their structure

16:50:36 23 existing to race."

16:50:38 24 Again, referring to their non-profit

16:50:40 25 status.

16:50:41 1 "Told RC listening - meet with
16:50:44 2 OLG next week."
16:50:45 3 944 Q. Okay. So, I take from what you
16:50:47 4 have just read in here that this is at the point in
16:50:51 5 time where OLG is initiating negotiations with the
16:50:56 6 racetracks and trying to negotiate rent to pay them
16:50:58 7 after they stop sharing revenue with the
16:51:01 8 racetracks.
16:51:02 9 Is that fair?
16:51:03 10 A. Correct.
16:51:04 11 945 Q. Okay. That's page 20.
16:51:07 12 Next, I have "Memo to File, Sue Leslie
16:51:09 13 Meeting"--
16:51:09 14 A. Yeah.
16:51:09 15 946 Q. --which appears to be April 19th,
16:51:12 16 2012.
16:51:12 17 A. I think that's right.
16:51:14 18 And for the record, Sue Leslie, besides
16:51:17 19 being the President of the HPPA, was also heading
16:51:21 20 up OHRIA.
16:51:22 21 947 Q. And had for quite a while;
16:51:24 22 correct?
16:51:24 23 A. I'm not sure how long she had.
16:51:29 24 "Purpose to see what OHRIA
16:51:30 25 doing. Told OHRIA to develop plan

16:51:32 1 for future. Looking at Strategic
16:51:36 2 Equine to develop. Looking at
16:51:38 3 mediator to get industry support.
16:51:40 4 Told government tell her 5/6 tracks
16:51:44 5 in future. Tells me government not
16:51:47 6 understand what it had done. Told
16:51:48 7 her government not consulting with
16:51:50 8 ORC.

16:51:50 9 "Questioned her how expect
16:51:53 10 initial support for plan that sees
16:51:56 11 many of them out of business. Told
16:51:58 12 her unfair to her - could be fatal
16:51:59 13 to her. Offered to bring John B..."
16:52:02 14 This is John Blakney, my executive
16:52:05 15 director.

16:52:05 16 "...to meet as has experience
16:52:09 17 in consultation/mediation."

16:52:10 18 948 Q. Then it appears that there was a
16:52:12 19 following meeting for the following April 24th,
16:52:15 20 2012?

16:52:15 21 A. Right.

16:52:15 22 "Reviewed situation again. JB
16:52:18 23 suggest [need government] need get
16:52:21 24 government involved in plan
16:52:23 25 develop...or pay for mediator. JB

16:52:27 1 agree unlikely have industry support
16:52:30 2 for plan, but Strategic Equine
16:52:35 3 possible to develop that plan. She
16:52:40 4 [reform] referenced as per earlier
16:52:44 5 meeting has 'smart' advisor lined up
16:52:47 6 to help with plan."

16:52:48 7 949 Q. So, do I understand what's
16:52:50 8 happening here in your discussions with Sue Leslie
16:52:54 9 is that there's the suggestion that there should
16:52:57 10 perhaps be a mediator to try and engage with the
16:53:00 11 government to see if there can be some sort of
16:53:04 12 resolution here, to sort of mitigate the fallout
16:53:10 13 from the decision that had been announced about a
16:53:13 14 month earlier?

16:53:14 15 A. No. I think we were, in this
16:53:17 16 case, we were talking about a mediator to try and
16:53:19 17 bring the different people in the industry together
16:53:23 18 to work, because as -- but I'm not 100 per cent
16:53:27 19 certain.

16:53:28 20 Time has slipped me by in this, so it
16:53:31 21 could be that or it could be the government had
16:53:34 22 asked OHRIA to come up with a plan.

16:53:36 23 We had identified very early on the
16:53:39 24 likelihood of that happening was slim or none
16:53:43 25 because people were going to be asked to support a

16:53:45 1 plan that puts them out of business.

16:53:48 2 So, the suggestion was maybe you need a
16:53:51 3 mediator to see if you can find some common ground.

16:53:54 4 950 Q. And the sides mean the different
16:53:55 5 segments of the horse racing industry?

16:53:58 6 A. Correct.

16:53:58 7 951 Q. Okay. That's page 21.

16:53:59 8 The next page I have, sir, appears to
16:54:01 9 be April 30th, 2012, "Memo to File meet Ian
16:54:07 10 Fleming."

16:54:07 11 A. Yes. Ian Fleming is the General
16:54:10 12 Manager of Clinton Raceway.

16:54:16 13 952 Q. Okay.

16:54:17 14 A. "Told him meet [to see -- to]
16:54:20 15 learn what happening. Told Clinton
16:54:22 16 will race in the future because has
16:54:25 17 \$1-million. Will accept deal with
16:54:28 18 OLG to preserve local jobs. Told
16:54:32 19 him government [working for] waiting
16:54:34 20 for plan.

16:54:35 21 "Discuss OHRIA issues develop
16:54:37 22 plan with industry support. [Told]
16:54:43 23 about ability of tracks to race
16:54:46 24 current allotted dates [due to
16:54:49 25 public] due to possible horse supply

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16:55:00 5
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16:55:11 8
16:55:14 9
16:55:14 10
16:55:16 11
16:55:19 12
16:55:22 13
16:55:26 14
16:55:30 15
16:55:32 16
16:55:38 17
16:55:44 18
16:55:47 19
16:55:50 20
16:55:52 21
16:55:55 22
16:55:57 23
16:56:02 24
16:56:08 25

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issues."

I will explain that.

We were concerned about, at that time, that people were already starting to get rid of horses. The expectation was there would be no racing post-March 31, so while your horse still has some value, let's get rid of it, which would have a direct impact on racing before the end of the Slots Program.

Q. So, this is because in April of 2012, we're still in breeding season; correct?

A. It's still in breeding season, but it has more to do with actual racing of the horses. It's the horse racing going on. It's both, but more -- more this discussion here is more about horse supply is there -- there were "X" amount of race dates allotted for the rest of the year. You need "Y" number of horses to put those races on.

If people start dispersing because they're going to get out of the business or at least downsize, and if you had good horses, there were markets for them in other jurisdictions outside Ontario, mostly in the States, there would be an exodus of horses and that would inhibit the ability for racing to go on here in Ontario.

16:56:10 1 954 Q. I see. Okay. I understand.
16:56:12 2 So back to the notes then.
16:56:13 3 A. Okay.
16:56:13 4 "Confirmed ORC not involve re
16:56:16 5 government decision and not involved
16:56:17 6 in planning for future.
16:56:19 7 "Said concern about racing
16:56:21 8 allotted because of horse supply and
16:56:23 9 heard Hiawatha Racing raising cost
16:56:26 10 issues because of loss of shared
16:56:29 11 expense with OLG.
16:56:33 12 "Said had heard Henderson..."
16:56:35 13 And Henderson is the owner of Hiawatha
16:56:39 14 Raceway.
16:56:41 15 "...wants to continue racing
16:56:43 16 post slots as he tell
16:56:44 17 administration. Ian says not
16:56:47 18 believe."
16:56:48 19 955 Q. I see. Okay. That's page 22.
16:56:53 20 And I see a theme that appears through
16:56:56 21 a number of the notes we've gone through earlier
16:56:58 22 when you're speaking with participants in the
16:57:00 23 industry, is that you're telling them that it was
16:57:03 24 not the ORC's decision and you were not involved in
16:57:07 25 the decision?

16:57:07 1 A. Yes. Somewhere, you will see in
16:57:09 2 there that people were referring to us as the
16:57:11 3 "idiot son", blaming us for the decision to end the
16:57:18 4 Slot Program.

16:57:18 5 956 Q. All right. The next page I have
16:57:20 6 looks like "May 2012, IN CAMERA".

16:57:24 7 Do I take this to be what was discussed
16:57:28 8 at an in camera session of the ORC?

16:57:31 9 A. Correct. Self-explanatory.

16:57:33 10 957 Q. Okay. Maybe we -- I see that
16:57:38 11 you've put in some headings here.

16:57:42 12 "Appointments" have nothing to do with
16:57:44 13 this case.

16:57:46 14 What does "Transition" refer to? Is
16:57:48 15 that transition of people on and off the Commission
16:57:51 16 or --

16:57:52 17 A. I need to find it. Just a minute.

16:57:54 18 958 Q. Oh. Sorry.

16:57:56 19 MS. MACHADO: Looks like this.

16:57:58 20 (Indicating)

16:57:58 21 MR. ROSENBERG: Can we go off the
16:57:59 22 record for that moment?

16:58:01 23 MR. MATTHEWS: Yeah.

16:59:45 24 --- (Discussion off the record.)

16:59:48 25 MR. MATTHEWS: Back on, please.

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17:00:30 18
17:00:32 19
17:00:34 20
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BY MR. MATTHEWS:

959 Q. So we're looking at the next page we have, which is "May 2012, IN CAMERA".

And I think you've confirmed, this is your handwritten notes from an in camera meeting of the ORC board around May 2012; correct?

A. Correct.

960 Q. Can you just take us to the portions of these handwritten notes that are germane to the Slots at Racetrack Program, sir?

A. Okay. So:

"Industry - transition.

"Work in progress. Government identifying ideas and dollars. No dollars to tracks except remedial if not operate.

"Sustainability - OHRIA announcement. Sadinsky/Martin/Mitchell. Plan will not require OHRIA support. One committee member not aware \$150,000 request. Told expenses should be minimal. Suggest ask for budget before formal okay. Unfortunate ORC best to develop plan.

17:00:54 1 "Easy to do once at track and
17:00:56 2 purse levels. Government need to
17:00:59 3 invest. Believe willing. No proof
17:01:01 4 but no deniability. Leads one to
17:01:04 5 believe exercise is about a new
17:01:07 6 deal. Concern about liability and
17:01:10 7 need to keep ORC clean.

17:01:20 8 "Frustration - understand how
17:01:22 9 some of you may feel. Each has to
17:01:24 10 make own decision. Deliberately not
17:01:28 11 talked collectively 'til now."

17:01:30 12 961 Q. Just pausing there.

17:01:32 13 Just for the benefit of the record, the
17:01:35 14 copy that I am going through with you, Mr. Seiling,
17:01:38 15 and which is going to be marked as the exhibit, a
17:01:42 16 couple of times seems to have words cut off on the
17:01:46 17 right-hand side of the page.

17:01:47 18 So the fact that we're doing this
17:01:50 19 exercise will be useful to us because we can't see
17:01:54 20 all of the words.

17:01:54 21 A. That's -- I have got the original.
17:01:54 22 That's it.

17:01:54 23 962 Q. Okay. Is there anything else in
17:01:59 24 this about the issues germane here?

17:01:59 25 A. No.

17:01:59 1 963 Q. And when you say:
17:02:06 2 "Concern about liability and
17:02:06 3 need to keep ORC clean."
17:02:06 4 What was that a reference to, sir?
17:02:06 5 A. I think before, earlier, I
17:02:12 6 reference my comment, I suspect, as I would recall,
17:02:12 7 about the ORC unwilling to be the allocator of who
17:02:20 8 gets money; who doesn't.
17:02:22 9 964 Q. And what's the reference to
17:02:25 10 "liability", though, sir?
17:02:29 11 A. Well, if the -- the concern was
17:02:31 12 if -- if the ORC was to say, 'Track 1 is going to
17:02:36 13 get money; Track 2 doesn't,' Track 2 could turn
17:02:41 14 around and commence a lawsuit as to, 'Why did you
17:02:43 15 pick that track and not this track?'
17:02:44 16 965 Q. And the reference right above it:
17:02:46 17 "Leads one to believe exercise
17:02:49 18 is about a new deal."
17:02:50 19 Does that go back to what you were
17:02:52 20 suggesting earlier, which you thought that perhaps
17:02:53 21 one of the purposes of this exercise was for OLG to
17:02:56 22 effectively get itself a new deal that differed
17:02:59 23 from the 20 per cent revenue-sharing arrangement?
17:03:06 24 A. Correct.
17:03:07 25 --- (Court reporter appeals.)

17:03:07 1 MR. MATTHEWS: ...the 20 per cent
17:03:08 2 revenue-sharing arrangement, and I believe the
17:03:08 3 witness agreed with that.
17:03:10 4 THE WITNESS: Correct.
17:03:10 5 BY MR. MATTHEWS:
17:03:10 6 966 Q. Okay. The next page I have, sir,
17:03:12 7 looks like May 3rd, 2012, "Memo to File, Ted
17:03:18 8 Clarke --"
17:03:18 9 MS. MACHADO: I think that's the one.
17:03:18 10 BY MR. MATTHEWS:
17:03:18 11 967 Q. "...Ted Clarke --"
17:03:18 12 A. Yeah.
17:03:18 13 968 Q. "...Ted Clarke Meeting."
17:03:19 14 A. Yeah.
17:03:23 15 969 Q. Now...
17:03:24 16 A. "Meet, see when Grand River re
17:03:29 17 future and when he see things [give]
17:03:36 18 given hear tracks..." [As read.]
17:03:47 19 I'm going to paraphrase here.
17:03:49 20 Talked about OHRIA and the problems Sue
17:03:55 21 Leslie was having.
17:03:55 22 I can't read my own -- I can't read it
17:03:56 23 all, so you can...
17:04:02 24 This is... "Used difficult" --
17:04:06 25 something "difficult for OHRIA", uh, and "fears to

1 Sue Leslie".

2 "Tell ORC not involved and
3 unaware government decisions. Told
4 meet see when he thinks... Told
5 meet to see where he thinks things
6 are. He's dejected still as to why.
7 Told him need to think this is an
8 opportunity. Government wants plan
9 for future. ORC can't do.
10 Government is saying public less
11 tracks. Not know what numbers
12 except heard 5 to 6? Talked about
13 OHRIA doing plan and difficulty it
14 has.

15 "Talk re Sue Leslie and Strategic
16 Equine to help. He raised possible
17 reasons for government decision
18 (OHRIA/WEG). Told him don't know
19 but something appears [has
20 triggered] as triggered.

21 "Discussed difficulty planning
22 when OLG issue not settled. Discuss
23 breeders' problems and need for
24 stable horse supply.

25 "Told me discussion with

17:05:21 1 non-profit. Told him can understand
17:05:23 2 their commonality. Told him believe
17:05:26 3 government now better understanding
17:05:27 4 of implications which can be an
17:05:29 5 opportunity.

17:05:31 6 "Told him believe two key numbers
17:05:33 7 need identified:
17:05:34 8 "(a) revenue needed for tracks to
17:05:37 9 race;
17:05:37 10 "(b) revenue needed for purses so
17:05:41 11 owners [can] race horses.
17:05:41 12 "Discussed breeders' current
17:05:45 13 situation and role for him (sic)
17:05:47 14 supply."

17:05:47 15 970 Q. "...role for horse supply"?

17:05:49 16 A. For -- oh. I mean "...for horse
17:05:52 17 supply."

17:05:52 18 971 Q. At this time in May 3rd, 2012, and
17:05:56 19 breeders' current situation, this is prior to the
17:05:59 20 Horse Racing Industry Transition Panel being
17:06:02 21 appointed; correct?

17:06:02 22 A. Correct.

17:06:03 23 972 Q. And so, at this juncture, as far
17:06:07 24 as the breeders are concerned, there is no
17:06:10 25 structure or process in place; just the

17:06:13 1 announcement that come March 31, 2013, there will
17:06:18 2 be no more racing?
17:06:19 3 A. Correct.
17:06:20 4 973 Q. Or no more --
17:06:21 5 A. No more Slot Program.
17:06:21 6 974 Q. -- sharing of revenue.
17:06:23 7 A. No more Slots Program.
17:06:23 8 975 Q. All right.
17:06:27 9 When Ted Clarke told you, "He is
17:06:30 10 dejected still as to why," is that a reference to
17:06:34 11 he is dejected as to why the government decided to
17:06:37 12 do this?
17:06:37 13 A. Yes.
17:06:38 14 976 Q. "This" being cancelling the Slots
17:06:41 15 Program?
17:06:41 16 A. Yes. And what Grand River's
17:06:43 17 future may or may not be.
17:06:45 18 MS. MACHADO: Sorry, sir. May I see
17:06:46 19 the original for just a moment?
17:06:48 20 Part of this is cut off on our copy, so
17:06:51 21 I'm just looking at it for a second.
17:06:54 22 BY MR. MATTHEWS:
17:06:55 23 977 Q. So, this is page 24.
17:06:56 24 The next page I have looks like it's
17:06:59 25 May 7th, 2012, "Memo to File Meet[ing] with Bill

17:07:03 1 O'Donnell".

17:07:04 2 A. Yes.

17:07:05 3 978 Q. Okay.

17:07:07 4 A. Explanation: Bill O'Donnell is

17:07:10 5 the head of COSA.

17:07:11 6 "Meet to see where COSA stands.

17:07:14 7 Told possible move to four days at

17:07:16 8 Mohawk to help. Told meet with

17:07:18 9 OHHA, discuss possible new dollar

17:07:23 10 deals [and if on web next] and it on

17:07:26 11 web next day and won't work with

17:07:28 12 them again because not trustworthy.

17:07:32 13 Told they are working on some plan.

17:07:34 14 Told not see how OHRIA can do plan

17:07:37 15 with industry support."

17:07:39 16 979 Q. And this last point about OHRIA

17:07:42 17 doing a plan with industry support, this goes back

17:07:45 18 to what we were discussing earlier about OHRIA

17:07:48 19 would be asking people to sign on to a plan that

17:07:51 20 would put some of them out of business; correct?

17:07:53 21 A. Correct.

17:07:55 22 980 Q. Okay. This is page 25.

17:08:03 23 Next page I have looks like another May

17:08:06 24 7th, 2012, "Memo to File Hugh Mitchell Meet[ing]."

17:08:11 25 Hugh Mitchell is Western Fair?

17:08:13 1 A. Yes.

17:08:28 2 "Meet..."

17:08:29 3 I can't read that.

17:08:30 4 "...understand track's need,

17:08:30 5 not meet fund. Concern how OHRIA

17:08:31 6 put Sue Leslie difficulty re need

17:08:34 7 for plan.

17:08:35 8 "Meet to see what he thinks of

17:08:36 9 situation as Western Fair and part

17:08:41 10 of board OHRIA.

17:08:44 11 "Discussed his interview -

17:08:48 12 Harold Howe re OHRIA not asked to do

17:08:51 13 plan.

17:08:51 14 "Told me non-profits meeting re

17:08:54 15 work[ing] together. Meeting later

17:08:57 16 that day with WEG but he had talked

17:09:01 17 with WEG.

17:09:03 18 "Asked if ORC could do plan.

17:09:05 19 "Told him no, government not

17:09:07 20 want...industry, and unlikely to

17:09:10 21 want.

17:09:12 22 "[Difficulty] discussed

17:09:12 23 difficulty (sic) position. Sue

17:09:15 24 Leslie is the head of OHRIA and

17:09:16 25 trying to get plan. Possibility of

1 Strategic Equine to assist plan
2 development.

3 "Told him government awaiting
4 plan from industry. No proof but
5 chance government might invest.
6 Talked difficulty with tracks having
7 common position because difficult
8 (sic) ownership structures.

9 "Reiterated need for industry to
10 bring plan to government. Told him
11 my view two key numbers:

12 "(a) revenue needed for a track
13 to race;

14 "(b) purse dollars needed to
15 incent owners to race horses."

16 981 Q. So at this juncture, we'll still
17 in May 2012.

18 What's your understanding of the
19 references that we've seen in a couple of these
20 notes now about Sue Leslie being in a difficult
21 position as head of -- head of OHRIA?

22 A. Well, she was -- OHRIA was asked
23 to bring forward a plan for the government post
24 March 31.

25 Based on the fact that there was only

17:10:23 1 supposed to be five or six tracks, she was asking
17:10:24 2 industry support from the industry for their own
17:10:25 3 demise.

17:10:26 4 982 Q. I see. So was it your
17:10:28 5 understanding, then, sir, that after this decision
17:10:29 6 gets announced in March 2012, and there's this
17:10:33 7 catastrophic effect on the industry, around May of
17:10:36 8 2012, the government is saying to the industry, 'if
17:10:39 9 you want to survive, we're going to look to you to
17:10:44 10 come up with a plan'?

17:10:44 11 A. Correct.

17:10:44 12 983 Q. Okay. All right. So that's page
17:10:47 13 26.

17:10:57 14 I next have May 8th, 2012, "Memo to
17:10:57 15 File Jamie Martin meeting," and this appears to be
17:10:57 16 a two-page note you've made.

17:10:57 17 A. Correct.

17:11:06 18 984 Q. Who's Jamie Martin?

17:11:06 19 A. Jamie Martin is a senior official
17:11:06 20 in charge of racing at Woodbine Entertainment.

17:11:11 21 985 Q. Okay.

17:11:12 22 A. "Meet to see what WEG doing as
17:11:15 23 it key for future for racing and
17:11:18 24 racetracks. Government awaiting
17:11:20 25 plan for future. No commitment but

17:11:22 1 think chance government might invest
17:11:24 2 in racing. Need for WEG to play
17:11:27 3 leadership role.

17:11:29 4 "He saw Mitchell interview -
17:11:32 5 agrees OHRIA unlikely to develop
17:11:35 6 plan for future and also a plan to
17:11:36 7 have industry support.

17:11:38 8 "Told me WEG looked at what it
17:11:40 9 could do for its future. Can race
17:11:40 10 Thoroughbreds. Standardbreds more
17:11:48 11 difficult but purse levels take big
17:11:50 12 hit. Told me OLG dealings to take
17:11:52 13 long time, and wish OLG invest
17:12:00 14 100-million to..."

17:12:03 15 I can't read -- that's r-e-something,
17:12:06 16 but --

17:12:06 17 986 Q. R-e-f; could it be "refurbish"?

17:12:08 18 A. I think "refurbish".

17:12:10 19 "Think WEG has some leverage.
17:12:12 20 Told me talking to Hugh Mitchell re
17:12:16 21 non-profits work together. Told him
17:12:19 22 ORC cannot help with planning.
17:12:22 23 Asked if fair to expect industry to
17:12:24 24 plan. Told him see problems because
17:12:27 25 ORC have done it all in past but

17:12:31 1 other industries have successfully
17:12:32 2 downsized.
17:12:33 3 "Told me government had no plan.
17:12:36 4 "Told him ORC not involved in
17:12:38 5 anything leading up. Aware of OLG
17:12:39 6 land based and because Fort Erie aid
17:12:44 7 of..."
17:12:46 8 987 Q. 40-million?
17:12:47 9 A. I think:
17:12:48 10 "...40-million still not
17:12:49 11 enough to keep it going and Hiawatha
17:12:52 12 and others..."
17:12:56 13 988 Q. "...to close"?
17:12:57 14 A. "...to close"? No, it's not --
17:13:00 15 or:
17:13:00 16 "...close casino. Two tracks
17:13:04 17 at risk.
17:13:08 18 "Told he reconnect with
17:13:10 19 Mitchell re non-profit work
17:13:12 20 together. Told him seem they have
17:13:15 21 common purpose but not endorse or
17:13:17 22 leading only reason here is to
17:13:20 23 stress past position of need for WEG
17:13:25 24 to lead as it is the natural and
17:13:29 25 given its position in the industry,

17:13:31 1 any plan, be it OHRIA's or other
17:13:37 2 needed its," I think, "involvement."
17:13:43 3 "Discussed after he raised point
17:13:45 4 that in discussion to... to role for
17:13:54 5 future would not... Discussed role
17:13:57 6 for future would not have 5/8 track.
17:14:01 7 "Responded it would be nice to
17:14:07 8 include for-profit tracks, they
17:14:07 9 would need to figure out how.
17:14:15 10 "His remark about no 5/8 track
17:14:17 11 involvement leads to question, are
17:14:17 12 they further along with a plan than
17:14:17 13 am being told by him or Mitchell.
17:14:18 14 "Asked him if OR Program would
17:14:21 15 be worth looking at as a basis for
17:14:25 16 any plan.
17:14:25 17 "Reminded him ORC understanding
17:14:28 18 not involved in programs anymore -
17:14:30 19 he confirmed his understanding of
17:14:32 20 same and...raised plight of breeders
17:14:35 21 now.
17:14:37 22 "Discussed need for
17:14:39 23 confirmation of breed improvement
17:14:42 24 plan for future with no
17:14:44 25 resolution..."

17:14:46 1 I think that's -- I can't say what the
17:14:48 2 last word is.
17:14:49 3 989 Q. "Now" or "how"?
17:14:51 4 A. I think it's "now".
17:14:53 5 990 Q. Okay. And through a number of
17:14:55 6 these notes, I see you making the comment to
17:14:59 7 whoever you're having the meeting with that ORC is
17:15:03 8 unable to help with the planning anymore.
17:15:06 9 Is that because you had been told by
17:15:11 10 Mr. Stransky or others that going forward, the
17:15:14 11 ORC's role as it related to the economics of the
17:15:18 12 horse racing industry would come to an end?
17:15:21 13 A. Correct. We were to return to a
17:15:23 14 straight regulator role.
17:15:26 15 991 Q. Okay. So these are the next two
17:15:28 16 pages, pages 27 and 28; a meeting with Jamie
17:15:36 17 Martin.
17:15:37 18 Next I have is May 17th, 2012 Memo to
17:15:42 19 File.
17:15:44 20 A. "Barbour Meeting".
17:15:45 21 992 Q. "Barbour Meeting".
17:15:47 22 A. Barbour is the General Manager of
17:15:51 23 Flamboro Downs, Great Canadian Gaming.
17:15:54 24 993 Q. Yes. Okay.
17:15:55 25 A. "Explained purpose to meet to

17:15:58 1 try and assess what tracks may be
17:16:00 2 able to race post March 31.

17:16:02 3 "Understood ORC need to
17:16:03 4 restructure - once they get model,
17:16:06 5 easy to up or decrease body count.

17:16:09 6 "Told me at Flamboro need
17:16:13 7 \$2-million to stay open, \$4-million
17:16:17 8 to race cover costs. No racing
17:16:19 9 possible if government does not put
17:16:22 10 dollars in somehow.

17:16:23 11 "Sees possible 60 to 80 days at
17:16:26 12 Flamboro. 500 Standardbred in
17:16:35 13 Ontario total.

17:16:36 14 "Flamboro commission run at 6
17:16:36 15 per cent.

17:16:40 16 "Talked about breeding industry
17:16:42 17 problems. Told him efforts, meet
17:16:44 18 with breeders, need to keep alive.
17:16:48 19 Need for continuous -- continuance
17:16:50 20 of OSS, so have horse supply to
17:16:53 21 race. Talked deniability of
17:17:01 22 industry. If there was or was not
17:17:01 23 plan.

17:17:01 24 "He recognized at end of
17:17:02 25 current agreements 20/10/10 was too

17:17:04 1 rich and would have changed.

17:17:06 2 "He said if this is about

17:17:08 3 changing splits, there was easier

17:17:11 4 ways.

17:17:12 5 "I told him not think there was

17:17:14 6 a plan. Had heard this about being

17:17:17 7 pissed off.

17:17:19 8 "He know of OHHA issue and

17:17:23 9 McMeekin.

17:17:23 10 "Told him Ted tell me same."

17:17:30 11 I will give you a little backgrounder.

17:17:33 12 Ted McMeekin, he and/or his wife or

17:17:40 13 family owned a strip mall or some office space in

17:17:46 14 -- down in McMeekin's riding.

17:17:49 15 994 Q. Flamboro was his riding.

17:17:52 16 Was it in the Flamboro area? Is that

17:17:55 17 right?

17:17:55 18 A. Yeah. And, uh... And OHHA came

17:17:58 19 out and supported the candidate running directly

17:18:01 20 against McMeekin. And -- not McMeekin. I'm sorry.

17:18:05 21 The head of OHHA owned some property

17:18:08 22 and leased out the space to -- to the McMeekin's...

17:18:13 23 995 Q. ...opponent?

17:18:15 24 A. ...opponent.

17:18:16 25 996 Q. And is that what the "pissed off"

17:18:19 1 reference is to?

17:18:20 2 A. I believe that -- that's what I
17:18:22 3 was taking it as. That's the only conversation,
17:18:27 4 and I had that conversation quite some time ago.

17:18:28 5 997 Q. Can I just pause there because I
17:18:29 6 don't want to lose this point.

17:18:31 7 The announcement about the cancellation
17:18:34 8 of revenue sharing in March of 2012 followed a
17:18:37 9 provincial election that had happened in October of
17:18:39 10 2011; correct?

17:18:41 11 A. Correct.

17:18:42 12 998 Q. And so, this -- what you're
17:18:44 13 discussing with Mr. Barbour about, you know, the
17:18:49 14 OHHA issue and McMeekin, was this, to your
17:18:53 15 understanding, an issue that had sort of come up in
17:18:56 16 the course of the election in 2011, and that OHHA
17:19:00 17 and its land had been leased to the candidate
17:19:03 18 running against Mr. McMeekin in the 2011 election?

17:19:06 19 A. Well, that's -- I had heard that.
17:19:09 20 Whether that was true or not, I note Ted told me
17:19:13 21 about it. I don't think he was terribly upset, but
17:19:15 22 I do know that OHHA had been a constant complainer
17:19:20 23 about a whole bunch of things including the day
17:19:24 24 after I was appointed, they went in to try to get
17:19:26 25 me fired.

17:19:27 1 999 Q. Sorry. Give me that one more
17:19:28 2 time?

17:19:30 3 A. OHHA had been an outlier on a
17:19:32 4 whole bunch of things in the industry. For
17:19:35 5 example, the day after the government appointed me,
17:19:39 6 I could be out a day or two, but they went to the
17:19:43 7 government to see if they could get me fired.

17:19:45 8 1000 Q. Okay. And just so I'm clear what
17:19:48 9 you understood Mr. Barbour talking to you when he
17:19:52 10 said, "had heard this was about being pissed off,"
17:19:56 11 was it being suggested to you by Mr. Barbour that
17:20:00 12 perhaps one of the reasons for the decision to
17:20:02 13 cancel the revenue sharing was because the Liberals
17:20:06 14 were "pissed off"?

17:20:07 15 A. What I was referencing, two things
17:20:12 16 I'm aware of, and I have no way of knowing true or
17:20:16 17 not true. I just said I knew there were issues
17:20:18 18 with OHHA, and I knew that Mr. McMeekin had had an
17:20:22 19 issue with the head of OHHA, Ontario Harness Horse
17:20:34 20 Association.

17:20:36 21 1001 Q. And then you replied by saying:
17:20:38 22 "Told him Ted tell me same."

17:20:40 23 A. About the renting of the... But
17:20:42 24 again, I... It's my...
17:20:48 25 I took it as an example of OHHA's tone

17:20:56 1 deafness regarding political or politics, not that
17:21:00 2 he was so upset that he would do something
17:21:04 3 untoward.
17:21:05 4 1002 Q. Okay. So, if we can return to the
17:21:08 5 notes, then, right after, "Told him Ted tell me
17:21:15 6 same."
17:21:15 7 A. "He said OHHA needs to join
17:21:16 8 rest to do deal.
17:21:17 9 "Told him O'Donnell told me it
17:21:20 10 won't happen.
17:21:22 11 "OHHA wants to be on own.
17:21:31 12 "He said Whelan behind it all
17:21:34 13 and wondered if he realized
17:21:37 14 destructive results. Told me OHHA
17:21:39 15 talking about suing OLG and
17:21:43 16 government.
17:21:50 17 "Re OHRIA and plan he
17:21:53 18 recognized won't get support that
17:21:55 19 sees many out of business. He could
17:21:58 20 not vote for a plan that saw
17:21:59 21 Flamboro stop.
17:22:00 22 "He talked about RFI and he
17:22:04 23 told me just out. Told me track
17:22:18 24 could not bid to operate unless had
17:22:18 25 gaming partner.

17:22:18 1 "Told him don't understand
17:22:21 2 rationale. Great Canadian will bid
17:22:23 3 on their site and some others."
17:22:25 4 1003 Q. And then, the second page?
17:22:33 5 A. I've lost it here, so...
17:22:35 6 1004 Q. Oh, sorry. I don't actually think
17:22:36 7 there's a second page.
17:22:38 8 A. I don't think there's a second
17:22:39 9 page. I think that's it.
17:22:39 10 1005 Q. Okay. So just coming back to the
17:22:44 11 fifth point down where it says:
17:22:45 12 "Talked about breeding industry
17:22:47 13 problems and told him my efforts to
17:22:49 14 meet with breeders and need to help
17:22:52 15 keep them (sic) alive."
17:22:56 16 Did I get that right?
17:22:58 17 A. "Talked about breeding industry
17:22:59 18 problems - told him my efforts to
17:23:02 19 meet with breeders and need to keep
17:23:05 20 HIP alive."
17:23:06 21 1006 Q. "...HIP alive."
17:23:08 22 And in terms of what you're referring
17:23:11 23 to, your efforts to meet with breeders; that
17:23:13 24 includes the meeting with some of the breeders that
17:23:16 25 we've reviewed earlier in this package?

17:23:18 1 A. That was -- I was referencing that
17:23:20 2 meeting.

17:23:20 3 1007 Q. Okay.

17:23:21 4 A. I was not out, soliciting. It was
17:23:25 5 not our role.

17:23:26 6 1008 Q. Okay. Page 29.

17:23:28 7 What I have next is June 5th, 2012,
17:23:31 8 "O'Donnell Meeting".

17:23:33 9 A. Okay.

17:23:37 10 "Confirmed Sadinsky plan must
17:23:38 11 come back to OHRIA board. Said only
17:23:42 12 needs one extra vote as will have
17:23:44 13 three - Jamie, Sue, Nick.

17:23:48 14 "Told Sue Leslie on committee
17:23:50 15 with Hugh and Jamie. Told OHHA
17:23:54 16 planning class action suit against
17:23:55 17 OLG and government. Attempting to
17:23:57 18 raise \$800,000 to fund it.

17:24:00 19 "Told much uncertainty and
17:24:03 20 bitterness and can't provide answer.

17:24:06 21 "He recognized need to have
17:24:09 22 tracks issues resolved first as need
17:24:13 23 tracks to race.

17:24:14 24 "Told me McMeekin stated Ajax
17:24:16 25 to be in surviving tracks.

17:24:16 1 "Told him expecting
17:24:19 2 announcement on transition plan from
17:24:22 3 government - he seemed aware.
17:24:24 4 "Told him not know dollars or
17:24:26 5 details but expected broader (sic)
17:24:29 6 help."
17:24:29 7 1009 Q. "Broader help" or "breeders'
17:24:32 8 help" ?
17:24:32 9 A. Oh. "Breeders' help". Sorry.
17:24:34 10 1010 Q. Okay. Page 30.
17:24:40 11 Next, I have June 5, 2012, "Ted Clarke
17:24:43 12 meeting."
17:24:44 13 A. "He confirmed tracks not
17:24:46 14 working together. Siteholder
17:24:48 15 agreements prevents sharing of info.
17:24:50 16 He believes OLG violated agreement
17:24:58 17 as two five-year term automatic
17:25:02 18 renewal if no violation.
17:25:05 19 "Dilemma to sue or try reach
17:25:08 20 agreement. Told his concern. OLG
17:25:11 21 wants to move to a city site. OLG
17:25:14 22 told him must have agreement with a
17:25:16 23 casino partner by July 1 to be able
17:25:20 24 to bid.
17:25:20 25 "The timing is problematic for

17:25:22 1 him. He convinced Sadinsky plan
17:25:25 2 must come back to OHRIA board for
17:25:28 3 approval. Told me he and Ian had
17:25:30 4 done a future plan for industry.
17:25:33 5 Assigned \$7,500 for tracks except
17:25:36 6 WEG for operating. Object to ensure
17:25:39 7 non-profits operating, therefore
17:25:39 8 only have tracks who want to race
17:25:42 9 will go forward.

17:25:43 10 "Purse levels for Grassroots and
17:25:48 11 Signature down proportionate with
17:25:49 12 high at 50,000.

17:25:50 13 "Told him expecting
17:25:52 14 announcement on transition soon. He
17:25:55 15 seemed to be aware. Told him not
17:25:57 16 aware dollar amounts or exact
17:25:59 17 details, except good chance help for
17:26:01 18 breeders.

17:26:02 19 "Told me tough negotiations
17:26:04 20 with government re rent still to
17:26:08 21 come. 'Who blinks first.' Offers
17:26:11 22 to date meaningless."

17:26:14 23 1011 Q. And we've seen a couple of
17:26:16 24 references now to Sadinsky plan.
17:26:18 25 Was it your understanding that

17:26:20 1 Mr. Sadinsky was working with OHRIA to try and
17:26:23 2 formulate a plan to present to government?

17:26:25 3 A. Correct.

17:26:26 4 1012 Q. Okay. Page 31.

17:26:33 5 And the final page I have, June 7,
17:26:35 6 2012, "Mark" someone.

17:26:36 7 A. "Mark Frostad".

17:26:38 8 Mark Frostad was a Thoroughbred trainer
17:26:40 9 and a trustee of WEG, and also his wife sat on the
17:26:45 10 ORC Board.

17:26:46 11 1013 Q. Okay.

17:26:49 12 A. "Asked why WEG no leadership.

17:26:51 13 He expressed frustration WEG not

17:26:54 14 more active. Said aware numbers

17:26:57 15 WEG run for purse in future not

17:26:59 16 good. Said good stakes go south;

17:27:04 17 therefore, Ontario breeding

17:27:05 18 operations done.

17:27:06 19 "Told me WEG strategy based

17:27:09 20 from head person. Our other Board

17:27:11 21 Members want more action. Jim

17:27:13 22 Lawson told me OHHA..."

17:27:19 23 1014 Q. "Hired"?

17:27:20 24 A. "...hired Clayton Ruby to

17:27:22 25 represent in court action.

17:27:25 1 Expressed frustration with OHHA
17:27:27 2 actions and futility of suing group.
17:27:29 3 Need to work a deal.

17:27:36 4 "Recognition any deal with
17:27:38 5 government must go through WEG as it
17:27:39 6 is key to any deal."

17:27:47 7 1015 Q. Okay. That's page 32.

17:27:49 8 Did you become aware, sir, in the
17:27:50 9 aftermath of what happened that, in fact, OLG did
17:27:53 10 reach settlements with a number of racetracks and
17:27:56 11 paid out about \$80-million in compensation?

17:27:59 12 A. We heard that there were some
17:28:01 13 deals being reached. The exact details, I was not
17:28:04 14 aware.

17:28:06 15 MR. MATTHEWS: Okay. So thank you for
17:28:06 16 taking the time to go through those notes. It's
17:28:09 17 very helpful, sir.

17:28:11 18 So, subject to any undertakings,
17:28:13 19 advisements and refusals, those are my questions,
17:28:16 20 Mr. Seiling.

17:28:16 21 THE WITNESS: Thank you.

17:28:19 22 MR. MATTHEWS: Thank you very much.

17:28:20 23 MR. ROSENBERG: Just to be clear, there
17:28:22 24 have not been any undertakings or refusals or
17:28:27 25 questions taken under advisement, so those are your

17:28:31 1 questions, Counsel, right?

17:28:31 2 MR. MATTHEWS: Those are my questions.

17:28:34 3 MR. ROSENBERG: Thank you.

17:28:34 4 All right. Why don't we take a break

17:28:35 5 and I will move around.

17:28:41 6 ---Recess at 5:28 p.m.

17:35:58 7 ---On resuming at 5:35 p.m.

17:36:43 8 EXAMINATION BY MR. ROSENBERG:

17:36:45 9 1016 Q. Okay. Good evening, Mr. Seiling.

17:36:50 10 A. Good evening.

17:36:51 11 1017 Q. It is now about twenty to six and

17:36:53 12 I will be efficient as I can.

17:36:56 13 My name is Michael Rosenberg. I'm

17:36:59 14 counsel for the Ontario Lottery and Gaming

17:37:01 15 Corporation in this matter.

17:37:01 16 I think you told us earlier, you do not

17:37:03 17 remember when you first learned about this lawsuit?

17:37:07 18 A. No. I can't tell you exactly what

17:37:09 19 date I learned about it.

17:37:12 20 1018 Q. Do you remember from who you

17:37:13 21 learned about this lawsuit?

17:37:15 22 A. No. I couldn't tell you that

17:37:18 23 either. There had been rumours about various

17:37:23 24 lawsuits and when I left the industry, I left the

17:37:23 25 industry.

17:37:26 1 1019 Q. Right.

17:37:26 2 When were you first contacted by

17:37:26 3 counsel for the Plaintiffs in this lawsuit?

17:37:33 4 A. December sometime. I think after

17:37:35 5 I -- the first communication I had was from your

17:37:40 6 colleague here, Ms. Machado.

17:37:41 7 1020 Q. Ms. Machado.

17:37:42 8 And then you heard from counsel for the

17:37:43 9 Plaintiffs?

17:37:43 10 A. Well, I gather... "Heard"; you

17:37:51 11 mean contacted by mail? I got a subpoena with a

17:37:53 12 cheque and everything, and then heard from

17:37:57 13 Ms. Machado.

17:37:57 14 And I never heard from counsel for the

17:38:00 15 Plaintiffs 'til around -- around when it was going

17:38:02 16 to go to court, I think.

17:38:11 17 1021 Q. I see. So the first you --

17:38:11 18 A. So I had very limited contact with

17:38:11 19 them.

17:38:11 20 1022 Q. But the first you heard from the

17:38:12 21 Plaintiffs was you received a summons?

17:38:14 22 A. Yes.

17:38:14 23 1023 Q. Nobody asked you whether you

17:38:16 24 needed to be summonsed?

17:38:18 25 A. No.

17:38:18 1 1024 Q. All right. And I think what
17:38:18 2 you've told us is, you're willing to share your
17:38:21 3 evidence?
17:38:21 4 A. Correct.
17:38:30 5 1025 Q. So you get the summons from the
17:38:32 6 Plaintiffs, and I take it you then meet with the
17:38:34 7 Plaintiffs' counsel at some point?
17:38:37 8 A. I had a meeting with them, yes.
17:38:39 9 One meeting.
17:38:39 10 1026 Q. One meeting. About how long?
17:38:39 11 A. An hour or two. Not much
17:38:46 12 different than the phone call that I had with you,
17:38:49 13 give or take.
17:38:50 14 1027 Q. And we spoke for about an hour?
17:38:51 15 A. Over an hour-and-a-half.
17:38:53 16 1028 Q. Over an hour-and-a-half.
17:38:57 17 And again, no objection to giving your
17:39:10 18 evidence?
17:39:10 19 A. Correct.
17:39:11 20 And what I have said in the meeting --
17:39:12 21 the discussions with you and counsel for the
17:39:15 22 Plaintiffs are no different than what my evidence
17:39:19 23 has been so far, nor will it change on your
17:39:22 24 questions.
17:39:22 25 1029 Q. Understood.

17:39:28 1 They've told us about your significant
17:39:31 2 involvement in the horse racing industry.
17:39:34 3 A. Correct.
17:39:34 4 1030 Q. And I understand that your family
17:39:37 5 were Standardbred horse breeders?
17:39:38 6 A. Correct.
17:39:39 7 1031 Q. On a farm near Elmira, Ontario?
17:39:44 8 A. Yes. Well, they didn't -- they...
17:39:50 9 My dad ended up having a farm there, but yeah.
17:39:54 10 They had -- they bred and raised horses very
17:39:57 11 successfully.
17:39:59 12 1032 Q. And your brother, I understand,
17:40:00 13 was a horse trainer?
17:40:02 14 A. Correct.
17:40:02 15 1033 Q. Standardbred horses?
17:40:05 16 A. Yes.
17:40:06 17 1034 Q. Is your family still involved in
17:40:09 18 the horse racing industry?
17:40:10 19 A. No.
17:40:11 20 1035 Q. When did your brother stop
17:40:18 21 training horses?
17:40:18 22 A. Oh, gosh. I couldn't tell...
17:40:24 23 I... I'm going to take a stab at ten years, but I
17:40:27 24 could be off on that. I don't know.
17:40:27 25 1036 Q. All right.

17:40:29 1 A. Could be... I really don't know.

17:40:29 2 1037 Q. Now, you must know some of the

17:40:38 3 Plaintiffs in this lawsuit personally?

17:40:40 4 A. I would have met most of them, I

17:40:44 5 think. I haven't even looked at the whole list.

17:40:46 6 1038 Q. But some familiar names there?

17:40:48 7 A. Yes. Oh, yeah. I mean as Chair

17:40:52 8 of the Racing Commission, you come in contact with

17:40:54 9 various people.

17:40:54 10 1039 Q. And not just as Chair of the

17:40:57 11 Racing Commission, but as a Standardbred horse

17:41:01 12 breeder and someone --

17:41:01 13 A. Yeah. But I didn't -- I didn't

17:41:01 14 have much contact with a lot of the men, no.

17:41:01 15 1040 Q. I see.

17:41:07 16 A. The odd one, I would, if...

17:41:24 17 1041 Q. Now, one of the things that I saw

17:41:27 18 in the documents as we were going through - and I

17:41:30 19 can take to you it - is Exhibit 13.

17:41:33 20 There's a note that the ORC had a

17:41:37 21 responsibility to ensure the success of the horse

17:41:41 22 racing industry.

17:41:41 23 Is that fair?

17:41:41 24 A. Umm. Yeah. I think that's a...

17:41:46 25 If you bundle it all up, that we had a

17:41:50 1 responsibility to that. If you look at what we
17:42:00 2 were delegated to do and you summed it up, that
17:42:01 3 would be one of the -- the words you would use, or
17:42:05 4 phrases you would use.

17:42:06 5 1042 Q. And you certainly cared about
17:42:07 6 seeing a strong horse racing industry?

17:42:07 7 A. Certainly. I was charged with
17:42:09 8 that as a responsibility as Chair of the Racing
17:42:12 9 Commission and also because of my past involvement,
17:42:16 10 I knew people. Obviously, I would want them to
17:42:22 11 succeed.

17:42:22 12 1043 Q. Right. And part of the reason you
17:42:24 13 were appointed Chair of the Racing Commission was
17:42:28 14 that you personally believed in the importance of a
17:42:31 15 strong horse racing industry?

17:42:31 16 A. Correct.

17:42:37 17 1044 Q. How was the horse racing industry
17:42:41 18 faring in the 1990s before the introduction of the
17:42:44 19 Slots at Racetracks Program?

17:42:45 20 A. Well, racing had gone through
17:42:51 21 difficult times as, at -- at one time, it was the
17:42:56 22 only legal gaming operation and then the government
17:43:02 23 went into competition with it.

17:43:04 24 So, as with any business that you add
17:43:07 25 more supply into a relatively constant demand, you

17:43:11 1 are going to see a division in those revenues, and
17:43:15 2 racing was not immune from that.

17:43:17 3 1045 Q. When you say "the government went
17:43:18 4 into competition with it", you mean the government
17:43:22 5 legalized other forms of gambling?

17:43:24 6 A. Well, the government operated it.
17:43:26 7 It was the government that operated it. It just
17:43:29 8 didn't legalize it; they operated it.

17:43:31 9 1046 Q. We are talking about charity
17:43:33 10 casinos?

17:43:36 11 A. Starting with charity casinos,
17:43:36 12 then the OLG and into its various games.

17:43:39 13 1047 Q. So you mean the lottery, for
17:43:41 14 example?

17:43:41 15 A. Exactly.

17:43:41 16 1048 Q. Okay. And this greater
17:43:41 17 competition resulted in a long-term downward trend
17:43:47 18 in the popularity of horse racing?

17:43:49 19 A. It certainly ended -- it -- it
17:43:53 20 started a downward trend in its revenues.

17:43:56 21 Betting revenues decreased as the other
17:44:02 22 gaming opportunities increased.

17:44:04 23 1049 Q. Not just revenues. Customer base,
17:44:07 24 as well.

17:44:08 25 Is that --

17:44:08 1 A. Exactly. Yeah.

17:44:11 2 When you're the only game in town...

17:44:15 3 Pretty good.

17:44:15 4 1050 Q. It's a pretty good game, and all

17:44:19 5 of a sudden you're not. I see.

17:44:21 6 A. Only legal game in town. I'll put

17:44:25 7 it that way.

17:44:28 8 1051 Q. Fair enough.

17:44:28 9 Now, you were asked earlier to venture

17:44:32 10 some opinion as to what the government intended

17:44:36 11 when it introduced the Slots at Racetracks Program

17:44:39 12 in 1998.

17:44:40 13 You have no special insight into what

17:44:42 14 the government intended at that point?

17:44:46 15 A. All I can tell you is based on

17:44:51 16 information that I got directly from certain

17:44:56 17 individuals who were part of the government of the

17:44:59 18 day.

17:44:59 19 1052 Q. Mm-hmm.

17:45:00 20 A. It was an opportunity to derive

17:45:06 21 new revenue for the government, and the easiest

17:45:10 22 place for them to do it was at the racetracks.

17:45:13 23 1053 Q. It was also an opportunity to

17:45:15 24 support the horse racing industry which --

17:45:18 25 A. I -- I'm not -- not disputing

17:45:20 1 that, as well, but I'm just giving you...

17:45:20 2 There was -- obviously, the rationale

17:45:23 3 is, we have agreed already what the agreements were

17:45:27 4 and -- and what was expected, but I'm also just --

17:45:29 5 you asked me the question--

17:45:32 6 1054 Q. Sure.

17:45:34 7 A. --and I'm giving you what I was --

17:45:36 8 my information of the day was.

17:45:36 9 1055 Q. Right. So --

17:45:37 10 A. And that was directly from senior

17:45:39 11 officials in the government of the day.

17:45:41 12 1056 Q. Right. But that's... You're able

17:45:44 13 to repeat things you've heard from others, but it's

17:45:44 14 not like you have any personal experience with the

17:45:49 15 introduction of slots at Racetracks?

17:45:52 16 A. Well, I'm giving you, I was told

17:45:55 17 directly by a senior member of the government of

17:45:58 18 the day as to why racetracks.

17:45:59 19 1057 Q. And who was that?

17:46:01 20 A. A Minister. I'm just going to

17:46:03 21 leave it at that, okay?

17:46:06 22 1058 Q. Well, I think we might need the

17:46:06 23 Minister's name?

17:46:09 24 A. Eves.

17:46:09 25 1059 Q. Ernie Eves?

17:46:13 1 A. Yes.

17:46:13 2 1060 Q. And do you remember what position
17:46:13 3 he held at the time in government?

17:46:16 4 A. Minister of Finance.

17:46:18 5 1061 Q. And you're aware of a June 25th,
17:46:30 6 1998 letter of intent that my friend, Mr. Matthews,
17:46:35 7 referenced an agreement between, I think you
17:46:36 8 agreed, OHRIA, OLG and Ontario?

17:46:39 9 A. Are you talking about the
17:46:42 10 siteholder agreement?

17:46:42 11 1062 Q. No.

17:46:42 12 A. Oh. The agreement; the -- the
17:46:45 13 overall introduction of it?

17:46:48 14 1063 Q. Right.

17:46:48 15 A. Yes. I'm aware of it just simply
17:46:52 16 because it was presented to me and I've heard about
17:46:54 17 it, but we were -- when it was done, I had no
17:46:58 18 knowledge of it.

17:46:58 19 1064 Q. Right.
17:46:58 20 When did you first see that document?

17:46:58 21 A. Couldn't tell you now.
17:47:02 22 I'm -- I'm more than... I might have
17:47:09 23 seen it when I was at the Commission.
17:47:09 24 I may not have seen it 'til this
17:47:09 25 lawsuit. I -- I can't tell you now. I don't

17:47:13 1 recall.

17:47:13 2 1065 Q. Sufficient to say, it wasn't a
17:47:17 3 document of central importance in your life?
17:47:17 4 A. No, because we were not party to
17:47:22 5 it.

17:47:22 6 1066 Q. Right.
17:47:22 7 A. There would be no need for me
17:47:22 8 to..., to see it.

17:47:27 9 1067 Q. Right. It didn't have any impact
17:47:27 10 on anything the ORC did?
17:47:27 11 A. Correct.

17:47:33 12 1068 Q. What about the siteholder
17:47:39 13 agreements? Did you see the siteholder agreements
17:47:41 14 when they were signed?
17:47:42 15 A. No.

17:47:43 16 1069 Q. Again, didn't have anything to do
17:47:45 17 with the ORC's business?
17:47:47 18 A. We were not a signatory to it.

17:47:49 19 1070 Q. And there was no reason for you to
17:47:51 20 see those contracts?
17:47:51 21 A. Correct.

17:47:54 22 1071 Q. My friend took you to a document
17:48:12 23 that was marked as Exhibit 4, which is, I think,
17:48:25 24 identified as a diagram showing how slots revenue
17:48:31 25 from Slots at Racetracks Program was divided. This

17:48:36 1 is CR27619.

17:48:40 2 You remember seeing this document?

17:48:43 3 A. Yes, I do.

17:48:44 4 1072 Q. And there's an amount that is

17:48:49 5 allocated to the Horse Improvement Program and

17:48:55 6 about half of that goes to Thoroughbred and half of

17:49:01 7 it goes to Standardbred.

17:49:02 8 Do you see that?

17:49:04 9 A. Yes, I do.

17:49:04 10 1073 Q. Is that split the case even at

17:49:06 11 tracks where Thoroughbred horses don't race?

17:49:09 12 A. Well, yes, because of inter-track

17:49:22 13 wagering.

17:49:22 14 So a Standardbred track will be... I'm

17:49:25 15 going by memory. So those splits -- so it's not

17:49:29 16 uncommon for a Breed Improvement Program of one

17:49:34 17 breed to be earning income from a different breed

17:49:39 18 track because of inter-track wagering.

17:49:44 19 So, for example, Grand River would be

17:49:47 20 conducting -- hosting wagering on Thoroughbreds and

17:49:51 21 while Thoroughbred -- Woodbine was operating as a

17:49:55 22 Thoroughbred, they would be hosting wagering on

17:49:58 23 Standardbred races.

17:49:59 24 1074 Q. So am I right in thinking that of

17:50:03 25 every dollar of net win from slot machines at any

17:50:08 1 of the 17 tracks participating in SARP, 10 per cent
17:50:14 2 of that -- so 20 per cent of the net win is going
17:50:18 3 to go to the track?

17:50:18 4 A. Yeah.

17:50:20 5 1075 Q. Of that, half is going to go to
17:50:22 6 the benefit of the horsepeople.

17:50:24 7 And of that, 8.23 per cent is going to
17:50:31 8 go to the Thoroughbred--

17:50:31 9 A. Well --

17:50:35 10 1076 Q. --Horse Improvement Program?

17:50:35 11 A. --no. So horsepeople get 10 per
17:50:38 12 cent.

17:50:38 13 1077 Q. Yes.

17:50:38 14 A. And then the split to purse
17:50:42 15 account, to horsepeople's association, and to the
17:50:45 16 Horse Improvement Program.

17:50:45 17 1078 Q. Yes.

17:50:45 18 A. And my understanding - and I can't
17:50:49 19 give you the background - more, it has to do with
17:50:56 20 what races the Thoroughbred people were putting on
17:51:00 21 versus the Standardbred, because there were
17:51:02 22 differences in the program.

17:51:03 23 So the split for Standardbred was 8.37;
17:51:06 24 for Thoroughbreds, 8.23. But that's only my guess.
17:51:10 25 I can't...

17:51:11 1 My other explanation was, I thought you
17:51:13 2 were asking about would there be money earned for
17:51:17 3 Thoroughbreds or Standardbreds at different tracks?
17:51:29 4 And how -- how that -- that flowed back.

17:51:29 5 I can't give you the history as to why
17:51:33 6 the difference.

17:51:35 7 1079 Q. Well, I'm not asking about the
17:51:37 8 differences in percentages.

17:51:39 9 I just wanted to confirm that, in fact,
17:51:42 10 of the money that's being paid for the benefit of
17:51:46 11 the horsepeople, about 16.6 per cent is going to
17:51:55 12 the Horse Improvement Program, half of it for
17:51:59 13 Thoroughbreds and half as Standardbreds.

17:52:01 14 Is that your answer?

17:52:02 15 A. That would be about correct, I
17:52:04 16 would say.

17:52:04 17 1080 Q. So at a --

17:52:06 18 A. For breed improvement.

17:52:08 19 1081 Q. Right.

17:52:08 20 A. Yeah.

17:52:08 21 1082 Q. So at a track where only
17:52:11 22 Standardbred horses are racing, there's still some
17:52:13 23 money that's going from the slots to the Breed
17:52:17 24 Improvement Program for Thoroughbreds.

17:52:19 25 A. No. I don't think so.

17:52:20 1 1083 Q. Ah. So that's what I'm trying to
17:52:24 2 get at.

17:52:24 3 A. I don't think so.
17:52:26 4 Again, if it's Standardbred track,--

17:52:30 5 1084 Q. Yes.

17:52:31 6 A. --it's a Standardbred track and
17:52:33 7 all the money goes for Standardbred racing--

17:52:33 8 1085 Q. Okay.

17:52:38 9 A. --all the way through.

17:52:41 10 The only track that would have dual
17:52:46 11 would be Woodbine, where it had conducted both
17:52:50 12 Standardbred and Thoroughbred.

17:52:51 13 1086 Q. Okay.

17:52:52 14 A. And so how they -- how they
17:52:54 15 decided to carve up that money, I can't tell you.

17:52:58 16 1087 Q. Right.

17:52:59 17 So it's not the case that both
17:53:02 18 Standardbred and Thoroughbred are getting about 8
17:53:05 19 per cent of the 10 per cent for the horsepeople at
17:53:10 20 a Standardbred track?

17:53:13 21 A. No. What I said was that - and my
17:53:16 22 understanding is, and if someone shows me I'm
17:53:20 23 wrong, I'm misunderstanding - but a Standardbred
17:53:24 24 track, out of the 10 per cent going to purses,
17:53:28 25 Standardbred Breed Improvement Program would get

17:53:30 1 that agreed percentage.

17:53:31 2 1088 Q. Okay.

17:53:32 3 In terms how these percentages get

17:53:35 4 fixed, so we're looking at some pretty specific

17:53:39 5 numbers; 8 followed by two decimal points.

17:53:39 6 A. I can't tell you how that came to

17:53:41 7 be.

17:53:42 8 1089 Q. ORC didn't have anything to do

17:53:45 9 with that?

17:53:45 10 A. I don't know. It was before my

17:53:47 11 time.

17:53:47 12 1090 Q. I see.

17:53:47 13 So there had been some... Something

17:53:50 14 happened prior to your time and the ORC sort of

17:53:53 15 carried that forward?

17:53:56 16 A. True.

17:53:56 17 1091 Q. And so, if I put to you that there

17:54:03 18 had been an agreement between the track and OHRIA

17:54:07 19 to divert some money from the siteholder commission

17:54:13 20 away from purse enhancements to--

17:54:17 21 A. I can't --

17:54:17 22 1092 Q. --a Horse Improvement --

17:54:18 23 A. I can't comment because I don't

17:54:21 24 know.

17:54:21 25 1093 Q. You don't know?

17:54:22 1 A. I don't know.

17:54:22 2 1094 Q. That's just how it had been done
17:54:24 3 and that's what you --

17:54:27 4 A. That's what we inherited and
17:54:29 5 that's... We said to -- expressed earlier, there
17:54:34 6 had been an attempt to flow some more money to the
17:54:37 7 breeders.

17:54:37 8 The signatories to the siteholder
17:54:39 9 agreement would not agree.

17:54:40 10 1095 Q. And maybe that does, in an
17:54:44 11 indirect way, address my question.

17:54:47 12 You understood that in order to divert
17:54:48 13 more of the siteholders' commission to a Horse
17:54:53 14 Improvement Program, you would need the agreement
17:54:55 15 of the particular racetrack?

17:54:58 16 A. Not the racetrack.

17:55:02 17 I think the signatories to the original
17:55:07 18 agreement, as I -- I believe.

17:55:14 19 I'm not a hundred per cent clear on
17:55:15 20 that. I just know that the administration
17:55:19 21 conducted a consultation process of which it came
17:55:24 22 to nothing happening.

17:55:25 23 But there was an agreed -- there --
17:55:27 24 everyone seemed to be on side 'til it came time to
17:55:31 25 put their hand up to say 'yes'.

17:55:34 1 That's what I'm told. But I was not
17:55:35 2 privy to or party to the process, because it would
17:55:41 3 have had to come to us, so I was excluded.
17:55:44 4 But when it failed, I came into the
17:55:47 5 meeting afterwards and...
17:55:50 6 1096 Q. So you weren't sure exactly who
17:55:52 7 had to agree to divert more money to--
17:55:52 8 A. Well, I know the --
17:55:55 9 1097 Q. --the Horse Improvement Program?
17:55:55 10 --- (Court reporter appeals.)
17:55:55 11 BY MR. ROSENBERG:
17:55:55 12 1098 Q. Sorry. You've got to let me
17:55:55 13 finish the question, so --
17:55:59 14 A. I'm sorry. I -- I apologize.
17:55:59 15 1099 Q. You weren't sure exactly who had
17:56:02 16 to agree to divert more money--
17:56:02 17 A. No. I did --
17:56:15 18 1100 Q. --to the Horse Improvement
17:56:15 19 Program?
17:56:15 20 A. No. I did tell you. The
17:56:15 21 signatories --
17:56:15 22 --- (Court reporter appeals.)
17:56:17 23 THE WITNESS: The signatories to the
17:56:18 24 agreement.
17:56:18 25 THE COURT REPORTER: Wait.

17:56:18 1 "You weren't sure exactly who
17:56:18 2 had to agree..."

17:56:19 3 BY MR. ROSENBERG:

17:56:19 4 1101 Q. "...to divert more money to the
17:56:20 5 Horse Improvement Program?"

17:56:20 6 And you said, "The signatories to the
17:56:21 7 agreement," by which you mean OHRIA, Ontario and
17:56:22 8 OLG?

17:56:23 9 A. Whoever the signatories were.

17:56:25 10 1102 Q. To which agreement?

17:56:27 11 A. There was an agreement in place
17:56:29 12 that covered the diversion or -- or the splits of
17:56:34 13 the -- of the division of the monies.

17:56:39 14 And I -- I am not prepared to tell you
17:56:43 15 which one it was. I don't -- I don't recall, but
17:56:47 16 given that we needed tracks and horsepeople to
17:56:50 17 agree, there would have to be some agreement they
17:56:54 18 were participatories to.

17:56:57 19 1103 Q. I see. I think I know what you're
17:56:59 20 talking about.

17:56:59 21 I think this is an agreement between
17:57:02 22 the racetrack and the local Horsemen's Association
17:57:06 23 as to how the horsepeople's 10 per cent gets spent;
17:57:10 24 is that right?

17:57:10 25 A. More than likely.

17:57:10 1 1104 Q. Okay. And so, what you're talking
17:57:14 2 about is an amendment to that agreement, or a new
17:57:19 3 agreement between the horsepeople's association and
17:57:21 4 the racetrack, to divert more of the horsepeople's
17:57:26 5 share of the siteholder commission to the Horse
17:57:29 6 Improvement Program?

17:57:29 7 A. Yes.

17:57:33 8 1105 Q. And who had proposed that?

17:57:38 9 A. I -- I don't know. I -- I am
17:57:45 10 presuming that that came up during consultations,
17:57:52 11 discussions during the breed improvement meetings
17:57:56 12 and was brought to the administration, and the
17:58:00 13 administration decided to move on it, or agreed to
17:58:02 14 move on it. It was a request.

17:58:04 15 1106 Q. You don't know who made the
17:58:09 16 request?

17:58:10 17 A. Do not know.

17:58:12 18 1107 Q. All right. Well, we'll come back
17:58:12 19 to that.

17:58:14 20 In terms of how we measure the impact
17:58:25 21 of SARP, one of the impacts of SARP would certainly
17:58:33 22 have been that it increased the amount of money
17:58:37 23 that was spent on purses in Ontario; fair?

17:58:41 24 A. That would be one measurement.

17:58:43 25 1108 Q. I'm going to take you through

17:58:45 1 several, so don't feel as though I'm going to skip
17:58:49 2 over. But I want to look at these one at a time,
17:58:51 3 just so you have the data points.

17:58:54 4 And my friend gave you one of the ORC's
17:58:58 5 annual reports.

17:59:00 6 The one that I wanted to look at - and
17:59:03 7 perhaps my friend can tell us if it's been made an
17:59:08 8 exhibit yet - is the 2009 to 2010 ORC report.

17:59:11 9 MR. MATTHEWS: If you mean in the
17:59:13 10 course of this Examination, no.

17:59:14 11 We only put one annual report to
17:59:19 12 Mr. Seiling.

17:59:19 13 MR. ROSENBERG: Thank you.

17:59:21 14 BY MR. ROSENBERG:

17:59:21 15 1109 Q. So this is the one that I wanted
17:59:23 16 to look at, and it is CRE0094758. I'm handing you
17:59:23 17 a copy, sir.

17:59:43 18 And I think we covered this off
17:59:44 19 earlier, but suffice to say, the ORC was fairly
17:59:48 20 confident of the statistics that are presented in
17:59:52 21 these reports?

17:59:52 22 A. Yes.

17:59:57 23 1110 Q. And you have no reason to doubt
17:59:59 24 their accuracy?

18:00:00 25 A. No.

18:00:00 1 1111 Q. All right.

18:00:02 2 So if we flip to page 36 of that

18:00:08 3 report, it's a table headed "10 Years of Ontario

18:00:26 4 Racing".

18:00:27 5 And, as I understand it, that final

18:00:30 6 column on the right shows the amount of money

18:00:35 7 distributed in purses in Ontario in each year for

18:00:40 8 the different breeds; is that right?

18:00:42 9 A. Yes.

18:00:42 10 1112 Q. And so, if we look at the bottom

18:00:46 11 set of numbers for Standardbred,--

18:00:47 12 A. Yes.

18:00:49 13 1113 Q. --you see that purses increased

18:00:53 14 from 2000, when SARP is now underway, and remain

18:00:57 15 relatively high through 2009?

18:01:00 16 A. Yes.

18:01:02 17 1114 Q. It goes from \$140-million in the

18:01:06 18 first year to about \$184-million in the final year

18:01:13 19 of that period?

18:01:14 20 A. Yeah.

18:01:14 21 1115 Q. You see that?

18:01:15 22 A. Yep.

18:01:23 23 Do you want me to make an observation

18:01:25 24 for you? 'Cause it might help you and where you

18:01:27 25 might be going.

18:01:29 1 1116 Q. It sounds like you would like to
18:01:29 2 make one, so please.

18:01:32 3 A. Well, I suspect I've got a feeling
18:01:36 4 where you might be heading because you asked me
18:01:40 5 about confidence in the numbers.

18:01:40 6 And so you look at the -- at the amount
18:01:44 7 wagered.

18:01:44 8 What these numbers don't show is
18:01:47 9 inter-track wagering. And if you look at
18:01:50 10 inter-track wagering, and I don't have the numbers,
18:01:54 11 but if you added that together, you would see a far
18:01:59 12 different picture of the amount wagered on horse
18:02:02 13 racing in Ontario. This is just what's been on
18:02:07 14 Ontario races where there's a huge amount of money
18:02:11 15 bet on races from Hong Kong to -- to California to
18:02:17 16 New York to Florida to Vancouver, so on and so
18:02:23 17 forth.

18:02:23 18 So this -- this chart here does not
18:02:28 19 give an accurate report on -- for the demand for
18:02:31 20 the product.

18:02:32 21 1117 Q. No. I certainly understand that,
18:02:34 22 sir, and I do propose to take you to a table that
18:02:37 23 shows--

18:02:37 24 A. Okay.

18:02:39 25 1118 Q. --the foreign wagering because I

18:02:43 1 understand that that is an important component
18:02:43 2 here.

18:02:43 3 What you're pointing to is "amount
18:02:47 4 wagered", and that starts in 2000 at about
18:02:51 5 \$517-million, and it falls by 2009 to about
18:02:55 6 \$371-million?

18:02:55 7 A. Correct.

18:02:55 8 1119 Q. And you're saying that that
18:03:00 9 downward trend is not entirely reflective of total
18:03:04 10 wagering, because we have to consider foreign
18:03:04 11 wagering?

18:03:04 12 A. Correct.

18:03:04 13 1120 Q. All right.

18:03:10 14 A. Well, inter-track, because there's
18:03:10 15 money bet on other -- all over the place, so--

18:03:10 16 1121 Q. Right.

18:03:10 17 A. --there was a vast explosion.

18:03:16 18 1122 Q. And I think I can give you some
18:03:16 19 numbers on that point.

18:03:16 20 In fact, why don't we do that now
18:03:24 21 because that, of course, would be another way that
18:03:26 22 you could look at the impact of SARP, how it
18:03:29 23 impacted wagering?

18:03:31 24 A. No, because that -- that's
18:03:34 25 wagering on other product, not on the Ontario

18:03:37 1 product.

18:03:37 2 1123 Q. Let me make sure I understand

18:03:46 3 that.

18:03:46 4 A. If -- if a customer in Ontario

18:03:48 5 goes to Woodbine and, let's say, is going --

18:03:52 6 because this is a harness issue, so Standardbred

18:03:55 7 issue will go to Standardbred.

18:03:55 8 So if a customer goes to Woodbine or,

18:03:59 9 actually, any other track and bets on the races

18:04:03 10 from the Meadowlands in New Jersey, that has no --

18:04:07 11 that has no reflection on SARP.

18:04:09 12 1124 Q. Good point.

18:04:10 13 I guess what I'm interested in is

18:04:13 14 understanding wagering on Ontario products.

18:04:15 15 So, is wagering on Ontario product a

18:04:18 16 way to measure the impact of SARP?

18:04:21 17 A. It is.

18:04:21 18 1125 Q. Okay.

18:04:21 19 A. And, of course -- and at the same

18:04:25 20 time, Meadowlands would be wagering on Ontario

18:04:29 21 product.

18:04:29 22 1126 Q. Right.

18:04:29 23 A. So there's another -- another

18:04:29 24 component to add into that.

18:04:32 25 1127 Q. So on the subject of wagering, the

18:04:39 1 document I would like to show you is the 2007 to
18:04:46 2 2010 business plan of the ORC.
18:04:53 3 Do you recognize that document?
18:04:54 4 A. Yes.
18:05:00 5 1128 Q. And I've just --
18:05:01 6 A. I think it's been shown to me
18:05:04 7 earlier today.
18:05:04 8 1129 Q. If it has, we'll give you the
18:05:08 9 exhibit, but why don't we work from this--
18:05:08 10 A. This is fine.
18:05:11 11 1130 Q. --copy in the interests of time.
18:05:11 12 A. It won't change.
18:05:15 13 1131 Q. Thank you.
18:05:15 14 MS. MACHADO: Sorry. Did you mark the
18:05:19 15 last document as an exhibit? You haven't done so.
18:05:20 16 MR. ROSENBERG: I'm going to be coming
18:05:21 17 back to it, but why don't we do that now. Fair
18:05:21 18 enough.
18:05:25 19 So we'll mark the 2009 to 2010 ORC
18:05:28 20 annual report as the next exhibit.
18:05:37 21 THE WITNESS: Do you want this back?
18:05:37 22 BY MR. ROSENBERG:
18:05:39 23 1132 Q. If you could hold onto it for a
18:05:39 24 moment, --
18:05:39 25 A. Okay.

18:05:39 1 1133 Q. --we're going to come back to it
18:05:39 2 for some more statistics, because one of the things
18:05:41 3 I found was that the ORC was a great repository of
18:05:45 4 horse racing statistics.
18:05:50 5 THE COURT REPORTER: So that will be
18:05:51 6 Exhibit 35.
18:05:52 7 MR. ROSENBERG: Yes.
18:05:52 8 ---EXHIBIT NO. 35: Doc ID Number
18:05:54 9 CRE0094758; 2009 to 2010 ORC Annual Report.
18:05:54 10 BY MR. ROSENBERG:
18:06:02 11 1134 Q. So if you look at the business
18:06:04 12 plan.
18:06:04 13 A. Page number?
18:06:06 14 1135 Q. Let's go to page 12.
18:06:07 15 There is a discussion of wagering and
18:06:21 16 you will see under the heading "Commissions from
18:06:25 17 Pari-Mutuel Wagering"....
18:06:27 18 But before that, just at the paragraph
18:06:27 19 above, you'll see:
18:06:27 20 "In 1996, the government
18:06:27 21 embarked on a long-term plan to
18:06:27 22 revitalize the horse racing industry
18:06:41 23 which had been experiencing wagering
18:06:44 24 levels that were seriously
18:06:46 25 challenged by increasing gaming

18:06:49 1 competition." [As read.]

18:06:51 2 That was what you were describing

18:06:53 3 earlier?

18:06:53 4 A. Yes.

18:06:53 5 1136 Q. So the introduction of SARP being

18:06:57 6 part of that campaign?

18:07:03 7 A. I am going to presume so.

18:07:03 8 1137 Q. As well as the pari-mutuel tax --

18:07:03 9 --- (Court reporter appeals.)

18:07:03 10 THE WITNESS: I said, "I'm going to

18:07:06 11 presume so."

18:07:06 12 BY MR. ROSENBERG:

18:07:07 13 1138 Q. As well as the pari-mutuel tax

18:07:10 14 reduction?

18:07:10 15 A. The pari-mutuel tax reduction

18:07:12 16 provided more industry to the -- revenue to the

18:07:14 17 industry, yes, if that's what you're asking.

18:07:17 18 1139 Q. Yes.

18:07:17 19 And would have been part of a

18:07:20 20 government effort to support the horse racing

18:07:26 21 industry?

18:07:27 22 A. Correct.

18:07:27 23 1140 Q. Now, if we look at --

18:07:27 24 A. And it would be just following the

18:07:29 25 trend of all other jurisdictions--

18:07:29 1 1141 Q. Right.

18:07:31 2 A. --which had done so already.

18:07:33 3 1142 Q. So this was bringing Ontario into

18:07:36 4 line with other jurisdictions that offered horse

18:07:39 5 racing?

18:07:39 6 A. Correct.

18:07:39 7 1143 Q. So if you look now under the

18:07:49 8 heading "Commissions From Pari-Mutuel Wagering",

18:08:00 9 you will see it says that:

18:08:05 10 "Pari-mutuel wagering has been

18:08:07 11 declining."

18:08:08 12 Do you see that, the second paragraph?

18:08:10 13 A. Yes.

18:08:13 14 1144 Q. Wagering was relatively stable,

18:08:17 15 peaked in real terms in 1995 at \$1.7-billion?

18:08:22 16 A. Yes.

18:08:23 17 1145 Q. Until 2002. That appears to be

18:08:25 18 the period of stability; 1995 to 2002.

18:08:29 19 Is that consistent with your

18:08:32 20 recollection?

18:08:32 21 A. Yeah.

18:08:35 22 1146 Q. "But has been declining in both

18:08:37 23 nominal and real terms." [As read.]

18:08:40 24 Do you see that?

18:08:41 25 A. Yeah.

18:08:41 1 1147 Q. "For instance, wagering revenue in
18:08:46 2 Ontario in 2004 was \$1.17-billion
18:08:50 3 compared to 1.2-billion in 2003."
18:08:52 4 [As read.]
18:08:52 5 A. Mm-hmm.
18:08:54 6 1148 Q. Sorry. I need a 'yes' or 'no'.
18:08:57 7 A. I said, 'Yes.'
18:08:57 8 1149 Q. And this is what I found
18:09:01 9 interesting.
18:09:01 10 "In real dollars, 1992 being
18:09:01 11 the base year, wagering on
18:09:05 12 Standardbred horses peaked in 1995
18:09:05 13 at \$508-million and declined to
18:09:10 14 \$402-million in 2004."
18:09:15 15 Do you see that?
18:09:15 16 A. I see that.
18:09:15 17 1150 Q. Now, this was at a time when
18:09:21 18 wagering, if you look the next paragraph, wagering
18:09:25 19 activity in the United States during that same
18:09:28 20 10-year period increased from \$9.9-billion to
18:09:33 21 \$15-billion.
18:09:33 22 Do you see that?
18:09:38 23 A. Yes.
18:09:45 24 1151 Q. And so, at least thus far in the
18:09:47 25 story, it appears that the introduction of SARP has

18:09:53 1 not coincided with an increase in wagering on
18:09:57 2 Ontario product.

18:10:00 3 A. Umm. If you're talking just
18:10:03 4 wagering, yes.

18:10:05 5 Again, what you have to take into
18:10:08 6 consideration when we are talking about the
18:10:11 7 inter-track wagering, the simulcasting. So there
18:10:14 8 -- there was offsets.

18:10:16 9 And, of course, in the same time
18:10:17 10 period, if you go on to the next paragraph, we also
18:10:19 11 talk about the..., the short term...

18:10:22 12 "...necessarily to conclusion
18:10:26 13 that wagering on horse racing has
18:10:26 14 long-term declined, nevertheless
18:10:27 15 legal wagering faces several
18:10:28 16 challenges due to direct
18:10:28 17 competition. A significant
18:10:30 18 increasing --" [As read.]

18:10:31 19 --- (Court reporter appeals.)

18:10:33 20 THE WITNESS: "A significant and
18:10:34 21 increased amount of wagering is
18:10:35 22 occurring through nominal sources, such
18:10:39 23 as offshore wagering. Implication to
18:10:40 24 Ontario Horse Racing..."

18:10:44 25 Go on.

18:10:44 1 BY MR. ROSENBERG:

18:10:44 2 1152 Q. "...have increased. Offshore

18:10:47 3 wagering has declined in revenue."

18:10:47 4 A. Yes.

18:10:51 5 1153 Q. All right. Then let me make sure

18:10:51 6 I've understood you here.

18:10:51 7 When we were talking about those

18:10:56 8 numbers earlier in the second paragraph, that peak

18:10:56 9 in real terms in 1995, \$1.7 billion; that is all

18:11:02 10 wagering on Ontario product, all legal wagering?

18:11:07 11 A. That's my understanding, yes.

18:11:07 12 1154 Q. And so, in terms of legal

18:11:13 13 wagering --

18:11:13 14 A. If -- maybe we'll shorten this

18:11:13 15 thing.

18:11:19 16 If you're trying to get me to agree

18:11:19 17 there has been a decline in the wagering in

18:11:19 18 Ontario, you're right. The numbers don't lie, and

18:11:29 19 it's right there.

18:11:29 20 All I was pointing out to you in that

18:11:29 21 other diagram was that at the same time, there was

18:11:29 22 simulcasting taking place, so that you have to add

18:11:39 23 that back in.

18:11:39 24 The problem -- the problem for the

18:11:39 25 industry is, a dollar earned... The commission

18:11:46 1 rate on simulcasting is so much less and cut up so
18:11:51 2 many more ways, that's a huge impact on the
18:11:56 3 industry.

18:11:56 4 1155 Q. Right. So fewer people actually
18:11:56 5 --

18:11:56 6 A. Negative impact. But you --

18:11:56 7 1156 Q. If fewer people come to the track
18:12:02 8 and bet dollars at the track, but instead bet those
18:12:02 9 dollars on a simulcast race, it's worse for the
18:12:08 10 racetrack and it's worse for the horsepeople?

18:12:08 11 A. Yes. And it's even worse if
18:12:15 12 they're doing it not through a legal channel here.
18:12:15 13 So you can open up accounts all over
18:12:15 14 the place and there's no way of policing it.

18:12:23 15 1157 Q. And that was just an increasing
18:12:23 16 reality of racing?

18:12:23 17 A. The new world we live in.

18:12:23 18 1158 Q. Exactly. It had nothing to do
18:12:33 19 with slots at racetracks?

18:12:33 20 A. Well, it -- well, slots at
18:12:33 21 racetracks, I would submit, also had a huge impact.
18:12:33 22 And we agreed earlier on that. The introduction of
18:12:42 23 more competition also had a negative impact on --
18:12:42 24 on the wagering levels at -- here in Ontario.

18:12:42 25 1159 Q. Right. But this is something --

18:12:42 1 we're talking about simulcasting is something that
18:12:42 2 has nothing to do with the introduction of slots at
18:12:54 3 racetracks.

18:12:54 4 A. There were various reasons for the
18:12:54 5 decline in wagering.

18:12:54 6 1160 Q. Okay.

18:12:54 7 A. It isn't just one.

18:12:54 8 1161 Q. And one of them is simulcasting?

18:12:54 9 A. Correct.

18:13:07 10 1162 Q. And simulcasting has nothing to do
18:13:07 11 slots at racetracks?

18:13:07 12 A. Correct.

18:13:07 13 1163 Q. Okay.

18:13:07 14 And if you want to see the impact, if
18:13:07 15 you go back to the 2009 to 2010 ORC annual
18:13:19 16 report...

18:13:19 17 MR. ROSENBERG: Just before we do that,
18:13:19 18 I will mark this business plan, 2007 to 2010, as
18:13:28 19 the next exhibit.

18:13:28 20 THE WITNESS: Do you want it?

18:13:28 21 MR. ROSENBERG: Thank you.

18:13:28 22 BY MR. ROSENBERG:

18:13:38 23 1164 Q. And, sir, you have no concern that
18:13:40 24 this is, in fact, the ORC's 2007 to 2010 business
18:13:42 25 plan?

18:13:42 1 A. I would accept it.

18:13:44 2 MR. ROSENBERG: All right. So that's

18:13:46 3 Exhibit 36.

18:13:46 4 ---EXHIBIT NO. 36: ORC's 2007 to 2010

18:13:46 5 business plan.

18:13:46 6 BY MR. ROSENBERG:

18:13:57 7 1165 Q. If we look...

18:13:57 8 A. Page number?

18:13:59 9 1166 Q. If we look at page 41,--

18:14:01 10 A. Got it.

18:14:04 11 1167 Q. --you will see that it's a chart

18:14:10 12 representing the ways in which people are betting

18:14:10 13 on horse races.

18:14:14 14 Do you see that?

18:14:14 15 A. Yes.

18:14:14 16 1168 Q. And you will agree with me that

18:14:14 17 the leftmost bar is live racing; live betting at

18:14:23 18 live races?

18:14:24 19 A. Yeah.

18:14:24 20 1169 Q. And that that bar diminishes over

18:14:27 21 time; that the live betting at tracks declines from

18:14:31 22 2000 to 2009?

18:14:41 23 A. Yeah. More people are moved off

18:14:44 24 track.

18:14:44 25 1170 Q. Right.

18:14:46 1 A. Teletheatres, home betting.

18:14:48 2 1171 Q. And that was just an impact of
18:14:50 3 technology?

18:14:50 4 A. Correct. And in percentage terms,
18:14:53 5 the total wagering is not off that much. If you
18:14:59 6 look -- if you look at the black bar across the
18:14:59 7 top, its decline is not near the decline in
18:15:07 8 percentage terms, I think, as the... Say you're
18:15:11 9 live. You see what -- what goes across.

18:15:11 10 1172 Q. So both total wagering and live
18:15:16 11 wagering are falling, but you're saying that live
18:15:21 12 wagering is falling quicker than total wagering?

18:15:21 13 A. On-track wagering is falling
18:15:21 14 quicker than, because people are using new
18:15:27 15 technology to...

18:15:27 16 1173 Q. Right. But total wagering is also
18:15:33 17 declining?

18:15:33 18 A. It has declined. There's no
18:15:33 19 question about it.

18:15:33 20 1174 Q. And if we look at page 38, you
18:15:41 21 will see 2009 wagering, foreign versus Ontario.

18:15:41 22 A. Yes.

18:15:41 23 1175 Q. And if you look at the grand total
18:15:50 24 at the end, you'll see the --

18:15:50 25 A. I've got to find -- "foreign",

18:15:50 1 yeah.

18:15:50 2 1176 Q. So "foreign" is wagering that is
18:15:58 3 outside of Ontario, I see from the legend at the
18:15:58 4 bottom there.

18:15:58 5 A. Yes.

18:16:04 6 1177 Q. So this is not inter-track betting
18:16:04 7 in Ontario?

18:16:04 8 A. Depends what your definition of
18:16:09 9 "inter-track" is.

18:16:09 10 1178 Q. I see.

18:16:09 11 A. So if it -- it is -- it is
18:16:14 12 inter-track because it's -- it's occurring at
18:16:19 13 another track and it's being piped into--

18:16:19 14 1179 Q. I see.

18:16:19 15 A. --another track.

18:16:19 16 1180 Q. But that other track is outside of
18:16:19 17 Ontario?

18:16:25 18 A. True. But it's still...

18:16:25 19 1181 Q. Okay. So by 2009, it looks like
18:16:25 20 78 per cent of all wagering on Ontario product is
18:16:33 21 foreign; is that fair?

18:16:33 22 A. You've got to lead me through here
18:16:38 23 because I'm... Are we talk...? So --

18:16:44 24 1182 Q. Sorry. That's the Thoroughbred.

18:16:44 25 A. That's the Thoroughbred.

18:16:46 1 1183 Q. Right.

18:16:47 2 A. You want to go over to...

18:16:50 3 1184 Q. Standardbred--

18:16:51 4 A. Yes.

18:16:53 5 1185 Q. --is 31.4 per cent.

18:16:55 6 A. Umm...

18:17:02 7 1186 Q. I'm just looking at the "Grand

18:17:03 8 Total" line.

18:17:03 9 A. You are looking at the last

18:17:05 10 line,--

18:17:05 11 1187 Q. Yeah.

18:17:05 12 A. --"per cent of total"?

18:17:14 13 1188 Q. And it looks like a total of 64.5

18:17:17 14 per cent of total wagering on horse racing on

18:17:23 15 Ontario product is foreign.

18:17:25 16 Is that fair?

18:17:25 17 A. I'm not following.

18:17:29 18 I see here, wagering, foreign versus

18:17:32 19 Ontario. I see a grand total of 35.5 per cent.

18:17:36 20 1189 Q. So I think that if you look at the

18:17:40 21 columns under "Foreign" and you go to "Grand Total"

18:17:44 22 and you see "percentage of total" under "Foreign",

18:17:49 23 you see "64.5 per cent"?

18:17:52 24 MS. MACHADO: (Indicating).

18:17:52 25 THE WITNESS: No. I see -- no. That's

18:17:52 1 -- that's Thoroughbred. You've got -- we've got to
18:17:56 2 go -- that's Thoroughbred, Ma'am.

18:17:56 3 MS. MACHADO: That.

18:18:00 4 THE WITNESS: That's Thoroughbred.

18:18:00 5 MS. MACHADO: It's --

18:18:00 6 THE WITNESS: It says... I thought we
18:18:00 7 were here.

18:18:03 8 MS. MACHADO: Can we go off the record
18:18:05 9 just for a second?

18:18:05 10 MR. ROSENBERG: Let's go off the
18:18:06 11 record.

18:20:48 12 --- (Discussion off the record.)

18:20:53 13 MR. ROSENBERG: Let's go back on now.

18:20:53 14 BY MR. ROSENBERG:

18:20:58 15 1190 Q. We've had a discussion off the
18:20:59 16 record and I think we are agreed that this chart
18:21:02 17 shows that 64.5 per cent of wagering on Ontario
18:21:09 18 product is foreign wagering.

18:21:13 19 But Mr. Seiling says, despite what the
18:21:17 20 chart says, that sounds high to him; fair?

18:21:19 21 A. Correct. Intuitively, that seems
18:21:22 22 wrong, especially when I look, I go down to the
18:21:27 23 end, I get a totally different number at 35...,
18:21:31 24 35.5 per cent.

18:21:33 25 1191 Q. I think the 35.5 per cent is the

1 other piece of the puzzle. It's the Ontario
2 wagering on the Ontario product, the non-foreign
3 wagering.

4 A. Mmm. Well, this chart says 2009
5 wagering, foreign versus Ontario. And you might be
6 right, but I -- it just -- that just seems
7 intuitively wrong.

8 MR. MATTHEWS: And can I just interject
9 because I don't want there to be any suggestion
10 that the Plaintiffs have taken a position one way
11 or the other in terms of what this means.

12 When you say we had an off-the-record
13 discussion, this was a discussion between Ontario,
14 OLG and the witness, not the Plaintiffs.

15 MR. ROSENBERG: Counsel for the
16 Plaintiff was at the table, so I take your point,
17 Counsel, but I'm not sure what to make of it.

18 If you have a different view you'd like
19 to put on the record, you are welcome to do so.

20 MR. MATTHEWS: The document says what
21 it says. I'm happy to have Mr. Seiling's evidence
22 on it, but I personally am not going to get
23 involved in interpreting any of these documents.

24 THE WITNESS: It is what it is.

25 BY MR. ROSENBERG:

18:22:41 1 1192 Q. And if we look at page 40,--

18:22:41 2 A. Yeah.

18:22:41 3 1193 Q. --under the heading "How is
18:22:41 4 Ontario Product Doing", this is again wagering. It
18:22:50 5 looks like it's total wagering.

18:22:50 6 That trends line over time is not a
18:22:58 7 good one.

18:22:58 8 A. If you -- again, the numbers are
18:22:58 9 what the numbers are.

18:22:58 10 All I would point out to you, because
18:22:58 11 you're trying to get me to say certain things, is
18:23:06 12 that there are more benchmarks than just wagering
18:23:06 13 dealing with the issue at hand.

18:23:14 14 1194 Q. Absolutely. And why don't we go
18:23:14 15 to another one of those benchmarks. And it's
18:23:14 16 actually one that I don't think I saw the ORC
18:23:23 17 tracking, which is one that you did mention when
18:23:31 18 you were speaking with my friend, and that is the
18:23:33 19 value of horses.

18:23:36 20 And I am particularly interested in the
18:23:40 21 prices at which yearlings sold.

18:23:43 22 A. Yeah.

18:23:43 23 1195 Q. I'm right in thinking that's not a
18:23:47 24 statistic that appears in the ORC annual reports?

18:23:52 25 A. I would be surprised if -- I mean,

18:23:54 1 it was tracked. I know that.

18:23:58 2 I can't tell you where that statistic
18:24:01 3 would be resident, but certainly there would be
18:24:05 4 numbers around that would track the value of -- of
18:24:10 5 -- of the sales.

18:24:13 6 1196 Q. Right.

18:24:14 7 And I wanted to give you one of those
18:24:18 8 sets of numbers, and it's a document that my
18:24:22 9 friends have now put to Mr. Snobelen and to
18:24:29 10 Mr. Wilkinson as reflective of the price at which
18:24:33 11 yearlings were selling.

18:24:41 12 A. And the other -- the other thing
18:24:43 13 that I -- that I would caution you on is that
18:24:48 14 the... You have to compare -- to look at
18:24:52 15 different -- you have to look at select sales where
18:24:55 16 the commercial breeders were selling versus lower
18:25:01 17 sales - how can I put it more - where the stock was
18:25:08 18 not as good, and so it has -- it has -- doesn't
18:25:13 19 diminish the economic impact because it's -- the
18:25:17 20 costs were still the same, but there was some wide
18:25:20 21 variances in the quality of the -- of the product,
18:25:23 22 and that, quite frankly, was one of the incentives
18:25:29 23 for trying to get people to upgrade their stock, to
18:25:33 24 sell a better product.

18:25:33 25 1197 Q. Understood.

18:25:37 1 And so, you know, at the sake of
18:25:37 2 eliminating selection bias, I'm just using what the
18:25:41 3 Plaintiffs have been using with the other
18:25:48 4 witnesses.

18:25:48 5 A. I wouldn't disagree.

18:25:48 6 1198 Q. Okay.

18:25:48 7 A. The numbers are what the numbers
18:25:48 8 are.

18:25:48 9 1199 Q. So the document number on this one
18:25:48 10 is CRE0230844 and it is titled "Information Note,
18:26:01 11 September Yearling Racehorse Sales". It's from
18:26:01 12 September 17th, 2012, and it appears to have been
18:26:04 13 prepared by OMAFRA.

18:26:08 14 Thom Hagerty is listed here. Do you
18:26:10 15 know who Thom Hagerty is?

18:26:11 16 A. No, I don't.

18:26:13 17 1200 Q. No.

18:26:13 18 He's at the Economic Development Policy
18:26:16 19 Branch. Do you know what that was?

18:26:21 20 A. I know nothing about it.

18:26:23 21 1201 Q. All right. I will give you the
18:26:25 22 document.

18:26:25 23 And if you look at the fourth page of
18:26:25 24 the document, that's the one that my friends have
18:26:37 25 taken the other witnesses to, and you'll see that

18:26:37 1 it is a chart titled "Standardbred Yearling Sale
18:26:38 2 Average Prices".
18:26:41 3 A. Yeah.
18:26:50 4 1202 Q. Do you have a sense of what the
18:26:50 5 data would have been for yearling sale average
18:26:50 6 prices? Are you able to say, 'That looks right to
18:26:52 7 me,' or not?
18:26:52 8 A. No. The only -- only -- the only
18:26:54 9 comment that I could make was, the 2012 sales
18:26:58 10 happened after the announcement of the ending of
18:27:01 11 SARP, so to see a precipitous drop in the price of
18:27:06 12 yearlings would not be a surprise.
18:27:06 13 1203 Q. All right. So you see a drop in
18:27:10 14 2012 to an average selling price that far into the
18:27:15 15 season, at least, of \$8,329?
18:27:18 16 A. Correct.
18:27:21 17 1204 Q. And this is prior to what we had
18:27:21 18 discussed earlier, an announcement of potential
18:27:25 19 support from the Horse Racing Industry Transition
18:27:31 20 Panel which happened on the third day of the
18:27:35 21 Harrisburg sales in November of 2012?
18:27:35 22 A. Correct.
18:27:35 23 1205 Q. So here we are at an earlier
18:27:40 24 point. SARP's termination has been announced and
18:27:45 25 the number is \$8,329, and you say a drop-off that's

18:27:51 1 not unexpected, right?

18:27:51 2 A. Correct.

18:27:55 3 1206 Q. But if we look at this chart, it
18:27:58 4 looks as though that figure is actually higher than
18:28:02 5 the average sale value in 2005, 2006 and 2007,
18:28:08 6 right?

18:28:08 7 A. I can't give you any reason other
18:28:12 8 than one might have to look at what was going on in
18:28:16 9 the economy and things like that.

18:28:19 10 For the most part, horse owners, it's
18:28:25 11 discretionary revenue, so they're buying -- there
18:28:30 12 are some, there are a few that were professional
18:28:34 13 owners, but most owners bought horses with
18:28:36 14 discretionary money, so I could not explain to you
18:28:39 15 the correlation or not, so I have no explanation
18:28:45 16 for you other than the numbers are what the numbers
18:28:49 17 are.

18:28:49 18 1207 Q. And if you look at the paragraph
18:28:58 19 above this chart, it says:

18:29:00 20 "Although prices in 2012 are
18:29:02 21 well off the previous three years,
18:29:02 22 the volume and average price in 2012
18:29:06 23 is higher than that received in the
18:29:09 24 years 2005 through 2007."

18:29:14 25 [As read.]

18:29:14 1 A. I agree with you.

18:29:14 2 1208 Q. But not just price. It's volume,
18:29:14 3 as well, you see?

18:29:14 4 A. Both. That -- that's not a
18:29:14 5 surprise.

18:29:15 6 If I owned a horse and I bred it for
18:29:20 7 the Sires Stakes Program and there was potentially
18:29:23 8 no Sires Stakes Program, even if I had thought I
18:29:28 9 might want to race it, I would be looking for
18:29:31 10 someone to buy it because I've got nothing to sell
18:29:34 11 it -- it's got no -- no -- its earning income has
18:29:37 12 been wiped out, diminished considerably, not
18:29:43 13 knowing what racing was going to happen the coming
18:29:43 14 year, so...

18:29:47 15 1209 Q. But you can't think of anything
18:29:47 16 that happened from 2004 to 2005 that would
18:29:53 17 explain --

18:29:53 18 A. I was not -- I was not in the
18:29:53 19 industry, so you're asking the wrong person.

18:29:53 20 1210 Q. All right. But 2006 is still
18:29:59 21 below 2012. The same with 2007.

18:29:59 22 A. That's right. I just... I had
18:30:07 23 just come into the industry at the end of 2006,--

18:30:07 24 1211 Q. Okay.

18:30:07 25 A. --so...

18:30:07 1 1212 Q. But you can't explain why prices
18:30:16 2 would have been so low those years?

18:30:16 3 A. I don't -- I don't recall. I'm
18:30:16 4 sure there's an explanation, but I -- I'm not here
18:30:16 5 to provide evidence as to what it would be.

18:30:29 6 I'm sure there are others around that
18:30:29 7 could give you an explanation, but I'm not one of
18:30:29 8 them.

18:30:29 9 1213 Q. And we looked earlier at the
18:30:29 10 purses that were available in those years, 2005,
18:30:29 11 2006, 2007. You agreed that they were high.

18:30:46 12 It appears, though, that high purses
18:30:46 13 were not translating into high prices for
18:30:46 14 yearlings?

18:30:46 15 MR. MATTHEWS: So, Mr. Rosenberg, my
18:30:46 16 objection here stems from the fact that to the
18:30:46 17 extent that you're putting propositions to the
18:31:05 18 witness about the price of yearlings, you're basing
18:31:05 19 it on a document that is not an ORC document and
18:31:05 20 certainly not a document authored by the witness.

18:31:05 21 And so, built into the premise of your
18:31:05 22 question is, you're asking the witness to accept
18:31:05 23 that the information in the document you've put to
18:31:27 24 him is, in fact, accurate, and so I've registered
18:31:27 25 my objection and that's all I will say about that.

18:31:27 1 MR. ROSENBERG: Well, what I'll say
18:31:27 2 about that is that this is the very document that
18:31:27 3 the Plaintiffs put to Mr. Snobelen and
18:31:27 4 Mr. Wilkinson and asked him to accept as an
18:31:27 5 accurate reflection of the price for Standardbred
18:31:27 6 yearling sales.

18:31:49 7 So I'm just taking the Plaintiff's
18:31:49 8 document --

18:31:49 9 THE WITNESS: Gentlemen, to interrupt,
18:31:49 10 I'm not going to dispute the numbers. I'm just
18:31:49 11 telling you that I can't give you an explanation.

18:31:49 12 BY MR. ROSENBERG:

18:31:49 13 1214 Q. Right.

18:31:49 14 A. So I have no -- I can't provide
18:31:49 15 you anything more than what the numbers are, the
18:31:49 16 numbers are.

18:31:49 17 1215 Q. But you will agree with me, sir,
18:31:49 18 that we looked at the purses available and they
18:32:11 19 were high for 2005?

18:32:11 20 A. Sir, I already told you, I cannot
18:32:11 21 give you an explanation. I have no explanation. I
18:32:11 22 -- I don't under- -- I don't -- and I'm not
18:32:11 23 disputing the numbers.

18:32:11 24 I have -- cannot give you any
18:32:11 25 explanation as to why the variance.

18:32:11 1 1216 Q. Okay. I'm not asking for an
18:32:32 2 explanation. I'm just asking you to agree that
18:32:32 3 high purses available under SARP did not appear to
18:32:32 4 be translating into high prices for Standardbred
18:32:32 5 yearlings?

18:32:32 6 A. Well, I would have to accept the
18:32:32 7 premise what the purses were into those years if
18:32:32 8 you -- if you -- and I'm not going to dispute the
18:32:32 9 fact that they -- that they weren't. I presume
18:32:54 10 they were.

18:32:54 11 1217 Q. Well, we just looked at the
18:32:54 12 prices, the purses.

18:32:54 13 If you look at the 2009 to 2010 ORC
18:32:54 14 annual report that we marked as Exhibit 35 and you
18:32:54 15 go to page 36, I thought we had looked at the
18:32:54 16 purses.

18:33:17 17 A. Except, though, that we -- one of
18:33:17 18 the things, and I can't tell you the year that it
18:33:17 19 changed, but there was a change in how purses for
18:33:17 20 the Sires Stakes Program were allocated, and so that
18:33:17 21 the ability for a horse to earn money was increased
18:33:17 22 dramatically.

18:33:17 23 1218 Q. I see. So it was not just the
18:33:39 24 amount of --

18:33:39 25 A. It's not the total--

18:33:39 1 1219 Q. Exactly.

18:33:39 2 A. --because it -- if -- I will give
18:33:39 3 you an example.

18:33:39 4 If I buy a horse and the total earning
18:33:39 5 power of that horse through the Sires Stakes Program
18:33:39 6 is \$20,000, it would be a hard time for me to put
18:34:01 7 my hand up and want to pay that much money for the
18:34:01 8 horse because it can't earn itself out.

18:34:01 9 But if the -- if the earning power of
18:34:01 10 that, because the structure of the purses has
18:34:01 11 changed, that the earning power of that horse is
18:34:01 12 now 100,000 or more, then I'm prepared to take that
18:34:23 13 gamble and pay more for the horse.

18:34:23 14 And I can tell you that -- that -- and
18:34:23 15 I -- and I don't know what years they were changed,
18:34:23 16 but we did make substantive changes in how purses
18:34:23 17 were paid. We came out with a Grassroots series, a
18:34:46 18 Gold series, and how many races, and so the earning
18:34:46 19 power for horses, as I recall, increased
18:34:46 20 dramatically.

18:34:46 21 1220 Q. Okay. But the ability of those
18:34:46 22 Sires Stakes incentives, you've told us that that
18:34:46 23 was a matter of, (1), the ORC's discretion in
18:34:46 24 setting them, or the Horse Improvement Program's
18:34:46 25 discretion in setting them?

18:34:46 1 A. Correct.

18:34:46 2 1221 Q. And (2) --

18:34:46 3 A. Well, the ORC would do it, but we

18:35:08 4 would do it with, in consultation with the

18:35:08 5 industry.

18:35:08 6 1222 Q. Right.

18:35:08 7 And (2), that was, in turn, a factor of

18:35:08 8 how much money from SARP was available for the

18:35:08 9 Horse Improvement Program?

18:35:08 10 A. Yeah. They -- I -- I would

18:35:08 11 suggest that the total amount of money didn't vary.

18:35:31 12 How it was paid out did vary.

18:35:31 13 1223 Q. And, but the total amount of money

18:35:31 14 was itself, you've told us, an agreement between

18:35:31 15 the Horsemen's Associations and the racetracks?

18:35:31 16 A. Correct.

18:35:31 17 1224 Q. All right.

18:35:31 18 A. Yeah.

18:35:31 19 1225 Q. But the other piece of this,

18:35:31 20 though, is you said there's a change in the Sire

18:35:31 21 Stakes incentives, but if you look back to that

18:35:54 22 graph that is at page 4 of CRE0230844, you will see

18:35:54 23 that actually the highest yearling sale prices are

18:35:54 24 in 2002.

18:35:54 25 A. Well...

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1226 Q. Do you see that?

A. I'm not disputing that. All I'm -- all I'm -- and I don't know what -- there had been changes to the program. It was fluid I would guess. And I'm not around then, so I have no recollection.

But I do know that during my tenure, and I can't tell you the exact date we made the changes, but we did make changes to the program that dramatically affected earning power.

1227 Q. Right.

So you're saying it's not just the amount of SARP money available; it's where that SARP money goes?

A. Yes. Or the ability to earn it.

1228 Q. Right.

And you're not actually saying, I don't think, that, 'I can see really high prices for yearlings in 2002, really low prices in 2005, high prices in 2010 because the Sires Stakes incentives were sort of changing in that direction'?

A. They would have an impact, I would think.

1229 Q. But you're not saying that the Sires Stakes changed in those ways. You don't

18:37:23 1 remember?

18:37:23 2 A. I do remember they changed. I

18:37:23 3 can't give you the exact date, so I'm going to

18:37:23 4 suggest to you that they would have an impact on

18:37:23 5 sale prices.

18:37:23 6 1230 Q. But you're not saying that the

18:37:23 7 Sires Stakes were really good in 2002, then really

18:37:23 8 bad in 2005, then really good in 2010?

18:37:23 9 A. I don't know what they were in

18:37:45 10 2002 or 2005.

18:37:45 11 I can tell you what they were, but

18:37:45 12 after the changes we made.

18:37:45 13 1231 Q. I see.

18:37:45 14 And the paragraph above this chart

18:37:45 15 says:

18:37:45 16 "The prices received at the

18:37:45 17 Standardbred yearling sales had been

18:37:45 18 variable over past years."

18:37:45 19 [As read.]

18:37:45 20 You would agree with that statement?

18:37:45 21 A. The numbers are there.

18:37:45 22 1232 Q. And they're variable?

18:38:08 23 A. Correct.

18:38:08 24 1233 Q. Another benchmark that you could

18:38:08 25 use to talk about the effect of SARP was the number

18:38:08 1 of horses racing in Ontario.

18:38:08 2 Did the number of horses racing in
18:38:08 3 Ontario increase while SARP was in effect?

18:38:08 4 A. Without having any document in
18:38:08 5 front of me, I would -- I wouldn't -- you don't
18:38:30 6 have to bother pulling...

18:38:30 7 I'm -- I would say yes because the
18:38:30 8 number of race dates increased, so if you increase
18:38:30 9 the number of race dates, you need a larger supply
18:38:30 10 of horses.

18:38:30 11 1234 Q. Well, why don't we take that
18:38:30 12 and --

18:38:30 13 A. There's always been -- in fact, as
18:38:30 14 part of the Ontario Racing Program, our staff made
18:38:53 15 an attempt to try and develop a more scientific way
18:38:53 16 to identify how many horses were racing in the
18:38:53 17 province because of the potential for double
18:38:53 18 counting and...

18:38:53 19 But if -- if you look at the -- at the
18:38:53 20 number of horses being bred in the province, and
18:38:53 21 take an agreed-upon average of how many of those
18:39:15 22 make it to the races, there's no question, as I
18:39:15 23 recall, the number of mares bred in this -- number
18:39:15 24 of -- not number of mares bred. That's the wrong
18:39:15 25 way to look at it; number of live foals in the

18:39:15 1 province, you take that agreed-upon average, that
18:39:15 2 will give you a number, and with the increase in
18:39:38 3 breedings and the increase of live foals, one would
18:39:38 4 have to say the horse supply increased in the
18:39:38 5 province.

18:39:38 6 MR. ROSENBERG: I think I can give you
18:39:38 7 a chart to help you with that.

18:39:38 8 Before I do, can we mark this document
18:39:38 9 CRE0230844 as our next exhibit, please, and I
18:40:00 10 believe that's 37.

18:40:00 11 ---EXHIBIT NO. 37: Doc ID Number
18:40:00 12 CRE0230844.

18:40:00 13 MR. ROSENBERG: Thank you.

18:40:00 14 BY MR. ROSENBERG:

18:40:00 15 1235 Q. All right. So I have a document
18:40:00 16 that was produced to us by the Plaintiffs from a
18:40:00 17 Standardbred Improvement Program.

18:40:00 18 That's a program run by the Horse
18:40:00 19 Improvement Program?

18:40:00 20 A. Yes.

18:40:00 21 1236 Q. Which is managed by the ORC?

18:40:23 22 A. Correct.

18:40:23 23 1237 Q. This is SB6829 and it's titled
18:40:23 24 "Percentage of Nominator and Sustained Horses
18:40:23 25 Racing in OSS", and I think that it will give you

18:40:23 1 some of the metrics that you've just been
18:40:23 2 discussing, so --

18:40:23 3 A. Well, just before I look at it,
18:40:23 4 this gives you the percentage of horses nominated,
18:40:45 5 sustained for OSS.

18:40:45 6 There will be a lot of other horses
18:40:45 7 bred in Ontario that weren't nominated to the
18:40:45 8 program.

18:40:45 9 1238 Q. Okay. So explain that to me. Why
18:40:45 10 would you nominate a horse to the OSS?

18:40:45 11 A. Because that -- for, I guess, two
18:40:45 12 reasons. One, if you're a commercial breeder,
18:40:45 13 you're breeding a product that you want to sell.

18:41:08 14 If you're -- you raise your own
18:41:08 15 homebreds, you're breeding, you will nominate to be
18:41:08 16 eligible to the program.

18:41:08 17 1239 Q. And to be eligible for breeders'
18:41:08 18 awards, you need to be --

18:41:08 19 A. That, too. You need... But also,
18:41:08 20 if you don't nominate your horse, the horse can't
18:41:08 21 race in the program.

18:41:30 22 1240 Q. Right. So when we talk about
18:41:30 23 getting Horse Improvement Program money, that's for
18:41:30 24 horses that are nominated to the Ontario Sires
18:41:30 25 Stakes Program?

18:41:30 1 A. Yes.

18:41:30 2 1241 Q. Okay. So I guess we'll take this,
18:41:30 3 then, with its limitations, but I'm interested in
18:41:30 4 looking at it nevertheless because it shows me the
18:41:53 5 impact, at least of the Horse Improvement Program
18:41:53 6 over these years, starting 1998 through 2012.

18:41:53 7 MR. MATTHEWS: The impact of the Horse
18:41:53 8 Improvement Program?

18:41:53 9 MR. ROSENBERG: (Nodding head.)

18:41:53 10 MR. MATTHEWS: Okay.

18:41:53 11 BY MR. ROSENBERG:

18:41:53 12 1242 Q. Yes.
18:41:53 13 Well, sir, is that fair?
18:41:53 14 This shows the horses that are
18:41:53 15 participating in the Horse Improvement Program,
18:41:53 16 right?

18:41:53 17 A. I don't know where these numbers
18:42:16 18 come from. I'm going to presume foals registered,
18:42:16 19 starting out in the 1998, shows 1,954; culminating
18:42:16 20 in 2012, 2,243.

18:42:16 21 1243 Q. Yes.

18:42:16 22 A. That's... And the high was in
18:42:16 23 2002 of 3,187.

18:42:16 24 1244 Q. Correct.

18:42:38 25 A. And it bounces around.

18:42:38 1 1245 Q. It looks to me like there was a
18:42:38 2 dramatic increase in the number of foals registered
18:42:38 3 when SARP was first introduced, followed by a
18:42:38 4 decline from 2002 to 2012; fair?

18:42:38 5 A. Yeah. And I -- the outlier there
18:42:38 6 is 1,950 in 2008. I don't know --

18:42:38 7 THE COURT REPORTER: In which year?

18:42:38 8 THE WITNESS: 2008, the total number of
18:43:01 9 foals registered was 1,950. Whether -- and that
18:43:01 10 could be the result of, there might have been a --
18:43:01 11 a problem in the breeding industry where mares
18:43:01 12 didn't conceive or -- or lost foals.

18:43:01 13 Just seems like an outlier, that you go
18:43:01 14 from 2,261 down to 1,950 and right back up to
18:43:01 15 2,234, which markedly tells me that there was some
18:43:24 16 other factor, that whether -- it drops
18:43:46 17 precipitously for that one year and comes right
18:43:46 18 back up again, which tells me people didn't exit
18:43:46 19 the program; that there was something else going on
18:43:46 20 in the industry like a disease that --

18:43:46 21 --- (Court reporter appeals.)

18:43:46 22 THE WITNESS: That there was something
18:43:46 23 else going on in the industry, such as a disease,
18:43:46 24 that mares either didn't get in foal or lost foals
18:43:46 25 when they were..., and -- and that...

18:43:46 1 And there are types of diseases that
18:43:46 2 can spread, that you get into quarantines and that,
18:43:46 3 so it's not...

18:44:09 4 There's history to that. Whether that
18:44:09 5 happened here, I can't tell you.

18:44:09 6 BY MR. ROSENBERG:

18:44:09 7 1246 Q. So explain this to me. What is
18:44:09 8 "foals registered"?

18:44:09 9 A. That's when a foal was born, it's
18:44:09 10 registered. It has to be registered.

18:44:09 11 1247 Q. To participate in the Ontario Sires
18:44:09 12 Stakes?

18:44:09 13 A. To be -- to race, period.

18:44:09 14 1248 Q. Race, period.

18:44:32 15 What's "yearlings nominated"?

18:44:32 16 A. That's, you nominate a foal to
18:44:32 17 race in the program.

18:44:32 18 1249 Q. And you will agree that the number
18:44:32 19 of yearlings nominated in 1999 is about the same as
18:44:32 20 in 2012?

18:44:32 21 A. 2,068 versus 2,074, yes.

18:44:32 22 1250 Q. And if we look over, what is
18:44:55 23 "two-year-old sustained"?

18:44:55 24 A. That's when owners make a payment
18:44:55 25 to keep their horses eligible for the Sires Stakes

18:44:55 1 Program.

18:44:55 2 1251 Q. What's "two-year-olds raced"?

18:44:55 3 A. That's when the horse starts in a

18:44:55 4 -- in a Sires Stakes race.

18:44:55 5 1252 Q. So that's kind of the goal of the

18:44:55 6 program. You want to get--

18:44:55 7 A. Yeah.

18:44:55 8 1253 Q. --horses starting in a race,

18:45:18 9 right?

18:45:18 10 A. Exactly. And I talked earlier

18:45:18 11 about the number of horses that make it.

18:45:18 12 You will see percentage of -- of

18:45:18 13 registered foals raced was 22.2 per cent.

18:45:18 14 --- (Court reporter appeals.)

18:45:18 15 THE WITNESS: ...of foals registered

18:45:18 16 that raced was 22.2 per cent.

18:45:18 17 BY MR. ROSENBERG:

18:45:18 18 1254 Q. And you will agree with me that

18:45:18 19 that matches the trend insofar as it increases from

18:45:41 20 1998, it appears to peak in about 2004, and then it

18:45:41 21 falls back down in 2011?

18:45:41 22 A. I don't know which number you're

18:45:41 23 talking about.

18:45:41 24 If we are talking being about

18:45:41 25 sustaining...

18:45:41 1 1255 Q. Two-year-olds raced peaks in 2004,
18:45:41 2 right; 601?
18:45:41 3 A. 601, yeah. Then the numbers are
18:46:04 4 fairly close all the way through.
18:46:04 5 If you look at percentage, 21.5 per
18:46:04 6 cent in 1998, 22.2 per cent in 2012. I mean, there
18:46:04 7 are slight variations, but they are not that far
18:46:04 8 off. They're within a hundred all the way across,
18:46:27 9 are they not?
18:46:27 10 MR. MATTHEWS: Mr. Rosenberg, just so I
18:46:27 11 understand your question, are you just asking the
18:46:27 12 witness to confirm what this document reflects, or
18:46:27 13 are you asking him to confirm if this, as a matter
18:46:27 14 of fact, is what occurred?
18:46:27 15 BY MR. ROSENBERG:
18:46:27 16 1256 Q. Well, do you have any basis on
18:46:27 17 which to offer that second --
18:46:27 18 A. No. I mean, I -- I can't... I
18:46:50 19 can't dispute what those numbers are. The numbers
18:46:50 20 are -- I've said before when we started this whole
18:46:50 21 exercise, the numbers are what the numbers are.
18:46:50 22 1257 Q. Okay.
18:46:50 23 A. Yeah.
18:46:50 24 1258 Q. And if we move across and look at
18:46:50 25 "three-year-olds raced"--

18:46:50 1 A. Yes.

18:46:50 2 1259 Q. --what's that?

18:46:50 3 A. Well, if you...

18:47:13 4 The program was for two- and

18:47:13 5 three-year-olds, so your horse may not have raced

18:47:13 6 as a two-year-old, but could race as a

18:47:13 7 three-year-old. Some horses, depending on their

18:47:13 8 ability, their growth cycle, a lot of factors,

18:47:13 9 don't race as two-year-olds, but do race as a

18:47:36 10 three-year-old.

18:47:36 11 1260 Q. And it appears that three-year-old

18:47:36 12 racing peaks in 2001 at 724?

18:47:36 13 A. I -- I don't look at these numbers

18:47:36 14 as being... I don't know what they show you, I

18:47:36 15 guess.

18:47:36 16 1261 Q. Well, I mean, surely it shows you

18:47:36 17 that the number of three-year-olds raced increased

18:47:59 18 from 1998 to 2001, and then declined such that the

18:47:59 19 number in 2011 is lower than 1998, right?

18:47:59 20 A. Yeah. But then it -- then it pops

18:47:59 21 back -- 2010 is 9- -- 990. Two thousand and- --

18:47:59 22 1262 Q. No. I'm looking at "raced"; you

18:48:22 23 are looking at "sustained".

18:48:22 24 A. Yeah, okay. Sorry.

18:48:22 25 Well, three-year-olds that raced, I...

18:48:22 1 I don't... I don't see anything untoward. It's,
18:48:22 2 you know, different years. You have -- more
18:48:22 3 horses. People think they have a chance; they
18:48:22 4 don't have a chance.

18:48:22 5 I look at the number. To me, more
18:48:46 6 pertinent is the fact, how many foals were
18:48:46 7 registered, how many yearlings were registered,
18:48:46 8 percentage of foals nominated is more pertinent to
18:48:46 9 -- to the program.

18:48:46 10 1263 Q. Than the--

18:48:46 11 A. How --

18:48:46 12 1264 Q. --number of horses racing?

18:48:46 13 A. Yeah, because --

18:48:46 14 --- (Court reporter appeals.)

18:48:46 15 BY MR. ROSENBERG:

18:48:46 16 1265 Q. Than the number of horses racing?

18:48:46 17 A. There -- there are a whole range
18:48:46 18 of factors that affect how many race in a given
18:48:46 19 year.

18:48:46 20 If -- if you've got a horse that is all
18:49:09 21 right, but it's particularly a strong year, you are
18:49:09 22 going to say, 'Why am I -- why am I going to spend
18:49:09 23 good money to -- to race when I know that maybe the
18:49:09 24 best I can ever do is finish fifth?'

18:49:09 25 1266 Q. I think I'm starting to see the

18:49:09 1 difficulty in creating benchmarks for the horse
18:49:32 2 racing industry.

18:49:32 3 A. Correct. It -- it is really
18:49:32 4 difficult 'cause there are so many variables that
18:49:32 5 change from year to year, that it's... It's hard
18:49:32 6 to understand.

18:49:32 7 1267 Q. Clearly hard to understand on this
18:49:32 8 side of the table.

18:49:32 9 A. It's hard to understand for
18:49:32 10 people, period, because it -- there are just a lot
18:49:55 11 of variables that go into what happens one year
18:49:55 12 versus another year.

18:49:55 13 1268 Q. All right. Another metric...

18:49:55 14 MR. MATTHEWS: [Sotto voce.]

18:49:55 15 MR. ROSENBERG: Before I move on to
18:49:55 16 another metric, why don't we mark this document,
18:49:55 17 SB6829, as our next exhibit. It's Exhibit 38.

18:49:55 18 ---EXHIBIT NO. 38: Doc ID Number
18:50:19 19 SB6829.

18:50:19 20 BY MR. ROSENBERG:

18:50:19 21 1269 Q. In the interests of time,
18:50:19 22 recognizing that I would like to get through what I
18:50:19 23 can tonight, why don't I actually not talk about
18:50:28 24 race dates for the moment.

18:50:28 25 Let's talk instead about

18:50:28 1 advertisements.

18:50:38 2 I think you've told us that you had

18:50:45 3 pretty minimal contact with OLG during your term --

18:50:50 4 terms as commissioner of the Ontario Racing

18:50:52 5 Commission?

18:50:52 6 A. Correct.

18:50:54 7 1270 Q. And it's safe to say that the ORC

18:50:58 8 did not report to OLG?

18:51:00 9 A. Correct.

18:51:00 10 1271 Q. It's safe to say that the ORC was

18:51:03 11 not an agent of OLG?

18:51:06 12 A. Correct.

18:51:06 13 1272 Q. It did not take direction from

18:51:10 14 OLG?

18:51:10 15 A. Correct.

18:51:10 16 1273 Q. And it didn't make statements on

18:51:10 17 behalf of OLG?

18:51:10 18 A. Correct.

18:51:17 19 1274 Q. Okay. You've told us that the ORC

18:51:21 20 conveyed a message to the public at large, that it

18:51:24 21 should breed, buy and race in Ontario?

18:51:26 22 A. Correct.

18:51:29 23 1275 Q. And it did so through

18:51:37 24 advertisements?

18:51:37 25 A. Correct.

18:51:38 1 1276 Q. Now, I have some of those
18:51:42 2 advertisements.
18:51:43 3 A. We -- we went through some of them
18:51:45 4 today already.
18:51:45 5 1277 Q. Yes. In fact, I can probably use
18:51:49 6 those.
18:52:11 7 So, sir, you're referring to Exhibit
18:52:13 8 15. I'm looking at SB894, "Creating a dream.
18:52:36 9 Breed, buy, race in Ontario." And it references:
18:52:42 10 "Ontario success. Ontario
18:52:45 11 sired trotting colt Majestic Son
18:52:48 12 earned over \$1.8-million without
18:52:51 13 leaving Ontario." [As read.]
18:52:52 14 That was true, I take it?
18:52:55 15 A. I would hope so. We said it.
18:52:58 16 1278 Q. Well, that's what I want to get at
18:52:59 17 here.
18:52:59 18 A. It would be true because if you
18:53:02 19 look at a race program, the horses' earnings are in
18:53:03 20 the program every time they race, so--
18:53:03 21 1279 Q. Right.
18:53:06 22 A. --it would be kind of tough to...
18:53:06 23 1280 Q. You're not -- there are no
18:53:11 24 revelations in this advertisement?
18:53:11 25 A. No.

18:53:11 1 1281 Q. There's nothing people wouldn't
18:53:17 2 have known already or been able to easily verify?

18:53:17 3 A. Correct.

18:53:17 4 1282 Q. And certainly, to the best of your
18:53:28 5 knowledge, there's nothing in this advertisement
18:53:28 6 that's untrue?

18:53:28 7 A. Correct.

18:53:28 8 1283 Q. Okay. So that is a February 2007
18:53:28 9 publication in Trot Magazine.

18:53:33 10 I've got SB895, which is a February
18:53:33 11 2008 advertisement. "Ontario success." Again, it
18:53:39 12 describes another horse. This one says:

18:53:42 13 "Breed to an Ontario sire for
18:53:45 14 your chance at approximately
18:53:48 15 \$18-million in OSS purses."

18:53:48 16 [As read.]

18:53:48 17 I take it that was true at the time?

18:53:56 18 A. Correct.

18:53:56 19 1284 Q. And, "It pays to be Ontario
18:53:58 20 sired"?

18:53:58 21 A. Correct.

18:53:59 22 1285 Q. And "breed, buy, race in Ontario"
18:54:02 23 was what you were encouraging people to do?

18:54:04 24 A. Correct.

18:54:08 25 1286 Q. And that's all you were

18:54:08 1 encouraging them to do?

18:54:12 2 A. Correct.

18:54:12 3 1287 Q. So there's nothing untrue about

18:54:16 4 this ad?

18:54:16 5 A. Correct.

18:54:16 6 1288 Q. So I'm looking at a February 2010

18:54:23 7 Trot Magazine ad. This is SB896. This one has a

18:54:27 8 bit more text in it. It says:

18:54:32 9 "Ontario sired racing for

18:54:33 10 millions. Ontario sired horses will

18:54:35 11 race for approximately \$19-million

18:54:38 12 in the 2010 Ontario Sires Stakes

18:54:41 13 Program." [As read.]

18:54:41 14 That was, I assume, true?

18:54:45 15 A. I would presume so.

18:54:45 16 1289 Q. And it's talking about this year's

18:54:50 17 program; the 2010 ad is talking about a 2010

18:54:55 18 program?

18:54:55 19 A. Correct.

18:54:55 20 1290 Q. And it also says:

18:55:01 21 "Ontario sired horses will have

18:55:01 22 the opportunity to race in

18:55:01 23 restricted overnight races which

18:55:09 24 were worth approximately

18:55:09 25 \$2.28-million in 2009." [As read.]

18:55:09 1 So it's -- I assume that was true as
18:55:09 2 well?

18:55:09 3 A. Correct.

18:55:18 4 1291 Q. And --

18:55:18 5 A. That was a program change we
18:55:18 6 initiated.

18:55:18 7 1292 Q. Right. And you're not certain as
18:55:18 8 to how much money they will have in 2010, so you
18:55:31 9 don't say, 'You will have an opportunity to race
18:55:31 10 for this much money in 2010 in the restricted
18:55:31 11 overnight races'; you just give the 2009 figure?

18:55:31 12 A. Yes. I mean, you don't know how
18:55:31 13 many races there are going to be.

18:55:45 14 1293 Q. Exactly. You can't make
18:55:45 15 representations about how much money will be
18:55:45 16 available to race for in the future?

18:55:45 17 A. Correct. On -- on -- on that
18:55:45 18 program.

18:55:45 19 1294 Q. Right.

18:55:45 20 A. Because there's -- one doesn't
18:55:45 21 know how many races are going to be carded.
18:55:45 22 There's a whole bunch of factors and it was a new
18:56:06 23 program.

18:56:06 24 1295 Q. Right. I mean, and --

18:56:06 25 A. That -- that restricted overnight

18:56:06 1 was a new program as an incentive to -- to the HIP
18:56:06 2 program.

18:56:06 3 1296 Q. When you start looking out any
18:56:06 4 number of years, my friend took you through some
18:56:06 5 charts of projections. Those are just projections?

18:56:30 6 A. Correct.

18:56:30 7 1297 Q. You don't know how much money is
18:56:30 8 going to be available to race in future years?

18:56:30 9 A. We weren't too far off in our
18:56:30 10 projections.

18:56:30 11 1298 Q. Well, I'm going to come back to
18:56:48 12 those projections, then, because they depend on a
18:56:48 13 number of things; for example, the pari-mutuel
18:56:48 14 handle, right?

18:56:48 15 A. Yeah.

18:56:48 16 1299 Q. You don't know what's going to be
18:56:48 17 several years out?

18:56:48 18 A. No. They're estimated.

18:56:48 19 1300 Q. Right. And they depend on that
18:56:48 20 money being available in order for the money to be
18:56:48 21 there to race for?

18:57:12 22 A. Correct.

18:57:12 23 1301 Q. Another thing that, you know, you
18:57:12 24 were predicting would be there, but ultimately
18:57:12 25 wasn't, was money from the SARP, right?

18:57:12 1 A. Going past, yeah. Of course.

18:57:12 2 1302 Q. So if we keep looking at the ad

18:57:12 3 that I have here, SB896, under the heading "Ontario

18:57:36 4 Bred: Delivering Rewards to Breeders", it says:

18:57:36 5 "The 2010 Ontario Sires Stakes

18:57:36 6 Program will pay out more than

18:57:36 7 \$2.85-million in rewards to breeders

18:57:36 8 of Ontario Sires Stakes purse

18:57:36 9 winners." [As read.]

18:57:36 10 True?

18:57:36 11 A. True.

18:57:36 12 1303 Q. And "Invest in Ontario for Real

18:57:36 13 Returns"; under that heading, it says:

18:58:00 14 "In 2009, the Standardbred

18:58:00 15 Improvement Program launched the

18:58:00 16 Ontario Resident Mare Program to

18:58:00 17 support the investment in quality

18:58:00 18 stallions and mares in the Ontario

18:58:00 19 breeding sector." [As read.]

18:58:00 20 That was true?

18:58:00 21 A. Correct.

18:58:00 22 1304 Q. It provides how you qualify.

18:58:00 23 I assume this information is accurate.

18:58:00 24 I mean, if you took a look at this ad, sir...

18:58:24 25 A. I think I've agreed to the

18:58:24 1 accuracy of it.

18:58:24 2 1305 Q. It's all true, right?

18:58:24 3 A. Yes. We are just going over my

18:58:24 4 previous testimony with each one of these.

18:58:24 5 1306 Q. You have confirmed that all of

18:58:24 6 these statements in all of the ads in Exhibit 15

18:58:48 7 are true?

18:58:48 8 A. That's what I -- my testimony was

18:58:48 9 earlier.

18:58:48 10 1307 Q. Okay.

18:58:48 11 And that slogan, "Breed, buy, race in

18:58:48 12 Ontario," or, "It pays to breed, buy, race in

18:58:48 13 Ontario," or any of the variants that we've seen

18:58:48 14 here, "Creating a dream: breed, buy, race in

18:58:48 15 Ontario," that was one of the tag lines that the

18:59:12 16 ORC used to advertise the Ontario Sires Stakes?

18:59:12 17 A. Part of the marketing initiative,

18:59:12 18 yes.

18:59:12 19 1308 Q. And that marketing initiative

18:59:12 20 continued after the termination of SARP?

18:59:12 21 A. I can't tell you that. I don't --

18:59:12 22 I don't recall, so... It certainly put into

18:59:36 23 question -- I -- I'm not sure it did. I don't know

18:59:36 24 what we did. I don't recall, but it -- it would be

18:59:36 25 hard to put out a marketing program for something

18:59:36 1 we didn't know if it was going to exist for the
18:59:36 2 coming year--

18:59:36 3 1309 Q. Well, that's --

18:59:36 4 A. --because one -- one of the issues
18:59:36 5 we had was, what are we going to -- what do we do,
19:00:01 6 for example, with the two-year-olds that raced the
19:00:01 7 current year? Will there be a program if
19:00:01 8 nominated, and they're eligible to a program we
19:00:01 9 don't know whether it's going to exist.

19:00:01 10 1310 Q. I mean, that's the point I wanted
19:00:01 11 to get to.

19:00:01 12 Even after SARP was cancelled, ORC was
19:00:01 13 still charged with encouraging people to breed, buy
19:00:25 14 and race in Ontario?

19:00:25 15 A. But I don't -- I can't tell you
19:00:25 16 that we still did it.

19:00:25 17 It seems to me that, given what was
19:00:25 18 going on, if you can show me materials that we put
19:00:25 19 out post-announcement, then I would agree with you.

19:00:25 20 But to the best of my recollection,
19:00:49 21 given the total uncertainty as to whether we would
19:00:49 22 exist going forward, whether there would be a breed
19:00:49 23 program going forward, that I -- I doubt that we
19:00:49 24 did any marketing of the Ontario Sires Stakes
19:00:49 25 Program post the announcement.

19:00:49 1 1311 Q. But, of course, the Ontario Sires
19:00:49 2 Stakes Program continued to exist?

19:00:49 3 A. We didn't know that at the time.

19:01:13 4 1312 Q. All right. But at a certain
19:01:13 5 point, you know, year in, year out, it -- the
19:01:13 6 Ontario Sires Stakes Program never stopped, right?

19:01:13 7 A. It never stopped until such time
19:01:13 8 as the announcement was made to end SARP. And at
19:01:13 9 that point in time, we had no idea whether there
19:01:13 10 would be a program going forward or not.

19:01:37 11 1313 Q. Okay. Is there an Ontario Sires
19:01:37 12 Stakes program today?

19:01:37 13 A. There is, but, sir, remember I
19:01:37 14 left.

19:01:37 15 1314 Q. Okay.

19:01:37 16 A. So all I can tell you is when, at
19:01:37 17 the time of my departure, there was no certainty
19:01:37 18 that there would be an Ontario Sires Stakes Program
19:01:37 19 going into the future.

19:01:37 20 1315 Q. Okay. But as it happens, there
19:02:02 21 never stopped being Ontario Sires Stakes Program?

19:02:02 22 A. Sir, I'm just -- I've already told
19:02:02 23 you, I can't comment on the go forward.

19:02:02 24 I can -- all I can tell you is that
19:02:02 25 there was a program up to the announcement.

19:02:02 1 Whether there would be a program going
19:02:02 2 forward, there was huge uncertainty. And there was
19:02:27 3 an announcement made by the government at the -- at
19:02:27 4 the Harrisburg sale in November that there would be
19:02:27 5 a program.

19:02:27 6 At that point in time, I had left. I
19:02:27 7 had resigned as Chair of the Commission.

19:02:27 8 I had urged numerous people that there
19:02:27 9 was a need to make some commitment for a breed
19:02:27 10 program, so there would be some certainty.

19:02:53 11 At -- to the point in time that I left,
19:02:53 12 they had seen fit, for whatever reason, not to act
19:02:53 13 on that.

19:02:53 14 1316 Q. And you can't speak to what
19:02:53 15 advertising was placed by the ORC after the
19:02:53 16 announcement was made that SARP would be
19:03:19 17 terminated?

19:03:19 18 A. To the best of my recollection, I
19:03:19 19 don't believe there was any.

19:03:19 20 We -- we couldn't -- we couldn't market
19:03:19 21 a program we didn't know would be in existence.
19:03:19 22 There was no certainty from that time 'til the time
19:03:19 23 I left.

19:03:19 24 1317 Q. So you're talking about
19:03:19 25 advertising for the Ontario Sires Stakes Program,

19:03:45 1
19:03:45 2
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19:04:11 20
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though.

A. Well, the Breed Improvement Program, period. It -- it was up in the air whether there was going to be a Breed Improvement Program.

---(Court reporter appeals.)

THE WITNESS: I didn't know whether there was going to be a Breed Improvement Program.

BY MR. ROSENBERG:

Q. So my information is that the document I'm handing you, SB5410, was an advertisement that ran in August 2012.

It appears to be an Ontario Sires Stakes advertisement.

MR. MATTHEWS: Well, what's your information, Mr. Rosenberg? Because this witness has told you he doesn't have a basis to believe anything happened.

And so, you're now asking him to accept your proposition is true.

MR. ROSENBERG: No. It's fair enough. That's the way it's labelled in the Plaintiffs' productions, so that's how I got the date.

MR. MATTHEWS: All right. Well --

THE WITNESS: And I can't tell you when

19:04:37 1 this would have been contractually committed to.

19:04:37 2 So all I'm telling is, from the
19:04:37 3 Commission perspective, we wouldn't have authorized
19:04:37 4 any marketing going forward. We didn't know there
19:04:37 5 was any --

19:04:37 6 --- (Court reporter appeals.)

19:04:37 7 THE WITNESS: ...any marketing
19:04:37 8 initiatives for the Breed Improvement Program, and
19:05:03 9 I don't -- I don't know when this ad ran.

19:05:03 10 BY MR. ROSENBERG:

19:05:03 11 1319 Q. You're telling me that you would
19:05:03 12 allow an ad you weren't comfortable with to run
19:05:03 13 because it had been placed earlier?

19:05:03 14 A. Well, I -- I'm saying I don't know
19:05:03 15 when this was placed. I don't know -- I don't know
19:05:03 16 when it ran.

19:05:03 17 1320 Q. Okay. But if you accept -- if you
19:05:28 18 accept that this ran in August of 2012, this is
19:05:28 19 now, like, five months after the termination of
19:05:28 20 SARP was announced.

19:05:28 21 A. It would have run without my
19:05:28 22 knowledge.

19:05:28 23 1321 Q. I see.

19:05:28 24 A. I'm not -- if it did run, I'm not
19:05:28 25 disputing the fact that it ran. I'm telling you,

19:05:53 1 it ran without my knowledge and I certainly
19:05:53 2 wouldn't have been in support of it going forward.
19:05:53 3 1322 Q. And that's because you...
19:05:53 4 MR. ROSENBERG: Sorry, Madam Reporter.
19:05:53 5 THE COURT REPORTER: It's after seven.
19:05:53 6 MS. MACHADO: Yeah. We said --
19:05:53 7 MR. ROSENBERG: Okay.
19:05:53 8 MR. MATTHEWS: Do you want to mark this
19:05:53 9 as an exhibit, at least?
19:05:53 10 MR. ROSENBERG: Let's mark this as an
19:05:53 11 exhibit.
19:05:53 12 MS. MACHADO: I've got to run.
19:05:53 13 MR. MATTHEWS: So this is 39.
19:06:18 14 ---EXHIBIT NO. 39: Doc ID Number
19:06:18 15 SB5410.
19:06:18 16 THE WITNESS: It's unfortunate
19:06:18 17 Ms. Hoogeveen isn't around to provide clarity on
19:06:18 18 that.
19:06:18 19 BY MR. ROSENBERG:
19:06:18 20 1323 Q. When did she die?
19:06:18 21 MR. MATTHEWS: So 39 has a document ID
19:06:18 22 SB 5410.
19:06:20 23 THE WITNESS: Before -- actually, she
19:06:23 24 wouldn't have been involved in that. There would
19:06:25 25 have been other staff. I think she had already

19:06:28 1 passed. She was--

19:06:30 2 BY MR. ROSENBERG:

19:06:30 3 1324 Q. That's unfortunate.

19:06:31 4 A. --sick for some time.

19:06:32 5 1325 Q. I've certainly seen her name on

19:06:34 6 lots of documents.

19:06:35 7 A. Yes. Oh, yeah.

19:06:37 8 1326 Q. She appears to have really been

19:06:38 9 very heavily involved.

19:06:40 10 MR. MATTHEWS: We're off for now.

19:06:45 11 --- (Discussion off the record.)

19:06:45 12 --- [Adjourned at 7:06 p.m.]

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REPORTER'S CERTIFICATE

I, BONNIE LYNN VAN DER MEER, C.S.R.,
Chartered Shorthand Reporter, hereby certify;

That the foregoing proceedings were
taken before me at the time and place therein set
forth, at which time the witness was put under oath
by me;

That the testimony of the witness and
all objections made at the time of examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and
correct transcript of my shorthand notes so taken.

Dated this 27th day of January, 2018.



BONNIE LYNN VAN DER MEER, CSR
NEESON COURT REPORTING INC.